# IOWA ADMINISTRATIVE BULLETIN

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# PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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**CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, paragraph, subparagraph, or numbered paragraph).

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

| | |
|---|---|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1 | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)"a" | (Paragraph) |
| 441 IAC 79.1(1)"a"(1) | (Subparagraph) |
| 441 IAC 79.1(1)"a"(1)"1" | (Numbered paragraph) |

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Note: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

| | | |
|---|---|---|
| Organization and operation; state library of Iowa, 1.4(7), 111.2(12), chs 122 to 130<br>IAB 12/25/25 **ARC 8674C** | Ola Babcock Miller Building<br>1112 East Grand Avenue<br>Des Moines, Iowa | January 14, 2025<br>10 to 11 a.m.<br>January 14, 2025<br>1:30 to 2:30 p.m. |
| Benefits, 64.1 to 64.4<br>IAB 1/8/25<br>**Regulatory Analysis** | Google Meet<br>1.413.728.2894<br>PIN: 372 678 365# | January 28, 2025<br>1 to 1:30 p.m. |
| Procurement of goods and services of general use; purchasing standards for service contracts, amendments to chs 117, 118<br>IAB 1/8/25 **ARC 8776C** | Google Meet<br>1.916.836.2562<br>PIN: 214 164 057# | January 30, 2025<br>2:30 to 3 p.m. |
| | Google Meet<br>1.302.440.5656<br>PIN: 132 977 762# | January 30, 2025<br>3:30 to 4 p.m. |
| Programs and funding, ch 131<br>IAB 12/25/25 **ARC 8676C** | Ola Babcock Miller Building<br>1112 East Grand Avenue<br>Des Moines, Iowa | January 15, 2025<br>10 to 11 a.m.<br>January 15, 2025<br>1:30 to 2:30 p.m. |
| Internet use policy, ch 132<br>IAB 12/25/25 **ARC 8673C** | Ola Babcock Miller Building<br>1112 East Grand Avenue<br>Des Moines, Iowa | January 16, 2025<br>10 to 11 a.m.<br>January 16, 2025<br>1:30 to 2:30 p.m. |

**ARCHITECTURAL EXAMINING BOARD[193B]**

| | | |
|---|---|---|
| Continuing education credits—applying excess credits, 3.3(2)<br>IAB 12/25/24 **ARC 8552C** | Suite 100<br>6200 Park Avenue<br>Des Moines, Iowa<br>Microsoft Teams link<br>Meeting ID: 870 0273 5933<br>Passcode: 814381<br>Or dial: 312.626.6799 | January 28, 2025<br>3:30 p.m. |
| | Suite 100<br>6200 Park Avenue<br>Des Moines, Iowa<br>Microsoft Teams link<br>Meeting ID: 878 2235 5121<br>Passcode: 548342<br>Or dial: 312.626.6799 | January 29, 2025<br>3:30 p.m. |

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

| | | |
|---|---|---|
| Public records and fair information practices, ch 195<br>IAB 12/25/24 **ARC 8663C** | 1963 Bell Avenue<br>Des Moines, Iowa<br>Registration information for online participation may be found at www.iowaeda.com/red-tape-review/ | January 14, 2025<br>1 to 1:15 p.m.<br>January 16, 2025<br>1 to 1:15 p.m. |

**ECONOMIC DEVELOPMENT AUTHORITY[261]**(cont'd)

| | | |
|---|---|---|
| Petition for rulemaking, ch 197<br>IAB 12/25/24 **ARC 8664C** | 1963 Bell Avenue<br>Des Moines, Iowa<br>Registration information for online participation may be found at www.iowaeda.com/red-tape-review/ | January 14, 2025<br>1:15 to 1:30 p.m.<br>January 16, 2025<br>1:15 to 1:30 p.m. |
| Petition for declaratory order, ch 198<br>IAB 12/25/24 **ARC 8665C** | 1963 Bell Avenue<br>Des Moines, Iowa<br>Registration information for online participation may be found at www.iowaeda.com/red-tape-review/ | January 14, 2025<br>1:30 to 1:45 p.m.<br>January 16, 2025<br>1:30 to 1:45 p.m. |
| Waivers from administrative rules, ch 199<br>IAB 12/25/24 **ARC 8666C** | 1963 Bell Avenue<br>Des Moines, Iowa<br>Registration information for online participation may be found at www.iowaeda.com/red-tape-review/ | January 14, 2025<br>1:45 to 2 p.m.<br>January 16, 2025<br>1:45 to 2 p.m. |

**EDUCATION DEPARTMENT[281]**

| | | |
|---|---|---|
| Open enrollment—transportation, deadlines, 17.2(1), 17.6, 17.8; community colleges, 21.1, 21.2, 21.62, 21.63; postsecondary program review, amendments to ch 46; state standards for progression in reading, 62.3(4), 62.4(4), 62.6(1); practitioner preparation, 79.13 to 79.15, 79.24<br>IAB 1/8/25 **ARCs 8757C**, **8758C**, **8759C**, **8760C**, **8761C** | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa | January 28, 2025<br>8 to 9 a.m. |

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

| | | |
|---|---|---|
| Nonpublic water wells—permits and construction, rescind ch 38, adopt ch 49; requirements for properly plugging abandoned wells, ch 39; well contractor certification, ch 82<br>IAB 1/8/25 **ARCs 8599C**, **8614C**, **8627C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | February 3, 2025<br>10 to 11 a.m.<br>February 4, 2025<br>2 to 3 p.m. |
| Scope of division, definitions, forms, public notice and education, consumer confidence reports, reporting, and record maintenance, adopt ch 40, rescind ch 42; water supplies, ch 41; water supplies—design and operation, ch 43<br>IAB 1/8/25 **ARCs 8616C**, **8617C**, **8631C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | January 30, 2025<br>2 to 3 p.m.<br>January 31, 2025<br>9 to 10 a.m. |
| Drinking water state revolving fund, ch 44; scope of title—definitions—forms; clean water state revolving fund, adopt ch 90; rescind chs 91, 92, 93<br>IAB 1/8/25 **ARCs 8625C**, **8637C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | February 5, 2025<br>9 to 10 a.m.<br>February 6, 2025<br>10 to 11 a.m. |

**ENVIRONMENTAL PROTECTION COMMISSION[567]**(cont'd)

| | | |
|---|---|---|
| Water use, withdrawals, and diversions, adopt ch 50, rescind chs 51, 52; protected water sources, ch 53; water use permit restrictions or compensation by permitted users to nonregulated users due to well interference, ch 54; aquifer storage and recovery, ch 55<br>IAB 1/8/25 **ARCs 8618C**, **8619C**, **8630C**, **8652C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | February 3, 2025<br>2 to 3 p.m.<br>February 4, 2025<br>10 to 11 a.m. |
| Scope of title, definitions, wastewater construction permits, and operation permits, adopt ch 60; rescind chs 64, 66; effluent and pretreatment standards: other effluent limitations or prohibitions, ch 62; monitoring, analytical and reporting requirements, ch 63; standards for the land application of sewage sludge, ch 67; commercial septic tank cleaners, ch 68; private sewage disposal systems, ch 69<br>IAB 1/8/25 **ARCs 8626C**, **8629C**, **8632C**, **8635C**, **8638C**, **8650C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | January 28, 2025<br>1 to 2 p.m.<br>January 29, 2025<br>1 to 2 p.m. |
| Scope of title—definitions—forms—rules of practice, ch 70; floodplain or floodway development—when approval is required, adopt ch 71; rescind chs 75, 76; criteria for approval, ch 72; approval, construction, use, maintenance, removal, inspections, and safety of dams, ch 73<br>IAB 1/8/25 **ARCs 8633C**, **8634C**, **8636C**, **8639C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | January 28, 2025<br>10 to 11 a.m.<br>January 29, 2025<br>1 to 2 p.m. |
| Operator certification: public water supply systems and wastewater treatment systems, ch 81<br>IAB 1/8/25 **ARC 8600C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | February 4, 2025<br>8:30 to 9:30 a.m.<br>February 5, 2025<br>2 to 3 p.m. |
| Laboratory certification, ch 83<br>IAB 1/8/25 **ARC 8601C** | Virtual meeting registration link will be provided prior to the hearing.<br>More information: www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking | January 28, 2025<br>10 to 11 a.m.<br>January 31, 2025<br>10:30 to 11:30 a.m. |

**HUMAN RIGHTS DEPARTMENT[421]**

| | | |
|---|---|---|
| Family development and self-sufficiency (FaDSS) program, rescind ch 24<br>IAB 12/11/24 **ARC 8540C** | Microsoft Teams<br>Meeting ID: 297 224 919 887<br>Passcode: TpBUop | January 16, 2025<br>10 to 11 a.m. |
| | Microsoft Teams<br>Meeting ID: 255 649 705 881<br>Passcode: BsEBSV | January 21, 2025<br>2:30 to 3:30 p.m. |

**HUMAN RIGHTS DEPARTMENT[421]**(cont'd)

| | | |
|---|---|---|
| Functions of division, rescind ch 40; hall of fame, rescind ch 41<br>IAB 12/11/24 **ARCs 8508C**, **8522C** | Microsoft Teams<br>Meeting ID: 281 130 323<br>Passcode: XDpFQ2: | January 14, 2025<br>9 to 10 a.m. |
| | Microsoft Teams<br>Meeting ID: 254 845 374<br>Passcode: hPYxD2 | January 17, 2025<br>9 to 10 a.m. |

**HUMAN SERVICES DEPARTMENT[441]**

| | | |
|---|---|---|
| Facility assessments, ch 36; promoting healthy marriage, ch 48; payment, ch 45; overpayment recovery, ch 46; diversion initiatives, ch 47; nursing facilities, ch 81; ICF/ID, ch 82; early and periodic screening, diagnosis, and treatment, ch 84; family planning program, ch 87<br>IAB 1/8/25 **ARCs 8709C**, **8710C**, **8711C**, **8712C**, **8713C**, **8714C**, **8715C**, **8717C**, **8718C** | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 | January 28, 2025<br>1 to 2 p.m. |
| | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ | January 29, 2025<br>10 to 11 a.m. |
| Family development and self-sufficiency program, ch 49; early childhood Iowa initiative, ch 121; payments for foster care, 156.6(1), 156.7<br>IAB 12/11/24 **ARC 8469C**, **8529C**, **8535C** | Microsoft Teams<br>Meeting ID: 240 123 537 880<br>Passcode: 4MT8Ac | January 15, 2025<br>10 to 11 a.m. |
| | Microsoft Teams<br>Meeting ID: 273 055 800 019<br>Passcode: FggQZn | January 17, 2025<br>2:30 to 3:30 p.m. |
| Application for assistance, ch 50; eligibility, ch 51; payment, ch 52<br>IAB 12/11/24 **ARCs 8468C**, **8531C**, **8536C** | Microsoft Teams<br>Meeting ID: 231 057 860 353<br>Passcode: fLgjUS | January 14, 2025<br>1 to 2 p.m. |
| | Microsoft Teams<br>Meeting ID: 230 344 825 539<br>Passcode: siQGLw | January 17, 2025<br>11 a.m. to 12 noon |
| Facility participation, ch 54<br>IAB 12/11/24 **ARC 8519C** | Microsoft Teams<br>Meeting ID: 216 574 088 886<br>Passcode: 6byRqd | January 14, 2025<br>10:30 to 11:30 a.m. |
| | Microsoft Teams<br>Meeting ID: 279 027 480 671<br>Passcode: RWrjKS | January 17, 2025<br>10 to 11 a.m. |
| Interim assistance reimbursement, ch 57; refugee cash assistance, ch 60; refugee services program, ch 61; rent reimbursement, ch 62; SNAP administration, ch 65; emergency food assistance program, ch 66; WIC, ch 67; child care centers, ch 109<br>IAB 12/11/24 **ARCs 8473C**, **8514C**, **8524C**, **8525C**, **8533C**, **8534C**, **8537C**<br>IAB 12/25/24 **ARC 8546C** | Microsoft Teams<br>ID: 225 091 018 909<br>Passcode: hVKapN | January 14, 2025<br>2:30 to 3:30 p.m. |
| | Microsoft Teams<br>Meeting ID: 260 724 672 894<br>Passcode: bWFD4e | January 17, 2025<br>1:30 to 2:30 p.m. |

**HUMAN SERVICES DEPARTMENT[441]**(cont'd)

| | | |
|---|---|---|
| PMIC—plan of care team, 78.12, 78.29, 85.3, 85.6, 85.22, 85.24; services in psychiatric institutions, ch 85; hawki program, ch 86; specialized managed care programs, ch 88; debts due from transfers of assets, ch 89; Medicare drug subsidy, ch 91<br>IAB 12/25/24 **ARCs 8570C**, **8571C**, **8572C**, **8573C**, **8574C**, **8660C** | Microsoft Teams<br>Meeting ID: 282 712 030 944<br>Passcode: Ce3j6u | January 15, 2025<br>2 to 3 p.m. |
| | Microsoft Teams<br>Meeting ID: 299 255 416 174<br>Passcode: ebdJ6y | January 21, 2025<br>10 to 11 a.m. |
| Child support promoting opportunities for parents program, ch 94; adjustment and modification of support, ch 101; suspension and reinstatement of support, ch 102; PROMISE JOBS, ch 93; child support services, ch 95; information and records, ch 96; collection services center, ch 97; support enforcement services, ch 98; support establishment and adjustment services, child support guidelines, ch 99; establishment of paternity and support, ch 100<br>IAB 12/25/24 **ARCs 8548C**, **8556C**, **8557C**, **8558C**, **8559C**, **8560C**, **8561C**, **8562C**, **8564C**, **8602C** | Microsoft Teams<br>Meeting ID: 245 418 432 946<br>Passcode: HDCTJV | January 16, 2025<br>9 to 10 a.m. |
| | Microsoft Teams<br>Meeting ID: 265 152 739 982<br>Passcode: gcc2UJ | January 21, 2025<br>11 a.m. to 12 noon |

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

| | | |
|---|---|---|
| Dependent adult abuse in facilities and programs, ch 52<br>IAB 12/11/24<br>**Regulatory Analysis** | Pine Conference Room<br>6200 Park Avenue<br>Des Moines, Iowa | January 14, 2025<br>10 to 10:30 a.m. |
| Model rules for contested cases before licensing boards and settlements, ch 506<br>IAB 12/25/24<br>**Regulatory Analysis** | 6200 Park Avenue, Suite 100<br>Des Moines, Iowa | January 14, 2025<br>1:30 p.m. |
| Definitions; licenses, registrations, permits; practice of pharmacy; controlled and precursor substances; distribution and drug supply chain; drugs in EMS programs; Iowa PMP; board of pharmacy, chs 550 to 557<br>IAB 11/27/24 **ARCs 8417C**, **8419C** to **8421C**, **8423C**, **8424C**, **8428C** | 6200 Park Avenue, Suite 100<br>Des Moines, Iowa | January 9, 2025<br>9:30 a.m. |

**INTERIOR DESIGN EXAMINING BOARD[193G]**

| | | |
|---|---|---|
| Description of organization, ch 1; registration, ch 2; continuing education, ch 3; grounds for discipline, disciplinary investigations, and disciplinary proceedings, ch 5; disciplinary investigations, rescind ch 6; disciplinary proceedings, rescind ch 7<br>IAB 12/25/24 **ARCs 8547C**, **8549C**, **8550C**, **8551C**, **8554C**, **8555C** | 6200 Park Avenue, Suite 100<br>Des Moines, Iowa<br>Via Zoom: us02web.zoom.us/j/84433132848?pwd=jrbJwdGmptTm0gZaKqYSRqqcXbDdlT.1<br>Meeting ID: 844 3313 2848<br>Passcode: 461940<br>Or dial: 1.312.626.6799 | January 28, 2025<br>4 p.m. |
| | 6200 Park Avenue, Suite 100<br>Des Moines, Iowa<br>Via Zoom: us02web.zoom.us/j/81810512251?pwd=y97pOzjCHYLqffosRbjf6ETPwtW8t0.1<br>Meeting ID: 818 1051 2251<br>Passcode: 926490<br>Or dial: 1.312.626.6799 | January 29, 2025<br>4 p.m. |

**IOWA FINANCE AUTHORITY[265]**

| | | |
|---|---|---|
| Red tape review, rescind chs 2, 4, 30, 32, 37, 38<br>IAB 12/11/24 **ARC 8491C** | 1963 Bell Avenue, Suite 200<br>Des Moines, Iowa<br>Registration information:<br>www.iowafinance.com/red-tape-review/ | January 9, 2025<br>1:30 to 1:45 p.m. |
| Title guaranty division, ch 9<br>IAB 12/11/24 **ARC 8466C** | 1963 Bell Avenue, Suite 200<br>Des Moines, Iowa<br>Registration information:<br>www.iowafinance.com/red-tape-review/ | January 9, 2025<br>2 to 2:15 p.m. |
| Public records and fair information practices, ch 13<br>IAB 12/11/24 **ARC 8481C** | 1963 Bell Avenue, Suite 200<br>Des Moines, Iowa<br>Registration information:<br>www.iowafinance.com/red-tape-review/ | January 9, 2025<br>2:15 to 2:30 p.m. |
| State housing trust fund, ch 19<br>IAB 12/11/24 **ARC 8480C** | 1963 Bell Avenue, Suite 200<br>Des Moines, Iowa<br>Registration information:<br>www.iowafinance.com/red-tape-review/ | January 9, 2025<br>1:45 to 2 p.m. |

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

| | | |
|---|---|---|
| Contribution rates; proof of date of birth, 4.6, 11.1(1)"a"<br>IAB 1/8/25<br>**Regulatory Analysis** | IPERS Boardroom<br>7401 Register Drive<br>Des Moines, Iowa<br>Via conference call:<br>teams.microsoft.com/l/meetup-join<br>Meeting ID: 252 958 841 610<br>Passcode: nS3qX3XN | January 29, 2025<br>10:30 to 11:30 a.m. |

**LABOR SERVICES DIVISION[875]**

| | | |
|---|---|---|
| Federal occupational safety and health standards for hazardous chemicals—adoption by reference, 10.4<br>IAB 12/25/24<br>**Regulatory Analysis** | Lake Conference Room<br>6200 Park Avenue, Suite 100<br>Des Moines, Iowa | January 14, 2025<br>2:30 to 2:45 p.m. |

**LIBRARIES AND INFORMATION SERVICES DIVISION[286]**

| | | |
|---|---|---|
| Agency reorganization, rescind chs 1 to 3, 6, 7, 10 to 12<br>IAB 12/25/24 **ARC 8679C** | Ola Babcock Miller Building<br>Des Moines, Iowa | January 14, 2025<br>10 to 11 a.m.<br>January 14, 2025<br>1:30 to 2:30 p.m. |

**MEDICINE BOARD[653]**

| | | |
|---|---|---|
| Administrative/regulatory authority, ch 1; red tape review, rescind chs 3, 12, 14, 15, 18, 25; fees, ch 8; permanent and administrative medicine physician licensure, ch 9; resident, special and temporary physician licensure, ch 10; continuing education and training, ch 11; standards of practice, principles of medical ethics, ch 13; licensure of acupuncturists, ch 17; prescribing psychologists, ch 19; licensure of genetic counselors, ch 20; mandatory reporting, ch 22; discipline, ch 23; complaints and investigations, ch 24; reinstatement after disciplinary action, ch 26<br>IAB 12/25/24 **ARCs 8659C**, **8693C**, **8694C**, **8695C**, **8696C**, **8697C**, **8698C**, **8699C**, **8700C**, **8701C**, **8702C**, **8703C**, **8705C**, **8706C** | 6200 Park Avenue<br>Des Moines, Iowa | January 14, 2025<br>8:30 a.m.<br>January 15, 2025<br>8:30 a.m. |

**NATURAL RESOURCE COMMISSION[571]**

| | | |
|---|---|---|
| Vessel safety and registration, rescind chs 36, 38 to 43, 45, adopt ch 37; special events and fireworks displays, ch 44; inspection of permanently moored vessels, ch 48; motor vehicles in meandered streams, navigable streams and trout streams, ch 49; nonpermanent structures, ch 55; shooting sports grant program, ch 56<br>IAB 1/8/25 **ARCs 8596C**, **8597C**, **8604C**, **8610C**, **8611C**, **8613C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 31, 2025<br>11 a.m.<br>February 11, 2025<br>11 a.m. |
| All-terrain vehicles, off-road motorcycles and off-road utility vehicles, ch 46; snowmobiles, ch 47; regulated vehicle, snowmobile and vessel bonding, ch 50; state parks, recreation areas, and state forest camping; keg beer rules, amend ch 61, rescind ch 63; metal detector use in state areas, ch 64; Saylorville multiuse trail, ch 66; recreation trails on state forests, parks, preserves and recreation areas, ch 67<br>IAB 1/8/25 **ARCs 8585C**, **8586C**, **8587C**, **8588C**, **8598C**, **8603C**, **8605C** | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>Also via videoconference<br>A meeting registration link will be provided prior to the hearing | January 29, 2025<br>12 noon to 1 p.m.<br>February 6, 2025<br>4 to 5 p.m. |

**NATURAL RESOURCE COMMISSION[571]**(cont'd)

| | | |
|---|---|---|
| Game management areas, ch 51; wildlife refuges, ch 52; restrictions on removal of plant life, ch 54; migratory game bird hunting, adopt ch 91, rescind chs 92, 97, 102; small game hunting, adopt ch 96, rescind chs 100, 107; wild turkey hunting, adopt ch 98, rescind ch 99; falconry regulations, ch 101; deer population management zones, ch 105; wild furbearer trapping and hunting, adopt ch 108, rescind chs 109, 110; nuisance wildlife control, ch 114<br>IAB 1/8/25 **ARCs 8590C**, **8606C**, **8607C**, **8608C**, **8609C**, **8612C**, **8620C**, **8623C**, **8624C**, **8628C** | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa | January 28, 2025<br>12 noon to 1 p.m.<br>January 29, 2025<br>12 noon to 1 p.m. |
| Timber buyers, ch 72; forest and fruit-tree reservations, ch 73<br>IAB 1/8/25 **ARCs 8589C**, **8622C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 29, 2025<br>1 to 2 p.m.<br>February 5, 2025<br>1 to 2 p.m. |
| Forest land enhancement program (FLEP), rescind ch 74<br>IAB 1/8/25 **ARC 8621C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 29, 2025<br>1 to 2 p.m. |

**NATURAL RESOURCES DEPARTMENT[561]**

| | | |
|---|---|---|
| Description of organization; submission of information and complaints—investigations, rescind chs 1, 3<br>IAB 1/8/25 **ARC 8642C** | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa | January 29, 2025<br>1 to 2 p.m. |
| Rules of practice in contested cases, ch 7; groundwater hazard documentation, ch 9; waivers from administrative rules, ch 10<br>IAB 1/8/25 **ARCs 8640C**, **8643C**, **8648C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 30, 2025<br>12 noon<br>January 31, 2025<br>12 noon |
| Contracts for services and public improvements, ch 8<br>IAB 1/8/25 **ARC 8645C** | Lake Darling Conference Room<br>6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 29, 2025<br>9 to 10 a.m.<br>January 30, 2025<br>9 to 10 a.m. |
| The Iowa nature store, rescind ch 11; concessions, rescind ch 14<br>IAB 1/8/25 **ARCs 8644C**, **8647C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 30, 2025<br>12 noon |
| Special nonresident deer and turkey licenses, ch 12<br>IAB 1/8/25 **ARC 8646C** | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa | January 28, 2025<br>12 noon to 1 p.m.<br>January 29, 2025<br>12 noon to 1 p.m. |

**NATURAL RESOURCES DEPARTMENT[561]**(cont'd)

| | | |
|---|---|---|
| State lands volunteer program, ch 13; state park and recreation area fees, ch 16<br>IAB 1/8/25 **ARCs 8615C**, **8649C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 29, 2025<br>12 noon to 1 p.m.<br>February 6, 2025<br>4 to 5 p.m. |
| Revocation, suspension, and nonrenewal of license for failure to pay state liabilities, ch 15<br>IAB 1/8/25 **ARC 8641C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 30, 2025<br>12 noon<br>January 31, 2025<br>12 noon |
| Oil, gas, and metallic minerals, ch 17<br>IAB 1/8/25 **ARC 8651C** | Via videoconference<br>A meeting registration link will be provided prior to the hearing | January 30, 2025<br>1 p.m.<br>January 31, 2025<br>9 a.m. |

**PHARMACY BOARD[657]**

| | | |
|---|---|---|
| Agency realignment, rescind chs 1 to 8, 10 to 23, 25 to 37, 39 to 43, 100<br>IAB 11/27/24 **ARC 8422C** | Ledges Conference Room<br>6200 Park Avenue, Suite 100<br>Des Moines, Iowa<br>Also via Zoom | January 9, 2025<br>9:30 a.m. |

**PUBLIC HEALTH DEPARTMENT[641]**

| | | |
|---|---|---|
| Congenital and inherited disorders, ch 4; WIC, rescind ch 73; state mortality review committee, ch 90; correction or substitution of medical certification of cause of death, 99.10; stroke care reporting, ch 146<br>IAB 12/11/24 **ARCs 8539C**, **8543C**<br>IAB 12/25/24 **ARCs 8465C**, **8563C**, **8569C** | Microsoft Teams<br>Meeting ID: 297 224 919 887<br>Passcode: TpBUop<br>Microsoft Teams<br>Meeting ID: 255 649 705 881<br>Passcode: BsEBSV | January 16, 2025<br>10 to 11 a.m.<br>January 21, 2025<br>2:30 to 3:30 p.m. |
| Approval of confirmatory laboratories for private sector drug-free workplace testing, ch 12; dental screening, 51; vision screening, ch 52; childhood lead poisoning prevention program, ch 72<br>IAB 12/11/24 **ARCs 8485C**, **8507C**, **8518C**, **8528C** | Microsoft Teams<br>Meeting ID: 225 091 018 909<br>Passcode: hVKapN<br>Microsoft Teams<br>Meeting ID: 260 724 672 894<br>Passcode: bWFD4e | January 14, 2025<br>2:30 to 3:30 p.m.<br>January 17, 2025<br>1:30 to 2:30 p.m. |
| Red tape review, rescind chs 20, 50, 55, 71, 74, 78, 87, 91, 92, 94, 114, 122, 130, 138, 158<br>IAB 12/11/24 **ARCs 8492C**, **8494C**, **8498C**, **8499C**, **8500C**, **8501C**, **8502C**, **8509C**, **8520C**, **8527C**<br>IAB 12/25/24 **ARCs 8455C**, **8461C**, **8553C**, **8566C**, **8567C**, **8576C** | Microsoft Teams<br>Meeting ID: 281 130 323 441<br>Passcode: XDpFQ2<br>Microsoft Teams<br>Meeting ID: 254 845 374 808<br>Passcode: hPYxD2 | January 14, 2025<br>9 to 10 a.m.<br>January 17, 2025<br>9 to 10 a.m. |
| State plumbing code, ch 25; state mechanical code, ch 61; migratory labor camps, ch 81<br>IAB 12/25/24 **ARCs 8656C**, **8669C**, **8670C** | Ledges Conference Room<br>6200 Park Avenue, Suite 100<br>Des Moines, Iowa | January 14, 2025<br>9 to 9:30 a.m.<br>January 15, 2025<br>1 to 1:30 p.m. |

**PUBLIC HEALTH DEPARTMENT[641]**(cont'd)

| | | |
|---|---|---|
| Blood lead testing, ch 67; control of lead-based paint hazards, ch 68; EMS—service program authorization, ch 132; EMS—air medical service program authorization, rescind ch 144<br>IAB 1/8/25 **ARCs 8719C**, **8720C**, **8721C**, **8722C** | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9<br><br>Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ | January 28, 2025<br>1 to 2 p.m.<br><br>January 29, 2025<br>10 to 11 a.m. |
| Renovation, remodeling, and repainting—lead hazard notification process, ch 69; lead-based paint activities, ch 70<br>IAB 12/25/24 **ARCs 8671C**, **8672C** | Geode Conference Room<br>6200 Park Avenue, Suite 100<br>Des Moines, Iowa | January 14, 2025<br>10 to 10:30 a.m.<br><br>January 15, 2025<br>2 to 2:30 p.m. |
| Public health response teams, ch 113; EMS—providers—initial certification—renewal and reactivation—authority—complaints and investigations, ch 131; white flashing light authorization, ch 133; out-of-hospital do-not-resuscitate orders, ch 142; automated external defibrillator maintenance, ch 143; Iowa regionalized system of perinatal health care, ch 150; substance abuse treatment and assessment programs and the OWI law, ch 157<br>IAB 12/25/24 **ARCs 8457C**, **8462C**, **8463C**, **8545C**, **8460C**, **8517C**, **8532C** | Microsoft Teams<br>Meeting ID: 264 876 129 663<br>Passcode: PMYX8N<br><br>Microsoft Teams<br>Meeting ID: 287 123 907 580<br>Passcode: hbQXQA | January 15, 2025<br>1 to 2 p.m.<br><br>January 21, 2025<br>9 to 10 a.m. |
| Interagency coordinating council for the state medical examiner, rescind ch 124<br>IAB 12/25/24 **ARC 8464C** | Microsoft Teams<br>Meeting ID: 240 123 537 880<br>Passcode: 4MT8Ac<br><br>Microsoft Teams<br>Meeting ID: 273 055 800 019<br>Passcode: FggQZn | January 15, 2025<br>10 to 11 a.m.<br><br>January 17, 2025<br>2:30 to 3:30 p.m. |

**PUBLIC SAFETY DEPARTMENT[661]**

| | | |
|---|---|---|
| State building code—factory-built structures, ch 16<br>IAB 1/8/25<br>**Regulatory Analysis** | 6200 Park Avenue<br>Des Moines, Iowa | January 29, 2025<br>2 to 3 p.m. |
| Fire marshal administration, general fire safety requirements, specific occupancies, fire safety for hospitals and health care facilities; smoke alarms/detectors; carbon monoxide alarms, rescind chs 200, 202, 205, 210, 211, adopt ch 201; flammable or combustible liquids, adopt ch 221, rescind ch 224<br>IAB 1/8/25<br>**Regulatory Analyses** | Ledges Conference Room<br>6200 Park Avenue<br>Des Moines, Iowa | January 28, 2025<br>10 a.m. |

**PUBLIC SAFETY DEPARTMENT[661]**(cont'd)

| | | |
|---|---|---|
| Liquefied petroleum gas, ch 226; liquefied natural gas, ch 228; manufacturing, storage, handling, use of explosive materials, and licensing for commercial explosive contractors and blasters, rescind ch 231; adopt ch 235<br>IAB 12/25/24 **ARCs 8667C**, **8668C**, **8677C** | Geode Conference Room<br>6200 Park Avenue, Suite 100<br>Des Moines, Iowa | January 14, 2025<br>9:30 to 10 a.m.<br>January 15, 2025<br>1:30 to 2 p.m. |
| State building code administration, ch 300; state building code, adopt ch 301, rescind chs 302, 303, 310, 315, 350; state building code—manufactured housing support and anchorage systems, ch 322; temporary emergency use of factory-built structures—commercial use, ch 323<br>IAB 1/8/25<br>**Regulatory Analyses** | 6200 Park Avenue<br>Des Moines, Iowa | January 29, 2025<br>2 to 3 p.m. |
| Standards for electrical work; electrical inspection program—organization and administration, definitions, permits and inspections, utility notifications and responsibilities of utilities; civil penalties, rescind chs 504, 550 to 553, 559; adopt ch 550<br>IAB 12/25/24 **ARC 8582C** | 6200 Park Avenue<br>Des Moines, Iowa | January 28, 2025<br>11:30 a.m.<br>January 29, 2025<br>11:30 a.m. |

**SCHOOL BUDGET REVIEW COMMITTEE[289]**

| | | |
|---|---|---|
| Organization and administrative procedures, ch 1; petitions for rulemaking, ch 2; declaratory rulings, ch 3; agency procedure for rulemaking, ch 4; public records and fair information practices, ch 5; waivers from administrative rules, ch 8;<br>IAB 1/8/25<br>**Regulatory Analyses** | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa | January 28, 2025<br>8 to 9 a.m. |

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**

| | | |
|---|---|---|
| Organization; administrative elements, amend ch 1; adopt ch 18<br>IAB 12/25/24 **ARC 8661C** | ICN Thompson Conference Room<br>Grimes State Office Building<br>Des Moines, Iowa | January 16, 2025<br>2 to 3 p.m. |

**TRANSPORTATION DEPARTMENT[761]**

| | | |
|---|---|---|
| Interest on retained funds, ch 27<br>IAB 12/25/24 **ARC 8591C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 351 420 023 | January 14, 2025<br>11 to 11:30 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 315 685 313 | January 15, 2025<br>3 to 3:30 p.m. |

**TRANSPORTATION DEPARTMENT[761]**(cont'd)

| | | |
|---|---|---|
| Recovery of damages to highways or highway structures, ch 40<br>IAB 12/25/24 **ARC 8592C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 771 905 536 | January 14, 2025<br>9 to 9:30 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 296 427 867 | January 15, 2025<br>11:30 a.m. to 12 noon |
| Utility accommodation, ch 115<br>IAB 12/25/24 **ARC 8594C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 270 366 478 | January 16, 2025<br>9 to 9:30 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 299 102 354 | January 16, 2025<br>2:30 to 3 p.m. |
| Automated traffic enforcement mobile systems, ch 145<br>IAB 1/8/25 **ARC 8740C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 535 185 780 | January 28, 2025<br>9 to 10 a.m. |
| Quotation process for governmental entities for public improvement for vertical infrastructure, ch 180<br>IAB 12/11/24 **ARC 8490C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 260 760 222 | January 8, 2025<br>9 to 9:30 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 952 817 462 | January 8, 2025<br>1 to 1:30 p.m. |
| Vehicle registration and certificate of title, ch 400<br>IAB 12/25/24 **ARC 8593C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 967 150 077 | January 17, 2025<br>9:30 to 10 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 688 969 009 | January 17, 2025<br>1 to 1:30 p.m. |
| OWI and implied consent, ch 620<br>IAB 12/25/24 **ARC 8595C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 619 667 972 | January 17, 2025<br>11 to 11:30 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 831 788 850 | January 17, 2025<br>3:30 to 4 p.m. |
| Driver education, ch 634<br>IAB 12/11/24 **ARC 8470C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 824 420 750 | January 9, 2025<br>9 to 9:30 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 668 291 488 | January 9, 2025<br>1 to 1:30 p.m. |
| Motorcycle rider education (MRE), ch 635<br>IAB 12/11/24 **ARC 8472C** | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 631 843 106 | January 9, 2025<br>10 to 10:30 a.m. |
| | Microsoft Teams link<br>Or dial: 515.817.6093<br>Conference ID: 629 845 33 | January 9, 2025<br>2 to 2:30 p.m. |

**UTILITIES COMMISSION[199]**

| | | |
|---|---|---|
| Equipment distribution program, ch 37<br>IAB 12/11/24 **ARC 8431C** | Commission Hearing Room<br>1375 East Court Avenue<br>Des Moines, Iowa<br>Also via Zoom | January 15, 2025<br>9 to 11 a.m. |
| | Commission Hearing Room<br>1375 East Court Avenue<br>Des Moines, Iowa<br>Also via Zoom | January 23, 2025<br>2 to 4 p.m. |

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

| | | |
|---|---|---|
| Organization and procedures; county commissions of veteran affairs fund and training program, amend ch 1; adopt ch 7<br>IAB 12/25/24 **ARC 8583C** | Google Meeting<br>meet.google.com/bae-qefw-eie?hs=224<br>Or dial: 219.213.3781<br>Conference ID: 680862936 | January 17, 2025<br>10 to 10:50 a.m. |

**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

| | | |
|---|---|---|
| Retired and senior volunteer program (RSVP), rescind ch 7<br>IAB 12/25/24<br>**Regulatory Analysis** | Microsoft Teams<br>Meeting ID: 254 845 374 808<br>Passcode: hPYxD2 | January 17, 2025<br>9 to 10 a.m. |

The following list will be updated as changes occur.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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  Soil Conservation and Water Quality Division[27]
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BLIND, DEPARTMENT FOR THE[111]
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  Banking Division[187]
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  Professional Licensing and Regulation Bureau[193]
    Accountancy Examining Board[193A]
    Architectural Examining Board[193B]
    Engineering and Land Surveying Examining Board[193C]
    Landscape Architectural Examining Board[193D]
    Real Estate Commission[193E]
    Real Estate Appraiser Examining Board[193F]
    Interior Design Examining Board[193G]
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  Educational Examiners Board[282]
  College Student Aid Commission[283]
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HUMAN SERVICES DEPARTMENT[441]
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  Employment Appeal Board[486]
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PUBLIC DEFENSE DEPARTMENT[601]
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## Schedule for Rulemaking—2025

| REGULATORY ANALYSIS SUBMISSION DEADLINE | REGULATORY ANALYSIS PUB. DATE | HEARING AND COMMENTS 20 DAYS | FIRST † POSSIBLE NOTICE SUBMISSION DEADLINE | NOTICE PUB. DATE | HEARING OR COMMENTS 20 DAYS | FIRST POSSIBLE ADOPTION DATE 35 DAYS | ADOPTED FILING DEADLINE | ADOPTED PUB. DATE | FIRST POSSIBLE EFFECTIVE DATE 35 DAYS | FIRST POSSIBLE EXPIRATION OF NOTICE 180 DAYS |
|---|---|---|---|---|---|---|---|---|---|---|
| **Dec. 18 '24** | Jan. 8 | Jan. 28 | Jan. 31 | Feb. 19 | Mar. 11 | Mar. 26 | Mar. 28 | Apr. 16 | May 21 | Aug. 18 |
| **Jan. 2** | Jan. 22 | Feb. 11 | Feb. 14 | Mar. 5 | Mar. 25 | Apr. 9 | Apr. 11 | Apr. 30 | June 4 | Sep. 1 |
| Jan. 17 | Feb. 5 | Feb. 25 | Feb. 28 | Mar. 19 | Apr. 8 | Apr. 23 | Apr. 25 | May 14 | June 18 | Sep. 15 |
| Jan. 31 | Feb. 19 | Mar. 11 | Mar. 14 | Apr. 2 | Apr. 22 | May 7 | **May 7** | May 28 | July 2 | Sep. 29 |
| Feb. 14 | Mar. 5 | Mar. 25 | Mar. 28 | Apr. 16 | May 6 | May 21 | May 23 | June 11 | July 16 | Oct. 13 |
| Feb. 28 | Mar. 19 | Apr. 8 | Apr. 11 | Apr. 30 | May 20 | June 4 | June 6 | June 25 | July 30 | Oct. 27 |
| Mar. 14 | Apr. 2 | Apr. 22 | Apr. 25 | May 14 | June 3 | June 18 | **June 18** | July 9 | Aug. 13 | Nov. 10 |
| Mar. 28 | Apr. 16 | May 6 | **May 7** | May 28 | June 17 | July 2 | **July 2** | July 23 | Aug. 27 | Nov. 24 |
| Apr. 11 | Apr. 30 | May 20 | May 23 | June 11 | July 1 | July 16 | July 18 | Aug. 6 | Sep. 10 | Dec. 8 |
| Apr. 25 | May 14 | June 3 | June 6 | June 25 | July 15 | July 30 | Aug. 1 | Aug. 20 | Sep. 24 | Dec. 22 |
| **May 7** | May 28 | June 17 | **June 18** | July 9 | July 29 | Aug. 13 | **Aug. 13** | Sep. 3 | Oct. 8 | Jan. 5 '26 |
| May 23 | June 11 | July 1 | **July 2** | July 23 | Aug. 12 | Aug. 27 | Aug. 29 | Sep. 17 | Oct. 22 | Jan. 19 '26 |
| June 6 | June 25 | July 15 | July 18 | Aug. 6 | Aug. 26 | Sep. 10 | Sep. 12 | Oct. 1 | Nov. 5 | Feb. 2 '26 |
| **June 18** | July 9 | July 29 | Aug. 1 | Aug. 20 | Sep. 9 | Sep. 24 | Sep. 26 | Oct. 15 | Nov. 19 | Feb. 16 '26 |
| **July 2** | July 23 | Aug. 12 | **Aug. 13** | Sep. 3 | Sep. 23 | Oct. 8 | Oct. 10 | Oct. 29 | Dec. 3 | Mar. 2 '26 |
| July 18 | Aug. 6 | Aug. 26 | Aug. 29 | Sep. 17 | Oct. 7 | Oct. 22 | **Oct. 22** | Nov. 12 | Dec. 17 | Mar. 16 '26 |
| Aug. 1 | Aug. 20 | Sep. 9 | Sep. 12 | Oct. 1 | Oct. 21 | Nov. 5 | **Nov. 5** | Nov. 26 | Dec. 31 | Mar. 30 '26 |
| **Aug. 13** | Sep. 3 | Sep. 23 | Sep. 26 | Oct. 15 | Nov. 4 | Nov. 19 | **Nov. 19** | Dec. 10 | Jan. 14 '26 | Apr. 13 '26 |
| Aug. 29 | Sep. 17 | Oct. 7 | Oct. 10 | Oct. 29 | Nov. 18 | Dec. 3 | **Dec. 3** | Dec. 24 | Jan. 28 '26 | Apr. 27 '26 |
| Sep. 12 | Oct. 1 | Oct. 21 | **Oct. 22** | Nov. 12 | Dec. 2 | Dec. 17 | **Dec. 17** | Jan. 7 '26 | Feb. 11 '26 | May 11 '26 |
| Sep. 26 | Oct. 15 | Nov. 4 | **Nov. 5** | Nov. 26 | Dec. 16 | Dec. 31 | **Dec. 31** | Jan. 21 '26 | Feb. 25 '26 | May 25 '26 |
| Oct. 10 | Oct. 29 | Nov. 18 | **Nov. 19** | Dec. 10 | Dec. 30 | Jan. 14 '26 | Jan. 16 '26 | Feb. 4 '26 | Mar. 11 '26 | June 8 '26 |
| **Oct. 22** | Nov. 12 | Dec. 2 | **Dec. 3** | Dec. 24 | Jan. 13 '26 | Jan. 28 '26 | Jan. 30 '26 | Feb. 18 '26 | Mar. 25 '26 | June 22 '26 |
| **Nov. 5** | Nov. 26 | Dec. 16 | **Dec. 17** | Jan. 7 '26 | Jan. 27 '26 | Feb. 11 '26 | Feb. 13 '26 | Mar. 4 '26 | Apr. 8 '26 | July 6 '26 |
| **Nov. 19** | Dec. 10 | Dec. 30 | **Dec. 31** | Jan. 21 '26 | Feb. 10 '26 | Feb. 25 '26 | Feb. 27 '26 | Mar. 18 '26 | Apr. 22 '26 | July 20 '26 |
| **Dec. 3** | Dec. 24 | Jan. 13 '26 | Jan. 16 '26 | Feb. 4 '26 | Feb. 24 '26 | Mar. 11 '26 | Mar. 13 '26 | Apr. 1 '26 | May 6 '26 | Aug. 3 '26 |
| **Dec. 17** | Jan. 7 '26 | Jan. 27 '26 | Jan. 30 '26 | Feb. 18 '26 | Mar. 10 '26 | Mar. 25 '26 | Mar. 27 '26 | Apr. 15 '26 | May 20 '26 | Aug. 17 '26 |
| **Dec. 31** | Jan. 21 '26 | Feb. 10 '26 | Feb. 13 '26 | Mar. 4 '26 | Mar. 24 '26 | Apr. 8 '26 | Apr. 10 '26 | Apr. 29 '26 | June 3 '26 | Aug. 31 '26 |

**PLEASE NOTE:**

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

If the filing deadline falls on a legal holiday, submissions made on the following business day will be accepted.

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more business days in advance of the deadline. The first possible notice submission deadline noted above may not allow sufficient time for this. **Agencies should plan accordingly.**

****Note change of filing deadline****

## Regulatory Analysis

Notice of Intended Action to be published: 11—Chapter 64
"Benefits"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 8A.104(5) and 8A.413
State or federal law(s) implemented by the rulemaking: Iowa Code sections 8A.104(5) and 8A.413

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 1:30 p.m. | Via Google Meet<br>Dial: 1.413.728.2894<br>PIN: 372 678 365# |

*Public Comment*

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department of Administrative Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tami Wiencek
Department of Administrative Services
1305 East Walnut Street, Third Floor
Des Moines, Iowa 50319
Email: tami.wiencek@iowa.gov

*Purpose and Summary*

2024 Iowa Acts, Senate File 2370, changes the definition of "governing body" in Iowa Code chapter 509A from the Executive Council of the State to the Director of the Department regarding authority for establishing plans for and procuring group insurance for public employees. This proposed rulemaking updates language to comport with the legislation.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

There are no costs associated with the rulemaking because the State already provides a health insurance plan.

- **Classes of persons that will benefit from the proposed rulemaking:**

State employees will benefit from the rulemaking because the proposed rules will comport with state law.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Not applicable.

- **Qualitative description of impact:**

Not applicable.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

There will be no implementation costs because the Department already administers a health insurance program and the Director has always been involved in informing the Executive Council regarding the health plan.

- **Anticipated effect on state revenues:**

These proposed amendments are intended to comport with state law and as such do not affect state revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

This is the proper method to align with state law.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

There are no alternative methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

This proposed rulemaking simply updates rule language to comport with state law, thus there are no alternatives.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

Not applicable.

*Text of Proposed Rulemaking*

ITEM 1. Amend rule 11—64.1(8A) as follows:

**11—64.1(8A) Health benefits.** The director is authorized ~~by the executive council of Iowa~~ to administer health benefit programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A. The ~~executive council of Iowa~~ director shall determine the amount of the state's contribution toward each individual employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in applicable collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

ITEM 2. Amend rule 11—64.2(8A) as follows:

**11—64.2(8A) Dental insurance.** The director is authorized ~~by the executive council of Iowa~~ to administer dental insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A.

ITEM 3. Amend rule 11—64.3(8A) as follows:

**11—64.3(8A) Life insurance.** The director is authorized ~~by the executive council of Iowa~~ to administer life insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

ITEM 4. Amend rule 11—64.4(8A) as follows:

**11—64.4(8A) Long-term disability insurance.** The director is authorized ~~by the executive council of Iowa~~ to administer long-term disability insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

Employees who receive loss of time benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.

# IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]



## Regulatory Analysis

Notice of Intended Action to be published: 495—Chapters 4 and 11
"Contribution Rates and Application for, Modification of, and Termination of Benefits"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 97B.4 and 97B.15
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 97B

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>10:30 to 11:30 a.m. | IPERS Boardroom<br>7401 Register Drive<br>Des Moines, Iowa<br>Via conference call:<br>teams.microsoft.com/l/meetup-join<br>Meeting ID: 252 958 841 610<br>Passcode: nS3qX3XN |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Iowa Public Employees' Retirement System (IPERS) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Cheryl Vander Hart
Iowa Public Employees' Retirement System
7401 Register Drive
Des Moines, Iowa 50321
Phone: 515.281.7623
Email: cheryl.vanderhart@ipers.org

*Purpose and Summary*

The proposed amendments do the following:

Item implements contribution rates for employers, regular, and special service members classes beginning July 1, 2025, to reflect FY 2026 rates. Pursuant to the Iowa Code, the rates must be reviewed and updated yearly.

Item 2 removes from members the extra burden of providing birth proof with their retirement application, currently mandated by paragraph 11.1(1)"a," if the member has done so previously, by inserting language to that effect. Removing this burden fulfills a stated purpose of Executive Order 10 (January 10, 2023).

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Costs will be borne by all classes of IPERS members and their employers.

- **Classes of persons that will benefit from the proposed rulemaking:**

IPERS members and employers will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

**ESTIMATED IPERS CONTRIBUTIONS**

**Sheriffs and Deputy Sheriffs**

**Both FY 2024 and 2025 are 17.02% (No Change)**

| FY 2025 | 17.02% - Rate for FY 2025 | | | | | | |
|---|---|---|---|---|---|---|---|
| EMPLOYER TYPE | PROJECTED WAGES | MEMBER CONT. 8.51% | EMPLOYER CONTRIBUTION 8.51% | COMBINED RATE 17.02% | MEMBER DIFF. | EMPLOYER DIFF. | TOTAL DIFF. |
| County | 159,320,217 | 13,558,150 | 13,558,150 | 27,116,301 | **(426,770)** | **(426,770)** | **(853,540)** |
| **FY 2024** | **17.02% - Rate for FY 2024** | | | | | | |
| **EMPLOYER TYPE** | **PROJECTED WAGES** | **MEMBER CONT. 8.51%** | **EMPLOYER CONTRIBUTION 8.51%** | **COMBINED RATE 17.02%** | | | |
| County | 154,305,295 | 13,131,381 | 13,131,381 | 26,262,761 | | | |

**Protection Occupation Class**

**Both FY 2024 and 2025 are 15.52% (No Change)**

| FY 2025 | 15.52% - Rate for FY 2025 | | | | | | |
|---|---|---|---|---|---|---|---|
| EMPLOYER TYPE | PROJECTED WAGES | MEMBER CONTRIBUTION 6.21% | EMPLOYER CONTRIBUTION 9.31% | COMBINED RATE 15.52% | MEMBER DIFF. | EMPLOYER DIFF. | TOTAL DIFF. |
| State | 225,431,719 | 13,999,310 | 20,987,693 | 34,987,003 | **(440,656)** | **(660,630)** | **(1,101,286)** |
| County | 150,622,529 | 9,353,659 | 14,022,957 | 23,376,617 | **(294,425)** | **(441,401)** | **(735,826)** |
| City | 123,008,399 | 7,638,822 | 11,452,082 | 19,090,904 | **(240,447)** | **(360,477)** | **(600,924)** |
| Other | 3,012,451 | 187,073 | 280,459 | 467,532 | **(5,889)** | **(8,828)** | **(14,717)** |
| Total | **502,075,098** | 31,178,864 | 46,743,192 | 77,922,055 | **(981,417)** | **(1,471,335)** | **(2,452,752)** |
| **FY 2024** | **15.52% - Rate for FY 2024** | | | | | | |
| **EMPLOYER TYPE** | **PROJECTED WAGES** | **MEMBER CONTRIBUTION 6.21%** | **EMPLOYER CONTRIBUTION 9.31%** | **COMBINED RATE 15.52%** | | | |
| State | 218,335,805 | 13,558,654 | 20,327,063 | 33,885,717 | | | |
| County | 145,881,384 | 9,059,234 | 13,581,557 | 22,640,791 | | | |
| City | 119,136,464 | 7,398,374 | 11,091,605 | 18,489,979 | | | |
| Other | 2,917,628 | 181,185 | 271,631 | 452,816 | | | |
| Total | **486,271,281** | 30,197,447 | 45,271,856 | 75,469,303 | | | |

**Regular Members**

**Both FY 2024 and 2025 are 15.73% (No Change)**

| FY 2025 | 15.73% - Rate for FY 2025 | | | | | | |
|---|---|---|---|---|---|---|---|
| EMPLOYER TYPE | PROJECTED WAGES | MEMBER CONTRIBUTION 6.29% | EMPLOYER CONTRIBUTION 9.44% | COMBINED RATE | MEMBER DIFF. | EMPLOYER DIFF. | TOTAL DIFF. |
| Education | 5,046,233,436 | 317,408,083 | 476,364,436 | 793,772,519 | **(15,902,919)** | **(23,867,021)** | **(39,769,940)** |
| State | 1,455,644,260 | 91,560,024 | 137,412,818 | 228,972,842 | **3,029,831** | **4,547,155** | **7,576,987** |
| County | 1,552,687,211 | 97,664,026 | 146,573,673 | 244,237,698 | **(3,074,170)** | **(4,613,699)** | **(7,687,869)** |
| City | 1,358,601,310 | 85,456,022 | 128,251,964 | 213,707,986 | **(2,689,899)** | **(4,036,987)** | **(6,726,886)** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Other | 291,128,852 | 18,312,005 | 27,482,564 | 45,794,568 | **(576,407)** | **(865,069)** | **(1,441,476)** |
| Total | **9,704,295,069** | 610,400,160 | 916,085,455 | 1,526,485,614 | **(19,213,564)** | **(28,835,620)** | **(48,049,184)** |

| **FY 2024** | **15.73% - Rate for FY 2024** | | | |
|---|---|---|---|---|
| **EMPLOYER TYPE** | **PROJECTED WAGES** | **MEMBER CONTRIBUTION 6.29%** | **EMPLOYER CONTRIBUTION 9.44%** | **COMBINED RATE** |
| Education | 4,793,404,828 | 301,505,164 | 452,497,416 | 754,002,580 |
| State | 1,503,813,280 | 94,589,855 | 141,959,974 | 236,549,829 |
| County | 1,503,813,280 | 94,589,855 | 141,959,974 | 236,549,829 |
| City | 1,315,836,620 | 82,766,123 | 124,214,977 | 206,981,100 |
| Other | 281,964,990 | 17,735,598 | 26,617,495 | 44,353,093 |
| Total | **9,398,832,997** | 591,186,596 | 887,249,835 | 1,478,436,430 |

- **Qualitative description of impact:**

The contribution rates rise or fall based upon procedures outlined in the Iowa Code in conjunction with the determination of the designated consulting actuary. The 2024 Legislative Session introduced a 1.5 percent cost-of-living adjustment (COLA) for members of the Sheriff/Deputy Sheriffs class who meet eligibility criteria.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

There are costs associated with updated rates being calculated by the designated consulting actuary and minimal costs to update the IPERS website.

- **Anticipated effect on state revenues:**

The effect depends entirely upon whether the updated contribution rates for each IPERS member class remain at the same levels or are lowered or raised or both; a corresponding effect on revenue will be seen. For the period of July 1, 2025, through June 30, 2026, contribution rates for Regular and Protection Occupation classes remain the same, while contribution rates for Sheriffs and Deputy Sheriffs have risen.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Inaction would violate the Iowa Code and IPERS' Contribution Rate Funding Policy as well as retain a burden on the taxpayer that is easily eliminated.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Iowa Code gives IPERS certain parameters that must be followed when IPERS lowers or raises contribution levels, and the contribution levels are set forth by IPERS' actuary. IPERS is charged with setting a Required Contribution Rate for each membership category within IPERS that will discharge its liabilities. Iowa Code section 97B.11(3)"d" provides the basic framework for implementing this charge.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

Not applicable.

*Text of Proposed Rulemaking*

ITEM 1. Amend rule 495—4.6(97B) as follows:

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

**4.6(1)** Contribution rates for regular class members.

*a.* No change.

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

| | ~~Effective July 1, 2020~~ | Effective July 1, 2021 | Effective July 1, 2022 | Effective July 1, 2023 | Effective July 1, 2024 | Effective July 1, 2025 |
|---|---|---|---|---|---|---|
| Combined rate | ~~15.73%~~ | 15.73% | 15.73% | 15.73% | 15.73% | 15.73% |
| Employer | ~~9.44%~~ | 9.44% | 9.44% | 9.44% | 9.44% | 9.44% |
| Employee | ~~6.29%~~ | 6.29% | 6.29% | 6.29% | 6.29% | 6.29% |

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

| | ~~Effective July 1, 2020~~ | Effective July 1, 2021 | Effective July 1, 2022 | Effective July 1, 2023 | Effective July 1, 2024 | Effective July 1, 2025 |
|---|---|---|---|---|---|---|
| Combined rate | ~~18.52%~~ | 18.02% | 17.52% | 17.02% | 17.02% | 24.18% |
| Employer | ~~9.26%~~ | 9.01% | 8.76% | 8.51% | 8.51% | 12.09% |
| Employee | ~~9.26%~~ | 9.01% | 8.76% | 8.51% | 8.51% | 12.09% |

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

| | ~~Effective July 1, 2020~~ | Effective July 1, 2021 | Effective July 1, 2022 | Effective July 1, 2023 | Effective July 1, 2024 | Effective July 1, 2025 |
|---|---|---|---|---|---|---|
| Combined rate | ~~16.02%~~ | 15.52% | 15.52% | 15.52% | 15.52% | 15.52% |
| Employer | ~~9.61%~~ | 9.31% | 9.31% | 9.31% | 9.31% | 9.31% |
| Employee | ~~6.41%~~ | 6.21% | 6.21% | 6.21% | 6.21% | 6.21% |

**4.6(4)** to **4.6(7)** No change.

ITEM 2. Amend paragraph **11.1(1)"a"** as follows:

*a.* Proof of date of birth for the member, if not previously verified by IPERS.

**Regulatory Analysis**

Notice of Intended Action to be published: 661—Chapter 16
"State Building Code—Factory-Built Structures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103A.7 and 103A.9
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 103A

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025 | 6200 Park Avenue |
| 2 to 3 p.m. | Des Moines, Iowa |

Virtual participation information will be available on the Department of Inspections, Appeals, and Licensing website prior to the hearing.

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeremiah Junker
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.672.4745
Email: jeremiah.junker@dia.iowa.gov

*Purpose and Summary*

This proposed rulemaking repromulgates Chapter 16 and implements Iowa Code chapter 103A, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 103A.7(1) empowers the state Building Code Commissioner to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in Iowa Code chapter 103A, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public. Pursuant to Iowa Code section 103A.7(2)"c," the rules shall include reasonable provisions for the manufacture and installation of factory-built structures. Iowa Code section 103A.9 states that the state building code shall contain provisions relating to the manufacture and installation of factory-built structures and provide requirements for factory-built structures.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Manufacturers and installers of modular factory-built structures incur direct costs in the form of modular code compliance seals ($30) and modular installation seals ($15). Notably, Iowa Code section 103A.9(2) requires the Commissioner to establish an "insignia of approval" and require factory-built structures to bear an insignia of approval prior to installation, and Iowa Code section 103A.23 requires the Commissioner to establish fees to defray the costs of administering Iowa Code chapter 103A and

the state building code. Manufactured home retailers must pay a license fee ($100), and this fee is explicitly established by Iowa Code section 103A.52(2).

Manufacturers and installers (and, by extension, likely purchasers/owners) of factory-built structures incur indirect costs by the nature of needing to meet the requirements of these rules.

- **Classes of persons that will benefit from the proposed rulemaking:**

Iowans (and non-Iowans) who occupy, own, visit, or otherwise use factory-built structures that are subject to these rules, which ensure the minimum safety standards at such structures, will benefit. These rules greatly improve the safety of the persons who live in and use factory-built structures.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

In fiscal year 2023, the Department collected a total of $91,700 in seal fees and $47,100 in manufactured home retailer license fees. As discussed above, these fees are supported by statute; in the case of the manufacture retailer license fees, the amount is explicitly stated in statute.

- **Qualitative description of impact:**

The indirect costs incurred by the nature of needing to meet the requirements of these rules are not easily quantified and are necessary to insure the health, safety, and welfare of Iowans. Additionally, the rules are expressly required by the Iowa Code, so indirect costs of compliance are unavoidable.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

The Department's costs related to implementation of Iowa Code chapter 103A and these rules include the costs of personnel to administer the program, including traveling associated with inspections. The Department maintains approximately 9.0 full-time equivalent (FTE) positions to administer the state building code, including 4.0 FTE positions (that also perform other duties) to administer the Manufactured Home and Modular Program. The Department's total budget to implement and enforce the state building code, including these rules, is $1,044,794.

- **Anticipated effect on state revenues:**

In fiscal year 2023, the total seal fees and manufactured home retailer license fees collected by the Department pursuant to Iowa Code sections 103A.23 and 103A.52(2) were $138,800.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Iowa Code sections 103A.7(2)"c" and 103A.9 require the Department to implement and enforce rules regarding the manufacture and installation of factory-built structures, so inaction is not an option. Additionally, the minimum health, welfare, and safety standards in these rules protect numerous Iowans and non-Iowans who own, reside in, visit, or otherwise use factory-built structures that are subject to Iowa Code chapter 103A and these rules. The modest costs incurred by the public are insignificant compared to the costs of inaction, which would result in unsafe factory-built structure manufacture and installation.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Iowa Code section 103A.7(1) requires the Commissioner to promulgate "reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public." These rules are expressly required to include reasonable provisions for the manufacture and installation of factory-built structures (Iowa Code sections 103A.7(2)"c" and 103A.9). It is the opinion of the Department and the Commissioner that these rules reasonably establish such minimum safeguards for the manufacture and installation of factory-built structures in Iowa and that making them any less restrictive would

negatively impact the health, safety, and welfare of Iowans (and non-Iowans) occupying and otherwise using factory-built structures in Iowa.

Additionally, these rules and fees are comparable to or less than those in neighboring states. Modular rule administration and compliance is similar to other surrounding states. However, fees are much higher in Minnesota and Wisconsin. Manufactured housing administration and compliance is consistent with all surrounding states as required by the U.S. Department of Housing and Urban Development. However, fees for seals and inspections in Iowa are dramatically lower. For example, Nebraska and South Dakota manufactured home administration and inspection fees range from $500 to $1,200 per home depending on travel distance for inspectors.

Finally, compared to the existing rules, these rules have been streamlined, clarified, and made less restrictive where possible in accordance with the goals and directives of Executive Order 10.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Response in section "5," above.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Response in section "5," above.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

While some manufacturers, installers, and retailers of factory-built structures subject to Iowa Code chapter 103A and these rules may be small businesses, these rules and fees are required by the Iowa Code. Additionally, these rules protect the health, safety, and welfare of many Iowans and non-Iowans who own, occupy, or otherwise use factory-built structures in Iowa. Even if these rules have a substantial impact on small business (and as discussed above, the costs are not substantial and are supported—or even explicitly required—by the Iowa Code), to exempt or even provide less stringent rules for small businesses would not be feasible or practicable because this would undermine public safety based on nothing more than the size of the business manufacturing, installing, or selling the factory-built structure. Finally, anyone subject to these rules (including a small business) can seek a waiver from provisions of these rules pursuant to the Department's uniform waiver rules under 481—Chapter 6.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 661—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
STATE BUILDING CODE—FACTORY-BUILT STRUCTURES

**661—16.1** to **16.609** Reserved.

PART 1—MODULAR FACTORY-BUILT STRUCTURES

**661—16.610(103A) "Modular factory-built structures."** Part 1 of this chapter contains the rules and regulations applicable to all factory-built structures that are not specifically included in Part 2.

**16.610(1)** *Authority to promulgate rules.* Provisions contained within all of Part 1 are authorized under Iowa Code section 103A.9.

**16.610(2)** *Scope and applicability.* The provisions contained within Part 1 apply to the following:

*a.* Plan evaluation, manufacture, inspection, and installation of "modular factory-built structures," of closed-type construction and of open-type construction for those manufacturers who have by option chosen to have their building component, assembly or system considered to be closed construction.

*b.* Approval by the commissioner or the commissioner's designated representative of an organization or person referred to as a third-party agent, or independent inspection agency.

*c.* All "modular factory-built structures" manufactured for installation in Iowa after February 1, 1973.

**16.610(3)** *Definitions.* The definitions set forth in Iowa Code sections 103A.3 and 103A.51 and rule 661—301.2(103A) are incorporated herein by reference. The following definitions also apply:

*"Certificate of compliance."* A certification that is filed with the commissioner that indicates that the third-party agency has approved specific models or model groups of factory-built structures as meeting the state building code. (See paragraph 16.610(14)*"d"* and subrule 16.610(17).)

*"Closed construction."* Any structure, building, component, assembly or system manufactured in such a manner that all portions cannot be readily inspected at the installation site without disassembly, damage to, or destruction thereof.

*"Code compliance certificate."* The certificate prepared by an approved manufacturer and submitted by the manufacturer for each unit that is to be installed in Iowa and includes an Installation Certificate. (See subrules 16.610(19) and 16.610(20).)

*"Commercial modular."* A modular factory-built structure that is not a modular home.

*"Component."* Any part, material or appliance that is built in as an integral part of the factory-built structure during the manufacturing process, or any factory-built system, subsystem or assembly not approved as part of a unit, section, or module.

*"Evaluation or inspection agency."* An approved person or organization, private or public, determined by the commissioner to be qualified by reason of facilities, personnel, experience and demonstrated reliability and independence of judgment, to investigate, evaluate and approve factory-built structures or buildings, building components, building systems, and compliance assurance programs.

*"Factory-built structure."* Any structure, building, component, assembly or system that is of closed construction and that is made or assembled in manufacturing facilities, on or off the building site, for installation or assembly and installation, on the building site. Factory-built structures may also mean, at the option of the manufacturer, any structure or building of open construction, made or assembled in manufacturing facilities away from the building site, for installation, or assembly and installation, on the building site. Factory-built structure also means "factory-built unit."

*"Independence of judgment"* means not being affiliated with or influenced by or controlled by building manufacturers or producers, suppliers, or vendors of products or equipment used in factory-built structures or buildings and building components in any manner which is likely to affect their capacity to tender reports and findings objectively and without bias.

*"Manufacturer's bill of sale."* Any document, certificate, sales receipt, etc., signed by the manufacturer or importer that the modular factory-built structure described has been transferred to the person or dealer named. The document shall have attached a copy of the 3A section of the Code

Compliance Certificate or shall contain at least the make, model year, manufacturer's serial number, Iowa model approval number and the code compliance seal number of the unit.

*"Model or model groups."* One or more manufacturer-designed modular homes that can constitute one model group.

*"Modular."* A general term to describe factory-built structures that are not manufactured homes, manufactured home add-on units, park model homes, or tiny homes. Modular includes but is not limited to panelized units, components, sections and modules.

*"Module."* A unit or a section that is assembled in its final form and transported in such a manner.

*"Open construction."* Any structure, building, component, assembly or system manufactured in such a manner that all portions can be readily inspected at the installation site without disassembly, damage to, or destruction thereof.

*"Park model."* A factory-built structure built in accordance with ANSI A 119.5 (2020).

*"Residential modular"* or *"modular home."* Modular factory-built structure used as a one- or two-family dwelling.

*"Seal"* or *"insignia."* A device or insignia issued to the manufacturer by the commissioner for affixing to a factory-built structure or system evidencing compliance with the code.

*"Section."* A division of a factory-built structure that must be combined with other sections to form a complete structure.

*"Temporary field construction office."* A factory-built structure used at a construction site as an office facility by the personnel engaged in the construction of another structure or project. The intent of this structure is to remain on the job site only as long as necessary during the construction and then be removed before construction is completed.

*"Testing agency."* An organization approved by the commissioner that:

1. Is qualified and equipped for the testing, observation, evaluation, or approval of building components, construction, materials, equipment, or systems as regulated by approved standards;
2. Is not under the jurisdiction, affiliation, influence, or control of any manufacturer or supplier of any industry;
3. Makes available a published report in which specific information is included certifying that the equipment and installations listed or labeled have been tested and found acceptable according to approved standards.

*"Third-party agency."* An approved person or organization, private or public, determined by the state building code commissioner to be qualified to act as an evaluation, inspection, testing, or listing agency, as defined in this section.

*"Tiny home."* A factory-built structure for residential use with less than 200 square feet of habitable space.

*"Unit."* A single factory-built structure approved by the state building code commissioner. Units may be combined to form a larger complex structure or may be a combination of sections.

**16.610(4)** *Administration.* This section covers the basic requirements for constructing modular structures and all of the administrative procedures under which the modular program functions including methods of certification approval and manufacturing requirements, inspection and installation.

**16.610(5)** *Modular construction requirements.* All modular factory-built structures shall be constructed in accordance with the following provisions in 661—Chapter 301, as applicable: rules 661—301.3(103A), 661—301.4(103A), 661—301.5(103A), 661—301.6(103A), and 661—301.8(103A); Part 2; and Part 3.

**16.610(6)** *Modular installation requirements.* All modular factory-built structures shall be installed according to the manufacturer's approved installation drawings and any additional state-approved requirements. All approvals shall be part of the third-party certification agency approval for their respective manufacturer. All installations shall comply with local building codes for items not included as part of the state approval and local zoning requirements whenever applicable.

Modular installation seals shall be obtained and attached upon completion and the installation certificate completed and filed pursuant to subrule 16.610(20).

**16.610(7)** *Procedures for approval.* Approval procedures shall meet the following criteria:

The manufacturer contracts with third-party agencies for third-party approvals and notifies the commissioner of the intent to manufacture units to be installed in Iowa and the name of the third party or parties to be used.

The third-party agency notifies the commissioner that it has entered into a contract to perform services with the manufacturer.

Third-party approvals are required for plan and design approval, plant facilities approval and a continuing inspection of units during manufacture.

The manufacturers submit plans to the third-party agency or agencies for review and approval. After the plans, the plant facilities, and an inspection procedure have been approved by the third-party agency, the manufacturer submits a compliance certificate on the form supplied by the commissioner for each model or model group. The commissioner will assign an Iowa approval number for those models included in the approval.

At the time of production of units for installation in Iowa the manufacturer obtains from the commissioner Iowa insignia seals for manufacture and installation, to be attached to the units at the time of manufacture and installation, as well as code compliance and installation certificates.

**16.610(8)** *Requirements and procedures for obtaining third-party agency approval.*

*a.* The commissioner or the commissioner's designated representative will be responsible for approving any person, state or organization who applies to the commissioner for approval and whose application is accompanied by written material evidencing that said agency is:

(1) Capable of discharging without bias the responsibilities assigned by these regulations.

(2) Not under the jurisdiction or control of any manufacturer or supplier of any industry.

(3) Professionally competent with independence of judgment to perform the function for which commissioned.

(4) Qualified to submit all findings regarding code compliance in a detailed report to the commissioner.

(5) Willing to be inspected and reviewed by the commissioner for all phases of work.

*b.* The commissioner may limit the agencies' approval to particular types of factory-built structures, buildings, building systems, components, assemblies or systems.

*c.* Other states wishing to exercise application with this state in order to act in the capacity of an approved third-party agency, may do so provided that:

(1) The state laws for issuing seals or insignia for code compliance are substantially similar to those specified in this code.

(2) The conditions in subparagraph 16.610(8)*"c"*(1) are enforced in their state.

(3) Other states agree to monitoring of this reciprocal agreement by representatives of this state assigned by the commissioner.

(4) Violations of any condition as part of the reciprocal agreement may be deemed just cause for revocation or suspension of this agreement by the commissioner.

**16.610(9)** *Third-party agency responsibilities.* Third-party approval agencies shall satisfy the following criteria:

*a.* Evidence of approval by the state are on file at each manufacturing facility.

*b.* Notification to the commissioner when they have contracted with a manufacturer to serve as their third-party agency.

*c.* Manufacturer plans and specifications are approved by the third-party agency.

*d.* File of all plans and documents are maintained at each manufacturing facility and in the third-party agency office.

*e.* Send a report to the commissioner stating that the plans and specifications comply with the Iowa state building code.

(1) Plans and specifications are not necessary for submittal with this report.

(2) A list of approved models for each manufacturing facility.

(3) Verify that all engineering documents have been signed by a registered engineer or architect.

(4) Update the report as necessary.

(5) Indicate approval of installation procedures for all of these structures as well as the personnel who will be doing the installation. Installation of factory-built structures comply, in addition to provisions of this code, with any local ordinances that apply. (That is, those construction processes that are not included as part of the state approval.)

*f.* Notify the manufacturer of plans and specifications approval including model numbers for use in preparing certificates of compliance.

*g.* Inspect manufacturing facilities and review or establish a quality control program and test procedure.

*h.* Notify the manufacturer of facilities approval for use in preparing certificates of compliance.

*i.* Prepare an inspection manual to be used by the third-party inspectors and the commissioner, maintained on file at each manufacturing facility.

*j.* Report to the state outlining in-plant procedures and include a typical inspection checkoff sheet.

*k.* Notify the manufacturer when in-plant inspection program is in force for use in preparing certificates of compliance.

*l.* Report each quarter to the state for each manufacturer and submit information as follows:

(1) Account for all Iowa seals used by each manufacturer during the quarter.

(2) Manufacturer's serial number and model number.

(3) Third-party seal number.

(4) Iowa seal number.

(5) The portion of the unit that was actually inspected during an in-plant inspection.

**16.610(10)** *Third-party agency documentation and plan verification.* The third-party agency is responsible for the investigation, evaluation, review of test results, of plans and documents, and each revision thereto submitted to the agency by the manufacturer with which it has a contract for compliance with applicable requirements set forth in this code. Such a review shall include but not be limited to:

*a.* All documentations and plans indicate the manufacturer's name, office address, and manufacturing facility address.

*b.* Manufacturer's plans show all elements relating to specific systems on drawings properly identifiable.

*c.* Each plan that contains material requiring engineering evaluation bears the signature and seal of a registered architect or engineer.

*d.* The plans indicate the method of evaluation and inspection for all required on-site testing of each system.

*e.* Plans designate all work to be performed on site, including all system connections, equipment and appliances and all work performed within the plant.

*f.* Space is provided on all sheets of plans near the title box for the approved stamp.

*g.* Individual system design or any structural design or method of construction and data complies with the Iowa state building code. Plumbing, electrical, heating and mechanical systems constitute individual system designs.

*h.* Grade, quality, and identification of all materials are specified.

*i.* Design calculations and test reports are submitted when specified or required.

*j.* Plans are drawn to scale.

*k.* Plans indicate the location of the approved seal and data plate locations.

*l.* Copies of approved plans showing third-party agency approval are on file at each manufacturing facility or made readily available.

*m.* Review and approval of all installation procedures conforms to the following:

(1) Crews performing installation that are under the jurisdiction of the unit manufacturer or the manufacturer's designee are approved as competent by the authorized third-party agency.

(2) Copies of the installation manual are available during installation for use by the commissioner or the commissioner's representative or by the local building official.

**16.610(11)** *Third-party agency plant investigation for quality control.* All manufacturing facilities shall be inspected to the performance objectives as stated in the Iowa state building code. These include as follows:

*a.* Review of the manufacturer's quality control manuals or establishing a quality control procedure to ensure code compliance.

*b.* Implementation of inspection and test procedures that will control the quality of fabrication and workmanship.

*c.* Making a complete report to the commissioner that includes certification of all manufacturing procedures.

**16.610(12)** *Third-party agency in-plant inspections.* To ensure compliance with the approved specifications and plans and the Iowa state building code and in conjunction with monitoring each manufacturer's quality control program, every approved third-party agency shall:

*a.* Maintain a record of inspections, with such records including the seal report and reported to the commissioner every quarter.

*b.* Witness and verify all required testing in accordance with the quality control manual.

*c.* Certify that all seals are being attached as required and only after each unit meets the code requirements.

*d.* Prepare a detailed inspection manual that specifies the third-party agency procedures in making the required inspections, which will be available for use by the commissioner or the commissioner's representative when periodic monitoring is performed.

*e.* Inspect some part of every unit, although 100 percent inspection is not necessary. A complete inspection of a typical structural, plumbing, heating and electrical system shall be made each visit to the manufacturing facility.

**16.610(13)** *Reapproval of third-party agencies.* Any agency approved by the commissioner or the commissioner's designated representative must file for reapproval annually. Such application for reapproval may be filed at any time from the forty-fifth day prior to the scheduled annual expiration date of the current approval. The applying third-party agency seeking reapproval shall completely and accurately update all information previously submitted to the commissioner or the commissioner's representative as part of its original application for approval and all subsequent applications for reapproval. The application for reapproval will become a permanent record of the department administering the provisions of the code. Should there be no change in the status of the applying agency from its original application, an affidavit to that effect will suffice for consideration of approval.

**16.610(14)** *Requirements and procedures for modular manufacturers.* Every modular manufacturer shall perform or meet the following:

*a.* Be responsible for all corrective actions required. The contractual agreement that each has with the approved third-party agency does not diminish this responsibility.

*b.* Notify the commissioner that the manufacturer's facility desires to construct units that are to be installed in the state of Iowa.

*c.* Contract with an approved third-party agency to perform all duties listed in subrules 16.610(9), 16.610(10), 16.610(11), and 16.610(12). The commissioner will furnish a list of approved third-party agencies upon request.

*d.* File certificates of compliance with the commissioner for each model or model group after all third-party reviews are completed; whenever additional models or changes are proposed, file additional certificates of compliance or request that additions be made to existing model lists.

*e.* Purchase Iowa seals from the office of the commissioner in accordance with requirements of subrule 16.610(22).

*f.* All units or sections have seals if manufactured after February 1, 1973, and if they are to be installed in Iowa. Regardless of manufactured date, all units being installed in Iowa for the first time have a seal attached.

*g.* Complete and furnish compliance certificates and installation certificates in accordance with the requirements of subrules 16.610(19) and 16.610(20).

**16.610(15)** *Manufacturer's data plate for modular units.* The following information shall be placed directly or by reference on one or more permanent manufacturer's data plates in the vicinity of the electrical distribution panel box or in some other designated location that is readily accessible for inspection.

*a.* Manufacturer's name and address.

*b.* Serial number of the structure or unit.

*c.* Model designation and name of each of the manufacturers of major factory-installed appliances.

*d.* Wherever applicable, identification of permissible type of gas for appliance and direction for water and drain connections.

*e.* Name and date of the standards complied with in construction of this structure or unit.

*f.* The seal serial number.

*g.* Design loads and special conditions or limitations.

*h.* Date of manufacture.

*i.* Electrical ratings. Instructions and warnings on voltage, phase size and connections of units and grounding requirements.

**16.610(16)** *Changes and alterations to factory-built structures.*

*a.* Changes to approved plans, drawings or installation instructions proposed by the manufacturer or third-party agency are to be requested in writing and submitted to the commissioner. All work being performed in the manufacturing plant that is affected by these changes will not proceed until written approval is received from the commissioner. Where these changes do not affect code compliance, then approval is permitted when changes are authorized through the third-party agency and said changes are then incorporated into the design documents.

*b.* The commissioner will notify the manufacturer and the third-party agency of all amendments, deletions or additions to the code provisions and the commissioner will allow the manufacturer a reasonable time frame in which to submit a request for a change in plan approval, if required, in order to conform to the code change.

*c.* Basic changes in manufacturing facility locations, company name or address changes, and changes resulting in companies changing ownership or dissolving their business are all to be reported promptly to the commissioner and the third-party agency, in writing, generally within a two-week period after said change was made.

*d.* Alterations to factory-built structures pursuant to the construction, plumbing, heat producing, electrical equipment or installation or fire safety in a unit after an Iowa seal has been affixed are all considered to be subject to the same requirements that exist for any structure within the local jurisdiction.

*e.* The following do not constitute an alteration to a factory-built structure.

(1) Any repairs to approved component parts.

(2) Conversion of listed fuel-burning appliances in accordance with the terms of their listing.

(3) Adjustment and maintenance of equipment installed in the factory-built structure.

(4) Replacement of equipment in kind.

**16.610(17)** *Certificate of compliance.* The manufacturer shall provide the commissioner with a certificate of compliance for each model or model group of the approved modular design that includes the following:

*a.* Model or model group number that will appear on the data plate and compliance certificate.

*b.* The signature of an authorized representative of the manufacturer.

*c.* The name of the third-party agency certifying compliance with the code, for each of the three certifications.

*d.* Evidence of code compliance certified by the third-party agencies, for the specific model or model group being submitted.

**16.610(18)** *Limitations.* For all types of structures other than modular homes, there shall be, with the certificate of compliance, an attached statement which sets out the limitations of the structure based on site conditions, type of construction, area, and height limitations. A statement to the effect that the structure should not be used except where it meets these conditions will not be acceptable.

**16.610(19)** *Code compliance and installation certificates.* Code compliance and installation certificates approved for use are available at the website of the building code bureau when seals are purchased pursuant to subrule 16.610(22). The manufacturer shall complete the certificate and distribute it as follows:

*a.* A copy returned to:

State Building Code Bureau
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321

*b.* A copy retained for plant records and to be used to make additional copies if necessary, including an additional copy to accompany other shipping documents carried by the transporter and to be available for inspection by any authorized official or department.

*c.* A copy of the compliance certificate forwarded to the dealer, distributor, or any other person who is required to obtain a local building permit or to oversee installation.

**16.610(20)** *Installation certificates.* The installation certificate portion of the supplied combination certificate (subrule 16.610(19)) shall be partially completed by the manufacturer at the same time the code compliance certificate is prepared and made part of the documents shipped with the unit and completed by the local building official or the installer.

*a.* When a building permit is required, a copy of the code compliance certificate shall be presented to the local building official at the time application for a permit is made. The building official shall sign the certificate and send a copy to the commissioner at the address designated in this rule.

*b.* When a building permit is not required, the code compliance certificate shall be signed by the installer and forwarded to the commissioner at the address designated in this rule.

**16.610(21)** *Certification seals.* There shall be two seals attached to every factory-built structure that is installed in Iowa as follows:

*a.* Every module, unit, section, or component has a state compliance seal securely affixed at the manufacturing facility to show that the manufactured unit complies with the code. When components and systems are included within a module, section or unit and have been approved by the third-party agency to be part of that module, section or unit, only one seal is necessary for the module, section, or unit. A series of panels that make up the final unit when assembled at the site, and where approved in that manner, need only one seal.

*b.* Every completed unit when installed at the final site has an installation seal attached to show that the installation complies with the requirements of this code.

**16.610(22)** *Compliance seals.*

*a. Compliance seal issuance.* The state compliance seal will be issued by the commissioner upon application and after approval of the plans and manufacturing procedures has been certified by the third-party agency evidencing compliance with this code. Applications for compliance seals shall be made to the commissioner on the supplied form and include the following:

(1) Number of seals requested.

(2) Iowa model or system approval numbers.

(3) Reference to approval of manufacturing procedures and third-party agency or agencies involved.

(4) A statement by the applicant that consent is given for inspection and investigation at all reasonable hours.

(5) Applicable compliance seal fees.

*b. Compliance seal reporting.* Manufacturers shall notify the commissioner monthly of the use of seals by the manufacturers' facilities, on a form approved by the commissioner and containing adequate information to determine the following:

(1) Compliance seal number.

(2) Serial number of the unit on which the seal was placed.

(3) Make and model of the unit on which the seal was placed.

(4) Number of sections that comprise the finished unit.

(5) Location to which the unit was shipped.

**16.610(23)** *Number of compliance seals required.* Each modular building shall have a compliance seal attached to every section or unit of the building.

**16.610(24)** *Compliance seal placement on modular units.* Every compliance seal shall be assigned and securely affixed to a specific section or unit in a readily visible location. Assigned seals are not transferable and are void when not affixed as assigned. All seals not properly affixed shall be returned to or may be confiscated by the commissioner. The seal remains the property of the commissioner in the event of violation of the conditions of approval.

**16.610(25)** *Denial and repossession of seals.* Should investigation or inspection reveal that a manufacturer is not constructing modular units in accordance with the plans approved by the third-party agency, and such manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules and the code have been violated, continues to manufacture units in violation of these rules and the code, applications for new seals will be denied and the seals previously issued will be confiscated. Upon satisfactory proof of compliance, such manufacturer may resubmit an application for seals.

**16.610(26)** *Seal removal.* In the event that any unit bearing the seal is found to be in violation of the code, the commissioner may remove the seal after furnishing the owner or the owner's agent with a written statement of such violations. No new seals will be issued until proof of corrections has been submitted to the commissioner.

**16.610(27)** *Lost or damaged seals.* When or if a seal has been lost or damaged, the commissioner shall be notified immediately in writing by the manufacturer, including identification of the unit serial number, and when possible, the seal number.

*a.* All seals that are damaged shall be promptly returned to the commissioner.

*b.* Lost and damaged seals will be replaced by the commissioner with a new seal upon payment of the seal fee as provided in this section.

**16.610(28)** *Return of seals.* When a manufacturer discontinues production of a unit carrying plan approval, the manufacturer shall within ten days advise the commissioner of the date of such discontinuance and either return all seals allocated for such discontinued unit or assign said seals to other approved units.

**16.610(29)** *Fees.*

*a. Form of remittance.* All remittances are to be:

(1) In the form of checks or money orders;

(2) Made payable to Iowa Department of Inspections, Appeals, and Licensing; and

(3) Addressed to:

State Building Code Bureau
Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321

*b. Seal fees.*

| | |
|---|---|
| Modular code compliance seals | $30 per seal |

| | |
|---|---|
| Modular installation seals | $15 per seal |

*c. Other fees.* A fee equal to the direct expense will be charged for all other services furnished by the commissioner which are not direct administrative duties of the commissioner's office, including but not limited to obtaining consultants for review and evaluation of applications or obtaining reviews from the national code writing organizations.

**16.610(30)** *Local issuance of building permits and local zoning.*

*a.* The issuance of building permits and occupancy permits will be in accordance with local ordinances and Iowa Code sections 103A.19 and 103A.20.

*b.* Local building codes and regulations apply to all parts of any project that are not included in the state approval of either the manufactured structure or the installation procedure.

*c.* Nothing in these rules or the state building code exempts any factory-built structure from the requirements of local zoning or site condition requirements.

*d.* A modular factory-built structure moved or relocated after the first installation in Iowa shall comply with the applicable codes and zoning restrictions of the jurisdiction into which it is being moved or relocated.

**16.610(31)** *Noncompliance to code provisions.* Any noncompliance or unauthorized deviation with the provisions of this code from the approved plans or production procedures will be just cause for the revocation of the plan approval and the return of the seals.

**661—16.611** to **16.619** Reserved.

PART 2—MANUFACTURED HOUSING

**661—16.620(103A) Manufactured home construction.** (Previously called mobile home.)

**16.620(1)** *Authority to promulgate rules.* Pursuant to Public Law 93-383, Section 604, of the National Manufactured Home Construction and Safety Act of 1974, specified in 42 U.S.C. 5403 and signed into law on August 22, 1974, the authority to promulgate rules and regulations in order to establish federal manufactured home construction standards and procedures of enforcement were established by Congress and subsequent provisions for their implementation were so granted to the United States Department of Housing and Urban Development (HUD). Title VI of this Act authorizes the secretary of HUD to promulgate the federal standards and to issue the rules and regulations to ensure adequate administration and enforcement of such standards.

**16.620(2)** *Scope and applicability.* Provisions contained within Part 2 shall apply to all factory-built structures defined as a "manufactured home" in subrule 16.620(4). These regulations shall govern manufactured homes that enter the first stage of production on or after June 15, 1976, and manufactured homes that entered the first stage of production prior to June 15, 1976, to which HUD labels were affixed. These provisions supersede all local, state, or other governmental regulations for manufactured home standards and are applicable for every manufactured home unit newly manufactured and offered for sale in the United States and its governing territories. These provisions do not apply to the following:

*a.* Factory-built structures that comply with the requirements of Part 1.

*b.* Manufactured homes manufactured for installation in the state of Iowa on or after February 1, 1973, and prior to June 15, 1976.

**16.620(3)** *Manufacture of units prior to June 15, 1976.* Manufactured home units and add-on units that were manufactured for installation in Iowa prior to June 15, 1976, which established the effective date of the HUD standard, shall have been constructed to the standards of manufactured homes of the Iowa state building code that was in effect at the time of manufacture.

**16.620(4)** *Definitions and terms.* Terms and definitions for purposes of clarification when used in Part 2. (See also subrule 16.610(3).)

*"Anchoring equipment."* Straps, cables, turnbuckles, clamps, clips, and other fasteners including tensioning devices, which are used with ties to secure a manufactured home to ground anchors.

*"Anchoring system."* A combination of ties, anchoring equipment, and ground anchors that will, when properly designed and installed, resist overturning and lateral movement of the manufactured home from wind forces.

*"Approved installer."* Approval by the commissioner or the commissioner's designated representative of a person, dealer, agency or organization, qualified to inspect, or install ground anchoring and support systems for manufactured homes or other manufactured structures, who installs units, for others, at a site of occupancy by attaching support and anchoring systems, and is familiar with and has agreed to comply with these installation procedures.

*"Certificate, installation."* The certificate provided by the installer to both the commissioner and the owner that warrants that the installation system complies with these rules. When an installer installs only the support system or anchorage system, an installation certificate shall also be completed and copies distributed accordingly for each installation and with the applicable information completed on the certificate pertinent to that type of installation (see subrule 16.623(5)).

*"DAPIA."* A design inspection agency approved by HUD to perform in-plant design reviews on all drawings and specifications in order to provide compliance to the HUD standard for manufactured home construction.

*"Diagonal tie (frame tie)."* A tie intended primarily to resist horizontal or shear forces and that may secondarily resist vertical, uplift, and overturning forces.

*"Ground anchor."* Any device at the manufactured home site designed to transfer manufactured home anchoring loads to the ground.

*"IPIA."* A production inspection agency approved by HUD to perform the in-plant quality assurance inspection programs within manufactured home manufacturing facilities.

*"Label or certification label."* The approved form of certification by the manufacturer that is affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States or its governing territories.

*"Main frame (chassis)."* The structural component on which is mounted the body of the manufactured home.

*"Manufactured home."* (Previously called mobile home.) A structure transportable in one or more sections that when erected on site measures 8 body feet or more in width and 40 body feet or more in length or when erected on site is 320 or more square feet in area, and that is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein.

*"Manufactured home add-on."* A structure that is designed and produced and to be made an integral part of a manufactured home and will be considered part of the manufactured home, when attached thereto.

*"Manufacturer's statement of origin"* means a certification signed by the manufacturer or importer that the manufactured home described has been transferred to the person or dealer named and that the transfer is the first transfer of the manufactured home in ordinary trade and commerce. The label number required by 24 CFR Chapter XX, Section 3282.362(c)(2), shall be included. (This number is commonly known as the HUD number.) The terms "manufacturer's certificate," "importer's certificate," "MSO" and "MCO" shall be synonymous with the term "manufacturer's statement of origin."

*"Pier."* That portion of the support system between the pier foundation and the manufactured home exclusive of caps and shims.

*"Pier foundation (footing)."* That portion of the support system that transmits loads directly to the soil, and shall be sized to support the loads shown herein.

*"SAA."* A state administrative agency approved by the Department of Housing and Urban Development to participate in the enforcement of all provisions to which a manufactured home is regulated under the HUD standard.

*"Seal, installation."* Is an insignia issued by the commissioner that is attached to a manufactured home by the installer to certify that the installation is in compliance with the requirements of the state building code.

*"Stabilizing system (tie-down system)."* A combination of the anchoring system and the support system when properly installed. Therefore, components of the anchoring and support systems such as piers, pier foundations, ties, anchoring equipment, anchors, or any other equipment that supports or secures the manufactured home to the ground, shall be defined as stabilizing devices. For the purposes of this code the definition of a stabilizing system and the definition of a tie-down system shall be one and the same.

*"Support system."* A combination of pier foundations, piers, caps, and shims that will, when properly installed, support the manufactured home.

*"Tie."* Strap, cable or securing device used to connect the manufactured home to ground anchors.

*"Tie-down system (stabilizing system)."* Means a ground support system and a ground anchoring system used in concert to provide anchoring and support for a manufactured home.

*"Vertical tie (over-the-top)."* A tie intended to resist the uplifting and overturning forces. This tie may continue over-the-top but if properly attached may only extend partway up each side.

**16.620(5)** *Administration.* This section covers the basic requirements for constructing manufactured homes and all of the administrative procedures under which the manufactured home program functions including information pursuant to certification, approval and manufacturing requirements. This section also applies to those structures defined in subrule 16.620(4) of Part 2 as manufactured home add-on units, temporary field construction offices and multifamily homes. There are also included within Part 2, (661—16.621(103A)) sections dealing with installation procedures and information pursuant to the handling of consumer complaints (16.620(15)) consistent with the duties of the state of Iowa to be performed as a State Administrative Agency (SAA) in conjunction with the manufactured home program.

**16.620(6)** *Manufactured home construction requirements.* All factory-built structures that are defined as a manufactured home under subrule 16.620(4) of Part 2, shall be constructed to the standards as promulgated by the United States Department of Housing and Urban Development hereafter referred to as HUD. These standards were published as final rules in the December 18, 1975, issue of the Federal Register, Volume 40, No. 244, and will be amended from time to time. These standards are herein adopted and apply to all manufactured homes manufactured after June 15, 1976. All provisions for manufactured home procedural and enforcement regulations are covered within the May 13, 1976, Federal Register, Volume 41, No. 94. All factory-built structures defined as a manufactured home by the federal standard shall be manufactured and so regulated by these documents.

**16.620(7)** *Procedures of approval for manufactured homes.* Every manufactured home unit or structure approval will follow the method of third-party certification approval with all approvals obtained through the HUD secretary. All manufactured home plans, specifications, documentation, plant facilities and in-plant inspections must be submitted to and approved by a third-party certification agency so designated by the HUD secretary. Rules and regulations pursuant to these procedures are outlined in the manufactured home procedural and enforcement regulations, Parts 3282.201 through 3282.204, which set out requirements to be met by states or private organizations that wish to qualify as primary inspection agencies (see subrule 16.620(4) of Part 2 definitions for IPIA and DAPIA).

**16.620(8)** *Compliance certification.* Every manufactured home unit or structure must conform to the certification requirements within section 3282.205 of the manufactured home procedural enforcement regulatory document.

**16.620(9)** *Certification seals (labels) and other seal requirements.* Every manufactured home unit or structure must conform to the requirements within the manufactured home procedural and enforcement regulatory document section 3282.362(c)(2) in lieu of Iowa insignias. Other types of

units manufactured under the requirements of Part 2 will be labeled as prescribed in subrule 16.620(10).

**16.620(10)** *Manufactured home add-on units.* Every factory-built structure manufactured as a manufactured home add-on unit as defined in subrule 16.620(4) shall be constructed to the standards set forth in subrule 16.620(6), except that these units will bear an Iowa seal in accordance with the provisions of Part 1. Manufacturers of manufactured home add-on units with the exception of constructing to the HUD standard, which has been herein adopted for these units, must comply with all other provisions of Part 1.

**16.620(11)** *Seal types for manufactured home add-on units.*

*a.* When ordering seals for manufactured home add-on units, each manufacturer will indicate the number of each type of seal requested and the letter prefix required. Examples of seals issued are as follows: (A00-0000MH), (B00-0000MH), C, D, and E, etc. Single units are without prefix letters (00-0000MH). More details are contained in subrule 16.610(21).

*b.* It is noted that manufactured home type seals shall be attached to all of these type units. All other procedures for seal issuance, removal, damage, repossession and return are to conform with provisions of this code as outlined in Part 1.

**16.620(12)** *Noncompliance.* Failure to conform to the provisions of Part 2 as they apply to the federal standard for the construction of manufactured homes is subject to the penalties where applicable as set forth within Part 1. The state of Iowa having adopted the federal standard and the enforcement regulations shall participate in the federal program as an agent of HUD thereby providing assurances to ensure code compliance when these units are offered for sale for subsequent installation within the state of Iowa.

**16.620(13)** *Consumer complaints.* The state building code bureau serving as an approved State Administrative Agency (SAA) for the Federal Department of Housing and Urban Development shall receive complaints and process them in accordance with the requirements of the federal regulations as outlined in subpart I, paragraph 3282.401, entitled, "Consumer Complaint Handling and Remedial Actions of the Manufactured Home Procedural and Enforcement Document." These specific complaints are categorized as possible imminent safety hazards or possible failures to conform to the federal standard. Imminent safety hazards shall be those items that could result in an unreasonable risk of injury or death to the occupants of the manufactured homes. Failures to conform to the federal standard are those items that do not result in an unreasonable risk of injury or death to the occupants of manufactured homes, but nevertheless do not meet the provisions of the federal standard in some specific manner.

**661—16.621(103A) Installation of manufactured homes.**

**16.621(1)** *Authority.* These rules and regulations are to establish minimum requirements for the installation of manufactured homes as authorized by Iowa Code sections 103A.7(2)*"c"* and 103A.9.

**16.621(2)** *Application.*

*a.* These rules apply to the initial installation of manufactured homes manufactured on or after February 1, 1973, and to factory-built structures manufactured homes before February 1, 1973, which have never been installed in Iowa, and are approved by the commissioner.

*b.* These rules apply to all manufactured homes, new or used, that are sold in Iowa or sold to be installed in Iowa after September 1, 1977, for new manufactured homes and January 1, 1978, for used manufactured homes. The seller shall provide an approved tie-down system and the purchaser shall install or have the system installed within 150 days (see subrule 16.620(4) for the definition of a tie-down system). The 150-day period is designated for time to complete the installation when climatic conditions may restrict the completion of the tie-down system.

*c.* These rules apply to the installation of manufactured home add-on units, temporary field construction offices and manufactured multifamily homes.

*d.* These rules shall apply to any person doing any work on any part of the tie-down system (both support or anchorage systems) whether the unit is being sold or not.

**16.621(3)** *Enforcement.* The commissioner shall administer and enforce these provisions. Any person, agent, or organization approved and authorized by the commissioner may inspect any installation system and equipment to ensure compliance with these regulations. Evidence of compliance shall be supported by the submission to the commissioner of a certificate of installation. One copy of such certificate will remain in possession of the owner of the installed structure.

**16.621(4)** *Manufactured home installation instructions.* Every manufactured home manufacturer that manufactures manufactured homes for installation in Iowa shall provide the commissioner with a reproducible copy of printed instructions of installation for each specific make and model of manufactured home that is to be installed in Iowa. These instructions shall include copies of the materials that have been certified by a registered professional engineer for compliance with the federal manufactured home construction standards and 3280.306(a)(2), 3280.306(b), and 3280.303(c) of the regulatory standards. The manufacturer's installation instructions shall also be available at the installation site.

**16.621(5)** *Approvals and procedures.* Requirements for approval of installers, support and anchorage systems, seals and certificates are described in the remaining sections of this part.

**661—16.622** Reserved.

**661—16.623(103A) Installation seal and certificate procedures for manufactured homes.**

**16.623(1)** *Application for seals.* Any installer who has met the applicable requirements of 661—Chapter 374 may apply for installation seals as needed. Such seals may be obtained from the commissioner or local building officials or building department who is a participant in the state's installation program.

**16.623(2)** *Manufactured home installation certificates.* The installer of manufactured homes shall supply the building code commissioner and the owner of the unit with the signed and completed installation certificate that has been issued by the Iowa building code commissioner, within 30 days of affixing the Iowa installation seal.

**16.623(3)** *Obtaining installation certificates.* Any person who installs a tie-down system or any portion thereof shall be supplied with the installation certificate forms when ordering installation seals and the payment of the appropriate fee. Installers who are not listed as an installer shall be supplied the proper form to be attached to the copy of the installation certificate to be filed with the commissioner, which will record compliance with the approved system.

**16.623(4)** *Placement of installation seal.*

*a.* The installation seal shall be placed in a readily visible location on the rear of the unit. Those units manufactured after June 15, 1976, shall have the installation seal placed adjacent to the federal (HUD) label. Those units manufactured before June 15, 1976, shall have the installation seal placed at the left rear corner above any skirting.

*b.* Multiple width units require only one seal for the completed installation. Additions that are added after the initial installation shall have an installation seal on that portion.

**16.623(5)** *Denial and repossession of installation seals.* Should investigation or inspection reveal that an approved installer has not installed an anchoring system, support system, or the complete tie-down system according to these rules and the code, the commissioner may deny such installer's application for new installation seals and any installation seals previously issued shall be confiscated. Upon satisfactory proof of modification of such installation bringing them into compliance, such dealer or installer may resubmit an application for installation seals.

**16.623(6)** *Seal removal, installation.* Should a violation of the rules regarding installation be found, the commissioner may remove the installation seal after furnishing the owner or a designated agent with a written statement of such violation. The commissioner shall not issue a new installation seal until corrections have been made and the owner or a designated agent has requested an inspection pursuant to 16.625(1).

**16.623(7)** *Lost or damaged seals, installation.* When an installation seal is lost or damaged, the commissioner shall be notified in writing. Damaged or lost installation seals shall be replaced by the commissioner upon payment of the replacement installation seal fee as provided in rule 661—322.20(103A).

**16.623(8)** *Return of seals, installation.* When a dealer or installer discontinues the installation of manufactured homes, the dealer or installer shall notify the commissioner within ten days of the date of such discontinuance and return all unused installation seals that have been issued to the dealer or installer. Installation seals may not be transferred by any dealer or installer after being issued to that dealer or installer.

**16.623(9)** *Seals for existing manufactured homes.* Seals may be obtained for existing manufactured homes that are tied down in accordance with the requirements of rule 661—16.627(103A).

**661—16.624** to **16.626** Reserved.

**661—16.627(103A) Approval of existing manufactured home tie-down systems.** This rule is to provide a method by which manufactured homes that have been installed prior to August 12, 1983, can be sold without requiring a new tie-down system to be installed and to allow existing manufactured homes that are properly supported and anchored to be sold without installing new support and anchorage systems.

**16.627(1)** *Sale of a certified unit.*

*a.* The commissioner shall be notified in writing by the seller of the change of ownership when any manufactured home sold after August 12, 1983, remains in the same location. The installation seal shall remain in place and a copy of the installation certificate shall be supplied to the new owner. Replacement seals and certificates may be obtained if necessary (subrule 16.623(9)).

*b.* A certified manufactured home sold after August 12, 1983, that is moved to a new location must obtain a new certificate and seal. The existing support and anchorage system may be used if the installer verifies the conditions of use and the installation procedures of the existing systems are met at the new location.

**16.627(2)** *Sale or acceptance of installed existing units as an owner's option.* Application may be made to the commissioner for approval of an existing manufactured home support and anchor system on one of the following conditions:

*a.* If the support and anchorage systems were installed by an approved installer and are approved systems.

*b.* If the existing support and anchorage system has been inspected by an approved installer and the installer attests by signing the installation certificate that to the best of the installer's knowledge, the existing systems are equal to or better than the minimum requirements of this code.

*c.* If the existing support and anchorage systems are inspected and approved by a registered engineer or architect, and attested to in writing.

*d.* If the existing support and anchorage systems are inspected by a field inspector with the Iowa state building code and the existing systems are found to be equal to or better than the minimum requirements of this code.

If compliance is met by one of the above procedures and payment of the required fee has been paid, an Iowa installation seal and certificate may then be issued.

**661—16.628(103A) Procedure for governmental subdivisions for installation of factory-built structures.**

**16.628(1)** Any governmental subdivision that has adopted the state building code or any other building code is required to enforce the state building code requirements for the installation of factory-built structures (Iowa Code section 103A.9(1)*"d"*(1)).

**16.628(2)** Governmental subdivisions who are issuing building permits and are inspecting construction for compliance with the local building regulations shall verify the installation of factory-built structures within their jurisdiction and shall sign the installation certificate and forward the appropriate copy to the commissioner.

*a.* The local official shall obtain the installation certificate and the installation seal from the person making application for a building permit which includes a factory-built structure.

*b.* Upon completion and review of the installation the local official shall attach the installation seal to the unit.

*c.* Governmental subdivisions are permitted to assess fees as may be required by local ordinances.

*d.* Nothing in this rule is intended to reduce the authority of the governmental subdivision from establishing zoning regulations as outlined in Iowa Code sections 414.28 and 335.30.

**661—16.629(103A) Support and anchoring systems submission.**

**16.629(1)** *Submission by manufacturer.* The manufacturer of each manufactured home installed in Iowa shall submit to the building code commissioner a copy of the installation instructions by mail in printed form and in an electronic form acceptable to the commissioner.

**16.629(2)** *Submission by licensed professional engineer.* A licensed professional engineer who designs a support and anchoring system for use in the installation of a manufactured home in Iowa shall submit to the building code commissioner a copy of the specifications and instructions for the system by mail in printed form and in an electronic form acceptable to the building code commissioner. A support and anchoring system designed by a licensed professional engineer shall not be utilized unless it has been submitted to the building code commissioner in compliance with this subrule.

**TABLE 6A**

**MINIMUM NUMBER OF TIEDOWNS**

**REQUIRED FOR SINGLEWIDE MOBILE HOMES**

| MOBILE HOME BOX LENGTH NOT EXCEEDING | MINIMUM NUMBER OF TIEDOWNS PER SIDE | |
|---|---|---|
| | DIAGONAL TIES | VERTICAL TIES* |
| 40′-0″ | 3 | 2 |
| 54′-0″ | 3 | 2 |
| 73′-0″ | 4 | 2 |
| 84′-0″ | 5 | 2 |

*If more than minimum number of vertical or diagonal ties have been supplied, they shall all be used.

NOTES:

1. Doublewide mobile homes shall comply with Table 6A except that no vertical ties are required.
2. Wherever a vertical tie and a diagonal tie lie in a plane that is vertical and transverse to the main longitudinal beam, both ties may be connected to the same ground anchor, providing that particular anchor withstands both loadings.
3. This table shall be used only if there are no manufacturers approved installation requirements.

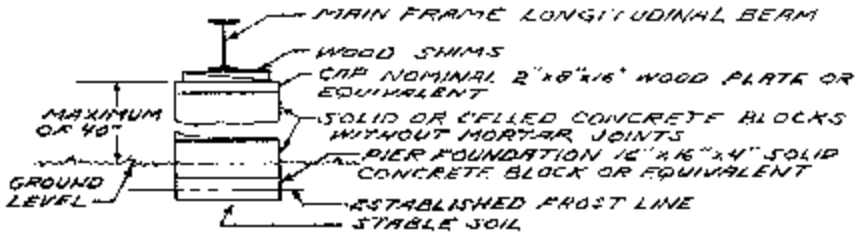



FIGURE 1. PIERS UP TO 40" IN HEIGHT (SINGLE BLOCK CONSTRUCTION)

NOTE: CORNER PIERS MORE THAN THREE (3) BLOCKS HIGH SHALL BE DOUBLE BLOCK CONSTRUCTION AS SHOWN IN FIGURES 2 & 3

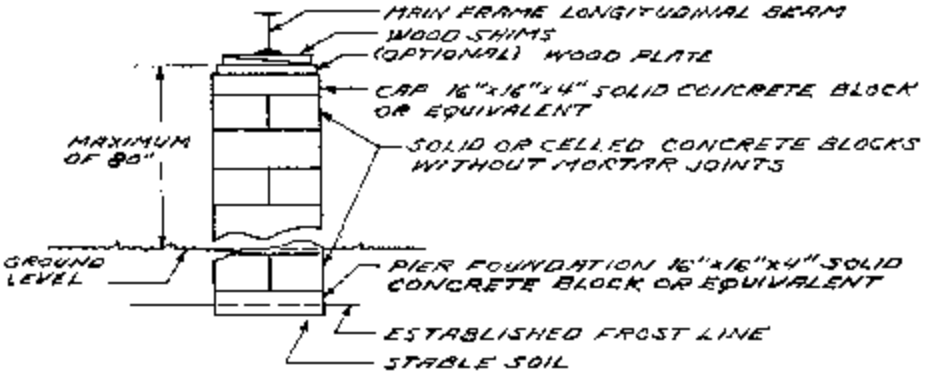



FIGURE 2 - PIERS OVER 40" IN HEIGHT AND NOT EXCEEDING 80" IN HEIGHT (DOUBLE BLOCK CONSTRUCTION)

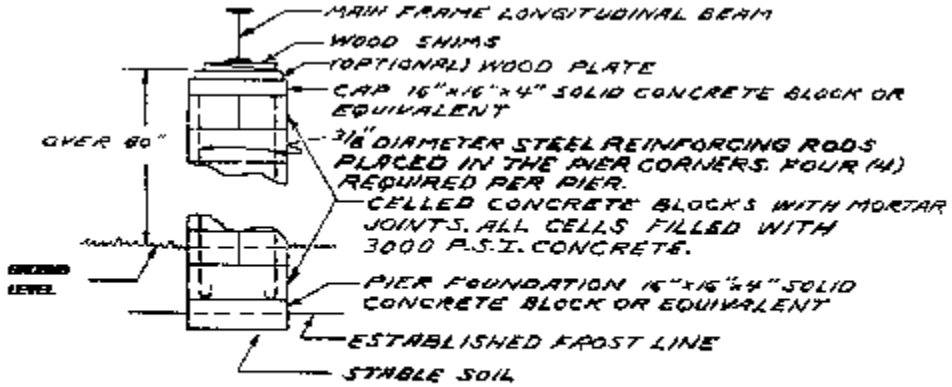
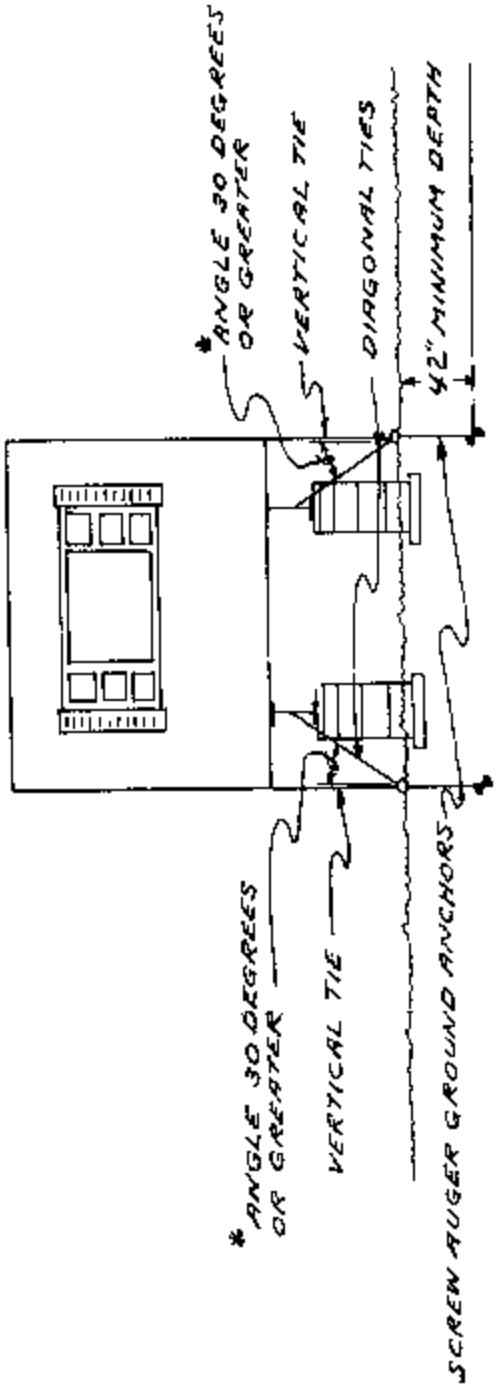



FIGURE 3 - PIERS OVER 80" IN HEIGHT (DOUBLE BLOCK CONSTRUCTION, STEEL REINFORCED)

FIGURE 4

MOBILE HOME TIEDOWN

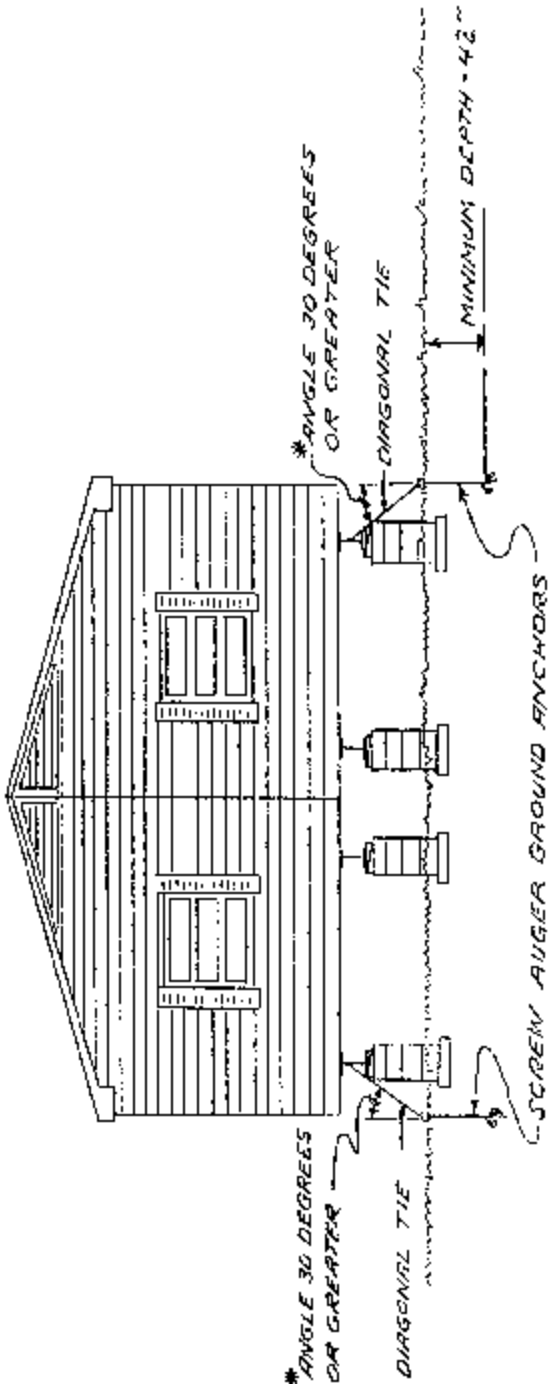



*DIAGONAL TIE SHALL DEVIATE FROM A VERTICAL DIRECTION 30 DEGREES OR MORE.

FIGURE 5

DOUBLE WIDE MOBILE HOME TIEDOWN

* DIAGONAL TIE SHALL DEVIATE FROM A VERTICAL DIRECTION 30 DEGREES OR MORE.




These rules are intended to implement Iowa Code sections 103A.7 and 103A.9 and Public Law 102-486.

## Regulatory Analysis

Notice of Intended Action to be published: 661—Chapters 200, 201, 202, 205, 210, and 211 "Fire Marshal Administration; General Fire Safety Requirements; Requirements for Specific Occupancies; Fire Safety Requirements for Hospitals and Health Care Facilities; Smoke Alarms/ Detectors; Carbon Monoxide Alarms"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A.511, 10A.518, 10A.523

State or federal law(s) implemented by the rulemaking: Iowa Code sections 10A.511, 10A.518, and 10A.523 and Executive Order 10 (January 10, 2023)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>10 a.m. | Ledges Conference Room<br>6200 Park Avenue<br>Des Moines, Iowa |

Virtual participation information will be available on the Department of Inspections, Appeals, and Licensing website prior to the hearing.

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Amy Oetken
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.672.4929
Email: amy.oetken@dia.iowa.gov

*Purpose and Summary*

This proposed rulemaking rescinds Chapters 200, 202, 205, 210, and 211. The rulemaking repromulgates pertinent rules in a new streamlined and combined Chapter 201, "Fire Control Administration," and implements Iowa Code sections 10A.511, 10A.518, and 10A.523 in accordance with the goals and directives of Executive Order 10.

Pursuant to 2023 Iowa Acts, Senate File 514, the following rules will be retained by the Department of Public Safety and analyzed as part of its Red Tape Review:

**661—200.1(100) Description.**
**661—200.2(100) General administrative procedures.**
**661—200.6(100) Fire investigations.**
**661—200.9(100A) Sharing of insurance company information with the fire marshal.**
**661—200.10(100A) Release of information to an insurance company.**
**661—200.11(100A) Forms.**

Iowa Code section 10A.511 provides that the Director of the Department is to promulgate fire safety rules in consultation with the State Fire Marshal. Wherever by any statute the Director or the Department is authorized or required to promulgate, proclaim, or amend rules and minimum standards regarding fire hazards or fire safety or protection in any establishment, building, or structure, the rules

and standards shall promote and enforce fire safety, fire protection, and the elimination of fire hazards as the rules may relate to the use, occupancy, and construction of the buildings, establishments, or structures. The rules and minimum standards shall be in substantial compliance except as otherwise specifically provided in Iowa Code chapter 10A, with the standards of the National Fire Protection Association (NFPA) relating to fire safety as published in the National Fire Codes. Pursuant to Iowa Code section 10A.511(4), another duty of the Director is to adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection or plan review by the Director is required by law. The fee designated by rule shall be set in an amount that is reasonably related to the costs of conducting the applicable inspection or plan review.

Iowa Code section 10A.518(2)"b" states that the rulemaking shall require the installation of smoke detectors in existing single-family rental units and multiple-unit residential buildings. The Director shall adopt rules and establish appropriate procedures to administer this Iowa Code section.

Iowa Code section 10A.518(3)"b" states that the rulemaking shall require the installation of carbon monoxide alarms in existing single-family rental units and multiple-unit residential buildings that have a fuel-fired heater or appliance, a fireplace, or an attached garage. Existing single-family dwellings that have a fuel-fired heater or appliance, a fireplace, or an attached garage shall be equipped with approved carbon monoxide alarms. The Director shall adopt rules and establish appropriate procedures to administer this Iowa Code section.

Iowa Code section 10A.523 provides that the Director shall adopt standards relating to exits and exit lights, fire escapes, fire protection, fire safety and the elimination of fire hazards, in and for hospitals, health care facilities and other buildings or structures where persons congregate from time to time, whether publicly or privately owned. Rules by the Director affecting the construction of new buildings, additions to buildings or rehabilitation of existing buildings and related to fire protection shall be substantially in accord with the provisions of the nationally recognized building and related codes adopted as the State Building Code pursuant to Iowa Code section 103A.7 or with codes adopted by a local subdivision that are in substantial accord with the codes comprising the State Building Code.

This rulemaking implements the aforementioned Iowa Code sections by setting forth building plan submission and inspection standards. The rulemaking sets forth safety requirements in processes for specific buildings, including hospitals and health care facilities. The rulemaking adopts by reference NFPA 101, Life Safety Code, 2012 edition, for fire safety rules for new and existing hospitals, nursing facilities, hospices, ambulatory surgical centers, and existing religious nonmedical health care institutions.

A uniform procedure is established for issuing a certificate of compliance, including an appeal process if a certificate is not granted. The rulemaking adopts the International Fire Code (IFC), 2024 edition, with amendments and establishes appropriate fees for plan reviews. The rulemaking further establishes safety standards for smoke detectors and carbon monoxide alarms. These rules were promulgated in consultation with the State Fire Marshal.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Members of the industry will bear the costs of the proposed rulemaking by operating in compliance with the rules and paying fees associated with the rulemaking.

Homeowners and building owners will incur the costs of complying with the safety standards for smoke detectors and carbon monoxide alarms.

- **Classes of persons that will benefit from the proposed rulemaking:**

Members of the industry will benefit from consistent processes and uniformity that is achieved through this rulemaking. The public will benefit because the rulemaking promotes safety, health and protection of property.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Costs are incurred by individuals or businesses who are submitting plans to the Department for review and approval. Submittal requirements request specific information, shop drawings, etc. that are necessary for staff to complete the review required by statute. However, pursuant to 611—subrule 300.4(2) (State Building Code), the fees for plan reviews are paid to the Building Code Bureau, not the Fire Prevention Bureau. The fee schedule is as follows:

| **Estimated Construction Costs** | **Calculation of Plan Review Fee** |
|---|---|
| Up to and including $1 million | $.58 per thousand dollars or fraction thereof (minimum fee $200) |
| More than $1 million | $580 for the first $1 million plus $.32 for each additional thousand dollars or fraction thereof |
| The plan review fees for fire suppression systems and fire alarm systems are separate fees and are calculated as follows: | |
| **Fire Protection System Costs** | **Plan Review Fee** |
| Fire suppression systems whose construction cost for materials and installation is calculated to be up to and including $5,000 | $100 |
| Fire suppression systems whose construction cost for materials and installation is calculated to be more than $5,000 and up to and including $20,000 | $200 |
| Fire suppression systems whose construction cost for materials and installation is estimated to be more than $20,000 | $400 |
| Fire alarm systems whose construction cost for materials and installation is calculated to be up to and including $5,000 | $100 |
| Fire alarm systems whose construction cost for materials and installation is calculated to be more than $5,000 and up to and including $20,000 | $200 |
| Fire alarm systems whose construction cost for materials and installation is estimated to be more than $20,000 | $400 |

The plan review fees under this rulemaking are comparable to or less than similar fees charged by neighboring and other states. For example, for a project with a value of $10 million, plan review fees in Iowa are $3,460, but in Minnesota they are over $47,000, in Wisconsin approximately $4,400 (estimated since Wisconsin bases fees on square footage, rather than project value), in Nebraska $500 (Nebraska caps plan review fees at $500, well below all other states), in Arizona nearly $34,000, and in Idaho over $13,000.

Costs of inspection fees are incurred for specific buildings or facilities identified by statute. Iowa charges inspection fees as follows: $2.50 per bed in a hospital or health care facility, $10 per bed in an elder group home or assisted living program, $75 per facility for an adult day service facility, and $25 per facility for a child care facility.

Fees are handled differently in other states. Nebraska charges $50 for health care facilities with up to 50 beds, $100 for facilities with up to 100 beds, and $150 for any facility over 100 beds. For child care facilities, Nebraska charges $40 for a facility with 1 to 8 children, $50 for a facility with 9 to 12 children, and $60 for facilities with more than 12 children. West Virginia also charges based on the type of facility and charges $25 for day care facilities, $100 for hospitals and nursing homes with more than 100 beds and $75 for facilities with fewer than 100 beds. Minnesota and North Dakota

appear to charge a flat rate of $50. Wisconsin charges $80 and Ohio charges $200 for new construction. Texas charges $75 for day care facilities and $200 for hospitals but will only inspect if the local jurisdiction does not have the ability to inspect.

Costs are incurred by the industry related to the nature of the day-to-day operations of new and existing hospitals, nursing facilities and hospices, intermediate care facilities, ambulatory surgical centers, and religious nonmedical health care institutions. Any costs associated with compliance with the standards herein are primarily due to the statutory requirement for standards promulgated consistent with the standards adopted in the NFPA and the Life Safety Code.

The costs of smoke detectors and carbon monoxide alarms are borne by homeowners and building owners. Costs range from $50 to $150 per unit. Costs may be incurred by purchasing alternative detection systems, such as a commercially installed system or combination smoke/carbon monoxide detectors, and for electrical wiring for the power source where permanent wiring is required. The costs vary significantly by project.

Civil penalties may be assessed to a business that fails to comply with these rules.

- **Qualitative description of impact:**

There is a positive impact to both the public and the regulated industry in maintaining industry standards that are safe and modern. In 2022, local fire departments responded to an estimated 1.5 million fires in the United States, according to the NFPA. Approximately 35 percent of those fires occurred in or on structures. These fires resulted in 2,790 civilian deaths, 11,720 civilian fire injuries, and $15 billion of direct property damage. The overall estimate for total fire incidents was 50 percent lower than in 1980. Property loss was 20 percent lower than in 1980. Safety standards save lives and protect property.

A number of other jurisdictions have adopted an edition of the IFC. Those jurisdictions update the edition in use periodically, as does Iowa. Changes in the 2024 edition of the IFC provide increased safety to the public and provide clarity and ease of compliance to the industry.

The Life Safety Code, 2012 edition, is required for facilities participating in the Medicare and Medicaid programs. Consistency in standards across jurisdictions benefits the industry by standardizing work processes.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Costs to the Department include staff ensuring compliance with the requirements of Iowa Code chapter 10A, currently incorporated into these rules. Costs to the Department also include costs for staff that already exist in day-to-day operations of the agency. Those costs include reviewing applications, responding to inquiries, managing complaints, conducting inspections, and enforcing requirements.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

There are no specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department's statutory duties identified and set forth above. The costs of this rulemaking are directly associated with the Department's general functions. This rulemaking does not add to the costs of the Department or public in excess of general functions. The benefits include clear and consistent implementation of applicable Iowa Code provisions.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

There are no less restrictive alternatives to these rules since the requirements mirror the content of statutory requirements found in Iowa Code chapter 10A. There are no substantive changes other than the adoption of the 2024 edition of the IFC. The adoption of the most recent edition of the IFC ensures

that the industry uses the safest business standards available. There is no less costly or intrusive method for achieving the purpose of the proposed rulemaking.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Response in section "5," above.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

There are no less restrictive alternatives to these rules since the requirements mirror the content of statutory requirements found in Iowa Code chapter 10A.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

The rulemaking is meant to ensure public safety and provide for consistency and uniformity in the industry. To exempt a small business from adhering to this rulemaking would jeopardize any member of the public who sought services from that business, as well as the employees of the business. The risk to the public is greater than the potential harm or cost to the small business. Additionally, if a small business identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, the business could utilize the established variance process set forth by the Department.

*Text of Proposed Rulemaking*

ITEM 1. Rescind and reserve **661—Chapter 200**.

ITEM 2. Rescind 661—Chapter 201 and adopt the following **new** chapter in lieu thereof:

CHAPTER 201
FIRE CONTROL ADMINISTRATION

**661—201.1(10A) Fire control administration description and contact information.** Fire control is administered within the health and safety division of the department and may be contacted as provided in 481—Chapter 1 and on the department's website: dial.iowa.gov. The general email address for the fire safety bureau is fire.inspections@dia.iowa.gov. The department will collaborate with the state fire marshal division of the department of public safety in accordance with Iowa Code chapter 10A and as necessary.

**661—201.2(10A) Definitions.** The definitions set forth in Iowa Code section 10A.101 are incorporated herein by reference. The following definitions also apply:

*"Ambulatory surgical center"* means a facility or portion thereof as defined in Iowa Code section 135R.1.

*"Fire alarm system"* means a system or a portion of a combination system consisting of components and circuits arranged to monitor and annunciate the status of fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

*"Hospice"* means a facility licensed or seeking licensure pursuant to Iowa Code section 135J.2.

*"Hospital"* means a facility licensed or seeking licensure pursuant to Iowa Code chapter 135B.

*"Intermediate care facility"* means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.6 as an intermediate care facility for persons with an intellectual disability or intermediate care facility for persons with mental illness as both are defined in Iowa Code section 135C.1.

*"Multiple-station smoke alarm"* means two or more single-station smoke alarm devices that are capable of interconnection such that actuation of one causes the appropriate alarm signal to operate in all interconnected alarms. Interconnection may occur wirelessly for residential smoke alarms.

*"NFPA"* means the National Fire Protection Association, available at: www.nfpa.org. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

*"Nursing facility"* means the same as defined in Iowa Code section 135C.1.

*"Single-station smoke alarm"* means an assembly incorporating the detector, the control equipment and the alarm-sounding device in one unit, operated from a power supply either in the unit or obtained at the point of installation or both.

*"Smoke alarm"* means a single- or multiple-station alarm responsive to smoke. See also "single-station smoke alarm" and "multiple-station smoke alarm."

*"Smoke detector"* means a device that senses visible or invisible particles of combustion. Smoke detectors are typically listed under Underwriters Laboratories (UL) 268.

**661—201.3(10A) Building plan submission.**

**201.3(1)** Plans for initial construction or alterations, changes, additions, renovations, or remodeling of buildings requiring the approval of the director shall be submitted to the building code bureau pursuant to rule 661—300.4(103A), except that plans related to the following entities may be submitted to a local fire or building department for approval upon a determination of compliance with the rules of the department or a local fire ordinance recognized in rule 661—201.11(10A):

*a.* Any educational building or facility serving kindergarten through twelfth grade,

*b.* Any college or university building or facility,

*c.* Any child care facility intended to serve seven or more children at one time,

*d.* Any correctional facility, or

*e.* Any gaming facility.

**201.3(2)** When approval of building construction projects is required by this chapter or requested by the submitter for other building construction projects covered by this chapter, one complete set of the final working plans and specifications shall be submitted to the building code bureau in accordance with Iowa Code chapters 542B and 544A and with rule 661—300.4(103A) (Note: 661—subrule 300.4(2) establishes fees for plan reviews that are paid to the building code bureau. These fees are not collected by the fire control bureau). Submittals will be examined, and the submitter will be notified of the findings. If the working plans and specifications comply with this chapter, an approval letter will be sent to the submitter.

**201.3(3)** Shop drawings, equipment specifications, and supporting documentation for fire alarm and sprinkler systems shall be submitted for review and approval and signed by a responsible managing employee licensed in accordance with Iowa Code chapter 100C. If the system is being installed as part of a project that has been designed by an engineer or architect, the submittal shall be approved by the responsible architect or engineer prior to submittal to the department. Submittals will be examined, and the submitter will be notified of the findings. Only one copy of shop drawings, equipment specifications, and supporting documentation should be submitted. The building code bureau will send a letter of approval to the submitter in lieu of returning approved shop drawings.

**201.3(4)** No changes shall be made to the approved final working plans and specifications or shop drawings unless the changes are submitted to and approved by the building code bureau.

**201.3(5)** If the blueprints and specifications are not acceptable, the building code bureau will notify the submitter of the deficiencies and request that the submitter either forward changes or request a review of the blueprints and specifications with the building code bureau. If after such review the submitter disputes the findings of the plan reviewer, the submitter may request that the disputed questions be reviewed by the chief for the building code bureau and the chief of the fire prevention bureau. If the submitter disputes the findings of the chief for the building code bureau and the chief of the fire prevention bureau, the submitter may appeal by submitting a request for a contested case hearing to the department, in writing, within 30 days of receipt or service of the order in accordance with Iowa Code section 10A.515 and chapter 17A. Contested cases are governed by 481—Chapter 9 (contested cases) and 481—Chapter 10 (rules of practice and procedure before the administrative hearings division).

**201.3(6)** The responsible design professional for a project will schedule a preliminary meeting with the building code bureau to discuss code compliance issues early in the design development phase in accordance with 661—subrule 300.4(3). Approval to bid the project will not be given unless all applicable issues identified on the checklist have been addressed to the satisfaction of the building code bureau.

**661—201.4(10A,101,101A) Inspections and inspection fees.** The director, any employee of the department, or any designated subordinate or local fire department authorized by the director may enter to inspect any building or premises and the contents thereof at any reasonable time, without notice, in accordance with Iowa Code sections 10A.512 and 10A.514.

**201.4(1)** An inspection may be of a particular system in the building, facility, or installation, or the inspection may include the entire building, facility, or installation.

**201.4(2)** An inspection to evaluate compliance with the rules of the department may be conducted by the department or by a consultant as requested by the director. A consultant will have the necessary degree of training, education, or experience to examine a system within a building required to comply with the rules of the department and determine if such system or systems comply with requirements. If a consultant is engaged to conduct an inspection, the consultant may be accompanied by an employee of the department or of a local fire department while conducting the inspection.

**201.4(3)** Inspections will be conducted without announcement and occur on a random basis, upon request, in response to a complaint, or to investigate a suspected fire hazard.

**201.4(4)** An owner or person in control of the building, facility, or installation will be advised of an inspection upon the inspector's arrival, if available, but the inspection will commence in any event. The owner or a representative may accompany an inspector throughout the inspection, provided that the inspection is not delayed.

**201.4(5)** Upon completion of an inspection, the inspector may complete a written inspection order if any violations or deficiencies are discovered. The order will be signed by the employee and, if prepared by a consultant, will also be signed by the consultant.

**201.4(6)** Upon completion of the inspection, if the building, facility, or installation does not comply with applicable laws or rules, the inspector will identify specific provisions with which the building, facility, or installation does not comply and will notify the owner. The owner may be ordered to correct or repair the deficiency. The owner may order the building, facility, or installation removed or demolished in lieu of correcting the deficiency.

*a.* The employee or consultant signing the notice of deficiency or order will retain a copy and distribute a copy to the department or fire department having jurisdiction as necessary.

*b.* The time allowed to comply with the order will be determined by the employee or consultant, who will consider the likelihood that a fire may occur; the possibility of personal injury or property

loss; the cost and availability of materials and labor to correct, repair, remove, or demolish; and other relevant information.

*c.* If the owner of the building, facility, or installation does not agree with the deficiency findings and order, the owner may appeal the order by submitting a request for a contested case hearing to the department in the same manner as set forth in subrule 201.3(5).

**201.4(7)** Inspection fees are payable through the department's website or by check or money order made payable to the department. If a certificate of occupancy is required for use of the building, facility, or installation, the certificate will not be issued until the inspection fee has been paid. When an initial inspection requiring a fee pursuant to this subrule results in a finding of a deficiency requiring reinspection, the initial reinspection will be performed without an additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of $125 for each additional reinspection after the initial reinspection is required until any original deficiency has been corrected. Inspection fees apply for entities licensed or seeking licensure as follows:

*a.* Hospital (Iowa Code chapter 135B) or health care facility (Iowa Code chapter 135C): $2.50 per bed.

*b.* Elder group home (Iowa Code chapter 231B) or assisted living program (Iowa Code chapter 231C): $10 per bed.

*c.* Adult day services (Iowa Code chapter 231D): $75 per facility.

*d.* Child care facility (Iowa Code chapter 237A): $25 per facility.

**661—201.5(10A) Certificates for licensure.** The department will issue a certificate approving a building, facility, or installation for occupancy upon request from an owner or owner's agency if the building, facility, or installation comply with applicable rules and all fees have been paid. Denial of such a certificate is subject to appeal in the same manner as set forth in subrule 201.3(5).

**661—201.6(10A) Fire drills.** Public and private schools shall conduct fire drills in all school buildings as specified in Iowa Code section 10A.522 when school is in session.

**661—201.7(10A) Inspection based on complaint.**

**201.7(1)** *Request for inspection.* A person alleging a building, facility, or installation presents a significant fire hazard may submit a complaint to the department and should provide the following information, if known:

*a.* The address of the building, facility, or installation and name and address of its owner;

*b.* The complainant's name, address, and telephone number; and

*c.* A general description of the alleged deficiencies.

**201.7(2)** *Initial determination.* The department will determine whether allegations warrant an inspection. The complainant or owner of the building, facility, or installation may be advised of the determination. Inspection is likely to occur for any building, facility, or installation that:

*a.* By want of proper repair, or by reason of age and dilapidated condition, is especially liable to fire and is so situated as to endanger other buildings, facilities, installations, property, or persons, or

*b.* Contains combustibles, explosives, or flammable materials dangerous to the safety of any buildings, premises, or persons.

**201.7(3)** *Final decision.* Upon completion of the inspection:

*a.* If the building, facility, or installation complies with applicable laws or rules and no deficiencies are found, the department will accordingly notify the owner and the complainant.

*b.* If any deficiencies are found, and the building, facility, or installation is within the corporate limits of a city, the department will notify the mayor and clerk of said city of the deficiencies and the need for repairs.

*c.* If any deficiencies are found, and the building, facility, or installation is outside the corporate limits of any city, the department will specifically identify such deficiencies and prepare an order to

correct or repair the deficiencies in accordance with Iowa Code section 10A.515. The order will be mailed to or served upon the owner of the building, facility, or installation in accordance with Iowa Code chapter 17A and may be provided, as appropriate, to any occupants, lienholders, or lessees. The order is effective upon receipt or issuance and will give the owner a reasonable time to comply with its mandate(s). The department will determine what constitutes a reasonable time by considering the likelihood of fires; possibility of personal injury or property loss; cost; availability of materials and labor to correct, repair, remove or demolish the building, facility, or installation; and any other reasonable and relevant information. The order will also notify the owner that the owner may appeal the order in accordance with Iowa Code section 10A.515 and the process described in subrule 201.3(5).

*d.* Emergency orders may be issued in accordance with Iowa Code section 10A.515.

**201.7(4)** *Reinspection.* If the owner of the building, facility, or installation elects not to challenge the department's order, the department will, at the end of the period during which compliance was required, conduct another inspection of the building, facility, or installation.

**201.7(5)** *Failure to comply.* At the request of the department, the county attorney shall institute legal proceedings to obtain compliance or enforce penalty provisions in accordance with Iowa Code section 10A.516.

**661—201.8(10A) General provisions.** The following publications or indicated portions thereof are hereby adopted by reference as general fire safety requirements and apply to all occupancies other than those to which provisions specific to an occupancy explicitly exclude these provisions or any individual provision contained therein.

**201.8(1)** International Fire Code, 2024 edition, published by the International Code Council, available at www.iccsafe.org, with the following amendments:

*a.* Delete section 103 and sections contained therein, section 104 and sections contained therein, section 105 and sections contained therein, section 106 and sections contained therein, section 107 and sections contained therein, section 108 and sections contained therein, section 109 and sections contained therein, section 110 and sections contained therein, section 111 and sections contained therein, section 112, section 113 and sections contained therein, section 114 and sections contained therein, and section 115 and sections contained therein.

*b.* Delete section 301.2.

*c.* Delete section 307.2.

*d.* Add the following new section 308.1.11:

**308.1.11 Open Flame Cooking Devices.** Charcoal burners and ash- or coal-producing devices shall not be operated on combustible balconies or within 10 feet of combustible construction.

Exceptions:

1. One- and two-family dwellings.
2. LP-gas burners connected to one (1) 20-pound LP-gas container.
3. Where buildings, balconies and decks are protected by an automatic sprinkler system.

*e.* Delete section 315.3.3 and insert in lieu thereof the following new section:

**315.3.3 Equipment Rooms.** Combustible material shall not be stored in boiler rooms, mechanical rooms, or electrical equipment rooms or in fire command centers as specified in Section 508.1.5.

Exception: In sprinklered equipment rooms that have sufficient space to allow a minimum of 10 feet between all combustible storage and the heating, mechanical or electrical equipment in the room.

*f.* Delete section 405.3 and table 405.3 and insert in lieu thereof the following new section and new table:

**405.3 Frequency.** Required emergency evacuation drills will be held at the intervals specified in Table 405.3 or more frequently where necessary to familiarize all occupants with the drill procedure.

**TABLE 405.3**

**FIRE AND EVACUATION DRILL FREQUENCY AND PARTICIPATION**

| GROUP OR OCCUPANCY | FREQUENCY | PARTICIPATION |
|---|---|---|
| Group A | Quarterly | Employees |
| Group B[(c)] | Annually | Employees |
| Group E | See [(a)] below | All occupants |
| Group I | Quarterly on each shift | Employees |
| Group I-1[(b)] and Group R-4 | Quarterly | All occupants |
| Group R-1 | Quarterly on each shift | Employees |
| Group R-2[(d)] | Four annually | All occupants |
| High-rise | Annually | Employees |

[(a)] Fire and severe weather drills shall be conducted in accordance with Iowa Code section 10A.522. In severe climates, the fire code official has the authority to modify the emergency evacuation drill frequency.

[(b)] Fire and evacuation drills in assisted living facilities include complete evacuation of the premises in accordance with Section 405.2. Drills shall be conducted not less than six times per year on a bimonthly basis, with not less than two drills conducted during the night when residents could reasonably be expected to be sleeping. The drills may be announced in advance to the residents. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.

[(c)] Group B buildings that have an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.

[(d)] Applicable to Group R-2 college and university buildings in accordance with Section 408.3.

*g.* Delete section 807.5.2.1 and insert in lieu thereof the following new section:

**807.5.2.1 Storage in corridors and lobbies.** Clothing and personal effects will not be stored in corridors and lobbies.

Exceptions:

1. Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
2. Storage in metal lockers, provided the minimum required egress width is maintained.

*h.* Delete section 903.2.8 and insert in lieu thereof the following new section:

**903.2.8 Group R.** An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: Cabin buildings that are located in remote areas without a sufficient municipal water supply for design of a fire sprinkler system and that meet all of the following:

1. Not more than one story.
2. Not more than 750 square feet in floor area.
3. Fuel-fired heating equipment and other fuel-fired appliances are separated from sleeping areas by a one-hour fire-rated assembly.
4. Provided with fire alarm and smoke alarm systems as required by Section 907 for R-1 occupancies.
5. Basements are not allowed.
6. Maintain a fire separation of 20 feet from any other building or structure.
7. Comply with all applicable requirements of this Code.

*i.* Delete section 907.2.3 and insert in lieu thereof the following new section:

**907.2.3 Group E.** In the absence of a complete automatic sprinkler system, a complete automatic detection system utilizing an emergency voice/alarm communication system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system will be provided with a fire alarm system utilizing an emergency voice/alarm communication system in compliance with Section 907.5.2.2 and installed in accordance with Section 907.6. As a

minimum, smoke detection will be provided in corridors at a maximum spacing of 30 feet on center, and heat or smoke detection will be provided in any hazardous or nonoccupied areas in all new or existing Group E occupancies.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.

2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

2.1. Interior corridors are protected by smoke detectors with alarm verification.

2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.

2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

2.4. Off-premises monitoring is provided.

2.5. The capability to activate the evacuation signal from a central point is provided.

2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

3. Manual fire alarm boxes are not required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow, and manual activation is provided from a normally occupied location.

4. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 are not required in Group E occupancies with occupant loads of 100 or less, provided that activation of the fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

*j.* Add the following new section 1003.8:

**1003.8 Frost protection.** Exterior landings at doors will be provided with frost protection.

*k.* Add the following new section 1028.6:

**1028.6 Exit discharge pathways.** Exit discharge pathways will be paved from all required exits of a building to a public way or parking lot.

*l.* Delete section 1030.1.1 and insert in lieu thereof the following new section:

**1030.1.1** Bleachers, grandstands, and folding and telescopic seating that are not building elements will comply with ICC-300, Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, 2023 edition, with the following amendments to ICC-300:

(1) Delete section 105.2 and insert in lieu thereof the following new section:

**105.2 Yearly inspection required.** All bleachers and folding and telescopic seating installed on or after December 1, 2011, shall be inspected at least once a year in order to verify that the structure is maintained in compliance with the provisions of this standard. All folding and telescopic seating will also be inspected to evaluate compliance with the manufacturer's installation and operational instructions during the opening and closing of such seating. Any inspection conducted in compliance with this section may be conducted by any knowledgeable person including, but not limited to, a person who has been instructed by the manufacturer or installer as to procedures and standards for inspections of the structure being inspected and including, but not limited to, the owner of the structure or an employee of the owner of the structure. There are no further limitations on the identity or employment of the person conducting the inspection unless otherwise provided by law. The owner shall maintain documentation of the required annual inspections, showing the date and name of the person conducting the inspection and initialed by the person conducting the inspection.

(2) Reserved.

*m.* Delete section 1103.5 (sprinkler systems). An automatic sprinkler system shall be provided in existing buildings in accordance with sections 1103.5.1 through 1103.5.5.

*n.* Delete section 1103.7.1 and insert in lieu thereof the following new section:

**1103.7.1** Existing Group E occupancies shall be provided with a fire alarm system utilizing an emergency voice/alarm communication system in compliance with Section 907.5.2.2 and installed in accordance with Section 907.6. As a minimum, smoke detection will be provided in corridors at a maximum spacing of 30 feet on center, and heat or smoke detection will be provided in any hazardous or nonoccupied areas.

Exceptions:

1. A building with a maximum area of 1,000 square feet that contains a single classroom and is located no closer than 50 feet from another building.
2. Group E occupancy with an occupant load of less than 50.
3. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 are not required in Group E occupancies with occupant loads of 100 or less, provided that the activation of the fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

*o.* Delete section 1103.8 and insert in lieu thereof the following new section:

**1103.8 Single- and multiple-station smoke alarms.** Single- and multiple-station smoke alarms shall be installed in existing Group I-1 and R occupancies in accordance with Sections 1103.8.1 through 1103.8.4.

*p.* Add the following new section 1103.8.4:

**1103.8.4 Smoke alarm service life.** Single-station battery-operated smoke alarms will be replaced in accordance with the manufacturer's instructions.

**201.8(2)** The state building code in rule 661—301.8(103A) for residential construction requirements.

**661—201.9(10A) Electrical installations.** The provisions of the state electrical code in 661—Chapter 550 are hereby adopted by reference as the requirements for electrical installations. In addition to compliance with 661—Chapter 550, any installation of wiring and equipment will comply with requirements established by the manufacturer of the equipment serviced by the wiring.

**661—201.10(10A) Existing buildings or structures.** Additions or alterations to any building or structure shall comply with the requirements for new construction. Additions shall comply with the height and area provisions of Chapter 5 of the International Building Code, 2024 edition. Only portions of the structure altered or affected by the alteration are required to comply with the requirements for new construction.

**661—201.11(10A) Recognition of local fire ordinances and enforcement.**

**201.11(1)** With the exception of a health care facility subject to the requirements of rule 661—201.14(10A), a building, structure, or facility is deemed to comply if all of the following conditions are met:

*a.* The building, structure, or facility is in a local jurisdiction that has adopted a local fire ordinance that adopts by reference any edition of the International Fire Code, published by the International Code Council; any edition of NFPA 1, Uniform Fire Code, published by the NFPA; or the Uniform Fire Code, 1997 edition, published by the Western Fire Chiefs Association.

*b.* The local fire ordinance is enforced through a process of review and approval of construction plans for compliance with the local fire ordinance and a process of regular inspections for compliance with the local fire ordinance.

*c.* The building, structure, or facility is subject to regular fire safety inspections.

*d.* The local jurisdiction has verified, during its most recent inspection, including any follow-up inspections, that the building, structure, or facility complies with the local fire ordinance.

**201.11(2)** Notwithstanding any conflicting provisions contained in any code adopted by reference in this chapter or by any local fire ordinance, compliance with the provisions of 661—

Chapter 221 is required at any location or facility in which flammable or combustible liquids are stored, handled, or used, other than incidental use.

REQUIREMENTS FOR SPECIFIC OCCUPANCIES

**661—201.12(10A) Scope of rules related to specific occupancies.** The provisions of this chapter related to a specific occupancy apply solely to buildings, structures, and facilities currently being used and those proposed to be used in the specific ways described in the rule governing that specific occupancy. All other buildings, structures, and facilities in which people congregate are subject to the provisions of rules 661—201.8(10A) through 661—201.11(10A) or rule 661—201.14(10A).

**661—201.13(10A,135C) Residential care facilities with a three- to five-bed specialized license and facilities in which foster care is provided by agencies to fewer than six children pursuant to Iowa Code chapter 237.** This rule applies to residential care facilities with a three- to five-bed specialized license pursuant to Iowa Code section 135C.2(5) and 481—Chapter 63 and facilities in which foster care is provided by agencies to fewer than six children pursuant to Iowa Code chapter 237. The following is required:

**201.13(1)** *Exits.*

*a.* A minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms.

*b.* Interior and exterior stairways with a minimum clear width of not less than 30 inches.

**201.13(2)** *Windows.* For every resident sleeping room, an outside window or outside door arranged and located to permit the venting of products of combustion and access to fresh air in the event of an emergency.

*a.* In new construction, windows with a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, minimum net clear openable width of 20 inches, and finished sill height not more than 44 inches above the floor.

*b.* In existing construction, the finished sill height not more than 44 inches above the floor or the finished sill accessible from a platform not more than 44 inches below the window sill.

**201.13(3)** *Interior finish.* Interior finish in an exit shall be in accordance with the IFC edition adopted in subrule 201.8(1).

**201.13(4)** *Doors.* A minimum of 1 ⅜-inch solid core wood or equivalent doors to resident sleeping rooms.

**201.13(5)** *Vertical separations.* Basement stairs enclosed with one-hour rated partitions and 1 ¾-inch solid core wood doors equipped with self-closers. These doors must be kept closed unless held open by an approved electromagnetic holder, actuated by an approved smoke detection device located at the top of the stairwell and interconnected with the alarm system.

**201.13(6)** *Fire detection, fire alarms, and sprinklers.*

*a.* Smoke detection installed on each occupied floor, including basements, in accordance with NFPA 72, as set forth in the IFC edition adopted in subrule 201.8(1). Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system be tested by a competent person at least semiannually with date of test and name noted.

*b.* For homes in which exiting is restricted by special door-locking arrangements that prevent residents from free egress, sprinkler systems meeting the requirements of NFPA 13D, as set forth in the IFC edition adopted in subrule 201.8(1).

**201.13(7)** *Fire extinguishers.* Approved fire extinguishers provided on each floor, located so that a person will not have to travel more than 75 feet from any point to reach the nearest extinguisher and an additional extinguisher provided in, or adjacent to, each kitchen or basement storage room. The type and number of portable fire extinguishers will be determined by the department.

**201.13(8)** *Mechanical, electrical, and building service equipment.*

*a.* Air conditioning, ventilating, heating, cooking, and other service equipment will be installed in accordance with the manufacturer's specifications and any pertinent state regulations, including national standards adopted therein, governing the same. All hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units and closets, need not be separated with walls if all equipment is installed in accordance with the manufacturer's specifications.

*b.* Portable comfort heating devices are not permitted.

**201.13(9)** *Attendants; evacuation plan.*

*a.* Every facility in which residents are present shall have at least one staff person who is at least 18 years of age and capable of performing the required duties of evacuation on the premises at all times.

*b.* Every facility will formulate a plan for the protection of all persons in the event of fire and for their evacuation to areas of refuge and from the building when necessary. All employees will be instructed and kept informed with respect to their duties under the plan. The plan will be posted where all employees may readily study it. Fire drills will be held at least once a month, with records retained for inspection.

**201.13(10)** *Smoking.*

*a.* There will be no smoking in resident sleeping areas, and smoking policies will be strictly enforced.

*b.* Any ashtrays will be constructed of noncombustible material with self-closing tops and provided in areas where smoking is permitted.

**201.13(11)** *Exit illumination.* Approved rechargeable battery-powered emergency lighting installed to provide automatic exit illumination in the event of failure of the normal lighting system.

**201.13(12)** *Accessibility.* Nonambulatory residents shall be housed only on accessible floors that have direct access to grade where the use of stairs or elevators is not required.

**201.13(13)** *Maintenance.*

*a.* All fire and life safety equipment or devices are regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards adopted herein. Such equipment and devices include fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems, and exit facilities.

*b.* Storerooms are maintained in a neat and proper manner at all times.

*c.* Excessive storage of combustible materials such as papers, cartons, magazines, paints, sprays, old clothing, furniture, and similar materials is prohibited at all times.

FIRE SAFETY REQUIREMENTS FOR HOSPITALS AND HEALTH CARE FACILITIES

**661—201.14(10A) Fire safety requirements for ambulatory surgical centers, hospitals, and health care facilities.**

**201.14(1)** *Definitions.* The following definitions apply to this rule:

*"Existing"* means that a facility (1) has been in continuous operation under its current classification of occupancy since before July 5, 2016, and has not undergone renovation or remodeling, including an addition, on or after July 5, 2016, or (2) received plan approval for initial construction or for its most recent renovation or remodeling project, including an addition, if any, from the building code bureau of the fire marshal division prior to July 5, 2016.

*"New"* means that a facility (1) commenced continuous operation under its current classification of occupancy on or after July 5, 2016, (2) has undergone renovation or remodeling, including an addition, on or after July 5, 2016, or (3) received plan approval from the building code bureau of the fire marshal division for the initial construction of the facility or the most recent renovation of or addition to the facility on or after July 5, 2016.

**201.14(2)** *New hospitals.* NFPA 101, Life Safety Code, 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new hospitals.

**201.14(3)** *Existing hospitals.* NFPA 101, Life Safety Code, 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing hospitals.

**201.14(4)** *New nursing facilities and hospices.* NFPA 101, Life Safety Code, 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new nursing facilities and hospices that provide inpatient care directly.

**201.14(5)** *Existing nursing facilities and hospices.* NFPA 101, Life Safety Code, 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing nursing facilities and hospices that provide inpatient care directly.

**201.14(6)** *New intermediate care facilities.* New intermediate care facilities shall comply with the provisions of one of the following:

*a.* NFPA 101, Life Safety Code, 2012 edition, Chapter 18.

*b.* NFPA 101, Life Safety Code, 2012 edition, Chapter 32.

**201.14(7)** *Existing intermediate care facilities.* Existing intermediate care facilities shall comply with the provisions of one of the following:

*a.* NFPA 101, Life Safety Code, 2012 edition, Chapter 19.

*b.* NFPA 101, Life Safety Code, 2012 edition, Chapter 33.

**201.14(8)** *New ambulatory surgical centers.* NFPA 101, Life Safety Code, 2012 edition, Chapter 20, is adopted by reference as the fire safety rules for new ambulatory surgical centers.

**201.14(9)** *Existing ambulatory surgical centers.* NFPA 101, Life Safety Code, 2012 edition, Chapter 21, is adopted by reference as the fire safety rules for existing ambulatory surgical centers.

**201.14(10)** *New religious nonmedical health care institutions.* NFPA 101, Life Safety Code, 2012 edition, Chapter 18, is adopted by reference as the fire safety rules for new religious nonmedical health care institutions as defined by 42 CFR Part 403 (effective as of September 1, 2024).

**201.14(11)** *Existing religious nonmedical health care institutions.* NFPA 101, Life Safety Code, 2012 edition, Chapter 19, is adopted by reference as the fire safety rules for existing religious nonmedical health care institutions as defined by 42 CFR Part 403 (effective as of September 1, 2024).

**201.14(12)** *Evacuation capability.* Any requirement contained in NFPA 101, Life Safety Code, 2012 edition, Chapters 32 or 33 that is determined on a rating of evacuation capability shall be "impractical."

SMOKE ALARMS/DETECTORS

**661—201.15(10A) Scope, definitions, and requirements for smoke alarms and smoke detectors.**

**201.15(1)** This rule applies to single-family and two-family residences, townhouses, and all other residential occupancies in commercial buildings unless otherwise provided herein or by another provision of law. This rule does not apply to nonresidential occupancies.

**201.15(2)** For purposes of this rule, the following definition applies:

*"Approved"* means that the equipment has been approved by the department or listed for a specific use by an independent testing laboratory or organization of national reputation.

**201.15(3)** Residential smoke alarms are required to be listed under UL 217 edition 10. Approved single-station smoke alarms are acceptable in all areas covered by this chapter, unless other fire warning equipment or materials are required by any provision of rules 661—201.8(10A) through 661—201.10(10A), rules 661—201.12(10A) and 661—201.13(10A,135C), or rule 661—201.14(10A) or if a fire alarm system with smoke detection listed under UL 268 edition 8-2023 has been installed. Any single-station smoke alarm or multiple-station smoke alarm installed on or after April 1, 2010, in compliance with this subrule, including a replacement of an existing smoke alarm, shall be listed under UL 217 edition 10.

**201.15(4)** All devices, combinations of devices, and equipment to be installed in conformity with this chapter shall be approved and used for the purposes for which they are intended and installed in accordance with the manufacturer's recommendations. Any devices, combinations of devices, and equipment installed on or after April 1, 2010, in compliance with this chapter, including a replacement

of an existing smoke alarm, will be listed in accordance with UL 217 edition 10. Existing dual sensor smoke alarms may be maintained until replacement is recommended by the manufacturer or upon failure.

**201.15(5)** A combination system, such as a household fire warning system whose components may be used in whole or in part, in common with a non-fire emergency signaling system, such as a burglar alarm system or an intercom system, is not permitted or approved, except for one- or two-family dwellings.

**201.15(6)** Single-station battery-operated or battery backup smoke alarms shall be replaced in accordance with the manufacturer's instructions.

**201.15(7)** Power supplies shall be sufficient to operate the smoke detector alarm for at least four continuous minutes. Additionally:

*a.* In new buildings and additions constructed after July 1, 1991, required smoke alarms will receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring will be permanent and without a disconnecting switch other than that required for overcurrent protection. Smoke alarms may be solely battery-powered when installed in existing buildings; in buildings without commercial power; or in buildings presently undergoing alterations, repairs, or additions subject to 661—Chapter 550.

*b.* New and replacement smoke alarms installed after May 1, 1993, that receive their primary power from the building wiring will be equipped with a battery backup.

*c.* New and replacement smoke alarms installed after July 1, 2016, that receive their primary power from the building wiring where more than one smoke alarm is required to be installed will be interconnected in such a manner that the activation of one alarm will activate all of the alarms.

*d.* After June 30, 2021, a battery-powered smoke alarm listed in accordance with UL 217 that is newly installed or replaces an existing battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least ten years. The battery requirements of this subrule do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system; that uses a low-power, radio frequency wireless communication signal.

**201.15(8)** The failure of any nonreliable or short-life component that renders the alarm inoperative shall be readily apparent to the occupant of the sleeping unit without the need for a test. Each smoke alarm shall detect abnormal quantities of smoke and properly operate under normal environmental conditions.

**201.15(9)** Installed fire warning equipment shall be mounted so as to be supported independently of its attachment to wires.

**201.15(10)** All apparatus shall be restored to normal immediately after each alarm or test.

**201.15(11)** Smoke alarms shall be located on the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms; in each room used for sleeping purposes; and in each story within a dwelling unit, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level suffices for the adjacent lower level, provided that the lower level is less than one full story below the upper level.

**201.15(12)** A person who files for a homestead tax credit pursuant to Iowa Code chapter 425 shall certify that the single-family dwelling unit for which the credit is filed has a smoke alarm(s) installed in accordance with subrules 201.15(6) and 201.15(11) or that such smoke alarm(s) will be installed within 30 days of the date of filing for credit.

**201.15(13)** All multiple-unit residential buildings and single-family dwellings that are constructed after July 1, 1991, shall include the installation of smoke alarms meeting the requirements of this rule. All existing single-family units and multiple-unit residential buildings shall be equipped with smoke alarms or detectors as required in subrule 201.15(11).

CARBON MONOXIDE ALARMS

**661—201.16(10A) Scope and definitions.** The provisions of this part (rules 661—201.16(10A) and 661—201.17(10A)) apply to new and existing single-family residences, single-family rental units, and multiple-unit residential buildings. The provisions of this part do not apply to nonresidential occupancies, including but not limited to Group I and Group E occupancies. The following definitions apply to this part:

*"Building"* means a combination of materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals, or property. "Building" includes any part of a building or an addition to a building.

*"Carbon monoxide alarm"* means one or more devices, including but not limited to combination carbon monoxide alarm/smoke alarms, that detect carbon monoxide gas for the purpose of alerting occupants by a distinct audible signal; that incorporate a sensor, control components, and an alarm notification appliance in a single unit operated from a power source either in the unit or obtained at the point of installation; and that meet the standards established by the UL.

*"Carbon monoxide detection system"* means a system or portion of a combination system that consists of a control unit, components, and circuits arranged to monitor and annunciate the status of carbon monoxide alarm initiating devices and to initiate the appropriate response to those signals and that meets the standards established by the UL.

*"Communicating opening"* means a door, window, or any other opening that allows air to be exchanged between a fuel-burning appliance or garage and a sleeping unit or dwelling unit.

*"Dwelling unit"* means a room or suite of rooms used for human habitation that provides complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

*"Existing"* means buildings, facilities, or conditions that are already in existence, constructed or officially authorized prior to July 1, 2018.

*"Fuel"* means coal, kerosene, oil, fuel gases, or other petroleum products or hydrocarbon products such as wood that emit carbon monoxide as a byproduct of combustion.

*"Fuel-burning"* or *"fuel-fired"* means an appliance, heater, furnace, or fireplace that uses and combusts fuel as part of its designed use.

*"Garage"* or *"attached garage"* means a building or portion of a building in which motor vehicles are stored or kept.

*"Listed"* means equipment, materials, products, or services included in a list published by an organization acceptable to the department or local fire code official and concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states either that the equipment, material, product or service meets identified standards or has been tested and found suitable for a specified purpose.

*"Multiple-unit residential building"* means a building that contains more than two dwelling units or sleeping units. "Multiple-unit residential building" includes but is not limited to condominiums, townhouses, co-ops, apartment houses or portions of a building or an apartment house, hotels, motels, dormitories, or rooming houses.

*"Open-ended corridor"* means an interior corridor that is open on each end and connects to an exterior stairway or ramp at each end with no intervening doors or separation from the corridor.

*"Single-family rental unit"* means a building that contains not more than two dwelling units or sleeping units that are rented or leased for living purposes.

*"Single-family residence"* or *"single-family dwelling"* means a building that contains not more than two dwelling units that are used, or intended or designed to be used, for living purposes.

*"Sleeping unit"* means a room or space in a building in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**661—201.17(10A) Requirements for carbon monoxide alarms and detection systems.**

**201.17(1)** *Standards for carbon monoxide alarms and carbon monoxide detection systems.* All carbon monoxide alarms installed prior to July 1, 2025, shall meet the requirements of the NFPA Standard 720, 2012 edition, and be UL listed in accordance with UL 2034 edition 5 as revised August 7, 2024. All carbon monoxide alarms installed after July 1, 2025, shall meet the requirements of the NFPA Standard 72, 2022 edition. All carbon monoxide detection systems installed prior to July 1, 2025, shall meet the requirements for the NFPA Standard 720, 2012 edition; display a label or other identification issued by an approved testing agency; and be UL listed in accordance with UL 2075 edition 2 as revised August 4, 2023. All carbon monoxide detection systems installed after July 1, 2025, shall meet the requirements of the NFPA Standard 72, 2022 edition. All carbon monoxide alarms, combination carbon monoxide alarm/smoke alarms, and carbon monoxide detection systems installed under these rules must be listed with the UL.

**201.17(2)** *Carbon monoxide alarms required.* Carbon monoxide alarms are required in the following buildings if the building is served by a fuel-burning heater, fuel-burning furnace, fuel-burning appliance, or fuel-burning fireplace or has an attached garage.

*a.* Multiple-unit residential buildings and single-family residences for which construction began on or after July 1, 2018.

*b.* Existing single-family rental units, single-family residences, and multiple-unit residential buildings.

**201.17(3)** *Location.* Carbon monoxide alarm shall be installed in the following building locations:

*a.* In the immediate vicinity of every room used for sleeping purposes in each dwelling unit.

*b.* In each bedroom where a fuel-burning heater or furnace, fuel-burning appliance, or fireplace is located within the bedroom or its attached bathroom.

*c.* In each sleeping unit, if the sleeping unit or its attached bathroom contains a fuel-burning appliance, fuel-burning heater or furnace, or fireplace.

*d.* In the immediate vicinity of each sleeping unit where the sleeping unit or its attached bathroom does not contain a fuel-burning appliance, fuel-burning heater, or fireplace and is not served by a forced-air furnace.

**201.17(4)** *Location exceptions.* A carbon monoxide alarm is not required in the locations specified by subrule 201.17(3) when:

*a.* There are no communicating openings between the fuel-burning heater or furnace, fuel-burning appliance, fireplace, or attached garage and a dwelling unit or sleeping unit.

*b.* There are no communicating openings between the fuel-burning heater or furnace, fuel-burning appliance or fireplace and a dwelling unit or sleeping unit and when a dwelling unit or sleeping unit is located more than one story above or below an attached garage.

*c.* There are no communicating openings between the fuel-burning heater or furnace, fuel-burning appliance, or fireplace and a sleeping unit or dwelling unit and the attached garage connects to the building through an open-ended corridor.

*d.* A carbon monoxide alarm is located on the ceiling of the room containing the fuel-burning heater, fuel-burning appliance or fireplace, or in the first room or area between the fuel-burning heater, fuel-burning appliance or fireplace and the dwelling unit or sleeping unit.

**201.17(5)** *Forced-air furnace—exception.* A carbon monoxide alarm is not required in a dwelling unit or sleeping unit that is served by a fuel-burning forced-air furnace when a carbon monoxide alarm is located on the ceiling of the room containing the forced-air furnace or in the first room or area served by each main duct leaving the forced-air furnace and the carbon monoxide alarm signals are automatically transmitted to the occupants of each dwelling unit or sleeping unit served by the forced-air furnace.

**201.17(6)** *Carbon monoxide detection systems.* Commercially installed carbon monoxide detection systems that have the capability of notifying all occupants of dwelling units or sleeping units

within a building are an acceptable alternative to the installation of carbon monoxide alarms and are deemed compliant with this chapter.

**201.17(7)** *Combination alarms.* The carbon monoxide alarm may be combined with smoke detecting devices provided that the combined unit complies with pertinent provisions of this chapter regarding smoke detectors in addition to carbon monoxide alarm standards. A combined carbon monoxide alarm/smoke alarm shall emit different alarm signals for carbon monoxide and for smoke. Combination carbon monoxide alarm/smoke alarms are an acceptable alternative to carbon monoxide alarms.

**201.17(8)** *New construction—power source.* In buildings for which construction is begun on or after July 1, 2018, carbon monoxide alarms will receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring will be permanent and without a disconnecting switch other than that required for overcurrent protection and will be equipped with a battery backup.

**201.17(9)** *Existing buildings—power source.* New and replacement carbon monoxide alarms installed in existing buildings may be solely battery operated or may plug into an electrical socket and have a battery backup.

**201.17(10)** *Responsibility for installation and maintenance of carbon monoxide alarms.* It is the responsibility of the owner, owner's agent, or manager of a multiple-unit residential building, single-family residence, or single-family rental unit to install carbon monoxide alarms in accordance with this chapter. However, if a dwelling unit in a multiple-unit residential building qualifies for a homestead credit pursuant to Iowa Code chapter 425, only the owner-occupant of the dwelling unit has the responsibility to install and maintain carbon monoxide alarms in accordance with this chapter.

**201.17(11)** *Maintenance of carbon monoxide alarms.*

*a.* It is the responsibility of the owner of a multiple-unit residential building, single-family rental unit, or dwelling unit to supply and install all required carbon monoxide alarms and to ensure that the batteries are in operating condition at the time the lessee, tenant, guest, or roomer takes possession of the dwelling unit or sleeping unit. The owner is responsible for providing written information regarding carbon monoxide alarm testing and maintenance to one lessee, tenant, guest, or roomer per dwelling unit or sleeping unit.

*b.* An owner or manager may require a lessee, tenant, guest, or roomer who has a residency longer than 30 days to be responsible for general maintenance, including but not limited to replacement of any required batteries of the carbon monoxide alarms and testing the carbon monoxide alarms in the lessee's, tenant's, guest's, or roomer's dwelling unit or sleeping unit. The lessee, tenant, guest, or roomer is responsible for notifying the owner or manager in writing of any deficiencies that the lessee, tenant, guest, or roomer cannot correct and providing the owner or manager access to the dwelling unit or sleeping unit so that deficiencies can be corrected.

**201.17(12)** *Deaf or hard-of-hearing tenant.* Upon request of a tenant who is deaf or hard of hearing, an owner of a multiple-unit residential building or a single-family rental unit that has a fuel-fired heater or appliance, a fireplace, or an attached garage, or the owner's agent, shall install light-emitting carbon monoxide alarms.

**201.17(13)** *Certification of installation required.* A person who files for a homestead credit pursuant to Iowa Code chapter 425 will certify that the dwelling unit that has a fuel-fired heater or furnace, a fuel-fired appliance, a fireplace, or an attached garage has carbon monoxide alarms installed in compliance with this chapter or that such alarms will be installed within 30 days of the date the filing for the credit is made.

**201.17(14)** *Inspections authorized.* Inspections may be conducted by the director; the director's subordinates; chiefs of local fire departments; state or local building inspectors; or other fire, building, or safety officials authorized by the director. Any inspections authorized under this rule are limited to the placement, repair, and operability of carbon monoxide alarms and carbon monoxide detection systems.

**201.17(15)** *Inoperable carbon monoxide alarms and corrective action.* Upon receiving written notification by a lessee, tenant, guest, or roomer or by the director; director's subordinates; state fire marshal; fire marshal's subordinates; a chief of a local fire department; a building inspector; or other fire, building or safety official that a carbon monoxide alarm is inoperable, the owner or manager of the multiple-unit residential building or single-family rental unit shall repair or replace the carbon monoxide alarm within 30 days. If the owner or manager fails to correct the situation within the 30 days after receipt of written notice, the tenant, guest, or roomer may cause the carbon monoxide alarm to be repaired or may purchase and install a carbon monoxide alarm required under this chapter and may deduct the repair cost or purchase price from the next rental payment or payments made by the tenant, guest, or roomer in accordance with Iowa Code section 10A.518(7).

These rules are intended to implement Iowa Code sections 10A.511 through 10A.526 and chapters 135B, 135C, 135J, 231C, and 237.

ITEM 3. Rescind and reserve **661—Chapter 202**.

ITEM 4. Rescind and reserve **661—Chapter 205**.

ITEM 5. Rescind and reserve **661—Chapter 210**.

ITEM 6. Rescind and reserve **661—Chapter 211**.

## Regulatory Analysis

Notice of Intended Action to be published: 661—Chapters 221 and 224
"Flammable or Combustible Liquids; Aboveground Flammable or Combustible Liquid Storage Tanks"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 101.1(1) and 10A.511.

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 101 and 17A and Executive Order 10 (January 10, 2023)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>10 a.m. | Ledges Conference Room<br>6200 Park Avenue<br>Des Moines, Iowa |

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Amy Oetken
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.672.4929
Email: amy.oetken@dia.iowa.gov

*Purpose and Summary*

This proposed rulemaking rescinds Chapters 221 and 224 and repromulgates pertinent rules in a new streamlined and combined Chapter 221. This proposed rulemaking implements Iowa Code sections 10A.511 and 101.1, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 10A.511 provides that the Director shall promulgate fire safety rules in consultation with the State Fire Marshal. Iowa Code section 101.1 provides that the Director is empowered to formulate and adopt or revise reasonable rules for the safe transportation, storage, handling, and use of flammable and combustible liquids. The rules shall be adopted pursuant to Iowa Code chapter 17A.

This rulemaking implements the aforementioned Iowa Code sections by adopting a more recent edition of the International Code Council (ICC) International Fire Code (IFC), National Fire Protection Association (NFPA) 30 and 30A. The proposed rulemaking explains the process and requirements for plan review, inspections, registration requirements and fees, violations, civil penalties, and appeals.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

The costs of this rulemaking will be borne by the industry by operating in compliance with the rules. There are no costs for the purchase of the digital or printed code standards from ICC and NFPA. Free versions are available at iccsafe.org and nfpa.org. Businesses will be responsible for the costs for plan reviews and registrations and may incur costs related to civil penalties or court costs related to code violations or costs for the retention of records as required by the code standards.

- **Classes of persons that will benefit from the proposed rulemaking:**

Uniformity in permitting and inspections, achieved through consistent processes and adoption of the codes benefit both the general public and members of the regulated industry. The public will benefit from the proposed rulemaking protecting safety, health, and property. The members of the industry will benefit by having clear standards, consistent with other jurisdictions, within which to work.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Members of the industry will bear the costs of complying with the safety standards established by the rulemaking. Stakeholders will have to pay the fees for plan reviews, including a fee of $100 plus $25 for each new or replacement tank included in the plan. The cost for review of the initial construction plans for a refinery is $500 if the projected construction costs are $100,000,000 or less and $1,000 if the projected construction costs are greater than $100,000,000. The fees for aboveground storage tanks are set forth in Iowa Code section 101.22. This proposed rulemaking proposes no substantive changes to the fee structure already in place. These costs and fees are statutorily mandated.

Persons may incur costs related to civil penalties or court costs related to code violations or costs for the retention of records as required by the code standard. The civil penalties are established in Iowa Code section 101.26.

- **Qualitative description of impact:**

The industry of transporting, storing, handling, or the use of flammable and combustible liquids is by nature dangerous. There is the potential for fire and explosion. These liquids have the ability to produce flammable vapors that can readily ignite when mixed with air. Implementing the requirements of Iowa Code chapter 101 ensures the safety of persons engaged in the transport, storage, handling, or use of flammable and combustible liquids. When this rulemaking is implemented, stakeholders, the public, and first responders are safer.

The economic costs associated with unsafe practices in this industry include the costs from accidents like fires and explosions, cleanup costs from spills, increased insurance premiums, production disruptions, potential lawsuits from accidents, and potential environmental damage costs. Iowa is a farming state, and spills, fires, and explosions would negatively impact farmland affected by those accidents.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Costs to the Department include staff time needed to ensure compliance with the requirements of Iowa Code chapter 101 and these rules. The Department has 2.0 full-time equivalent (FTE) positions who, among other duties, are responsible for the inspection of aboveground storage tanks containing flammable and combustible liquids. These FTE positions ensure compliance with the IFC and NFPA 30 and 30A code standards.

- **Anticipated effect on state revenues:**

Pursuant to Iowa Code chapter 101, fees collected for plan reviews and registrations are retained by the Department and appropriated for the use of the Director. These fees help to defray the costs of this rulemaking.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

There are no specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department's statutory duties identified. The costs of this rulemaking are directly associated with the Department's general functions. This rulemaking does not add to the costs of the Department or public in excess of general functions. The benefits include clear and consistent implementation of applicable Iowa Code provisions.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

There are no less costly methods or less intrusive methods since the rules implement requirements in Iowa Code chapter 101. A number of states have implemented fees for plan reviews and inspections. Nebraska charges $2.50 per $10,000 of the project, not to exceed $500. Minnesota charges $100 for plan review. Kentucky charges $100 for the first tank and $50 for each additional tank. Wisconsin charges $35 for the first tank and $10 for each additional tank and $150 for 11 or more tanks. Illinois seems to charge $200 for permitted projects. Iowa's fees are clear and help to recoup the cost to review plans to ensure that the plans meet the requirements of Iowa Code chapter 101 and these rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Response in section "5," above.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Response in section "5," above.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

The chapter is meant to ensure public safety and the appropriate transportation, storage, handling, and use of liquefied petroleum gases, much of which may affect those operating small businesses. To exempt a small business from adhering to this chapter would jeopardize any member of the public who sought services from that business, as well as the employees of the business. The risk to the public is greater than the potential harm or cost to the small business. Additionally, if a small business identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, the business could utilize the established waiver process set forth by the Department.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 661—Chapter 221 and adopt the following **new** chapter in lieu thereof:

# CHAPTER 221
# FLAMMABLE OR COMBUSTIBLE LIQUIDS

**661—221.1(101) Scope and definitions.**

**221.1(1)** This chapter provides the rules of the department for safe transportation, storage, handling, and use of flammable or combustible liquids. The flammable or combustible liquids program is part of the aboveground flammable or combustible liquid storage tanks program and may be contacted as provided in 481—Chapter 1 and on the department's website: dial.iowa.gov.

**221.1(2)** The definitions set forth in Iowa Code chapter 101 are incorporated by reference herein. The following definitions also apply to this chapter. These definitions are adopted in addition to those that appear in the International Fire Code, 2024 edition; NFPA 30, Flammable and Combustible Liquids Code, 2024 edition; and NFPA 30A, Code for Motor Fuel Dispensing and Repair Garages, 2024 edition. If a definition adopted in this rule conflicts with a definition included in a code or standard adopted by reference in this chapter, the definition found in this rule will apply.

*"Approved by the department"* means a laboratory has requested and received recognition by the department to test equipment whose use or installation is required by rules of the department. A laboratory that seeks approval of the department will contact the department and provide information required by the department. Approval or disapproval will be granted only by a letter from the department to the laboratory making the request, although advance notice of the decision of the department regarding whether approval is to be granted may be provided by electronic mail.

*"Department"* means the department of inspections, appeals, and licensing.

*"Diesel fuel"* means a liquid, other than gasoline, that is suitable for use as a fuel in a diesel fuel-powered engine and that meets the applicable standards established in Iowa Code section 214A.2. A blend of "diesel fuel" that meets these standards and contains 6 percent biodiesel or more is "biodiesel fuel." Diesel fuel blends that meet these standards and contain less than 6 percent biodiesel are diesel fuel and not biodiesel fuel.

*"ICC"* means the International Code Council, 200 Massachusetts Avenue, NW, Suite 250, Washington, D.C., 20001; website iccsafe.org.

*"IFC"* means the International Fire Code, published by the ICC. "IFC" will be followed by a year (e.g., IFC, 2006), which indicates the specific edition of the IFC to which reference is made.

*"Independent testing laboratory"* means a laboratory recognized by the federal Occupational Safety and Health Administration as a nationally recognized testing laboratory or a laboratory approved by the department.

*"Listed"* means listed or approved by an independent testing laboratory for a specific use. A product is considered to be listed if it is of a model that has been listed for the use to which it is being put, whether it was manufactured prior to or after the date on which the listing became effective.

*"Mobile air-conditioning system"* means mechanical vapor compression equipment that is used to cool the driver or passenger compartment of any motor vehicle.

*"NFPA"* means the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471; website nfpa.org. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

*"SPCC plan"* means a spill prevention, control, and countermeasure plan, as defined in 40 CFR 112, published July 22, 2024.

*"Under dispenser containment"* or *"UDC"* means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater.

**661—221.3(101) Compliance.** Any tank subject to the provisions of this chapter shall comply with this chapter and Iowa Code chapter 101 at all times.

**661—221.4(101) Flammable or combustible liquids.** The IFC, 2024 edition, published by the ICC, Chapter 34 and references contained therein, and NFPA 30, Flammable and Combustible Liquids Code, 2024 edition, and references contained therein, subject to amendments that follow, are adopted by reference as the rules for transportation, storage, handling, and use of flammable or combustible liquids. In any case in which a provision of the IFC conflicts with a provision of NFPA 30, the NFPA provision controls. Any refinery shall comply with the provisions of this rule.

**221.4(1)** Amendments to the IFC, 2024 edition, are as follows:

*a.* The category of combustible liquids does not include compressed gases or cryogenic fluids.

*b.* Delete the definition of refinery and insert in lieu thereof the following:

REFINERY. A plant in which flammable or combustible liquids are produced on a commercial scale from crude petroleum, natural gasoline or other sources.

*c.* Add the following new sections:

5703.6.12 Each connection to an aboveground tank through which liquid can normally flow shall be provided with an external control valve that is located as close as practical to the shell of the tank as well as an emergency internal check valve at each pipe connection to any tank opening below normal liquid level effectively located inside the tank shell and operable both manually and by an effective heat-activated device that, in case of fire, will automatically close the valve to prevent the flow of liquid from the tank even though the pipelines from the tank are broken.

5703.6.13 Any device dispensing Class I or Class II flammable liquids shall not be constructed or installed less than 100 feet from any existing dwelling unit.

*d.* Delete section 5704.2.9.2.2.1, introductory paragraph, and insert in lieu thereof the following:

5704.2.9.2.2.1 Foam fire protection shall:

*a.* If required, be provided in accordance with NFPA 11, 2024 edition, and be of a type or types and amount appropriate to suppress fires involving types and amounts of flammable or combustible liquids found on the premises.

*b.* Where the flammable or combustible liquid contains more than 10 percent alcohol, be alcohol-resistant and stored separately from any area in which flammable or combustible liquids are stored and, in an area, or areas that will be readily accessible to fire fighters responding to a fire at the facility.

*e.* Amend the exception to section 5704.2.9.2.2.1 by adding the following new numbered paragraphs:

6. The premises are not a refinery.

7. The premises do not include bulk storage of flammable or combustible liquids.

8. The premises do not contain total storage capacity to store one million gallons or more of flammable or combustible liquids.

*f.* Delete section 5704.3.1.1 and insert in lieu thereof the following:

5704.3.1.1 Approved containers. Only approved containers and portable tanks shall be used, and no flammable or combustible liquid be placed into, stored in, or carried in any container other than one which is metal or hard plastic or be placed into, stored in, or carried in any temporary or disposable container.

**221.4(2)** Amend NFPA 30, section 22.11.4, by adding the following new paragraphs:

(11) Each secondary containment tank shall have top-only openings and be either a steel double-walled tank or a steel inner tank with an outer containment tank wall constructed in accordance with nationally accepted industry standards, such as those codified by the American Petroleum Institute, the Steel Tank Institute and the American Concrete Institute. Each tank will be listed by an independent testing laboratory.

(12) Each fill opening in a secondary containment tank shall be provided with a spill container that will hold at least 5 gallons.

(13) For any secondary containment tank, interstitial tank space shall be monitored by an approved, continuous, automatic detection system that is capable of detecting liquids, including water. An automatic detection system may be either electronically or mechanically operated.

**661—221.5(101) Motor fuel dispensing facilities and repair garages.** The IFC, 2024 edition, published by the ICC, and references contained therein, and NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2024 edition and references contained therein, are adopted by reference as the rules for motor fuel dispensing facilities and repair garages. If any provision of the IFC adopted herein is in conflict with any provision of NFPA 30A, the IFC provision will apply. The IFC, 2024 edition, Chapter 23, is adopted with the following amendments:

**221.5(1)** Amend Table 2306.2.3 so that:

Each tank with a capacity of not more than 6,000 gallons for motor vehicle fuel dispensing systems and storing a Class I liquid, or with a capacity of not more than 12,000 gallons and storing a Class II or Class III liquid, that is located at a commercial, industrial, governmental, or manufacturing establishment, and that is intended for fueling vehicles used in connection with the establishment, is required to be located at least:

*a.* 40 feet away from the nearest important building on the same property;

Exception: Tanks may be located closer than 40 feet to a building of noncombustible construction.

*b.* 40 feet away from any property that is or may be built upon, including the opposite side of a public way;

Exception: No minimum separation will be required for any tank that complies with NFPA 30A, section 4.3.2.6.

*c.* 100 feet away from any residence or place of assembly.

**221.5(2)** Add the following new sections:

2206.7.1.1 Dispensing of blended biofuels.

2206.7.1.1.1 Definitions.

*"B-blend"* means biodiesel blended fuel as defined in Iowa Code section 214A.1 with the blend including between 6 and 20 percent biodiesel, as defined in Iowa Code section 214A.1.

Note: For purposes of the rules contained in this chapter and other chapters of rules of the department, diesel fuel may contain biodiesel provided that the concentration of biodiesel is less than 6 percent in accordance with rule 21—85.20(214A,208A), which adopts by reference standards for the content of motor fuels established by ASTM International (formerly known as the American Society for Testing and Materials).

*"E-10"* means a blend of petroleum and ethanol including no more than 16 percent ethanol intended for use as a motor vehicle fuel.

*"E-blend"* means a blend of petroleum and ethanol including more than 16 percent ethanol intended for use as a motor vehicle fuel.

*"Existing E-blend dispenser"* means a dispenser installed on or before October 24, 2010, for use in dispensing E-blend.

2206.7.1.1.2 E-blend may be dispensed only if the dispenser is listed by an independent testing laboratory for use with E-blend or E-85.

2206.7.1.1.3 B-blend may be dispensed only if (1) and either (2), (3), (4), or (5) apply:

(1) Only a dispenser listed by an independent testing laboratory as compatible with diesel fuel shall be used to dispense B-blend.

(2) The owner or operator shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection and located on the premises of the owner or operator and made available to the department of natural resources or the department upon request. If a leak is detected, the department of natural resources will be notified pursuant to Iowa Code section 455B.386.

(3) The dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and the owner or operator has installed an under-dispenser containment system with electronic monitoring.

(4) Information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend.

(5) The owner or operator of the dispenser has in force insurance for environmental liability in a minimum amount of $500,000, which would cover damage resulting from the operation of the dispenser and the owner or operator is able to produce documentation of the insurance coverage upon request from the department or the department of natural resources.

Note: If option (2), (4), or (5) is used, under-dispenser containment will be provided if otherwise required by the rules in this chapter, rules of the department of natural resources, or any other applicable provision of law.

This subrule is intended to implement Iowa Code sections 101.1 and 455G.31.

**221.5(3)** Add the following new section:

2206.7.10 Under dispenser containment (UDC). When installing a new motor fuel dispenser or replacing a motor fuel dispenser, UDC shall be installed whenever any of the following occurs:

(1) UDC is required by a rule adopted by the environmental protection commission.

Note: See 567—subrule 135.3(9);

(2) A motor fuel dispenser is installed at a location where there previously was no dispenser; or

(3) An existing motor fuel dispenser is removed and replaced with another dispenser. UDC is not required when only the emergency shutoff, shear valves or check valves are replaced.

UDC shall:

- Be intact and liquid tight on its sides and bottom and at any penetrations;
- Be compatible with the substance conveyed by the piping; and
- Allow for visual inspection and monitoring and access to the components in the containment system.

Exception: UDC will not be required for a dispenser which sits directly upon a solid concrete apron.

**661—221.6(101) Temporary storage in disaster emergencies.** Notwithstanding any provision to the contrary found in this chapter or the IFC or NFPA 30A as adopted by reference herein, aboveground flammable or combustible liquid storage tanks may be used to store flammable or combustible liquids in motor fuel dispensing operations, provided that all of the following apply:

**221.6(1)** The facility is in an area covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6 or, if not in such an area, the facility has applied to the department and has been approved for storage of flammable or combustible liquids in compliance with this subrule.

**221.6(2)** The facility has suffered damage that has rendered the storage tanks normally used by the facility for flammable or combustible liquids inoperable. Storage of flammable or combustible liquids in compliance with this subrule may continue only for as long as the normal storage tanks are inoperable and for more than 90 days.

Exception: In extraordinary circumstances, storage of flammable or combustible liquids in compliance with this subrule may continue for more than 90 days if the facility has sought and received specific written approval from the department for such storage.

**221.6(3)** The facility has written confirmation from the facility's insurance provider that insurance coverage will apply while storage of flammable or combustible liquids in compliance with this subrule is occurring.

**221.6(4)** Any aboveground flammable or combustible liquid storage tank used pursuant to this subrule shall be rated or listed by an independent testing laboratory for aboveground storage of flammable or combustible liquids.

**221.6(5)** Any aboveground flammable or combustible liquid storage tank used pursuant to this subrule shall be of no more than 1,000 gallons capacity.

Exception: A storage tank larger than 1,000 gallons capacity may be used pursuant to this subrule if the facility has received specific written approval from the department for its use. In reviewing such a request, the department will consider but is not limited to considering the following factors:

*a.* Volume of throughput of the facility.

*b.* Ability to meet setback requirements appropriate to the size of the tanks used.

**221.6(6)** All electrical service proximate to the storage area will comply with applicable provisions of NFPA 70, National Electrical Code, as adopted in 661—Chapter 550. An emergency shutoff control or electrical disconnect shall be installed no less than 20 feet nor more than 100 feet from any fuel-dispensing device at the facility and be clearly marked "Emergency Shutoff."

**221.6(7)** A 20-pound fire extinguisher with a minimum B:C rating of 40 shall be located no more than 50 feet from the location of any storage tank being used in compliance with this subrule.

**221.6(8)** Precautions shall be taken to prevent the ignition of flammable or combustible liquids, including the conspicuous posting of warning signs saying, "NO SMOKING" and "NO OPEN FLAME."

**221.6(9)** Aboveground flammable or combustible liquid storage tanks used pursuant to this subrule will be plumbed into existing dispensers, if practical. If this is impractical, all fueling at the facility shall be by attendant only; no self-service dispensing will be allowed at the facility.

**221.6(10)** Any aboveground flammable or combustible liquid storage tank used in compliance with this subrule shall be located so as to be protected from prospective damage from vehicle collisions and located with due regard to vehicular traffic patterns and the location of property lines and significant buildings, particularly those that are frequently occupied by humans.

**661—221.7(101) Aircraft fueling.** The IFC, 2024 edition, published by the ICC, sections 2006 through 2006.21.1 and references contained therein, and NFPA 407, Standard for Aircraft Fuel Servicing, 2022 edition and references contained therein, are adopted by reference as the rules for aircraft fueling facilities. If any provision of the IFC adopted herein conflicts with any provision of NFPA 407, 2022 edition, the NFPA provision controls.

**661—221.8(101) Helicopter fueling.** The IFC, 2024 edition, published by the ICC, sections 2007 through 2007.8 and references contained therein, is adopted by reference as the rules for helicopter fueling facilities.

**661—221.9(101) Fuel-fired appliances.** The IFC, 2024 edition, published by the ICC, sections 605 through 605.8 and references contained therein, is adopted by reference as the rules for fuel-fired appliances, except for LP-gas fired appliances, which are subject to the provisions of 661—Chapter 226.

**661—221.10(101) Stationary combustion engines and gas turbines.** The IFC, 2024 edition, Chapter 6 and references contained therein, and NFPA 37, "Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines," 2024 edition, are adopted by reference as the rules governing the installation and use of stationary combustion engines and gas turbines. If any provision of the IFC, 2024 edition, Chapter 6, adopted herein is in conflict with any provision of NFPA 37, 2024 edition, the IFC provision controls.

**661—221.11(101) Plans and plan review fees.**

**221.11(1)** The owner of any premises on which flammable or combustible liquids are or will be stored or used is required to submit construction plans to the department, online or by mail, prior to commencing initial construction of the facility or prior to commencing any construction at an existing facility that includes the addition or replacement of an aboveground flammable or combustible liquid storage tank. The construction plans will be sealed by a licensed professional engineer if the facility at which the construction will occur is or will be a refinery or if preparation of the plans by a licensed professional engineer is required by another provision of Iowa law. Construction for which plans are required to be submitted for review will not commence until approval of the plan has been received from the department.

Exception 1: Submission of construction plans is not required if the total flammable or combustible liquid storage capacity on the premises is or will be 1,100 gallons or less.

Exception 2: If an SPCC plan has been prepared pursuant to 40 CFR 112 for a facility other than a refinery, a copy of the SPCC plan may be submitted to the department in lieu of submission of separate construction plans, provided that the SPCC plan includes all of the elements required to be included in construction plans for the specific facility in this subrule. If the department agrees, copies of portions of the SPCC plan may be submitted in lieu of a copy of the complete plan provided that all elements of construction plans that are required by this subrule for the specific facility are included. If an SPCC plan or portions thereof are submitted to the department, the person making the submission will provide any additional information required by the department to evaluate compliance with the provisions of this chapter and Iowa Code chapter 101. The copy of the SPCC plan or portions thereof submitted to the department will clearly identify the licensed professional engineer who prepared the plan or will be accompanied by a letter making this identification.

**221.11(2)** Minimum requirements for plans submitted for review shall include the following:

*a.* Drawings showing the name of the person, firm, or corporation proposing the installation, the location, and the adjacent streets or highways.

*b.* In the case of refineries or bulk plants, drawings showing, in addition to any applicable features required under paragraphs 221.11(2)*"d"* and *"e,"* the plot of ground to be utilized and its immediate surroundings on all sides and a complete layout of buildings, tanks, loading and unloading docks, and heating devices, if any.

*c.* In the case of service stations, drawings showing, in addition to any applicable features required under paragraphs 221.11(2)*"d," "e,"* and *"f,"* the plot of ground to be utilized; the complete layout of buildings, drives, dispensing equipment, and greasing or washing stalls; and the type and location of any heating device.

*d.* In the case of aboveground storage, drawings showing the location and capacity of each tank; dimensions of each tank whose capacity exceeds 50,000 gallons, the class of liquid to be stored in each tank, the type of tank supports, the clearances, the type of venting and pressure relief relied upon and the combined capacity of all venting and pressure relief valves on each tank, and the tank control valves and the location of pumps and other facilities by which liquid is filled into or withdrawn from the tanks.

*e.* In the case of underground storage, drawings showing the location and capacity of each tank; the class of liquids to be stored; and the location of fill, gauge, vent pipes, openings, and clearances.

*f.* In the case of an installation for storage, handling, or use of flammable or combustible liquids within buildings or enclosures at any establishment or occupancy covered in this chapter, a drawing in detail sufficient to show whether applicable requirements are to be met.

**221.11(3)** Fees for plan reviews apply as follows:

*a.* $100 plus $25 for each new or replacement tank included in the plan, for any site or facility at which flammable or combustible liquids are or will be stored, except for new construction of a refinery.

*b.* $500 for review of the initial construction plans of a refinery if the projected construction costs are $100,000,000 or less and $1,000 for the initial construction plans for a refinery if the projected construction costs are greater than $100,000,000.

**221.11(4)** The owner will submit payment of plan review fees electronically or in the form of a check, money order, or warrant payable to the department. Payment will not be made in cash.

**661—221.12(101) Approval of plans.** A registration tag for a new aboveground storage tank will not be issued prior to approval by the department of plans for the installation of the tank and payment of the required plan review and registration fee. The department may require inspection of the tank and payment of an inspection fee prior to use of the tank.

**661—221.13(101) Inspections.** Any facility at which flammable or combustible liquids are stored is subject to inspection by an employee of the department during the regular business hours of the facility or within four hours of notifying the owner of intent to inspect the facility. Inspections may be

initiated by the department or designee at random or on any other basis; may be conducted at the request of the owner, operator, or manager of a facility; or may be conducted to investigate allegations made in a complaint. Complaints should be in writing and submitted to the department and specify the location and nature of the alleged violations.

**661—221.14(101) Registration of existing and new tanks—fees.** All existing, new, replacement, and out-of-service aboveground tanks of 1,101-gallon capacity or greater shall be registered with the department as follows: aboveground tanks used to store flammable or combustible liquids, as defined in Iowa Code section 455B.471, including but not limited to crude oil, heating oil offered for resale, motor fuels and oils such as gasoline, diesel fuels and motor oil; and tanks and are used, or planned for use, to store blended fuels, which include either gasoline or diesel.

**221.14(1)** *Registration form.* Registration forms for aboveground storage tanks may be obtained from the department. A completed registration form shall be submitted to the department, online or by mail by the date on which it is due, and accompanied by the applicable fee, including any applicable late charges.

**221.14(2)** *Fees.* Registration fees and late fees are set forth in Iowa Code section 101.22.

**221.14(3)** *Registration deadline.* Each tank shall be registered annually by October 1 of each year.

Exception: A tank may be registered for the first time on any date without penalty, provided that it has not previously been in use to store flammable or combustible liquids. A tank that is registered for the first time shall not be used to store flammable or combustible liquid until the registration has been completed and the registration tag has been attached to the tank.

**221.14(4)** *Payment.* The registration fee, and any applicable late fee, may be submitted electronically or by draft, check, or money order payable to the department. Payment cannot be made in cash.

**661—221.15(101) Inspections and orders.**

**221.15(1)** *Inspections.* Any tank is subject to inspection at any time by the department, an employee of the department, a local fire chief, or any member of the local fire department designated by the local fire chief. Any of the persons listed who seeks to inspect a tank pursuant to this rule shall, upon request, be allowed access to any facility in which a tank or tanks are located as follows:

*a.* At any time such a facility is attended, immediate access to the facility to the person who requests access to the facility in order to conduct an inspection;

*b.* If a facility is unattended, the person who seeks to conduct the inspection will notify the owner or operator of the facility. During regular business hours, or between 8 a.m. and 4 p.m. Monday through Friday, access shall be allowed within one hour of notification. If access is sought other than during regular business hours, access will be provided at 8 a.m. on the next weekday other than a holiday;

*c.* If the person who seeks access to the facility indicates that access is being sought to investigate an emergency or potential emergency, the owner of the facility will provide access within one hour of receiving the request, regardless of the time of day or day of the week when the request is received.

**221.15(2)** *Orders.* If the person who conducts an inspection pursuant to this chapter finds that a tank is in violation of any applicable provision of this chapter or Iowa Code chapter 101, the person may issue an order for correction. The order will specify the violation or violations, corrective actions to be taken, and the time allowed for completion of the corrective actions.

**221.15(3)** *Suspension of use.* If any corrective action ordered pursuant to subrule 221.15(2) is not completed in the time specified therein, the department may order that the tank be placed out of service until the corrective action or actions have been completed. If a tank is ordered to be placed out of service pursuant to this subrule, the tank will have a sticker prominently affixed to it that states that

the tank is out of service by order of the department and that it is a violation of law to transfer any flammable or combustible liquid into the tank.

**221.15(4)** *Emergency order.* If the department finds that a violation identified during an inspection conducted pursuant to subrule 221.15(1) creates an imminent threat to public safety or public health, or if the department finds, after consultation with the department of natural resources, that such a violation creates an imminent threat of environmental damage, the department will order that the tank be placed out of service immediately and may order that the tank be evacuated of liquid and purged of vapors. If a tank is ordered to be placed out of service pursuant to this subrule, the tank will have a sticker prominently affixed to it that states that the tank is out of service by order of the department and that it is a violation of law to transfer any flammable or combustible liquid into the tank.

**221.15(5)** *Notice.* Notice of any order issued pursuant to this rule will be given to the owner or operator of a tank subject to the order. Notice of an emergency order issued pursuant to subrule 221.15(4) will be given by personal service. Notice of any other order issued pursuant to this rule may be given by regular mail, electronic mail, or personal service.

Exception: If the owner of a tank subject to an order issued pursuant to this rule is unknown or cannot be located, notice will be considered to have been given if the notice is served personally to any person at the location of the tank or, if no person is present, by affixing the notice to the tank. Alternatively, notice may be given by mailing the notice to the address at which the tank is located, with a return receipt requested. Notification from the United States Postal Service that delivery was attempted unsuccessfully or that delivery was refused will serve as proof that notice was given.

**661—221.16(101) Leaks, spills, or damage.** Any leak from, spill from, or damage to a storage tank shall:

**221.16(1)** Be reported to the local fire department and, if required by law, to the department of natural resources.

**221.16(2)** Be placed out of service until the leak or damage has been repaired.

**221.16(3)** Have a sign placed prominently on the tank stating that the tank is out of service and that no flammable or combustible liquid shall be placed into the tank until required repairs have been completed.

**661—221.17(101) Civil penalty.** The department may impose a civil penalty in accordance with Iowa Code section 101.26 upon the owner of a storage tank for any of the following:

**221.17(1)** Failure to register a storage tank currently being used to store a flammable or combustible liquid if the registration is more than 30 days late.

**221.17(2)** Allowing any flammable or combustible liquid to be placed into a tank that has been ordered to be placed out of service and for which the order has not been rescinded or allowing any flammable or combustible liquid to be placed into any tank that has been damaged or is leaking, if the damage or leak has not been repaired.

**661—221.18(17A,101) Appeals.** Any order or civil penalty issued pursuant to this chapter may be appealed by submitting a request for a contested case hearing to the department, in writing, within 30 days of receipt or service of the order or civil penalty. Contested cases are governed by 481—Chapter 9 (contested cases) and 481—Chapter 10 (rules of practice and procedure before the administrative hearings division). Any order or civil penalty appealed pursuant to this rule will be stayed until the issuance of a final agency decision.

Exception: An emergency order issued pursuant to subrule 221.15(4) will not be stayed and will take effect immediately upon notification of the order to the owner of the tank.

These rules are intended to implement Iowa Code chapter 101.

ITEM 2. Rescind and reserve **661—Chapter 224**.

**Regulatory Analysis**

Notice of Intended Action to be published: 661—Chapter 300
"State Building Code Administration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103A.7 and 103A.23
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 103A

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025 | 6200 Park Avenue |
| 2 to 3 p.m. | Des Moines, Iowa |

Virtual participation information will be available on the Department of Inspections, Appeals, and Licensing website prior to the hearing.

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeremiah Junker
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.672.4745
Email: jeremiah.junker@dia.iowa.gov

*Purpose and Summary*

This proposed rulemaking repromulgates Chapter 300 and implements Iowa Code chapter 103A, in accordance with the goals and directives of Executive Order 10 (January 10, 2023).

Iowa Code section 103A.7 provides that the state building code Commissioner is empowered and directed to formulate and adopt, and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in Iowa Code chapter 103A, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public.

Pursuant to Iowa Code section 103A.23, the Commissioner shall establish by rule a schedule of fees based upon the costs of administration and for the purpose of obtaining revenue to defray the costs of administering the provisions of Iowa Code chapter 103A. Fees shall be collected from persons whose manufacture, installation, or construction is subject to the provisions of the state building code. For the performance of building plan reviews by the Department, the Commissioner shall establish by rule a fee, chargeable to the owner of the building, and the fee shall be equal to a percentage of the estimated total valuation of the building and shall be in an amount reasonably related to the cost of conducting the review.

The policy of Iowa is to insure the health, safety, and welfare of its citizens through the promulgation and enforcement of a state building code (Iowa Code section 103A.2), and these rules aid in that policy by providing for the administration of the state building code. These rules provide

for the administration of the state building code through the state building code bureau, including plan review and inspections, as well as fees for the same (as provided by Iowa Code section 103A.23(1)). The bureau has worked under this chapter for close to 20 years, conducting plan review of over $1 billion worth of construction per year. The rules also provide guidelines for local jurisdictions to enforce the building code. All of the rules in this chapter support the State's policy of insuring the health, safety, and welfare of Iowa citizens.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Initially, it should be clarified that the state building code only applies to the following: (1) all buildings and structures owned by the State or an agency of the State; (2) in each governmental subdivision (i.e., city, county, or combination thereof) where the governing body has enacted an ordinance accepting the application of the state building code; (3) all newly constructed buildings and structures the construction of which is paid for in whole or in part with moneys appropriated by the State but which are not wholly owned by the State; and (4) in each city with a population of more than 15,000 that has not adopted a local building code that is substantially in accord with the standards developed by a nationally recognized building organization (Iowa Code section 103A.10(2)).

Therefore, when considering persons affected by, costs incurred for complying with, and benefits arising from this proposed rulemaking, it is important to remember that the state building code and this proposed rulemaking have limited applicability.

Any public costs of compliance are born by owners/builders of projects subject to the state building code. Direct costs to owners/builders are plan review and inspection fees, set forth in rules 661—300.4(103A) and 661—300.5(103A). Notably, Iowa Code section 103A.23 requires the Commissioner to establish a schedule of fees (including, specifically, a schedule of plan review fees) to defray the costs of administering Iowa Code chapter 103A. Additionally, owners/builders of projects subject to the state building code incur indirect costs by the nature of needing to meet requirements of the state building code.

- **Classes of persons that will benefit from the proposed rulemaking:**

Iowans and non-Iowans who live in, work in, and utilize buildings that are subject to the state building code during construction benefit when building projects are safe and plan reviews and inspections are conducted in a timely manner. There are no known injuries or deaths attributable to building construction for projects subject to the state building code, which is the ultimate metric as the purpose of Iowa's building code is to insure the health, safety, and welfare of Iowa citizens.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Direct costs related to construction of structures are subject to Iowa Code chapter 103A, and these rules establish plan review fees and inspection fees. Under these rules, fees for plan review range from $200 to $580 for projects up to and including $1 million, and then $580 for the first $1 million plus $0.32 for each additional $1,000 or fraction thereof for projects exceeding $1 million; as well as $100 to $400 for fire protection systems. Fees for inspections range from $598 to $783, and follow-up inspections are $214. In fiscal year 2023, the building code bureau collected $241,075 in building code plan review and inspection fees. Notably, Iowa Code section 103A.23 requires the Commissioner to establish a schedule of fees (including, specifically, a schedule of plan review fees) to defray the costs of administering Iowa Code chapter 103A, and those total fees are less than the Department's total budget to implement and enforce Iowa Code chapter 103A (more information below). Furthermore, the plan review and inspection fees under these rules are comparable to or less than similar fees charged by neighboring and other states. For example, for a project with a value of $10 million, plan review fees in Iowa are $3,460, but in Minnesota they are over $47,000, in Wisconsin

approximately $4,400 (estimated because Wisconsin bases fees on square footage, rather than project value), in Nebraska $500 (Nebraska caps plan review fees at $500, well below all other states), in Arizona nearly $34,000, and in Idaho over $13,000. Furthermore, the energy review fee currently required by the rules is being proposed for rescission in this rulemaking.

- **Qualitative description of impact:**

Owners/builders of projects subject to the state building code indirectly incur costs by the nature of needing to meet requirements of the state building code. These indirect costs of compliance vary greatly based on multiple factors (including the size, complexity, and location of a project), are not easily quantified, and are necessary to ensure the health, safety, and welfare of Iowans.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Costs to the Department related to implementation of Iowa Code chapter 103A and these rules include the costs of personnel to administer the state building code. The Department maintains approximately 9.0 full-time equivalent (FTE) positions to administer the state building code. The Department's total budget to implement and enforce the state building code, including these rules, is $1,044,794. These costs are partially defrayed by fees established and collected pursuant to Iowa Code section 103A.23.

- **Anticipated effect on state revenues:**

In fiscal year 2023, the bureau collected $241,075 in building code plan review and inspection fees —established and collected pursuant to Iowa Code section 103A.23. These fees helped to defray the costs of administering Iowa Code chapter 103A.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Construction projects subject to the state building code have been safe and plan reviews and inspections conducted in a timely manner. There are no known injuries or deaths attributable to building construction for projects subject to the state building code, which is the ultimate metric as the purpose of Iowa's building code is to insure the health, safety, and welfare of Iowa citizens. The costs to owners to comply with and costs to the Department to implement Iowa Code chapter 103A and these rules are insignificant compared to the costs of inaction, which can include death when minimum construction safety standards are absent.

Additionally, as discussed in the "Purpose and Summary" section above, the state building code is required by the Iowa Code, so inaction is not an option.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Iowa Code requires the Commissioner to promulgate, as the state building code, "reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public" (Iowa Code section 103A.7(1)).

It is the opinion of the Department and Commissioner that the state building code reasonably establishes these minimum safeguards. Additionally, as discussed in section "1" above, the state building code has limited applicability (Iowa Code section 103A.10). Therefore, some rural areas of Iowa that have not otherwise adopted their own building code are already only regulated by the fire safety bureau's general fire safety requirements. Making the state building code any less restrictive would negatively impact the minimum safeguards established by the state building code and risk unsafe building practices where the state building code applies.

The plan review and inspection fees under these rules are comparable to or less than similar fees charged by neighboring and other states. For example, for a project with a value of $10 million, plan review fees in Iowa are $3,460, but in Minnesota they are over $47,000, in Wisconsin approximately $4,400 (estimated because Wisconsin bases fees on square footage, rather than project value), in

Nebraska $500 (Nebraska caps plan review fees at $500, well below all other states), in Arizona nearly $34,000, and in Idaho over $13,000. Because fees are similar of less, a change in fees was not considered.

Finally, compared to the existing rules, these rules have been streamlined, clarified, and made less restrictive when possible, in accordance with the goals and directives of Executive Order 10.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Response in section "5," above.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Response in section "5," above.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

While some owners/builders of buildings subject to Iowa Code chapter 103A and these rules may be small businesses, these rules (required by the Iowa Code) protect the health, safety, and welfare of Iowans and non-Iowans who own, reside in, visit, enter, or otherwise use buildings the construction of which are subject to Iowa Code chapter 103A and the state building code. Even if these rules have a substantial impact on small business (and as shown above, the directs costs to owner/builders are not substantial), to exempt or even provide less stringent rules for small businesses would not be feasible or practicable because it would undermine public safety based on nothing more than the size of the business owning or building the subject building. Finally, any owner or builder (including a small business) can seek a waiver from provisions of these rules pursuant to the Department's uniform waiver rules under 481—Chapter 6.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 661—Chapter 300 and adopt the following **new** chapter in lieu thereof:

CHAPTER 300
STATE BUILDING CODE—ADMINISTRATION

**661—300.1(103A) State building code promulgated; definitions.** The definitions set forth in Iowa Code section 103A.3 are incorporated herein by reference.

Iowa Code section 103A.7 empowers and directs the commissioner to adopt and promulgate the state building code, with the approval of the council, except that adoption of the state historic building code requires the approval of the state historical society board, rather than the council, pursuant to Iowa Code section 103A.41.

The state building code includes 661—Chapters 16, 300, 301, 322 and 323.

**661—300.2(103A) Building code commissioner.** The commissioner appointed pursuant to Iowa Code section 103A.4 will adopt, and amend as needed, the state building code with the approval of the council and the state historic building code with the approval of the state historical society board; appoint the board of review from among the council membership; consider any request for the use of alternate materials or methods of construction submitted to the building code bureau pursuant to Iowa Code section 103A.13; and either disapprove each such request or recommend approval of the request to the council.

**661—300.3(103A) Building code advisory council.** The council appointed pursuant to Iowa Code section 103A.14 will consider amendments to the state building code proposed by the commissioner, other than amendments to the state historic building code; approve or disapprove any changes to the state building code proposed by the commissioner; and consider and approve or disapprove any requests for use of alternate materials or methods of construction, the approval of which has been recommended to the council by the commissioner.

**661—300.4(103A) Plan reviews.**

**300.4(1)** *Plans and specifications review—approvals.*

*a.* Submissions to the commissioner of architectural technical documents, engineering documents, and plans and specifications are the responsibility of the owner of a building or facility. The submission may be completed by an authorized agent of the owner or the responsible design professional.

*b.* "Responsible design professional" means a registered architect or licensed professional engineer who signs the documents submitted.

*c.* Plans, specifications, and other supporting information have to be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code.

*d.* In Sections 107.1 and 107.2.6 of the International Building Code, 2024 edition, the word "permit" is replaced by the words "plan review."

*e.* Submittals to the commissioner have to be certified or stamped and signed according to Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.

*f.* Plans and specifications for projects subject to plan review by the commissioner have to be submitted in a format specified on the plan review submittal form.

*g.* Architectural technical submissions; engineering documents; and plans and specifications for construction, renovation, or remodeling of all state-owned buildings or facilities, including additions to existing buildings, have to be submitted to the commissioner for review and comment. A written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments has to be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

*h.* Architectural technical submissions; engineering documents; and plans and specifications for the initial construction of any building or facility that will not be wholly owned by the state or an agency of the state have to be submitted to the commissioner for review and comment, if the construction is financed in whole or in part with funds appropriated by the state and there is no local building code in effect in the local jurisdiction in which the construction is planned or, if there is such a local building code in effect, it is not enforced through a system that includes both plan reviews and inspections. A written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments has to be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on

a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

*i.* Architectural technical submissions; engineering documents; and plans and specifications for construction, renovation, or remodeling of all buildings or facilities, including additions to existing buildings, to which the state building code applies, other than those subject to paragraph *"g"* or *"h,"* have to be submitted to the commissioner for review and comment unless applicability of the state building code is based upon a local ordinance enacted pursuant to Iowa Code section 103A.12. A written response by the design professional indicating corrective measures taken to address the commissioner's plan review comments has to be submitted to and approved by the commissioner prior to the issuance of construction documents for bidding. Bidding may commence on a project after the preliminary meeting provided for in subrule 300.4(3) if all items on the preliminary meeting checklist have been resolved to the satisfaction of the commissioner.

*j.* If the state building code applies to a construction project based upon a local ordinance adopting the state building code, the submission has to be made to the local jurisdiction, provided that the local jurisdiction has established a building department, unless the local jurisdiction requires submission to the commissioner. Review and approval of such documents by the commissioner are at the discretion of the commissioner based upon available resources.

*k.* A life cycle cost analysis will be needed for new public projects and additions over 20,000 square feet or a renovation that exceeds 50 percent of the value of the building pursuant to Iowa Code chapter 470 and will be submitted to the commissioner before construction commences. The department has developed life cycle cost analysis guidelines to assist architects and engineers in completing this analysis, and these guidelines are available on the department's website or upon request.

*l.* Any necessary energy code review pursuant to 661—Chapter 301, Part 3, will be completed prior to approval.

**300.4(2)** *Copies and fees.* 661—Chapters 16 and 322 describe fees pertaining to factory-built structures.

*a.* Codes and standards adopted by reference in the state building code that are published by other organizations, including but not limited to the American National Standards Institute, the International Code Council, the International Association of Plumbing and Mechanical Officials, and the National Fire Protection Association, may be purchased from the publishing organization. A copy of each code or standard adopted by reference in the state building code has been deposited in the Iowa state law library.

*b.* The fees for plan reviews completed by the building code bureau are calculated as follows:

| **Estimated Construction Costs** | **Calculation of Plan Review Fee** |
|---|---|
| Up to and including $1 million | $.58 per thousand dollars or fraction thereof (minimum fee $200) |
| More than $1 million | $580 for the first $1 million plus $.32 for each additional thousand dollars or fraction thereof |
| The plan review fees for fire suppression systems and fire alarm systems are separate fees and are calculated as follows: | |
| **Fire Protection System Costs** | **Plan Review Fee** |
| Fire suppression systems whose construction cost for materials and installation is calculated to be up to and including $5,000 | $100 |

| | |
|---|---|
| Fire suppression systems whose construction cost for materials and installation is calculated to be more than $5,000 and up to and including $20,000 | $200 |
| Fire suppression systems whose construction cost for materials and installation is estimated to be more than $20,000 | $400 |
| Fire alarm systems whose construction cost for materials and installation is calculated to be up to and including $5,000 | $100 |
| Fire alarm systems whose construction cost for materials and installation is calculated to be more than $5,000 and up to and including $20,000 | $200 |
| Fire alarm systems whose construction cost for materials and installation is estimated to be more than $20,000 | $400 |

Payment of the assigned fee has to accompany each plan when submitted for review. Payment may be made by money order, check, or draft made payable to the Treasurer, State of Iowa.

NOTE: Plan review fees for assisted living projects are contained in Iowa Code section 231C.18(2) *"c."* Elder group home plan review fees are contained in Iowa Code section 231B.17. Adult day services plan review fees are contained in Iowa Code section 231D.4.

*c.* A person who has submitted a plan for review for which a fee has been assessed pursuant to paragraph "b" is eligible to receive a refund of the fee if the plan has not been approved or rejected within 60 calendar days of its receipt by the building code bureau. A person who believes that a refund is due may notify the commissioner, who will provide a form to request a refund. If the request for refund is approved, the commissioner will cause a check for the amount of the refund to be issued to the individual or organization that originally paid the fee. If the original submission of the plan is incomplete, the fee will be refunded only if the plan has not been approved or rejected within 60 days of a full and complete submission of the plan. "Approved or rejected within 60 days" means that a letter approving or rejecting the plan has been presented or mailed to the submitter within 60 days of the date of receipt by the building code bureau, within the meaning of "time" as defined in Iowa Code section 4.1.

**300.4(3)** *Preliminary meeting.* The responsible design professional for a project shall contact the building code bureau to schedule a preliminary meeting to discuss code compliance issues early in the design development phase. There is no separate fee for a preliminary meeting. If the responsible design professional plans to request approval to bid the project as part of the preliminary meeting, that person has to request a copy of the document "Preliminary Meeting Checklist" at the time the meeting is scheduled and be prepared to address all applicable issues identified on the checklist at the preliminary meeting. Approval to bid the project will not be given unless all applicable issues identified on the checklist have been addressed to the satisfaction of the commissioner.

**300.4(4)** *Requests for staged approvals.*

*a.* Requests for approval to begin foundation work shall be submitted to the building code bureau in writing and may be transmitted by mail, email, or fax or in person. Foundation approval may be granted by the bureau in writing, following a preliminary meeting, if the construction plans and specifications are in compliance with the requisite code provisions.

*b.* Requests for approval to continue construction beyond the foundation, up to and including the shell of the building, shall be submitted to the bureau in writing and may be transmitted by mail, email, or fax or in person. These requests will be evaluated on a case-by-case basis, and approval or denial of the requests will be transmitted to the submitter in a written form.

**300.4(5)** *Fast-track projects.* While fast-track projects are not encouraged and will only be approved on the basis of good cause shown, fast-track projects may be considered by the commissioner on a case-by-case basis. If a fast-track project is initially approved, a written plan of submittal, review and approval will be developed for each project A full set of construction documents are needed for a full review and approval in a timely manner.

**661—300.5(103A) Inspections.**

**300.5(1)** Any building or facility for which construction is subject to a plan review by the commissioner, except construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents, is subject to inspection by the commissioner or staff of the bureau or division at the direction of the commissioner or by a third party with whom the commissioner contracts to conduct inspections of buildings and facilities subject to the state building code.

EXCEPTION: Construction that is limited to building renovations or repairs is not subject to inspection by the commissioner.

**300.5(2)** Any construction involving any building or facility owned by the board of regents or by an institution subject to the authority of the board of regents is subject to inspection by the commissioner or staff of the bureau or division at the direction of the commissioner.

EXCEPTION: Construction that is limited to building renovations or repairs is not subject to inspection by the commissioner.

**300.5(3)** Buildings subject to inspection by the commissioner, except construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents, shall pay an inspection fee based upon the construction cost of the project. The inspection fee is calculated as follows:

| Construction Cost | Base Inspection Fee |
|---|---|
| Up to $100,000 | $598 |
| $100,001 to $1,000,000 | $645 |
| $1,000,001 to $10,000,000 | $722 |
| $10,000,001 and above | $783 |
| Follow-up inspection | $214 |

The base inspection fee covers three inspections—a foundation, rough-in, and final. The base inspection fee is due and payable at the time completed construction documents are submitted for review. The plan review will not be conducted until the proper base inspection fee is paid. Checks should be made payable to the Treasurer, State of Iowa, and delivered to the bureau office. This fee is separate and distinct from the plan review fee established in subrule 300.4(2).

Additional inspections may occur for any of the following reasons:

*a.* During one of the three base inspections, code violations are identified that require that a follow-up inspection be conducted to verify that the violations have been corrected.

*b.* The inspector finds that the project is not ready for the type of inspection requested.

*c.* By special request of the project designer, contractor, or owner.

*d.* Upon order of the building code commissioner (no additional charge).

The fee for each additional inspection is calculated as follows:

One hour on site = $206

One to two hours on site = $240

Two to three hours on site = $273

Three to four hours on site = $307

Four to five hours on site = $341

Five to six hours on site = $374

Additional inspection fees will be billed to the responsible architect or building contractor on a monthly basis. The building may receive only temporary approval for occupancy if unpaid inspection fees remain at the time of final inspection.

Inspection fees and standard operating procedures for construction involving any building or facility owned by the board of regents or by any institution subject to the authority of the board of regents will be established through a written agreement between the commissioner and the board of regents.

**300.5(4)** Any person who performs a building code inspection on behalf of the building code commissioner will have and maintain one of the following: (1) current certification as a commercial building inspector by the International Code Council, or (2) other equivalent certification approved by the building code commissioner. An employee of the department who performs an inspection on behalf of the building code commissioner will, in addition, meet any requirements for the job class in which the employee is classified as established by the department of administrative services, pursuant to Iowa Code chapter 8A, subchapter IV, part 2.

EXCEPTION: An employee of the department who performs inspections on behalf of the building code commissioner may perform such inspections for no more than six months prior to obtaining certification.

**661—300.6(103A) Local code enforcement.** Provisions of the state building code applicable statewide or applicable in a local jurisdiction that has adopted the state building code by local ordinance may be enforced by the local jurisdiction.

Any local jurisdiction that adopts the state building code by local ordinance may further adopt provisions for the administration and enforcement of the building code by the local jurisdiction. These provisions may include administrative provisions contained in the codes adopted by reference as part of the state building code and may include other provisions at the discretion of the local jurisdiction.

**300.6(1)** *Creation of department.* There may be established within the governmental subdivision a "building department" that is under the jurisdiction of the building official designated by the appointing authority. Within the state building code, including publications adopted by reference within the state building code, the terms "administrative authority," "authority having jurisdiction," and "authorized representative" mean the building official. The local governmental subdivision must inform the state building code bureau, in writing transmitted by mail, email, or fax, when it establishes or dissolves a building department.

**300.6(2)** *Powers and duties of building official.* The building official in those governmental subdivisions establishing a building department will enforce all the provisions of any applicable building code as prescribed by local law or ordinance and as outlined by Iowa Code section 103A.19.

**300.6(3)** *Permits only.* Any governmental subdivision that has not established a building department but requires a permit to construct or an occupancy permit or both is known as the "issuing authority."

**300.6(4)** *Statement of compliance with energy conservation requirements.* Any application for a building permit, except for applications to renovate or remodel residential buildings of one or two units, shall include a statement that the construction will comply with all applicable energy conservation requirements.

These rules are intended to implement Iowa Code chapter 103A.

## Regulatory Analysis

Notice of Intended Action to be published: 661—Chapters 301, 302, 303, 310, 315, and 350 "State Building Code—General Provisions, Accessibility of Buildings and Facilities Available to the Public, Requirements for Energy Conservation in Construction; Sustainable Design Standards; Weather Safe Rooms; State Historic Building Code"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103A.7, 103A.8A, 103A.8B, 103A.8C, 103A.41, 104A.2, and 470.2

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 103A, 104A, and 470

### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025 | 6200 Park Avenue |
| 2 to 3 p.m. | Des Moines, Iowa |

Virtual participation information will be available on the Department of Inspections, Appeals, and Licensing website prior to the hearing.

### *Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeremiah Junker
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.672.4745
Email: jeremiah.junker@dia.iowa.gov

### *Purpose and Summary*

This proposed rulemaking repromulgates Chapters 301, 302, 303, 310, 315, and 350 into one combined chapter and implements Iowa Code chapters 103A, 104A, and 470, in accordance with the goals and directives of Executive Order 10 (January 10, 2023).

Iowa Code section 103A.7(1) provides that the state building code Commissioner is empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in Iowa Code chapter 103A, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public. Pursuant to Iowa Code section 103A.7(2), the rules shall include reasonable provisions for the following: (1) the installation of equipment; (2) the standards or requirements for materials to be used in construction; (3) the manufacture and installation of factory-built structures; (4) protection of the health, safety, and welfare of occupants and users; (5) the accessibility and use by persons with disabilities and elderly persons of buildings, structures, and facilities that are constructed and intended for use by the general public (consistent with federal standards for building accessibility and applying only to those buildings, structures, and facilities subject to Iowa Code chapter 104A); (6) the conservation of energy through

thermal efficiency standards for buildings intended for human occupancy and that are heated or cooled and lighting efficiency standards for buildings intended for human occupancy that are lighted; (7) standards for sustainable design, also known and referred to as green building standards; and (8) standards for safe rooms and storm shelters.

Pursuant to Iowa Code section 103A.8A, the Commissioner shall adopt as a part of the state building code a requirement that new single-family or two-family residential construction shall comply with energy conservation requirements. Pursuant to Iowa Code section 103A.8B, the commissioner shall adopt rules specifying standards and requirements for sustainable design and construction based upon or incorporating nationally recognized ratings, certifications, or classification systems and procedures relating to documentation of compliance. The standards and requirements shall be incorporated into the state building code but in lieu of general applicability shall apply to construction projects only if such applicability is expressly authorized by statute or as established by another state agency by rule. Pursuant to Iowa Code section 103A.8C, the Commissioner shall adopt rules specifying standards and requirements for design and construction of safe rooms and storm shelters. The standards and requirements shall be incorporated into the state building code but shall not be interpreted to require the inclusion of a safe room or storm shelter in a building construction project unless such inclusion is expressly required by another statute or by a federal statute or regulation.

Additionally, Iowa Code section 103A.41 provides that the commissioner shall adopt alternative building standards and building regulations for the rehabilitation; preservation; restoration, including related reconstruction; and relocation of buildings or structures designated by state agencies or governmental subdivisions as qualified historic buildings which are included in, or appear to meet criteria for inclusion in, the national register of historic places. The purpose of the state historic building code is to facilitate the restoration or change of occupancy of qualified historic buildings or structures so as to preserve their original or restored architectural elements and features and, concurrently, to provide reasonable safety from fire and other hazards for the occupants and users, through a cost-effective approach to preservation.

Iowa Code section 104A.2 provides that the standards and specifications adopted by the state building code Commissioner and as set forth in Iowa Code chapter 104A (accessibility for persons with disabilities) shall apply to all public and private buildings and facilities, temporary and permanent, used by the general public. The specific occupancies and minimum extent of accessibility shall be in accordance with the conforming standards set forth in Iowa Code section 104A.6. In every covered multiple-dwelling-unit building containing four or more individual dwelling units, the requirements of Iowa Code chapter 104A and those adopted by the state building code Commissioner shall be met. However, Iowa Code chapter 104A shall not apply to a building, or to structures or facilities within the building, if the primary use of the building is to serve as a place of worship.

Finally, Iowa Code section 470.2 states that on or after May 26, 2016, a public agency responsible for the construction or renovation of a facility (which Iowa Code section 470.1(7) defines as a building having 20,000 square feet or more of usable floor space that is heated or cooled by a mechanical or electrical system) or the construction of an addition shall, in a design begun after that date, include as a design criterion the requirement that a life cycle cost analysis be conducted for the facility.

Currently, rules implementing the above statutes are spread across six chapters (301 (general provisions), 302 (accessibility), 303 (energy conservation), 310 (sustainable design), 315 (weather safe rooms), and 350 (historic building code)). This proposed rulemaking consolidates those six chapters into one single chapter. Additionally, many currently adopted standards in those chapters are outdated editions, and this rulemaking updates many of them to 2024 editions in conformity with the statutory directives above, including to establish minimum safeguards in the erection and construction of buildings and structures; to protect the human beings who live and work in them from fire and other hazards; and to establish regulations to further protect the health, safety, and welfare of the public.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Initially, it should be clarified that the state building code only applies to the following: (1) all buildings and structures owned by the State or an agency of the State; (2) in each governmental subdivision (i.e., city, county, or combination thereof) where the governing body has enacted an ordinance accepting the application of the state building code; (3) all newly constructed buildings and structures the construction of which is paid for in whole or in part with moneys appropriated by the State but which are not wholly owned by the state; and (4) in each city with a population of more than 15,000 that has not adopted a local building code that is substantially in accord with the standards developed by a nationally recognized building organization (Iowa Code section 103A.10(2)).

Therefore, when considering persons affected by, costs incurred for complying with, and benefits arising from this proposed rulemaking, it is important to remember that the state building code and this proposed rulemaking have limited applicability.

Generally, owners/builders of projects subject to the state building code will bear the costs of this proposed rulemaking. Notably, the sustainable design standards are optional and there are no costs incurred by the public if they do not opt-in; this rulemaking does not independently require weather safe rooms in construction projects and those provisions only apply when a weather safe room is required under another provision of law or is incorporated voluntarily in a construction project; and the state historic building code is also a voluntary alternative (meant to preserve historic buildings while still insuring the health, safety, and welfare of Iowans) to the standard building code.

- **Classes of persons that will benefit from the proposed rulemaking:**

All Iowans (as well as non-Iowans) who own, reside in, visit, enter, or otherwise use a building that is subject to the state building code benefit (in health, safety, and welfare) from this proposed rulemaking. As discussed above, the entire Iowa public and energy grid/infrastructure benefit from the energy code. Additionally, persons who own, reside in, visit, or otherwise use historic buildings in Iowa benefit from the state historic building code. Of note, the Iowa State Capitol and the buildings of the Iowa State Fair Grounds are historic buildings that benefit from the alternative standards under the historic building code, which allows for the preservation of these historic (as well as popular and significant) buildings and their important architectural and building features.

Additionally, this proposed rulemaking updates a number of the national standards adopted in the state building code from 2015 editions to 2024 editions, resulting in modernization, health, safety, welfare, and other benefits over the existing rules. For example, the 2021 edition of the International Building Code (IBC) introduced four new construction types for mass timber (a state-of-the-art form of engineered timber) and allowed for buildings of up to 270 feet tall and 18 stories to be constructed from mass timber, something that is not recognized in the 2015 edition. The 2024 edition further allows for 100 percent exposure of mass timber ceilings and integral beams, an increase from the 20 percent allowed in the 2021 edition. These mass timber updates specifically benefit owners and builders who wish to build mass timber structures that are subject to the state building code (as under the existing 2015 edition, they would not be able to utilize such materials). Finally, the 2021 edition increased the required lighting for stairs and landings from one foot-candle to ten foot-candles, significantly improving the safety of stairs and landings in construction projects that are subject to the state building code, benefiting all persons who use such stairs and landings.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Direct costs to owners/builders of projects subject to the state building code are plan review and inspection fees, set forth in Chapter 300 (administration chapter of the state building code). In fiscal year 2023, the state building code bureau collected $241,075 in building code plan review and

inspection fees. Notably, Iowa Code section 103A.23 requires the Commissioner to establish a schedule of fees (including, specifically, a schedule of plan review fees) to defray the costs of administering Iowa Code chapter 103A, and those total fees are less than the Department's total budget to implement and enforce Iowa Code chapter 103A (more information below). Furthermore, the plan review and inspection fees under these rules are comparable to or less than similar fees charged by neighboring and other states. For example, for a project with a value of $10 million, plan review fees in Iowa are $3,460, but in Minnesota they are over $47,000, in Wisconsin approximately $4,400 (estimated since Wisconsin bases fees on square footage, rather than project value), in Nebraska $500 (Nebraska caps plan review fees at $500, well below all other states), in Arizona nearly $34,000, and in Idaho over $13,000. Furthermore, the energy review fee currently required by the rules is being proposed for repeal in this rulemaking.

- **Qualitative description of impact:**

Generally, owners/builders of projects subject to the state building code also incur indirect costs by the nature of needing to meet requirements of the state building code. These indirect costs of compliance vary greatly based on multiple factors (including the size, complexity, and location of a project); are not easily quantified; and are necessary to insure the health, safety, and welfare of Iowans.

Regarding costs of compliance with the energy code, indirect costs of compliance vary greatly based on multiple factors (including the size, complexity, and location of a project) and are not easily quantified. Additionally, the 2012 model standard was adopted in 2014, so standards of compliance have been the same for ten years. Finally, energy code compliance should not be viewed as a cost since the public also incurs energy costs (whether in the form of costs for consumers to purchase energy or costs on energy generation/grid to supply the necessary energy to all consumers). Where greater energy efficiency reduces public energy costs and less energy efficiency increases public energy costs, the energy code creates an energy efficiency baseline to control/manage the conflicting costs.

Regarding costs incurred to comply with the sustainable design standards, those standards are optional and there are no costs incurred by the public if they do not opt-in. Additionally, if the public does opt-in to those standards, there are multiple sustainable design criteria options for compliance. Similarly, this rulemaking does not independently require weather safe rooms in construction projects. It only applies—and any costs of compliance are only incurred—when a weather safe room is required under another provision of law or is incorporated voluntarily in a construction project.

Finally, the state historic building code is also a voluntary alternative (meant to preserve historic buildings while still insuring the health, safety, and welfare of Iowans) to the standard building code, so any costs incurred to specifically comply with the historic building code are voluntarily incurred.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

The Department's costs related to implementation of Iowa Code chapter 103A and the state building code include the costs of personnel to administer the state building code, including traveling associated with on-site inspections. The Department maintains approximately 9.0 full-time equivalent (FTE) positions to administer the state building code. The Department's total budget to implement and enforce the state building code is $1,044,794. As noted above, these costs are partially defrayed by fees established and collected pursuant to Iowa Code section 103A.23.

- **Anticipated effect on state revenues:**

In fiscal year 2023, a total of $241,075 was collected by the Department in plan review and inspection fees pursuant to Iowa Code section 103A.23, which requires the Commissioner to establish a schedule of fees (including, specifically, a schedule of plan review fees) to defray the costs of administering Iowa Code chapter 103A.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

As discussed in detail in the "Purpose and Summary" section above, the state building code and various of its subparts are specifically required by the Iowa Code, so inaction is not an option. While owners/builders of projects subject to the state building code will incur indirect costs by the nature of needing to meet requirements of the state building code, these costs of compliance vary greatly based on multiple factors (including the size, complexity, and location of a project) and are necessary to insure the health, safety, and welfare of Iowans and non-Iowans. Furthermore, as previously discussed, the state building code and this proposed rulemaking (as well as any costs of compliance) have limited applicability.

Additionally, updating adopted standards from 2015 editions to 2024 editions will provide a number of benefits, including allowing for building techniques and materials not recognized by the2015 code and improved building standards and safety (more information in section "1," above.) Looking at the IBC as an example, according to the International Code Council's website, only one of Iowa's "neighbor" states (Wisconsin) still adopts the 2015 edition for its state building code. Illinois, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota have all updated their state building code equivalents beyond the 2015 edition of the IBC. The majority of other states in the U.S. have also updated their state building code equivalents beyond the 2015 edition, including Alabama, Arizona, Idaho, Louisiana, Mississippi, Montana, West Virginia, and Wyoming. In addition to the IBC, most of these neighboring and non-neighboring states have also updated other adopted standards (for example, International Residential Code or International Existing Building Code) beyond the 2015 editions.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

It is the Department's opinion that these proposed rules are necessary to protect the health, safety, and welfare of Iowans (as well as non-Iowans) who own, reside in, visit, enter, or otherwise use buildings the construction of which are subject to the state building code. As for the direct costs to owners/builders, the fees set forth in these rules are: (1) explicitly required by statute to defray the costs of administration (fees charged/collected by the Department could actually be higher, considering that they do not completely defray the costs of administration); (2) largely unchanged from the existing version of the rules, and the change made reduces fees (i.e., repeal of the energy review fee); and (3) comparable to or less than similar fees charged by neighboring states.

Additionally, as discussed in section "1" above, the state building code has limited applicability (Iowa Code section 103A.10). Therefore, some rural areas of Iowa that have not otherwise adopted their own building code are already only regulated by the fire safety bureau's general fire safety requirements. Making the state building code any less restrictive would negatively impact the minimum safeguards established by the state building code and risk unsafe building practices where the state building code applies.

Finally, compared to the existing rules, these rules have been streamlined, clarified, and made less restrictive when possible, in accordance with the goals and directives of Executive Order 10. These proposed rules also consolidate six separate chapters of the existing state building code into a single proposed Chapter 301.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Response in section "5," above.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Response in section "5," above.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

While some owners/builders of buildings subject to Iowa Code chapter 103A and these rules may be small businesses, these rules (required by the Iowa Code) protect the health, safety, and welfare of Iowans and non-Iowans who own, reside in, visit, enter, or otherwise use buildings the construction of which are subject to Iowa Code chapter 103A and the state building code. Even if these rules have a substantial impact on small business (and as shown above, the directs costs to owner/builders are not substantial), to exempt or even provide less stringent rules for small businesses would not be feasible or practicable because it would undermine public safety based on nothing more than the size of the business owning or building the subject building. Finally, any owner or builder (including a small business) can seek a waiver from provisions of these rules pursuant to the Department's uniform waiver rules under 481—Chapter 6.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 661—Chapter 301 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 301
## STATE BUILDING CODE

### PART 1
### GENERAL PROVISIONS

**661—301.1(103A) Scope and applicability.** The provisions of this chapter apply to buildings and facilities subject to the state building code pursuant to Iowa Code chapter 103A, including sections 103A.10 and 103A.12, and provisions of state or federal law other than Iowa Code chapter 103A.

**661—301.2(103A) Definitions.** The definitions set forth in Iowa Code section 103A.3 are incorporated herein by reference. Additionally:

*"Appropriated by the state of Iowa"* means funds which are included in a bill enacted by the Iowa general assembly and signed by the governor or which are appropriated in a provision of the Iowa Code.

*"Board of appeals"* means the local board of appeals as created by local ordinance.

*"Building component"* means any part, subsystem, subassembly, or other system designed for use in, or as a part of, a structure, including but not limited to: structural, electrical, mechanical, fire protection, or plumbing systems, and including such variations thereof as are specifically permitted by regulation, and which variations are submitted as part of the building system or amendment thereof.

*"Building department"* means an agency of any governmental subdivision charged with the administration, supervision, or enforcement of building regulations, prescribed or required by state or local building regulations.

*"Building system"* means plans, specifications and documentation for a system of manufactured factory-built structures or buildings or for a type or a system of building components, including but

not limited to: structural, electrical, mechanical, fire protection, or plumbing systems, and including such variations thereof as are specifically permitted by regulation, and which variations are submitted as part of the building system or amendment thereof.

*"Bureau"* means the building code bureau of the department of inspections, appeals, and licensing.

*"Construction cost"* means the total cost of the work to the owner of all elements of the project designed or specified by the design professional including the cost at current market rates of labor and materials furnished by the owner and equipment designed, specified or specifically provided by the design professional. Construction costs include the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for each construction manager's or contractor's overhead and profit.

*"Enforcement authority"* means any state agency or political subdivision of the state that has the authority to enforce the state building code.

*"Label"* means an approved device affixed to a factory-built structure or building, or building component, by an approved agency, evidencing code compliance.

*"Listing agency"* means an agency approved by the commissioner which is in the business of listing or labeling and which maintains a periodic inspection program on current production of listed models, and which makes available timely reports of such listing including specific information verifying that the product has been tested to approved standards and found acceptable for use in a specified manner.

*"Responsible design professional"* means a registered architect or licensed professional engineer who stamps and signs the documents submitted, pursuant to Iowa Code chapters 542B and 544A.

*"State fire code"* means administrative rules adopted by the director of the department of inspections, appeals, and licensing in consultation with the state fire marshal, pursuant to Iowa Code section 10A.511.

*"State mechanical code"* means the state mechanical code adopted by the state plumbing and mechanical systems board, pursuant to Iowa Code chapter 105.

*"State plumbing code"* means the state plumbing code adopted by the state plumbing and mechanical systems board, pursuant to Iowa Code chapter 105.

**661—301.3(103A) General provisions.** The provisions of the International Building Code, 2024 edition, published by the International Code Council, www.iccsafe.org, are hereby adopted by reference as the general requirements for building construction, with the following amendments:

**301.3(1)** Delete section 101.1.

**301.3(2)** Delete section 101.2 and insert in lieu thereof the following new section:

101.2 Scope. The provisions of this code apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code, as amended by rule 661—301.8(103A).

**301.3(3)** Delete sections 101.4.1 through 101.4.6.

**301.3(4)** Delete section 102.6 and insert in lieu thereof the following new section:

102.6 Existing Structures. The legal occupancy of any structure existing on the date of adoption of this code is permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

**301.3(5)** Delete sections 103, 104, 105 and sections therein.

**301.3(6)** Delete section 106.2.

**301.3(7)** Delete section 107.1 and insert in lieu thereof the following new section:

107.1 General. Submittal documents consisting of construction documents, statement of special inspections, a geotechnical report and other data shall be submitted in one or more sets with each plan review application. The construction documents shall be prepared by a responsible design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the commissioner is authorized to require additional construction documents to be prepared by a responsible design professional.

Exception: The commissioner may waive the submission of construction documents and other data if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

**301.3(8)** Delete sections 107.3, 107.4, and 107.5 and sections therein.

**301.3(9)** Delete sections 109, 110, 111, 112, 113, 114, 115, and 116 and sections therein.

**301.3(10)** Add the following to section 202, Definitions:

"Cabin Building." A residential building or structure the use of which is transient in nature and which is used for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code.

**301.3(11)** Add the following to section 310.2:

Cabin buildings.

**301.3(12)** Add the following new section 408.9.1:

408.9.1 Windowed Buildings. Plans and specifications for windowed buildings or portions of windowed buildings shall include a rational analysis demonstrating a tenable environment for exiting from the smoke compartment in the area of fire origin.

**301.3(13)** Delete section 423 in its entirety and insert in lieu thereof the following new section:

423 Storm Shelters.

423.1 General. Any storm shelter or weather safe room as defined by rule 661—315.2(103A) shall comply with ICC 500-2014.

423.1.1 Scope. In accordance with 661—Chapter 315, this section applies to storm shelters and weather safe rooms constructed on or after January 1, 2011. This section does not require the construction of a weather safe room or rooms for any construction project but does establish standards for design and construction of storm shelters and weather safe rooms when their construction is required by another statute, federal statute or regulation, or is incorporated voluntarily in a construction project.

**301.3(14)** Delete section 903.2.8, except for subsections 903.2.8.1 through 903.2.8.3, and insert in lieu thereof the following new section:

903.2.8 Group R. An automatic sprinkler system installed in accordance with section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: Cabin buildings that are located in remote areas without a sufficient municipal water supply for design of a fire sprinkler system and that meet all of the following:

1. Not more than one story.
2. Not more than 750 square feet in floor area.
3. Fuel-fired heating equipment and other fuel-fired appliances are separated from sleeping areas by a one-hour fire-rated assembly.
4. Provided with fire alarm and smoke alarm systems in accord with 907 for R-1 occupancies.
5. No basements.
6. Maintain a fire separation of 20 feet from any other building or structure.
7. Comply with all applicable requirements of the state building code.

**301.3(15)** Delete section 907.2.3 and insert in lieu thereof the following new section:

907.2.3 Group E. In the absence of a complete automatic sprinkler system, a complete automatic detection system utilizing an emergency voice/alarm communication system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system utilizing an emergency voice/alarm communication

system in compliance with section 907.5.2.2 and installed in accordance with section 907.6. Smoke detection shall be provided in corridors at a maximum spacing of 30 feet on center, and heat or smoke detection provided in any hazardous or nonoccupied areas.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.

2. Manual fire alarm boxes are not necessary in Group E occupancies where all of the following apply:

2.1. Interior corridors are protected by smoke detectors with alarm verification.

2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.

2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

2.4. Off-premises monitoring is provided.

2.5. The capability to activate the evacuation signal from a central point is provided.

2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

3. Manual fire alarm boxes are not necessary in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow, and manual activation is provided from a normally occupied location.

4. Emergency voice/alarm communication systems meeting the requirements of section 907.5.2.2 and installed in accordance with section 907.6 are not necessary in Group E occupancies with occupant loads of 100 or less, provided that activation of the fire alarm system initiates an approved occupant notification signal in accordance with section 907.5.

**301.3(16)** Add the following new section 1003.8:

1003.8 Frost Protection. Exterior landings at doors shall be provided with frost protection.

**301.3(17)** Add the following new section 1027.5.1:

1027.5.1 Exit Discharge Pathways. Exit discharge pathways shall be paved from all exits of the building to the public way.

**301.3(18)** Delete section 1030.1.1 and insert in lieu thereof the following new section:

1030.1.1 Bleachers, grandstands, and folding and telescopic seating that are not building elements shall comply with ICC-300, Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, 2012 edition, with the following amendments to ICC-300:

*a.* Delete section 105.2 and insert in lieu thereof the following new section:

105.2 Yearly inspection. All bleachers and folding and telescopic seating installed on or after December 1, 2011, shall be inspected at least once a year in order to verify that the structure is maintained in compliance with the provisions of this standard. All folding and telescopic seating shall also be inspected to evaluate compliance with the manufacturer's installation and operational instructions during the opening and closing of such seating. Any inspection conducted in compliance with this section may be conducted by any knowledgeable person including, but not limited to, a person who has been instructed by the manufacturer or installer as to procedures and standards for inspections of the structure being inspected and including, but not limited to, the owner of the structure or an employee of the owner of the structure. There are no further restrictions on the identity or employment of the person conducting the inspection unless otherwise provided by law. The owner shall maintain documentation of the required annual inspections, showing the date and name of the person conducting the inspection and initialed by the person conducting the inspection.

*b.* Delete section 501.2 and insert in lieu thereof the following new section:

501.2 Inspections. All tiered seating that was installed prior to December 1, 2011, shall be inspected at least once a year. The inspection may be conducted by any knowledgeable person including, but not limited to, a person who has been instructed by the manufacturer or installer as to procedures and standards for inspections of the structure being inspected and including, but not

limited to, the owner of the structure or an employee of the owner of the structure. There are no further restrictions on the person conducting the inspection unless otherwise provided by law. All folding and telescopic seating shall be inspected to evaluate compliance with the manufacturer's installation and operational instructions and be inspected during the opening and closing of such seating. The owner shall maintain documentation of the inspections, which show the date and name of the person conducting the inspection and are initialed by the person conducting the inspection.

**301.3(19)** Add the following new section 1100:

1100. Any building or facility in compliance with the applicable requirements of 661—Chapter 30, Part 2, is in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.

**301.3(20)** Delete chapter 29.

**301.3(21)** Amend section 3001.3 by adding the following new unnumbered paragraph after the introductory paragraph:

Notwithstanding the references in Chapter 35 to editions of national standards adopted in this section, any editions of these standards adopted by the elevator safety board in 875—Chapter 72 are hereby adopted by reference. If a standard is adopted by reference in this section and there is no adoption by reference of the same standard in 875—Chapter 72, the adoption by reference in this section is of the edition identified in Chapter 35.

**301.3(22)** Delete appendices A, B, D, E, F, G, H, I, J, K, L, M, N, O, and P.

**301.3(23)** Retain Appendix C, Group U Agricultural Buildings.

**301.3(24)** Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

**301.3(25)** Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

**301.3(26)** Delete all references to the "International Mechanical Code" and insert in lieu thereof "state mechanical code."

**301.3(27)** Delete all references to the "International Residential Code" and insert in lieu thereof "rule 661—301.8(103A)."

**301.3(28)** Delete all references to the "International Energy Conservation Code" and insert in lieu thereof "661—Chapter 301, Part 3."

**301.3(29)** *Hospitals and health care facilities.*

*a.* A hospital, as defined in rule 661—201.2(10A), that is required to meet the provisions of the state building code is in compliance with the fire safety requirements of the state building code if the hospital is in compliance with the provisions of rule 661—201.14(10A). In any other case in which an applicable requirement of the Life Safety Code, adopted in 661—subrule 201.14(2), is inconsistent with an applicable requirement of the state building code, the hospital is in compliance with the state building code requirement if the Life Safety Code requirement is met.

*b.* A nursing facility or hospice, as defined in rule 661—201.2(10A), that is required to meet the provisions of the state building code is in compliance with the fire safety requirements of the state building code if the nursing facility or hospice is in compliance with the provisions of rule 661—201.14(10A). In any other case in which an applicable requirement of the Life Safety Code, adopted in 661—subrule 201.14(2), is inconsistent with an applicable requirement of the state building code, the nursing facility or hospice is in compliance with the state building code requirement if the Life Safety Code requirement is met.

*c.* An intermediate care facility, as defined in rule 661—201.2(10A), that is required to meet the provisions of the state building code is in compliance with the fire safety requirements of the state building code if the intermediate care facility is in compliance with the provisions of rule 661—201.14(10A). In any other case in which an applicable requirement of the Life Safety Code, as adopted in 661—subrule 201.14(2), is inconsistent with an applicable requirement of the state building code, the intermediate care facility is in compliance with the state building code requirement if the Life Safety Code requirement is met.

*d.* An ambulatory surgical center, as defined in rule 661—201.2(10A), that is required to meet the provisions of the state building code is in compliance with the fire safety requirements of the state building code if the ambulatory surgical center is in compliance with the provisions of rule 661—201.14(10A). In any other case in which an applicable requirement of the Life Safety Code, as adopted in 661—subrule 201.14(2), is inconsistent with an applicable requirement of the state building code, the ambulatory surgical center is in compliance with the state building code requirement if the Life Safety Code requirement is met.

*e.* A religious nonmedical health care institution that is required to meet the provisions of the state building code is in compliance with the provisions of the state building code if the institution is in compliance with the provisions of rule 661—201.14(10A). In any other case in which an applicable requirement of the Life Safety Code, as adopted in 661—subrule 201.14(2), is inconsistent with an applicable requirement of the state building code, the religious nonmedical health care institution is in compliance with the state building code requirement if the Life Safety Code requirement is met.

**661—301.4(103A) Mechanical requirements.** The provisions of the state mechanical code, 641—Chapter 61, as adopted and amended by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105 are hereby adopted by reference as the requirements for mechanical installations.

**661—301.5(103A) Electrical requirements.** The provisions of the state electrical code, as adopted and amended in 661—Chapter 550, are hereby adopted by reference as the requirements for electrical installations.

**661—301.6(103A) Plumbing requirements.**

**301.6(1)** Provisions of the state plumbing code, 641—Chapter 25, adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105, apply to plumbing installations in this state.

**301.6(2)** Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2015 edition, published by the International Code Council, located at www.iccsafe.org. The manufacturer's data plate must indicate which plumbing code was utilized for compliance with this rule, as set forth in 661—paragraph 16.610(15)*"e."*

**301.6(3)** Private sewage disposal systems shall comply with 567—Chapter 69.

**661—301.7(103A) Existing buildings.** The provisions of the International Existing Building Code, 2024 edition, published by the International Code Council, located at www.iccsafe.org, are hereby adopted by reference as the requirements for repair, alteration, change of occupancy, addition, and relocation of existing buildings, with the following amendments:

**301.7(1)** Delete section 101.1.

**301.7(2)** Delete section 101.4.2 and insert in lieu thereof the following new section:

101.4.2 Buildings Previously Occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the commissioner for the general safety and welfare of the occupants and the public.

**301.7(3)** Delete section 101.5.

**301.7(4)** Delete section 101.6.

**301.7(5)** Delete sections 103, 104, and 105.

**301.7(6)** Delete sections 106.1, 106.3, 106.4, 106.5, and 106.6.

**301.7(7)** Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117.

**301.7(8)** Delete section 306.

**301.7(9)** Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

**301.7(10)** Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

**301.7(11)** Delete all references to the "International Mechanical Code" and insert in lieu thereof "state mechanical code."

**301.7(12)** Delete all references to the "International Building Code" and insert in lieu thereof "rule 661—301.3(103A)."

**301.7(13)** Delete all references to the "International Residential Code" and insert in lieu thereof "rule 661—301.8(103A)."

**301.7(14)** Delete all references to the "International Fire Code" and insert in lieu thereof "state fire code."

**661—301.8(103A) Residential construction requirements.** The provisions of the International Residential Code, 2024 edition, published by the International Code Council, located at www.iccsafe.org, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

**301.8(1)** Delete section R101.1.

Insert new Exception 5: "5. Exterior decks, exterior balconies, and exterior porches."

**301.8(2)** Delete sections R103 through R114 and sections therein.

Note: The values for table R301.2 are determined by the location of the project and referenced footnotes from table R301.2.

**301.8(3)** Amend section R306.1.7 by striking the words "Chapter 3 of the International Private Sewage Disposal Code" and inserting in lieu thereof "567 Iowa Administrative Code Chapter 69".

**301.8(4)** Delete section R309.1.

Note: Deletion of section R309.1, which would have required the installation of sprinklers in newly constructed townhouses, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

**301.8(5)** Delete section R309.2.

Note: Deletion of section R309.2, which would have required the installation of sprinklers in newly constructed one- and two-family residences, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

**301.8(6)** Delete section R319.1 and insert in lieu thereof the following new section:

R319.1 Emergency escape and rescue required as follows: Basements, habitable attics and every sleeping room have at least one operable emergency and rescue opening that opens directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings are in each sleeping room, but are not necessary in adjoining areas of the basement. Where emergency escape and rescue openings are provided, they have a sill height of not more than 44 inches (1118 mm) above an adjacent permanent interior standing surface which is no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure complies with section R319.3. The net clear opening dimensions are obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation are provided with a window well in accordance with section R319.2. Emergency escape and rescue openings open directly into a public way, or to a yard or court that opens to a public way.

Exceptions:

- Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 $m^2$).
- Storm shelters constructed in accordance with 661—Chapter 301, Part 2.

- Where the dwelling unit or townhouse unit is equipped with an automatic sprinkler system installed in accordance with section P2904, sleeping rooms in basements are not required to have emergency escape and rescue openings provided that the basement has either (1) one means of egress complying with section R318 and one emergency escape and rescue opening or (2) two means of egress complying with section R318.
- A yard is not required to open directly into a public way where the yard opens to an unobstructed path from the yard to the public way if the path has a width of not less than 36 inches (914 mm).

**301.8(7)** Delete chapter 11 and insert in lieu thereof rule 661—301.24(103A).

**301.8(8)** Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661—301.9(103A).

**301.8(9)** Delete chapters 25 through 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105.

Exception: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2015 edition, published by the International Code Council, located at www.iccsafe.org. The manufacturer's data plate must indicate which plumbing code was utilized for compliance with this rule, as set forth in 661—paragraph 16.610(15)*"e."*

**301.8(10)** Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

The provisions of the state electrical code, as adopted and amended in 661—Chapter 504, are hereby adopted by reference as the requirements for electrical installations.

**301.8(11)** Delete appendices AA through CH.

**301.8(12)** Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

**301.8(13)** Delete all references to the "International Mechanical Code" and insert in lieu thereof "state mechanical code."

**301.8(14)** Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

**301.8(15)** Delete all references to the "International Building Code" and insert in lieu thereof "rule 661—301.3(103A)."

**301.8(16)** Delete all references to the "International Fire Code" and insert in lieu thereof "state fire code."

**661—301.9(103A) Fuel gas piping requirements.** Fuel gas piping shall comply with the requirements of 661—Chapter 226 and NFPA 54, ANSI Z223.1-2012, National Fuel Gas Code, 2012 Edition, published by the National Fire Protection Association. Liquefied petroleum gas facilities and appliances shall comply with rule 661—226.1(101).

**661—301.10(103A) Transition period.** A construction project subject to the provisions of any rule in Part 1 or Part 3 and commenced within 12 months after the effective date of revised standards may comply with either the newly adopted standards or the previous standards. "Commenced" means that the submitter has obtained preliminary approval from the commissioner or a local building department pursuant to rule 661—300.6(103A).

**661—301.11** to **301.15** Reserved.

PART 2
ACCESSIBILITY OF BUILDINGS AND FACILITIES AVAILABLE TO THE PUBLIC

**661—301.16(103A,104A) Purpose and scope.** Part 2 is intended to ensure that buildings and facilities used by the public, other than places of worship, are accessible to, and functional for, persons with disabilities. Rule 661—301.18(103A,104A) applies statewide to new construction of buildings and facilities available to the public and to renovation and rehabilitation projects on existing buildings and facilities when local or state building codes require compliance with standards for new construction. Rule 661—301.19(103A,104A) applies statewide to construction of multiunit residential buildings.

**301.16(1)** Note A. Although rule 661—301.18(103A,104A) is based upon the federal 2010 ADA Standards for Accessible Design and adopts the language of the 2010 ADA Standards for Accessible Design by reference, and rule 661—301.19(103A,104A) is based upon the requirements of the federal Fair Housing Act, determinations of state and local building officials charged with enforcement of these rules are not binding on other state or federal jurisdictions and do not prevent the federal government or another state from making a different determination under applicable law.

**301.16(2)** Note B. Other federal and state laws address requirements for accessibility for persons with disabilities and may be applicable to buildings and facilities subject to Part 2. Nothing in these rules should be interpreted as limiting the applicability of other provisions of state or federal law. These provisions include but are not limited to the following:

*a.* Iowa Code chapter 216, the Iowa civil rights Act of 1965.

*b.* Iowa Code chapter 216C, which enumerates the rights of persons who are blind or partially blind and persons with physical disabilities.

*c.* Iowa Code chapter 321L and 661—Chapter 18, which relate to requirements for parking for persons with disabilities.

*d.* The federal Architectural Barriers Act of 1968 (Public Law 90-480).

*e.* The federal Rehabilitation Act of 1973 (Public Law 93-112).

*f.* The federal Fair Housing Act of 1968 (Public Law 90-284); the federal Fair Housing Amendments Act of 1988 (Public Law 100-430); and related regulations, including 24 CFR 100, Subpart D.

**661—301.17(103A,104A) Definitions.** The following definitions are adopted for purposes of Part 2.

*"ADA"* means the federal Americans with Disabilities Act (Public Law 101-336).

*"ADAAG"* means Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 28 CFR Part 36, Appendix A, as revised through July 1, 1994.

*"ADASAD 2010"* means 2010 ADA Standards for Accessible Design, published by the U.S. Department of Justice, September 15, 2010. Included in the publication are accessibility standards for state and local government facilities and accessibility standards for public accommodations and commercial facilities.

NOTE: Copies of ADASAD 2010 and additional explanatory material may be downloaded from www.ada.gov/law-and-regs.

*"IBC"* means the International Building Code, adopted in rule 661—301.3(103A).

**661—301.18(103A,104A) Accessibility of buildings and facilities available to the public.** Buildings and facilities which are available to the public, other than places of worship, shall comply with one of the following:

**301.18(1)** Applicable provisions of ADASAD 2010.

**301.18(2)** IBC, Chapter 11 and applicable accessibility provisions contained in IBC.

NOTE: Approval of construction plans based upon compliance with the applicable provisions of the IBC, as provided, does not relieve the designer, builder, building owner, or building operator from

responsibility under federal law to comply with all applicable provisions of the 2010 ADA Standards for Accessible Design.

**661—301.19(103A,104A) Making apartments accessible and functional for persons with disabilities.**

**301.19(1)** Multiple dwelling unit buildings. This rule applies to all multiple dwelling unit buildings that consist of four or more dwelling units if such buildings have one or more elevators. In such buildings without an elevator, all ground floor units must be accessible. The requirements of this rule apply to the individual dwelling units and the common use spaces that are accessible to persons with disabilities in multiple dwelling unit buildings.

EXCEPTION 1: A multiple dwelling unit building is deemed to be in compliance with this rule if it is located in a local jurisdiction which has enacted accessibility rules that have been recognized by the U.S. Department of Housing and Urban Development as providing a safe harbor for compliance with the accessibility requirements established in the federal Fair Housing Act and if the building has been found to be in compliance with those requirements, unless the building is required to comply with the requirements of the Uniform Federal Accessibility Standards, or other applicable standards which may be more restrictive than the provisions of this rule.

EXCEPTION 2: Certain multiple dwelling unit buildings are required to comply with the Uniform Federal Accessibility Standards, published by the U.S. Access Board, 1988. Compliance with the provisions of this rule does not substitute for compliance with any applicable provision of the Uniform Federal Accessibility Standards, or any other applicable standards which may be more restrictive than the provisions of this rule.

NOTE: Compliance with the Uniform Federal Accessibility Standards is generally necessary for buildings and facilities constructed with federal financial assistance.

*"Dwelling unit"* means a single unit of residence for a household of one or more persons. Examples of a dwelling unit covered by these rules include a condominium, an apartment unit within an apartment building, and another type of dwelling in which sleeping accommodations are provided but toilet or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

*"Ground floor"* means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors.

*a.* The individual dwelling units shall contain an accessible route into and through the unit, as well as meet the following:

(1) All doors intended for use as passage through the dwelling unit have a clear opening of at least 32″ nominal width with the door open 90 degrees, measured between the face of the door and the stop. Openings more than 24″ in depth are not considered doorways.

NOTE: A 34″ door, hung in the standard manner, provides an acceptable 32″ opening.

(2) Except at doorways, the minimum clear width of the accessible route is at least 36″ wide.

(3) In single-story units, special features such as lofts or sunken or raised areas may be on an accessible route provided the areas do not interrupt the accessible route through the remainder of the dwelling unit.

(4) In multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit and such entry/accessible floor complies with the requirements of subparagraphs (1), (2) and (3) above. The entry/accessible floor contains a bathroom or powder room which complies with paragraph *"c"* below.

(5) Exterior deck, patio, or balcony surfaces are no more than ½″ below the floor level of the interior of the dwelling unit unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface is no more than 4″ below the floor level of the interior or lower if required by local building code.

(6) Thresholds at exterior doors, including sliding tracks, are no higher than ¾″. Thresholds and changes in elevations as in subparagraph (5) above are beveled with a slope no greater than 1:2.

*b.* Kitchens shall meet or be adaptable to meet the following:

(1) A clear floor space at least 30″ × 48″ that allows a parallel approach by a person in a wheelchair is provided at the range or cooktop and the sink. Either a parallel or forward approach is provided at the oven, dishwasher, refrigerator/freezer or trash compactor.

(2) Clearance between counters and all opposing base cabinets, countertops, appliances or walls are at least 40″. In U-shaped kitchens with a sink or cooktop at the base of the "U," the base cabinets are removable at that location or a 60″ turning radius is provided.

*c.* All bathrooms of covered multifamily dwelling units shall comply with provisions of subparagraph (1) of this paragraph or at least one bathroom in the dwelling unit shall comply with provisions of subparagraph (2) of this paragraph and all other bathrooms and powder rooms within the dwelling unit must be on an accessible route with usable entry doors in accordance with paragraph "a" above. "Powder room" means a room with a toilet and sink.

In multistory dwelling units, only those bathrooms on the accessible level are subject to these requirements. Where the powder room is the only facility provided on the accessible level of a multistory dwelling unit, the powder room must comply with the provisions of subparagraph (1) or (2) of this paragraph.

(1) Sufficient maneuvering space is provided within the bathroom for a person using a wheelchair or other mobility aid to enter and close the door, use the fixtures, reopen the door and exit. Doors may swing into the clear floor space provided at any fixture if the maneuvering space is provided. Maneuvering space may include any knee space or toe space available below the bathroom fixtures.

Clear floor space at fixtures may overlap.

If the shower stall is the only bathing facility provided in the covered dwelling unit, the shower stall measures at least 36″ × 36″.

Note: Cabinets under lavatories are acceptable provided the bathroom has space to allow a parallel approach by a person in a wheelchair; if parallel approach is not possible within the space, any cabinets provided would have to be removable to afford the necessary knee clearance for forward approach.

(2) Where the door swings into the bathroom, there is a clear space (2′6″ × 4′0″) within the room to position a wheelchair or other mobility aid clear of the path of the door as it is closed and to permit the use of the fixtures. This clear space can include any knee space and toe space available below the bathroom fixtures.

Where the door swings out, a clear space is provided within the bathroom for a person using a wheelchair or other mobility aid to position the wheelchair such that the person is allowed use of the fixtures. There is a clear space to allow persons using wheelchairs to reopen the door to exit.

When both tub and shower fixtures are provided in the bathroom, at least one fixture is made accessible. When two or more lavatories are provided in a bathroom, at least one is made accessible.

Toilets are located within bathrooms in a manner that permits a grab bar to be installed on one side of the fixture. In locations where toilets are adjacent to walls or bathtubs, the centerline of the fixture is a minimum of 1′6″ from the obstacle. The nongrab bar side of the toilet fixture is a minimum of 1′3″ from the finished surface of the adjoining walls, vanities, or the edge of a lavatory.

Vanities and lavatories are installed with the center line of the fixture a minimum of 1′3″ horizontally from an adjoining wall or fixture. The top of the fixture rim is a maximum height of 2′10″ above the finished floor. If knee space is provided below the vanity, the bottom of the apron is at least 2′3″ above the floor. If provided, full knee space (for front approach) is at least 1′5″ deep.

Bathtubs and tub/showers located in the bathroom provide a clear access aisle adjacent to the lavatory that is at least 2′6″ wide and extends for a length of 4′0″ measured from the head of the bathtub.

Stall showers in the bathroom may be of any size or configuration. A minimum clear floor space 2′6″ wide × 4′0″ deep should be available outside the stall. If the shower stall is the only bathing facility provided in the covered dwelling unit, or on the accessible level of a covered multistory unit, and measures a nominal 36″ × 36″, the shower stall has reinforcing to allow for installation of an optional wall-hung bench seat.

*d.* Walls in bathrooms which are to be adaptable will be reinforced to allow later installation of grab bars around toilet, tub, shower stall and shower seat where provided.

Where the toilet is not placed adjacent to a side wall, provision shall be made for floor-mounted foldaway or similar alternative grab bars. Where the powder room is the only toilet facility located on an accessible level of a multistory dwelling unit, it must comply with this requirement for reinforced walls for grab bars.

NOTE: A tub may have shelves or benches at either end; or a tub may be installed without surrounding walls, if there is provision for alternative mounting of grab bars. For example, a sunken tub placed away from walls could have reinforced areas for installation of floor-mounted grab bars. The same principle applies to shower stalls, e.g., glass-walled stalls could be planned to allow floor-mounted grab bars to be installed later.

Reinforcement for grab bars may be provided in a variety of ways (for example, by plywood or wood blocking) so long as the necessary reinforcement is placed so as to permit later installation of appropriate grab bars.

*e.* Public and common use areas shall be readily accessible to and usable by persons with disabilities.

*f.* Light switches, electrical outlets, thermostats and other environmental controls shall be located no higher than 48″, and no lower than 15″, above the floor. If the reach is over an obstruction between 20″ and 25″ in depth, the maximum height is reduced to 44″ for forward approach; or 46″ for side approach, provided the obstruction is no more than 24″ in depth. Obstructions should not extend more than 25″ from the wall beneath a control. (See ADAAG Figure 5.)

NOTE: Controls or outlets that do not satisfy these specifications are acceptable provided that comparable controls or outlets (i.e., that perform the same functions) are provided within the same area and are accessible.

**301.19(2)** Elevators. An elevator meeting the requirements established for accessible elevators in Section 4.10 of the Americans with Disabilities Act Accessibility Guidelines (28 CFR Part 36, Appendix A) is required in any apartment building of four or more stories.

NOTE: Elevators are not necessary in apartment buildings of three or fewer stories; however, the Uniform Federal Accessibility Standards, or any other applicable standard, may require the installation of an elevator. If an elevator is not required to be installed by this rule, then the elevator is not subject to the requirements of Section 4.10 of the Americans with Disabilities Act Accessibility Guidelines (28 CFR Part 36, Appendix A).

**301.19(3)** Any covered units within a multiple unit dwelling which comply with a code or standard which has been certified as a safe harbor for compliance with the accessibility requirements of the federal Fair Housing Act by the U.S. Department of Housing and Urban Development are in compliance with these rules, unless the covered units are required to comply with the Uniform Federal Accessibility Standards or any other applicable requirements which may be more restrictive than the provisions of this rule.

**661—301.20** to **301.22** Reserved.

PART 3
REQUIREMENTS FOR ENERGY CONSERVATION IN CONSTRUCTION

**661—301.23(103A) Scope and applicability of energy conservation requirements.**

**301.23(1)** *Scope.* Part 3 establishes thermal energy efficiency standards for the design of new buildings and structures or portions thereof, additions to existing buildings, and renovation and remodeling of existing buildings, except for residential buildings of one or two dwelling units, that are intended for human occupancy and that are heated or cooled by regulating their exterior envelopes and selection of their heating, ventilation, and air-conditioning systems, service water heating systems and equipment for the efficient use of energy, and lighting efficiency standards for buildings intended for human occupancy that are lighted.

**301.23(2)** *Applicability.* Part 3 applies to design and construction of buildings that are intended for human occupancy throughout the state of Iowa. Any construction of buildings or facilities that are intended for human occupancy and that are heated or cooled is covered, with the exception of renovation and remodeling of residential buildings of one or two dwelling units, which are not covered. Rule 661—301.24(103A) establishes standards for design and construction of residential buildings of three or fewer stories. Rule 661—301.25(103A) establishes standards for design and construction of commercial buildings and residential buildings of four or more stories. The occupancy of any building covered by this chapter shall be determined based upon the occupancy definitions in chapter 3 of the International Building Code, as adopted in rule 661—301.3(103A).

**301.23(3)** *Review by architect or engineer.* Plan review shall meet the following criteria:

*a.* The plans and specifications for all buildings to be constructed that exceed a total volume of 100,000 cubic feet of enclosed space that is heated or cooled are reviewed by a registered architect or licensed professional engineer for compliance with applicable energy efficiency standards. Buildings with less than 100,000 cubic feet can be reviewed by the owner or designated representative.

*b.* A statement that a review has been accomplished and that the design complies with the energy efficiency standards is signed and sealed by the responsible registered architect or licensed professional engineer. This statement is filed with the commissioner or a local building official on a form approved by the commissioner prior to construction or before obtaining any local permits. The statement is filed with the commissioner for any project that is subject to plan review by the building code bureau.

*c.* If the plans and specifications relating to energy efficiency for a specific structure have been approved, additional buildings may be constructed from those same plans and specifications without need of further approval if construction begins within five years of the date of approval. Alterations of a structure that has been previously approved do not require a review because of these changes, provided the basic structure remains unchanged and no additional energy is necessary for heating, cooling or lighting.

*d.* Prior to the completion of construction, no changes are made to any approved plan or specifications that increase the amount of energy used for heating, cooling, or lighting, unless the changes are approved by the responsible registered architect or licensed professional engineer in writing and notice has been filed with the commissioner or a local building official. The commissioner or a local building official is notified of any change that is anticipated to decrease the amount of energy used. The commissioner is notified pursuant to this paragraph for any project that is subject to plan review by the bureau.

**661—301.24(103A) Residential energy code.** The International Energy Conservation Code – Residential Provisions, 2012 edition, published by the International Code Council, located at www.iccsafe.org, is adopted by reference as the residential energy code of the state of Iowa building code, applicable to residential construction limited to three or fewer stories throughout the state of Iowa, with the following amendments:

**301.24(1)** Delete section R101.1.

**301.24(2)** Delete section R101.2 and insert in lieu thereof the following new section:

R101.2 Scope. This code applies to residential buildings and the building sites and associated systems and equipment as defined pursuant to 661—subrule 301.23(2). The remodeling or renovation of one- and two-family dwelling units is not within the scope of this code.

**301.24(3)** Delete section R103.3.1.

**301.24(4)** Delete section R103.3.2.

**301.24(5)** Delete section R103.3.3.

**301.24(6)** Delete section R104.1 and insert in lieu thereof the following new section:

R104.1 General. Construction or other work that is required to be inspected by state law or local ordinance shall be in accordance with sections R104.2 through R104.8. The commissioner has authority to perform audits to ensure compliance with this code. When local governments conduct compliance audits, the information may be provided to the Department of Energy or to the commissioner in a timely way. Local governments may contract with the commissioner to conduct audits.

**301.24(7)** Delete sections R108 and R109 and all sections contained therein.

**301.24(8)** Delete section R402.1.1 and insert in lieu thereof the following new section:

R402.1.1 Insulation and fenestration criteria. The building thermal envelope shall meet the requirements of Table R402.1.1 based on the climate zone specified in chapter 3.

Table R402.1.1

**Table R402.1.1 Insulation and Fenestration Requirements by Component[a]**

| Climate Zone | Fenestration U-Factor[b] | Skylight U-Factor[b] | Glazed Fenestration SHGC[b,e] | Ceiling R-Value | Wood Frame Wall R-Value | Mass Wall R-Value[i] | Floor R-Value | Basement Wall R-Value[c] | Slab R-Value & Depth[d] | Crawl Space[c] Wall R-Value |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | NR | .75 | .25 | 30 | 13 | 3/4 | 13 | 0 | 0 | 0 |
| 2 | .40 | .65 | .25 | 38 | 13 | 4/6 | 13 | 0 | 0 | 0 |
| 3 | .35 | .55 | .25 | 38 | 20 or 13+5[h] | 8/13 | 19 | 5/13[f] | 0 | 5/13 |
| 4 | .35 | .55 | .40 | 49 | 20 or 13+5[h] | 8/13 | 19 | 10/13 | 10, 2ft | 10/13 |
| 5 | .32 | .55 | NR | 49 | 20 or 13+5[h] | 13/17 | 30[g] | 15/19 | 10, 2ft | 15/19 |
| 6 | .32 | .55 | NR | 49 | 20 or 13+5[h] | 15/20 | 30[g] | 15/19 | 10, 4ft | 15/19 |
| 7 & 8 | .32 | .55 | NR | 49 | 20+5 or 13+10[h] | 19/21 | 38[g] | 15/19 | 10, 4ft | 15/19 |

[a] R-values are minimums. U-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the installed R-value of the insulation shall not be less than the R-value specified in the table.

[b] The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration. Exception: Skylights may be excluded from glazed fenestration SHGC requirements in Climate Zones 1 through 3 where the SHGC for such skylights does not exceed .30.

[c] "15/19" means R-15 continuous insulation on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the home. "10/13" means R-10 continuous insulation on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

[d] R-5 shall be added to the slab edge R-values for heated slabs. Insulation depth shall be the depth of the footing or 2 feet, whichever is less in Climate Zones 1 through 3 for heated slabs.

[e] There are no SHGC requirements in the Marine Zone.

[f] Basement wall insulation is not necessary in warm-humid locations as defined by Figure R301.1 and Table R301.1.

[g] Or insulation sufficient to fill the framing cavity, R-19 minimum.

[h] First value is cavity insulation; second value is continuous insulation or insulated siding. Therefore, "13+5" means R-13 cavity insulation plus R-5 continuous insulation or insulated siding. If structural sheathing covers 40 percent or less of the exterior, continuous insulation R-value shall be permitted to be reduced by no more than R-3 in the locations where structural sheathing is used – to maintain a consistent total sheathing thickness.

[i] The second R-value applies when more than half the insulation is on the interior of the mass wall.

**301.24(9)** Delete section R402.4.1.2 and insert in lieu thereof the following new section:

R402.4.1.2 Testing shall meet the following requirements: The building or dwelling unit is tested and verified as having an air leakage rate not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 4 air changes per hour in Climate Zones 3 through 8. Testing is conducted with a blower door at a pressure of 0.2 inches w.g. (50 pascals). Where required by the code official, testing is conducted by an approved third party and a written report of the results is signed by the party conducting the test and provided to the code official. Testing is performed at any time after creation of all penetrations of the building thermal envelope.

During testing:

1. Exterior windows and doors, fireplace and stove doors are closed, but not sealed beyond the intended weatherstripping or other infiltration control measures;
2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers are closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of the test, are open;
4. Exterior doors for continuous ventilation systems and heat recovery ventilators are closed and sealed;
5. Heating and cooling systems, if installed at the time of the test, are turned off; and
6. Supply and return registers, if installed at the time of the test, are fully open.

**301.24(10)** Delete section R403.2.2 and insert in lieu thereof the following new section:

R403.2.2 Sealing is mandatory and shall meet the following requirements: Ducts, air handlers, and filter boxes are sealed. Joints and seams comply with either the International Mechanical Code or International Residential Code, as applicable.

Exceptions:

1. Air-impermeable spray foam products may be applied without additional joint seals.
2. Where a duct connection is made that is partially inaccessible, three screws or rivets are equally spaced on the exposed portion of the joint so as to prevent a hinge effect.
3. Continuously welded and locking-type longitudinal joints and seams in ducts operating at static pressures less than 2 inches of water column (500 Pa) pressure classification do not require additional closure systems.

Duct tightness is verified by either of the following:

1. Postconstruction test: Leakage to outdoors is less than or equal to 4 cfm (113.3 L/min) per 100 square feet (9.29 $m^2$) of conditioned floor area or total leakage is less than or equal to 6 cfm (170 L/min) per 100 square feet (9.29 $m^2$) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots are taped or otherwise sealed during the test.
2. Rough-in test: Total leakage is less than or equal to 6 cfm (170 L/min) per 100 square feet (9.29 $m^2$) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure. All registers are taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage is less than or equal to 3 cfm (85 L/min) per 100 square feet (9.29 $m^2$) of conditioned floor area.

Testing is conducted by an approved third party and a written report of the results is signed by the party conducting the test and provided to the code official.

Exception: The duct leakage test is not needed for ducts and air handlers located entirely within the building thermal envelope unless cavities are used for returns.

**301.24(11)** Delete section R403.2.3 and insert in lieu thereof the following new section:

R403.2.3 Building cavities (mandatory). Building framing cavities cannot be used as supply ducts. Building framing cavities may be used as return ducts if both of the following conditions exist:

1. Ducts must be tested for duct leakage in accordance with section R403.2.2.
2. Exterior wall cavities cannot be used for return ducts.

**661—301.25(103A) Adoption of nonresidential energy code.** The International Energy Conservation Code – Commercial Provisions, 2012 edition, published by the International Code Council, located at www.iccsafe.org, is hereby adopted by reference as the nonresidential energy code of the state building code, applicable to commercial construction or residential construction of four or more stories within the state of Iowa, with the following amendments:

**301.25(1)** Delete section C101.1.

**301.25(2)** Delete section C101.2 and insert in lieu thereof the following new section:

C101.2 Scope. This code applies to commercial buildings and the buildings' sites and associated systems and equipment as defined pursuant to 661—subrule 301.23(2).

**301.25(3)** Delete section C103.3.1.

**301.25(4)** Delete section C104.1 and insert in lieu thereof the following new section:

C104.1 General. Construction or other work that is to be inspected by state law or local ordinance shall be in accordance with sections C104.2 through C104.8.

**301.25(5)** Delete sections C108 and C109 and all sections contained therein.

**661—301.26** and **301.27** Reserved.

PART 4
LIFE CYCLE COST ANALYSIS OF PUBLIC FACILITIES

**661—301.28(470) Life cycle cost analysis.**

**301.28(1)** *Submission.* Any public agency as defined by Iowa Code section 470.1 will prepare a life cycle cost analysis in compliance with Iowa Code chapter 470 and submit the analysis to the commissioner before construction commences.

**301.28(2)** *Notification by state agency.* Any public agency that is a state agency as defined in Iowa Code section 7D.34 will, within 60 days of final selection of a design architect or engineer, notify the commissioner and the Iowa energy office in the economic development authority of the methodology to be used to perform the life cycle cost analysis. Notice will be given on the forms provided by the Iowa office of energy for this purpose. A life cycle cost analysis prepared by a state agency will be submitted in sufficient time ahead of the release of plans for bids to allow for revisions or additions that may be made to the plans. Public funds will not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance with Iowa Code chapter 470 and the actual construction or renovation is consistent with the design.

**301.28(3)** *Exemptions from implementation.*

*a.* A public agency responsible for construction or renovation of a public facility may apply to the commissioner for exemption from any recommendation of the life cycle cost analysis.

*b.* The public agency will implement all recommendations of the life cycle cost analysis except those which have been approved for exemption by the commissioner and the director of the office of energy independence.

EXCEPTION: The public agency is not required to implement any recommendation which would result in a violation of any other provision of law. If the public agency determines that compliance with any recommendation of the life cycle cost analysis would result in a violation of law, the public agency will so notify the commissioner.

*c.* The commissioner and the director of the economic development authority will evaluate each request for an exemption on a case-by-case basis, considering the following factors:

(1) The purpose of the facility or renovation;
(2) Preservation of historic architectural features;
(3) Site considerations;
(4) Health and safety concerns;
(5) Compliance with any other provisions of law; and
(6) The technical feasibility of implementing the recommendation. "Technical feasibility" means that a recommendation may be implemented without altering major structural features of an existing facility.

**661—301.29** Reserved.

PART 5
SUSTAINABLE DESIGN STANDARDS

**661—301.30(103A) Scope and purpose.**

**301.30(1)** *Scope.* The standards established in Part 5 apply to building construction projects in Iowa and are based upon state or federal statutory requirements; administrative rules adopted by state agencies that own, manage, regulate, or finance building construction projects; or federal regulations.

**301.30(2)** *Purpose.* The purpose of the standards in Part 5 is to promote sustainable design in building construction, which is defined as construction that meets current needs while not compromising the needs of future generations. Sustainable design standards are intended to minimize the adverse environmental impacts of construction and the built environment.

**661—301.31(103A) Definitions.** The following definitions apply to Part 5:

*"Commercial"* means a building construction project that is not residential.

*"Residential"* means a building construction project that involves a building or buildings, each of which is a detached one- or two-family dwelling or which consists of townhouses not more than three stories above grade in height with a separate means of egress to the exterior of the building for each dwelling unit and consisting entirely of dwelling units and their accessory structures.

**661—301.32(103A) Submission of projects.**

**301.32(1)** *Approval of building code commissioner.* Approval of a construction project as sustainably designed pursuant to these rules may be granted only by the commissioner. All requests for approval of a project as sustainably designed must be submitted to the bureau at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

**301.32(2)** *Building code approval.* No building construction project will be approved as a sustainably designed project pursuant to these rules unless construction plans for the project have been approved by the commissioner as meeting the state building code or by a local building department as meeting the applicable local building code.

**301.32(3)** *Projects subject to state building code.* If approval as a sustainably designed project is requested for a project that is otherwise subject to the state building code, approval may be requested by including a statement in the materials submitted pursuant to 661—Chapter 300 that approval for the project as sustainably designed is being requested.

**301.32(4)** *Projects subject to local building codes.* If approval from the commissioner is sought for a project that is subject to a local building code and code enforcement, approval may be sought by submitting construction plans to the bureau as provided in 661—Chapter 300, with a cover letter stating that approval of the project as a sustainably designed project is being requested and that the project has been submitted for review to the local building department. The commissioner will not issue approval of the project as a sustainably designed project until evidence of approval of the construction plans by the local building department are submitted to the bureau.

**301.32(5)** *Projects not otherwise subject to state or local building codes.* If approval as a sustainably designed project is sought for a building construction project that is otherwise not subject to the state building code or a local building code, approval may be sought by submitting construction plans for the project to the bureau as provided in 661—Chapter 300, with a cover letter stating that approval as a sustainably designed project is being requested and that the project is not subject to a local building code enforced by a local jurisdiction. The project will be subject to the state building code and to procedures and fees for review of construction plans and inspections as provided in 661—Chapter 300.

**301.32(6)** *Application form.* A completed application form prescribed by the commissioner shall be included with the submission of the construction plans for review of any project for which approval as a sustainably designed project is requested.

**661—301.33(103A) Sustainable design criteria for residential projects.** A residential building construction project will be approved as sustainably designed if it meets any of the following requirements:

**301.33(1)** Satisfaction of all of the mandatory criteria of the Iowa economic development authority's green streets criteria; or

**301.33(2)** Compliance with ICC 700 National Green Building Standard®, (ICC 700-2008 NGBS) published by the International Code Council, at the bronze level; or

**301.33(3)** Certification from the United States Green Building Council at the certified level or better in the Leadership in Energy and Environmental Design (LEED) green building rating system for residential projects; or

**301.33(4)** Satisfaction of any alternative set of criteria submitted in advance to and approved by the commissioner as equivalent to the requirements of subrules 300.33(1) through 300.33(3).

**661—301.34(103A) Sustainable design criteria for commercial projects.** A commercial building construction project will be approved as sustainably designed if it meets the following applicable requirements:

**301.34(1)** If approval as a sustainably designed project is being sought in order to qualify for a tax credit or tax refund, the project will be approved as sustainably designed if the building receives certification from the United States Green Building Council at the Certified level or better in the Leadership in Energy and Environmental Design (LEED) green building rating system and if the building complies with the requirements of ASHRAE 90.1 2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE).

**301.34(2)** If the project includes only the following commercial structures, satisfaction of all of the mandatory criteria of the Iowa green streets criteria:

*a.* Day care centers.

*b.* Vocational rehabilitation centers.

*c.* Community centers.

*d.* Senior centers.

EXCEPTION: Application may be made to the commissioner to accept satisfaction of all of the mandatory criteria of the Iowa green streets criteria as the basis for approval of other commercial projects as sustainably designed. Such submission should be limited to smaller commercial projects, and approval as a sustainably designed project is at the discretion of the commissioner, who will award such approval only if the commissioner is convinced that the Iowa green streets criteria are applicable to the project. Written approval for use of the Iowa green streets criteria pursuant to this exception shall be sought and obtained prior to submission of an application for approval as a sustainably designed project.

**301.34(3)** If a project involves the construction of a building or a portion of a building intended to host a data center or operations of a web portal business, it will be approved as sustainably designed

if the project receives certification at the certified level from the United States Green Building Council in the LEED green building rating system and complies with the requirements of ASHRAE 90.1 2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the ASHRAE.

**301.34(4)** Satisfaction of any alternative set of criteria submitted in advance to and approved by the commissioner as equivalent to the requirements set forth in subrule 301.34(1).

**661—301.35(103A) Fees.**

**301.35(1)** *Projects subject to the state building code.* For any project for which approval as a sustainably designed project is requested from the commissioner and which is otherwise subject to the state building code, the additional fee for review for compliance with sustainable design standards is $100, due prior to review of the application.

**301.35(2)** *Projects subject to local building codes and code enforcement.* For any project approved by a local building department as compliant with the local building code and for which approval as a sustainably designed project is requested, a fee of $250 is due prior to the commissioner's review of the application for approval as a sustainably designed project.

**301.35(3)** *Projects not otherwise subject to a building code.* For any project for which approval as a sustainably designed project is requested and which is not otherwise subject to a building code, the plan review fee is the same as the plan review fee for the project established in 661—subrule 300.4(2). An additional fee of $100 for review for compliance with the requirements set forth in Part 5 applies and is due prior to review of the plan.

**661—301.36** Reserved.

PART 6
WEATHER SAFE ROOMS

**661—301.37(103A) Scope.** The standards adopted in Part 6 apply to the design and construction of weather safe rooms. This chapter does not require the construction of a weather safe room or rooms for any construction project but does establish standards for design and construction of weather safe rooms when their construction is necessary under another provision of law or is incorporated voluntarily in a construction project.

**661—301.38(103A) Definition.** The following definition applies to Part 6:

*"Weather safe room"* means a building, structure, or portion of a building or structure designated for use during a severe windstorm event.

**661—301.39(103A) Standards.** Any weather safe room shall be designed and constructed in compliance with the provisions of ICC 500-2014, ICC/NSSA Standard for the Design and Construction of Storm Shelters, published by the International Code Council, located at www.iccsafe.org. Any provision which would apply to a hurricane safe structure but not to a tornado safe structure does not apply. For any provision for which a distinction is made between a tornado safe structure and a hurricane safe structure, the requirement for a tornado safe structure applies.

**661—301.40** Reserved.

PART 7
STATE HISTORIC BUILDING CODE

**661—301.41(103A) Scope and definition.** Part 7 applies to historic buildings and is an alternative to the state building code or local building codes for the buildings to which it applies.

*"Historic building"* means any building or structure that is listed in the state or National Register of Historic Places, that is designated as a historic property under local or state designation law or survey, that is certified as a contributing resource within a National Register-listed or locally designated historic district, or that has an opinion or certification that the property is eligible to be listed on the state or National Register of Historic Places either individually or as a contributing building to a historic district by the state historic preservation officer pursuant to Iowa Code section 103A.42 or the Keeper of the National Register of Historic Places.

**661—301.42(103A) Adoption.** The provisions of the International Existing Building Code, 2024 edition, published by the International Code Council, located at www.iccsafe.org, are adopted as the alternative requirements for rehabilitation, preservation, restoration, repair, alteration, change of occupancy and relocation of and addition to historic buildings, with the following amendments:

**301.42(1)** Delete the definition of "historic building."

**301.42(2)** Delete section 101.1.

**301.42(3)** Delete section 101.4.2 and insert in lieu thereof the following new section: 101.4.2 Buildings previously occupied. The legal occupancy of any structure existing on the date of adoption of this code is permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the commissioner for the general safety and welfare of the occupants and the public.

**301.42(4)** Delete section 101.5.

**301.42(5)** Delete section 101.6.

**301.42(6)** Delete sections 103, 104, and 105.

**301.42(7)** Delete sections 106.1, 106.3, 106.4, 106.5, and 106.6.

**301.42(8)** Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117.

**301.42(9)** Delete section 306.

**301.42(10)** Delete appendix B and insert in lieu thereof "Any building or facility subject to Part 7 shall comply with the provisions of 661—Chapter 301, Part 2."

**301.42(11)** Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

**301.42(12)** Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code".

**301.42(13)** Delete all references to the "International Mechanical Code" and insert in lieu thereof "state mechanical code".

**301.42(14)** Delete all references to the "International Building Code" and insert in lieu thereof "rule 661—301.3(103A)".

**301.42(15)** Delete all references to the "International Residential Code" and insert in lieu thereof "rule 661—301.8(103A)".

**301.42(16)** Delete all references to the "International Fire Code" and insert in lieu thereof "state fire code".

NOTE 1: International Existing Building Code, as adopted by rule 661—301.7(103A), Resource A, provides guidelines for evaluating fire ratings of archaic materials and assemblies that may be used by designers and code officials when evaluating compliance with provisions of this chapter.

NOTE 2: Except for elevators excluded from the jurisdiction of the department by the provisions of Iowa Code section 89A.2, each elevator is to comply with any applicable requirements established by the department and is subject to enforcement of any applicable regulation.

NOTE 3: Except for boilers and pressure vessels excluded from the jurisdiction of the department by the provisions of Iowa Code section 89.4, each boiler or pressure vessel is to comply with any applicable requirements established by the department and is subject to enforcement of any applicable regulations.

Any boiler that is subject to requirements established by the department of natural resources is to comply with any such requirements and is subject to enforcement of any applicable regulations by the department of natural resources.

These rules are intended to implement Iowa Code chapters 103A, 104A, and 470.

ITEM 2. Rescind and reserve **661—Chapter 302**.

ITEM 3. Rescind and reserve **661—Chapter 303**.

ITEM 4. Rescind and reserve **661—Chapter 310**.

ITEM 5. Rescind and reserve **661—Chapter 315**.

ITEM 6. Rescind and reserve **661—Chapter 350**.

**Regulatory Analysis**

Notice of Intended Action to be published: 661—Chapter 322
"State Building Code—Manufactured Housing Support and Anchorage Systems"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103A.7 and 103A.9
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 103A

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025 | 6200 Park Avenue |
| 2 to 3 p.m. | Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeremiah Junker
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.672.4745
Email: jeremiah.junker@dia.iowa.gov

*Purpose and Summary*

This proposed rulemaking repromulgates Chapter 322 and implements Iowa Code section 103A.7, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 103A.7(1) empowers and directs the state building code Commissioner to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in Iowa Code chapter 103A, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public. Pursuant to Iowa Code section 103A.7(2)"c," the rules shall include reasonable provisions for the manufacture and installation of factory-built structures. Iowa Code section 103A.9 states that the state building code shall contain provisions relating to the manufacture and installation of factory-built structures and provides requirements for factory-built structures.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Installers of manufactured homes must pay $25 for an installation seal, $10 for an installation seal replacement, and $100 for ground support and anchoring system approval. Notably, Iowa Code section 103A.9(2) requires the Commissioner to establish an "insignia of approval" and requires factory-built structures to bear an insignia of approval prior to installation, and Iowa Code section 103A.23 requires the Commissioner to establish fees to defray the costs of administering Iowa Code

chapter 103A and the state building code. Additionally, manufactured home retailers must pay a license fee ($100), and this fee is explicitly established by Iowa Code section 103A.52(2).

Manufacturers and installers (and, by extension, likely purchasers/owners) of factory-built structures incur indirect costs by the nature of needing to meet the requirements of these rules.

- **Classes of persons that will benefit from the proposed rulemaking:**

Iowans who live in and utilize factory-built structures that are subject to these rules, which ensure the minimum safety standards at such structures, will benefit. These rules greatly improve the safety of the persons who live in and use factory-built structures. Manufactured homes are being safely installed in Iowa, pursuant to these rules governing manufactured housing supports and anchorage systems.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

In fiscal year 2023, the Department collected a total of $91,700 in seal fees and $47,100 in manufactured home retailer license fees. As discussed above, these fees are supported by statute, and in the case of the manufacture retailer license fees, the amount is explicitly stated in statute.

- **Qualitative description of impact:**

The indirect costs incurred by the nature of needing to meet the requirements of these rules are not easily quantified and are necessary to ensure the health, safety, and welfare of Iowans. Additionally, the rules are expressly required by the Iowa Code, so indirect costs of compliance are unavoidable.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

The Department's costs related to implementation of Iowa Code chapter 103A and these rules include the costs of personnel to administer the program, including traveling associated with inspections. The Department maintains approximately 9.0 full-time equivalent (FTE) positions to administer the state building code, including 4.0 FTE positions (that also perform other duties) to administer the Manufactured Home and Modular Program. The Department's total budget to implement and enforce the state building code, including these rules, is $1,044,794.

- **Anticipated effect on state revenues:**

In fiscal year 2023, the total seal fees and manufactured home retailer license fees collected by the Department pursuant to Iowa Code sections 103A.23 and 103A.52(2) were $138,800.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Iowa Code sections 103A.7(2)"c" and 103A.9 require the Department to implement and enforce rules regarding the manufacture and installation of factory-built structures, so inaction is not an option. Additionally, the minimum health, welfare, and safety standards in these rules protect numerous Iowans and non-Iowans who own, reside in, visit, or otherwise use factory-built structures that are subject to Iowa Code chapter 103A and these rules. The modest costs incurred by the public are insignificant compared to the costs of inaction, which would result in unsafe factory-built structure manufacture and installation.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Iowa Code section 103A.7(1) requires the Commissioner to promulgate "reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public." These rules are expressly required to include reasonable provisions for the manufacture and installation of factory-built structures (Iowa Code sections 103A.7(2)"c" and 103A.9). It is the opinion of the Department and the Commissioner that these rules reasonably establish such minimum safeguards for the manufacture and

installation of factory-built structures in Iowa and that making them any less restrictive would negatively impact the health, safety, and welfare of Iowans (and non-Iowans) occupying and otherwise using factory-built structures in Iowa.

Additionally, these rules and fees are comparable to or less than those in neighboring states. Manufactured housing administration and compliance is consistent with all surrounding states as required by the U.S. Department of Housing and Urban Development. However, fees for seals and inspections in Iowa are dramatically lower. For example, Nebraska and South Dakota manufactured home administration and inspection fees range from $500 to $1,200 per home depending on travel distance for inspectors.

Finally, compared to the existing rules, these rules have been streamlined, clarified, and made less restrictive when possible, in accordance with the goals and directives of Executive Order 10.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Response in section "5," above.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Response in section "5," above.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

While some manufacturers and installers of factory-built structures subject to Iowa Code chapter 103A and these rules may be small businesses, these rules and fees are required by the Iowa Code. Additionally, these rules protect the health, safety, and welfare of many Iowans and non-Iowans who own, occupy, or otherwise use factory-built structures in Iowa. Even if these rules have a substantial impact on small business (and as discussed above, the costs are not substantial and are supported—or even explicitly required—by the Iowa Code), to exempt or even provide less stringent rules for small businesses would not be feasible or practicable because this would undermine public safety based on nothing more than the size of the business manufacturing or installing the factory-built structure. Finally, any manufacturer or installer (including a small business) can seek a waiver from provisions of these rules pursuant to the Department's uniform waiver rules under 481—Chapter 6.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 661—Chapter 322 and adopt the following **new** chapter in lieu thereof:

CHAPTER 322
STATE BUILDING CODE—MANUFACTURED
HOUSING SUPPORT AND ANCHORAGE SYSTEMS

**661—322.1** Reserved.

**661—322.2(103A) Definitions.** The definitions in 661—subrule 16.620(4) apply to this chapter.

**661—322.3** to **322.10** Reserved.

**661—322.11(103A) Support and anchorage of manufactured homes.**

**322.11(1)** *First time installation.* Manufactured homes shall be installed according to one of the following:

*a.* Homes manufactured prior to October 20, 2008, which are being installed for the first time will be installed with support and anchorage as recommended by the manufacturer and in accordance with federal manufactured home construction and safety standards, 24 CFR Section 3280.306(b), as published April 1, 2004; or

*b.* Homes manufactured on or after October 20, 2008, which are being installed for the first time shall be installed with support and anchorage as recommended by the manufacturer and in accordance with 24 CFR Part 3285, Model Manufactured Home Installation Standards, as published April 1, 2008; or

*c.* With a support and anchorage system which is designed by an Iowa-licensed professional engineer and which meets or exceeds the requirements of 24 CFR Part 3285 as published April 1, 2008; or

*d.* Homes installed in areas subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6 may be installed in compliance with subrule 322.11(5).

**322.11(2)** *Reinstallation of homes.*

*a.* The provisions of this subrule apply only to homes that have been previously installed in the United States and are being reinstalled at either the same location or a different location.

*b.* The following definitions apply to this subrule.

*"Frost-protected footing"* or *"frost-free footing."* Foundation material installed to depth of 42 inches below finished grade.

*"Ground anchor."* A specific anchoring assembly device designed to transfer home anchoring loads to the ground.

*"Pier."* That portion of the support system between the footing and the manufactured home, exclusive of shims. Types of piers include but are not limited to manufactured steel stands, pressure-treated wood, manufactured concrete stands, concrete blocks, and portions of foundation walls.

*"Pier footing."* That portion of a support system that supports the piers or blocking, is sized to adequately support the weight of the home at that load point, and is capable of transferring all design loads to the ground.

*"Support system."* Pilings, columns, footings, piers, foundation walls, shims, and any combination thereof that, when properly installed, support the manufactured home.

*c.* Homes reinstalled pursuant to subrule 322.11(2) must meet the following mandatory minimum requirements:

(1) Above ground support systems must meet the manufacturer's specifications or the requirements of subrule 322.11(3).

(2) Ground anchors must meet the manufacturer's specifications or subrule 322.11(4). Engineered ground anchoring systems that do not extend to the frost line may be used only if they are approved by the commissioner.

NOTE 1: Pier footings may be placed below the frost line for reinstallation of homes.

NOTE 2: If the home is still under a manufacturer's warranty, the manufacturer's installation instructions should be followed or the warranty may be void.

*d.* Pursuant to 661—subrule 16.623(2), prior to the reinstallation of a manufactured home, the installer reinstalling the home or the installer hired to inspect the home that is being reinstalled by the owner shall complete the portion of the installation certificate relating to the installation of frost-

protected footings. This portion of the certificate must state that the home is not being installed with frost-protected footings and be signed and witnessed by the installer and the owner. Upon completion of the reinstallation, the installer shall complete and submit the certificate to the commissioner as prescribed by 661—subrule 16.623(2).

NOTE: Iowa Code sections 335.30 and 414.28 have requirements that may affect the reinstallation of homes.

**322.11(3)** *Requirements for support system installations.*

*a.* Piers placed on foundations shall be installed and centered directly under the main frame longitudinal beams. The piers should not be farther apart than 10 feet on centers for manufactured homes 12 feet wide or less and not more than 8 feet on centers for manufactured homes over 12 feet wide to less than 16 feet wide and no more than 6 feet on centers for manufactured homes 16 feet wide or more. The main frame, front or back, should not extend farther than two feet beyond the centerline of the end piers.

NOTE: When making excavations for footings and piers on private property, installers shall take precautions to ensure that no telephone, electrical, plumbing or water lines are contacted. Utility line locations shall be verified with the property owner or property owner's representative.

*b.* Pier foundations shall be placed on level, undisturbed soil or on controlled fill that is free of grass and organic materials. A small amount of sand may be of use to provide a level surface. All pier foundations shall be set level and piers installed plumb. The pier foundation shall be at least a 16″ × 16″ × 4″ solid concrete pad, precast or poured in place, or other approved material. Two nominal 4″ × 8″ × 16″ solid concrete blocks may be used provided that the joint between the blocks is parallel to the main frame longitudinal beam. Concrete used in foundations shall have a 28-day compressive strength of not less than 3,000 pounds per square inch (3,000 psi).

*c.* Unless otherwise directed by the owner of the site, the soil-bearing capacity of the site may be assumed to be 2,000 pounds per square foot. The acceptable construction under this subrule is based upon a soil-bearing capacity of 2,000 pounds per square foot. Sites with less soil-bearing capacity will require increased-size footings.

Explanation: The permissible footing sizes and pier spacing are based upon a combined live and dead load of 65 pounds per square foot of unit. This assumes that the full snow and internal live load will not be present at the same time.

*d.* Piers may be constructed of concrete or undamaged nominal 8″ × 8″ × 16″ concrete blocks, open-celled or solid, placed on the pier foundation. All open-celled concrete block shall be installed with the cells of the block in a vertical position. Nominal 2″ × 8″ × 16″ or nominal 4″ × 8″ × 16″ solid concrete blocks may be utilized as needed to achieve the necessary heights of the piers for a particular installation. A nominal 2″ × 8″ × 16″ wood plate, or equivalent, shall be placed on top of each pier, unless there is at least 4 inches of solid block, with shims fitted and driven between the wood plate or solid block and the main frame longitudinal beam. The wood blocking shall not occupy more than a nominal two inches of vertical space, and shims shall not occupy more than one inch of vertical space. Shims that have a thickness of more than 3/8″ shall be hardwood.

(1) Piers up to 40 inches in height, except corner piers over three blocks high (a nominal 24″), may be of single-block construction and shall be installed transverse (right angle) to the main frame longitudinal beam.

(2) Piers over 40 inches in height but not exceeding 80 inches in height and corner piers over three blocks high shall be of double-block construction with every other course either parallel or transverse (right angle) to the main frame longitudinal beam and be capped with a nominal 16″ × 16″ × 4″ solid concrete block or equivalent. Wood blocking and hardwood shims shall be installed accordingly.

(3) Piers over 80 inches in height shall be of reinforced concrete or of double-block construction and installed exactly according to the procedure given in subparagraph (2) above. Only celled concrete blocks shall be used (with open cells vertical) with 3/8″ diameter or larger steel reinforcing rods

placed in the pier corners and all cells filled with 3,000 psi concrete. Wood blocking and shims shall be installed accordingly.

**322.11(4)** *Requirements for anchorage systems.* When instructions are not provided by the manufacturer, ties shall be attached vertically and diagonally to a system of ground anchors in a manner as illustrated in Figures 4 and 5. The minimum number of ties are listed in Table 6–A. There shall be a diagonal tie between the ground anchors and the unit at each vertical tie. Additional diagonal ties may be required between vertical ties. The ties shall be as evenly spaced as practicable along the length of the unit with not over eight feet open on each end.

*a.* Ties may be either steel cable, steel strapping, or other materials that meet the requirements of paragraph 322.11(4)*"f."* Ties are to be fastened to ground anchors and drawn tight with galvanized turnbuckles or yoke-type fasteners and tensioning devices. Turnbuckles shall be ended with jaws of forged or welded eyes (hook ends are not approved).

*b.* When continuous straps (over-the-top tie-downs) are provided as vertical ties, they should be positioned at rafters and studs to prevent structural damage. Where a vertical tie and diagonal tie are located at the same place, both ties may be connected to a single double-head ground anchor provided that the anchor used is capable of carrying the combined loads and is included on a list of approved products maintained by the commissioner.

*c.* Cable used for ties shall be either galvanized steel or stainless steel and have a breaking strength of at least 4,725 pounds. Cable should be either 7/32″ diameter or greater (7 × 7) steel cable or ¼″ diameter or greater (7 × 19) aircraft cable. All cable ends should be secured with at least two I-bolt-type cable clamps or other nationally approved fastening devices.

*d.* When flat steel straps are used as ties, they shall conform with 24 CFR Section 3285.402(c)(2). Steel strap ties shall terminate with D-rings, bolts, or other nationally approved fastening devices that will not cause distortion or reduce the breaking strength of the ties.

*e.* The direction of pull of the diagonal ties should be at a right angle to the main frame longitudinal beam. Connection of the diagonal tie to the main frame longitudinal beam should be in accordance with anchor system instructions for those fastening devices. When steel strap ties are used, care should be exercised that the minimum bending radius is adhered to so the breaking strength is not reduced.

*f.* Anchors and anchorage materials shall meet the following requirements:

(1) The anchorage materials shall be capable of resisting an allowable minimum working load of 3,150 pounds (pullout in a vertical direction) with no more than 2 percent elongation and withstanding a 50 percent overload. All anchorage materials shall be resistant to weathering deterioration at least equivalent to that provided by a coating of zinc on steel strapping of not less than 0.30 ounces per square foot surface coated. Anchors to reinforced concrete slab or to rock shall be of comparable strength as provided within this paragraph.

(2) Each ground anchor, when installed, shall be capable of resisting an allowable working load at least equal to 3,150 pounds in the direction of the ties plus a 50 percent overload (4,750 pounds total) without failure. Failure is considered to have occurred when the point of connection between the tie and anchor moves more than two inches at 4,750 pounds in the direction of the vertical tie when anchoring equipment is installed in accordance with the anchorage manufacturer's instructions. Those ground anchors which are designed to be installed so that the loads on the anchor are other than direct withdrawal shall be designed and installed to resist an applied design load of 3,150 pounds at 45° from horizontal without displacing the anchor more than four inches horizontally at the point where the tie attaches to the anchor.

(3) Anchors designed for connection of multiple ties shall be capable of resisting the combined working load and overload consistent with the intent expressed in this paragraph.

(4) Ground anchors shall be installed so that the load-carrying portion of the anchor in its final working position is below the frost depth (42 inches), and the anchor head shall be at ground level. Total anchor length shall be more than 42 inches as necessary.

NOTE: When installing ground anchors on private property, installers shall take precautions to ensure that no telephone, electrical, plumbing or water lines are contacted. Utility line locations shall be verified with the property owner or property owner's representative.

TABLE 6–A
MINIMUM NUMBER OF TIEDOWNS
REQUIRED FOR SINGLEWIDE MOBILE HOMES

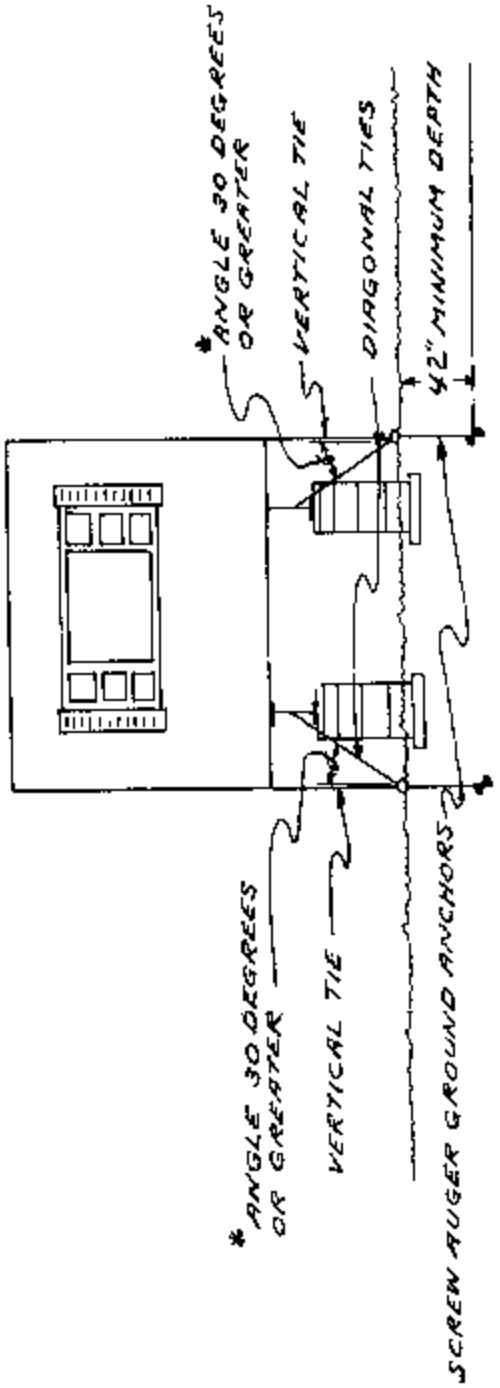
| MOBILE HOME BOX LENGTH NOT EXCEEDING | MINIMUM NUMBER OF TIEDOWNS PER SIDE | |
|---|---|---|
| | DIAGONAL TIES | VERTICAL TIES* |
| 40′–0″ | 3 | 2 |
| 54′–0″ | 3 | 2 |
| 73′–0″ | 4 | 2 |
| 84′–0″ | 5 | 2 |

*If more than the minimum number of vertical or diagonal ties have been supplied, they shall all be used.

1. Doublewide mobile homes shall comply with Table 6–A except that no vertical ties are required.
2. Wherever a vertical tie and a diagonal tie lie in a plane that is vertical and transverse to the main longitudinal beam, both ties may be connected to the same ground anchor, providing that the particular anchor withstands both loadings.
3. This table shall be used only if there are no manufacturer's approved installation requirements.

FIGURE 4

MOBILE HOME TIEDOWN

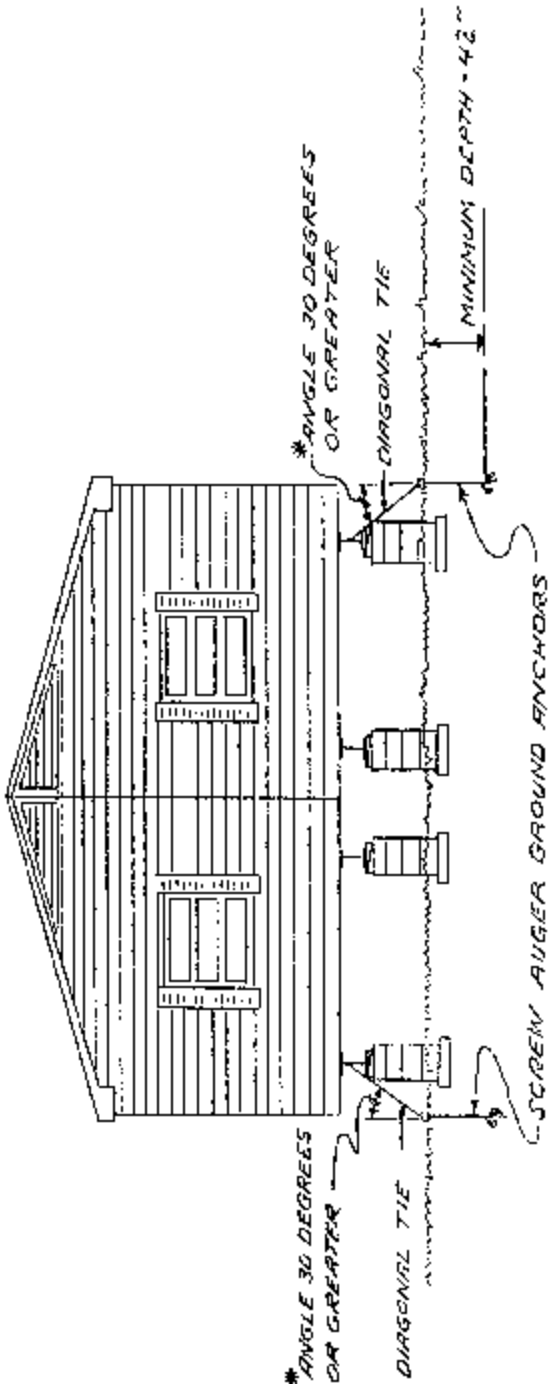



*DIAGONAL TIE SHALL DEVIATE FROM A VERTICAL DIRECTION 30 DEGREES OR MORE.

FIGURE 5

DOUBLE WIDE MOBILE HOME TIEDOWN

* DIAGONAL TIE SHALL DEVIATE FROM A VERTICAL DIRECTION 30 DEGREES OR MORE.




**322.11(5)** *Installations in disaster emergency areas.* In an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6, a manufactured home may be installed without a permanent support system provided that all of the following apply:

*a.* The installation complies with anchorage and aboveground support requirements specified by the manufacturer or subrule 322.11(4) as applicable;

*b.* A government agency or a third-party contractor is contractually obligated to regularly inspect the home while it is occupied and to loosen the ties or straps used in the anchoring system as needed between November 15 of each year and April 15 of the following year, in order to prevent

frost heave from affecting the home, and to retighten the ties or straps on or after April 15 and prior to May 15 of the following year; and

*c.* The home shall be vacated within 18 months after installation without a support system which is fully compliant with subrules 322.11(1), 322.11(2), 322.11(3) and 322.11(4). A home installed in compliance with this subrule may continue to be occupied if it has been reinstalled in compliance with the provisions of this rule that would apply in the absence of a proclaimed disaster emergency.

**661—322.12(103A) Suspension of installation requirements in proclaimed disaster emergencies.** The commissioner may suspend any requirement established in this chapter or 661—Chapter 16 for the installation of manufactured homes, provided that all of the following apply:

1. The installation is within an area that is currently subject to a disaster emergency proclamation issued by the governor.

2. The commissioner finds that suspension of the requirement or requirements presents no imminent threat to the health or safety of any individual and specifically of any person who may occupy a manufactured home installed while the suspension is in effect.

3. Any manufactured home whose installation is subject to a suspension of any requirement shall be occupied only for the duration of the disaster emergency proclamation and for no more than 180 days after the expiration of the proclamation, or for a shorter time specified by the commissioner, unless the home has been installed or reinstalled in compliance with all requirements of this chapter and 661—Chapter 16 prior to the expiration of the period specified for suspension of the requirements.

**661—322.13** to **322.19** Reserved.

**661—322.20(103A) Fees.**

**322.20(1)** All remittances of fees shall be made by check or money order payable to Iowa Department of Inspections, Appeals and Licensing—Building Code Bureau and remitted to the Building Code Bureau, Iowa Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Des Moines, Iowa 50321.

**322.20(2)** The following table sets out the fee schedule for the manufactured home program.

| | |
|---|---|
| Installation Seal | $25 |
| Installation Seal Replacement | $10 |
| Verification Inspections Requested by Installer or Owner | No Charge |
| Ground Support and Anchoring System Approval | $100 |

These rules are intended to implement Iowa Code sections 103A.7 and 103A.9.

## Regulatory Analysis

Notice of Intended Action to be published: 661—Chapter 323
"Temporary Emergency Use of Factory-Built Structures—Commercial Use"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 103A.7 and 103A.9
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 103A

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025 | 6200 Park Avenue |
| 2 to 3 p.m. | Des Moines, Iowa 50321 |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeremiah Junker
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.672.4745
Email: jeremiah.junker@dia.iowa.gov

*Purpose and Summary*

This proposed rulemaking repromulgates Chapter 323 and implements Iowa Code chapter 103A, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 103A.7(1) empowers and directs the state building code Commissioner, with the approval of the state building code advisory council, to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in Iowa Code chapter 103A, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public. Pursuant to Iowa Code section 103A.7(2)"c," the rules shall include reasonable provisions for the manufacture and installation of factory-built structures. Iowa Code section 103A.9 states that the state building code shall contain provisions relating to the manufacture and installation of factory-built structures and provide requirements for factory-built structures.

Specifically, this rulemaking allows and provides criteria for use of factory-built structures as temporary locations for businesses or commercial operations in areas subject to a disaster emergency proclamation issued by the Governor.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Owners of businesses or commercial operations seeking to utilize the benefits of this chapter during a disaster proclamation would incur indirect costs by the nature of needing to meet the

requirements of this chapter. Costs to the public are minimized as much as safely possible and still maintain businesses and commercial facilities in times of need.

However, this chapter should not be viewed as a cost since it provides an alternative, less restrictive means for businesses and commercial operations to utilize factory-built structures during disaster proclamations. Such businesses and commercial operations may not otherwise be able to operate if it were not for this chapter.

- **Classes of persons that will benefit from the proposed rulemaking:**

Iowans who are included in an area with a disaster proclamation, and the businesses and commercial operations who will assist Iowans during a disaster, will all benefit from this chapter.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Notably, for purposes of this chapter only, factory-built structures are not required to display an installation seal as would otherwise be required under 661—Chapter 16.

- **Qualitative description of impact:**

Costs of compliance are not easily quantified, but this chapter should not be viewed as a cost, as discussed above.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

The Department's costs related to implementation of Iowa Code chapter 103A, including this chapter, include the costs of personnel to administer the state building code. The Department maintains approximately 9.0 full-time equivalent (FTE) positions to administer the state building code, including 4.0 FTE positions (which also perform other duties) to administer the Manufactured Home and Modular Program. The Department's total budget to implement and enforce the state building code, including this chapter, is $1,044,794. The costs specifically associated with implementation of this chapter are not separately identifiable but are not a substantial portion of the budget to implement and enforce the state building code.

- **Anticipated effect on state revenues:**

The Department does not anticipate a noteworthy effect on state revenue associated with this chapter specifically.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

The costs to the public and Department are minimal, while allowing quick and efficient installations after a disaster and maintaining minimum standards.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Iowa Code requires the Commissioner to promulgate "reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety, and welfare of the public" (Iowa Code section 103A.7(1)). These rules are expressly required to include reasonable provisions for the manufacture and installation of factory-built structures (Iowa Code sections 103A.7(2)"c" and 103A.9). It is the opinion of the Department and the Commissioner that this chapter reasonably establishes such minimum safeguards for the installation of factory-built structures for business and commercial operations during disaster proclamation. The chapter is as nonrestrictive as possible while maintaining proper support and anchoring, and making it any less restrictive would negatively impact the health, safety, and welfare of Iowans.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Response in section "5," above.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Response in section "5," above.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

While some of the businesses and commercial operations taking advantage of this chapter may be small businesses, as discussed above, this chapter should not be viewed as a cost to or as having a negative impact on such businesses. Rather, this chapter provides an alternative, less restrictive means for businesses and commercial operations to utilize factory-built structures during disaster proclamations. Such businesses and commercial operations may not otherwise be able to operate if it were not for this rule.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 661—Chapter 323 and adopt the following **new** chapter in lieu thereof:

CHAPTER 323
TEMPORARY EMERGENCY USE OF FACTORY-BUILT STRUCTURES—COMMERCIAL USE

**661—323.1(103A) Temporary factory-built structures for commercial use.** A factory-built structure, as defined in Iowa Code section 103A.3, may be installed and used as a temporary location for a business or commercial operation, provided that all of the following apply:

**323.1(1)** The installation is in an area currently subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

EXCEPTION: If outside any area covered by a current disaster emergency proclamation, the installation is approved in writing by the building code commissioner provided that all of the other requirements of this rule are met.

**323.1(2)** The structure was manufactured to be installed without a permanent foundation.

**323.1(3)** The installation fully complies with all applicable installation requirements established by the manufacturer.

EXCEPTION: If specifications provided by the manufacturer provide for the use of both a support system and an anchoring system, a structure may be installed without a permanent support system, provided that an anchoring system is installed in compliance with specifications provided by the manufacturer and the owner or occupant ensures that straps or ties are loosened to prevent the structure from suffering damage from frost heave as needed between November 15 of any year during

which it is in use and April 15 of the following year and retightened on or after April 15 and no later than May 15 of the following year.

**323.1(4)** The owner ensures full compliance with all maintenance requirements established by the manufacturer.

**323.1(5)** The structure complies with other applicable codes for the use of the structure, except that a structure installed in compliance with this rule is not required to display an Iowa seal as otherwise required by 661—subrules 16.610(21), 16.610(22), and 16.610(24).

**323.1(6)** The structure is not used as a private residence. More information on manufactured homes is available in 661—subrule 322.11(5).

**323.1(7)** The structure is vacated within 18 months of installation.

**323.1(8)** No portion of the structure is used as an educational occupancy unless written permission for such use has been issued by the fire control bureau and the building code commissioner.

**323.1(9)** No portion of the structure is used as a health care facility unless written permission for such use has been issued by the fire control bureau and the building code commissioner.

This rule is intended to implement Iowa Code sections 103A.7 and 103A.9.

# SCHOOL BUDGET REVIEW COMMITTEE[289]



## Regulatory Analysis

Notice of Intended Action to be published: 289—Chapter 1
"Organization and Administrative Procedures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 257.30(2)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.30 through 257.32

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the School Budget Review Committee no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Stephanie Edler
School Budget Review Committee
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.689.2258
Email: stephanie.edler@iowa.gov

*Purpose and Summary*

This proposed rulemaking removes duplicative and obsolete language and provides some additional flexibility when allowed by statute.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

School districts will bear the cost of compliance with this rulemaking to demonstrate they are entitled to relief from the Committee.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities interacting with the Committee, as well as Iowa's taxpayers, will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

No impact noted.

- **Qualitative description of impact:**

No impact noted.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs noted.

- **Anticipated effect on state revenues:**

No appreciable effects on state revenue are noted.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable. The statute requires rules.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable. The statute requires rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable. The statute requires rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable. The statute requires rules.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

None noted.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 289—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ORGANIZATION AND ADMINISTRATIVE PROCEDURES

**289—1.1(257) School budget review committee.** The school budget review committee (SBRC) is established to review and make recommendations on any rules, regulations, directives, or forms relating to budgeting and accounting in school districts and area education agencies (AEA); to confer with local school districts and make recommendations on any budgeting or accounting matters; and to grant supplemental aid or to grant a modified allowable growth in the budget year for any school district or AEA that has unusual circumstances that create a need for additional funds for operations or that must abate an environmental hazard due to a state or federal regulation. The SBRC may grant use of the unexpended general fund for facilities under certain circumstances specified in the Iowa Code. The SBRC has the authority to direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.

**1.1(1)** *Membership.* The SBRC is composed of the following six members:

*a.* The director of the department of education who will serve as chairperson and conduct all meetings unless another member of the committee is asked by the director of the department of education to assume this role. The director of the department of education is a nonvoting member of the committee.

*b.* The director of the department of management who will serve as secretary unless another member of the committee or department of education staff or department of management staff is asked by the director of the department of management to assume this role. The designated secretary is not a voting member unless the designee is a regular member of the committee.

*c.* Four public members who are knowledgeable in the areas of school finance or public finance issues shall be appointed by the governor to represent the public. All committee members shall perform their assigned duties until a replacement has been appointed.

*d.* The department of education shall employ a staff person to assist the SBRC.

**1.1(2)** *Qualifications of public members.* The four public members shall have general knowledge in the areas of Iowa school finance or public finance. At least one of the public members shall possess a master's or doctoral degree in which areas of school finance, economics or statistics are an integral component or shall have equivalent experience in an executive administrative or senior research position in the education or public administration field.

**1.1(3)** *Terms of office.* The public members appointed by the governor shall serve staggered three-year terms beginning and ending as provided in Iowa Code section 69.19. Members appointed by the governor are subject to senate confirmation as provided by Iowa Code section 2.32.

**1.1(4)** *Compensation.* The committee members representing the public are entitled to receive the committee members' necessary expenses while engaged in official duties. In addition, committee members shall be paid a per diem at the rate specified in Iowa Code section 7E.6. Per diem and expense payments shall be made from appropriations to the department of education.

**289—1.2(257) Mailing address.** The mailing address for all operations of the SBRC is Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146.

**289—1.3(257) Information or submissions.** Information inquiries or requests for hearings, declaratory rulings, for participation in the rulemaking procedures of the SBRC, and for scheduling presentations to the committee should be addressed to the director of the department of education as chairperson of the SBRC.

**289—1.4(257) Hearings.**

**1.4(1)** *Number.* The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts and completed the other duties as found in Iowa Code sections 257.30 through 257.32 and 260C.18B. A minimum of three sessions to hold hearings shall be scheduled each fiscal year and shall be held during the months of October, December, and March. Revisions to these regularly scheduled sessions may be made if there are scheduling conflicts, if the SBRC determines that additional sessions are necessary, or if there are not sufficient hearing requests to hold a session.

**1.4(2)** *Notification to legislators and others.*

*a.* Legislators shall be notified of hearings of the SBRC for specific school districts, AEAs, or community colleges in their constituencies. Such notification may be written, oral, or electronic.

*b.* Public notice of all hearings scheduled by the SBRC shall be posted by the department of education on the department's website and on the first floor of the Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa.

**1.4(3)** *Hearing procedures.* The chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**1.4(4)** *Quorum.*

*a.* Three voting members present constitute a quorum of the SBRC, and a quorum must be present to conduct a hearing at which official action is taken. Members may be present by electronic media.

*b.* If only three members are present, three favorable votes are necessary to pass a motion.

These rules are intended to implement Iowa Code sections 257.30 and 257.31.

# SCHOOL BUDGET REVIEW COMMITTEE[289]



## Regulatory Analysis

Notice of Intended Action to be published: 289—Chapter 2
"Petitions for Rulemaking"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 257.30(2)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.30 through 257.32

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the School Budget Review Committee no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Stephanie Edler
School Budget Review Committee
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.689.2258
Email: stephanie.edler@iowa.gov

*Purpose and Summary*

This proposed rulemaking removes duplicative and obsolete language and provides some additional flexibility when allowed by statute.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

School districts will bear the cost of compliance with these rules to demonstrate they are entitled to relief from the Committee.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities interacting with the Committee, as well as Iowa's taxpayers, will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

No impact noted.

- **Qualitative description of impact:**

No impact noted.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs noted.

- **Anticipated effect on state revenues:**

No appreciable effects on state revenue are noted.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable. The statute requires rules.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable. The statute requires rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable. The statute requires rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable. The statute requires rules.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

None noted.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 289—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
PETITIONS FOR RULEMAKING

The school budget review committee hereby adopts, with the following exceptions and amendments, the Uniform Rules of Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

**289—2.1(17A) Petition for rulemaking.** In lieu of the words "(designated office)", insert "the School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146". In lieu of the words "(AGENCY NAME)", the heading on the petition form should read:

"SCHOOL BUDGET REVIEW COMMITTEE"

**289—2.3(17A) Inquiries.** In lieu of the words "(designate official by full title and address)", insert, "Chairperson, School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146".

These rules are intended to implement Iowa Code section 17A.7.

# SCHOOL BUDGET REVIEW COMMITTEE[289]



## Regulatory Analysis

Notice of Intended Action to be published: 289—Chapter 3
"Declaratory Rulings"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 257.30(2)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.30 through 257.32

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the School Budget Review Committee no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Stephanie Edler
School Budget Review Committee
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.689.2258
Email: stephanie.edler@iowa.gov

*Purpose and Summary*

This proposed rulemaking removes duplicative and obsolete language and provides some additional flexibility when allowed by statute.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

School districts will bear the cost of compliance with these rules to demonstrate they are entitled to relief from the Committee.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities interacting with the Committee, as well as Iowa's taxpayers, will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

No impact noted.

- **Qualitative description of impact:**

No impact noted.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs noted.

- **Anticipated effect on state revenues:**

No appreciable effects on state revenue are noted.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable. The statute requires rules.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable. The statute requires rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable. The statute requires rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable. The statute requires rules.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

None noted.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 289—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
DECLARATORY RULINGS

The school budget review committee hereby adopts, with the following exceptions and amendments, the Uniform Rules of Agency Procedure relating to declaratory rulings, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

**289—3.1(17A) Petition for declaratory ruling.** In lieu of the words "(designate office)", insert "the School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146". In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

"SCHOOL BUDGET REVIEW COMMITTEE"

**289—3.3(17A) Inquiries.** In lieu of the words "(designate official by full title and address)", insert "Chairperson, School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146".

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

# SCHOOL BUDGET REVIEW COMMITTEE[289]



## Regulatory Analysis

Notice of Intended Action to be published: 289—Chapter 4
"Agency Procedure for Rulemaking"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 257.30(2)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.30 through 257.32

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the School Budget Review Committee no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Stephanie Edler
School Budget Review Committee
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.689.2258
Email: stephanie.edler@iowa.gov

*Purpose and Summary*

This proposed rulemaking removes duplicative and obsolete language and provides some additional flexibility when allowed by statute.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

School districts will bear the cost of compliance with these rules to demonstrate they are entitled to relief from the Committee.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities interacting with the Committee, as well as Iowa's taxpayers, will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

No impact noted.

- **Qualitative description of impact:**

No impact noted.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs noted.

- **Anticipated effect on state revenues:**

No appreciable effects on state revenue are noted.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable. The statute requires rules.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable. The statute requires rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable. The statute requires rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable. The statute requires rules.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

None noted.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 289—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
AGENCY PROCEDURE FOR RULEMAKING

The school budget review committee hereby adopts, with the following exceptions and amendments, the Uniform Rules of Agency Procedure relating to agency procedure for rulemaking, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

**289—4.3(17A) Public rulemaking docket.**

**4.3(2)** *Anticipated rulemaking.* In lieu of the words "(commission, board, council, director)", insert "school budget review committee".

**289—4.4(17A) Notice of proposed rulemaking.**

**4.4(3)** *Notices mailed.* In lieu of the words "(specific time period)", insert "three years".

**289—4.5(17A) Public participation.**

**4.5(1)** *Written comments.* In lieu of the words "(identify office and address)", insert "the School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146".

**289—4.6(17A) Regulatory analysis.**

**4.6(3)** *Mailing list.* In lieu of the words "(designate office)" insert "the School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146".

**289—4.10(17A) Exemptions from public rulemaking procedures.** Delete subrule 4.10(2) entitled "Categories exempt".

**289—4.11(17A) Concise statement of reasons.**

**4.11(1)** *General.* In lieu of the words "(specify the office and address)", insert "the School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146".

**289—4.13(17A) Agency rulemaking record.**

**4.13(2)** *Contents.*

*c.* In lieu of the words "(agency head)", insert "chairperson".

These rules are intended to implement Iowa Code section 17A.4.

# SCHOOL BUDGET REVIEW COMMITTEE[289]



## Regulatory Analysis

Notice of Intended Action to be published: 289—Chapter 5
"Public Records and Fair Information Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 257.30(2)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.30 through 257.32

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the School Budget Review Committee no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Stephanie Edler
School Budget Review Committee
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.689.2258
Email: stephanie.edler@iowa.gov

*Purpose and Summary*

This proposed rulemaking removes duplicative and obsolete language and provides some additional flexibility when allowed by statute.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

School districts will bear the cost of compliance with these rules to demonstrate they are entitled to relief from the Committee.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities interacting with the Committee, as well as Iowa's taxpayers, will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

No impact noted.

- **Qualitative description of impact:**

No impact noted.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs noted.

- **Anticipated effect on state revenues:**

No appreciable effects on state revenue are noted.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable. The statute requires rules.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable. The statute requires rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable. The statute requires rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable. The statute requires rules.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

None noted.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 289—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The school budget review committee hereby adopts, with the following exceptions and amendments, the Uniform Rules of Agency Procedure relating to public records and fair information practices, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

**289—5.1(17A) Definitions.** As used in this chapter:

*"Agency."* In lieu of the words "(official or body issuing these rules)", insert "school budget review committee".

**289—5.3(17A) Requests for access to records.**

**5.3(1)** *Location of record.* In lieu of the words "(insert agency head)", insert "chairperson of the committee". In lieu of the words "(insert agency name and address)", insert "School Budget Review Committee, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146".

**5.3(2)** *Office hours.* In lieu of the words "(insert customary hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

**5.3(7)** *Fees.*

*c.* *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour". In lieu of the words "An agency wishing to deal with search fees authorized by law should do so here", insert "The committee will give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester."

**289—5.6(17A) Procedure by which additions, dissents, or objections may be entered into certain records.** In lieu of the words "(designate office)", insert "the office of the chairperson of this committee".

**289—5.9(17A) Disclosures without the consent of the subject.** Open records are routinely disclosed without the consent of the subject.

**289—5.10(17A) Routine use.**

**5.10(1)** "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose for which the record was collected. It includes disclosures required to be made by statute other than public records law, Iowa Code chapter 22.

**5.10(2)** To the extent allowed by law, the following uses are considered routine uses of all committee records:

*a.* Disclosure to those members of the committee who have a need for the record in the performance of their duties.

*b.* Information released to staff of federal and state entities for audit purposes or to determine whether the agency is operating a program lawfully.

**289—5.11(17A) Availability of records.** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**289—5.12(17A) Rulemaking records.** These records are routinely available to the public and may contain information about individuals making written or oral comments on proposed rules or proposing rules or rule amendments. This information is collected pursuant to Iowa Code sections 17A.3, 17A.4 and 17A.7. These records are stored on paper and not in an automated data processing system.

**289—5.13(17A) Applicability.** This chapter does not require the agency to index or retrieve records that contain information about individuals by that person's name or other personal identifier.

These rules are intended to implement Iowa Code section 17A.22.

# SCHOOL BUDGET REVIEW COMMITTEE[289]



## Regulatory Analysis

Notice of Intended Action to be published: 289—Chapter 6
"Duties and Operational Procedures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 257.30(2)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.30 through 257.32

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the School Budget Review Committee no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Stephanie Edler
School Budget Review Committee
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.689.2258
Email: stephanie.edler@iowa.gov

*Purpose and Summary*

This proposed rulemaking removes duplicative and obsolete language and provides some additional flexibility when allowed by statute, such as increased flexibility in payment of special education administrative costs.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

School districts will bear the cost of compliance with these rules to demonstrate they are entitled to relief from the Committee.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities interacting with the Committee, as well as Iowa's taxpayers, will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

No impact noted.

- **Qualitative description of impact:**

No impact noted.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs noted.

- **Anticipated effect on state revenues:**

No appreciable effects on state revenue are noted.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable. The statute requires rules.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable. The statute requires rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable. The statute requires rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable. The statute requires rules.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

None noted.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 289—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
DUTIES AND OPERATIONAL PROCEDURES

**289—6.1(257) Definitions.** For the purposes of this chapter, the following definitions apply.

*"Area education agency"* or *"AEA"* means an agency organized under Iowa Code chapter 273.

*"Authorized budget"* means the total dollars available as the expenditure limit for a school district for a specific fiscal year. This total is the combined district cost plus miscellaneous income actually received during the fiscal year, plus the unspent balance of the previous year.

*"Base year"* means the same as defined in Iowa Code section 257.2.

*"Basis of accounting"* means the accrual or modified accrual accounting basis under generally accepted accounting principles (GAAP) as defined by the Governmental Accounting Standards Board (GASB) and in effect on [publication date of Notice of Intended Action].

*"Basis of budgeting"* means the accrual or modified accrual budgeting basis under GAAP as defined by GASB in effect on [publication date of Notice of Intended Action].

*"Budget year"* means the same as defined in Iowa Code section 257.2.

*"Certified budget"* means the document that has been published and certified as provided for in Iowa Code chapter 24 and contains the amount proposed to be expended during the budget year.

*"Collective action"* means a situation that applies to multiple districts with the same or substantially similar needs and the committee has determined that the districts can be considered jointly in a single hearing.

*"Committee"* means the school budget review committee.

*"Community college"* means a publicly supported school organized under Iowa Code chapter 260C.

*"Expenditures"* means the total amounts paid from the general fund of a school corporation.

*"Miscellaneous income"* means the receipts deposited to the general fund of the school district but not including any of the following:

1. Foundation aid.
2. Revenue obtained from the foundation property tax as defined in Iowa Code section 257.3(1).
3. Cash reserve levy.
4. Revenue obtained from the additional property tax under Iowa Code section 257.4.

*"Modified supplemental amount"* means an amount expressed in dollars that is added to the district's authorized budget.

*"School corporation"* means a school district, area education agency, or community college.

*"School district"* means a school corporation organized under Iowa Code chapter 274.

*"Unexpended fund balance"* means the school district's or AEA's fund balance in the general fund reported by the school district or AEA on the GAAP basis of accounting on its certified annual report.

*"Unspent balance"* means the amount of the authorized budget for the general fund less the amount expended during the budget year on the GAAP basis of budgeting as reported by the school district on its certified annual report.

**289—6.2** Reserved.

**289—6.3(257) Hearing procedures.**

**6.3(1)** *Request for hearing.*

*a.* The board of a school corporation requesting a hearing before the committee is required to submit an electronic request to the committee stating the reason for the request for a hearing. The board is required to take official board action on the subject of the hearing, exhibits submitted to the committee, and the amount of the request, if applicable.

*b.* A request must be received by the committee at least one month prior to the date of the scheduled hearing.

*c.* School corporations with similar requests may appear and present their requests jointly at the discretion of the committee chairperson.

**6.3(2)** *Notification.*

*a.* An electronic confirmation of each request shall be provided to the school corporation upon receipt of the request for hearing.

*b.* The committee may require board members or employees of any school corporation to appear. School corporations required to have a board member or employee appear shall be notified no later than three weeks prior to the hearing.

*c.* School corporations scheduled for hearings shall be notified no later than one week prior to the hearing.

*d.* A school corporation desiring to withdraw its request to appear before the committee shall immediately inform the committee and the legislators within whose constituency the school corporation is located. A school corporation required to appear may not withdraw without the approval of the committee.

**6.3(3)** *Material for the hearing.*

*a.* Any information requested by the committee must be provided within the timelines requested by the committee in order for the school corporation to be included on the schedule for a hearing. One full set of materials provided electronically in a format that can be cut and pasted into official documentation shall be submitted at least four weeks prior to the scheduled hearing. The committee chairperson may set an earlier due date for information if necessary for adequate review based on the quantity or complexity of hearings. If a school corporation's exhibits for a hearing the school corporation has requested are not received timely, the school corporation's hearing may be postponed to the next following regularly scheduled session. Where applicable, the committee will provide forms or checklists to school corporations to obtain uniform and comparable data for determining committee decisions.

*b.* School corporations shall include in their materials for the hearing a copy of the board minutes that include the official action taken by the applicable school corporation board on the subject of the hearing approving the district's hearing materials and authorizing the school corporation's administrative officials to request a modified supplemental amount or use of the unexpended fund balance.

*c.* It is the responsibility of the administrative officials and board members to present information and materials in support of their school corporation's request to the committee in a timely manner.

*d.* The committee may require staff of the department of education or department of management to appear or provide information for a hearing or for a study. The committee may require staff of any school corporation to provide information for a hearing related to another school corporation or for a study.

*e.* In order for the committee to have the information necessary to evaluate balances and budgets as required by the Iowa Code or to evaluate materials submitted by school districts or AEAs, all school districts and AEAs shall file financial and enrollment reports, including the certified annual report, in the manner, by the procedures, and by the dates prescribed by the department of education or department of management.

*f.* If the requirements in paragraph 6.3(3)*"e"* are not met, the committee may implement the procedures described in subrule 6.3(5).

*g.* Applications for any supplemental aid funding shall be filed by the due date established in the Iowa Code, an administrative rule, or otherwise by the department of education or department of management.

*h.* Applications for a modified supplemental amount for increased certified enrollment over the prior year's enrollment, applications for a modified supplemental amount to pay tuition costs for open-enrolled-out students who were not enrolled in the district on the certified enrollment date in the prior year, and applications for a modified supplemental amount for excess costs of instructional programs for English learner students must be received no later than December 1 of the budget year.

*i.* Applications for a modified supplemental amount for adopted program plans for at-risk students, secondary students who attend alternative programs and alternative schools, and returning dropouts and dropout prevention shall be filed by January 15 of the base year.

*j.* Requests to charge administrative costs to the special education program for the subsequent fiscal year must be received no later than February 1 of the base year.

*k.* Applications described in paragraph 6.3(3)*"g"* that are not timely filed will not be considered for supplemental aid or for a modified supplemental amount. Applications described in paragraphs 6.3(3)*"h"* and *"j"* that are not timely filed may be considered at the sole discretion of the committee. Applications described in paragraph 6.3(3)*"i"* that are submitted after January 15 but before March 1 of the budget year preceding the budget year during which the program will be offered may be considered at the sole discretion of the committee; applications received after March 1 shall not be considered by the committee for any reason.

**6.3(4)** *Permission to speak during the hearing.* Any person wishing to appear before the committee, other than the board member or school corporation employee representing the school

corporation, shall submit a request in writing prior to the hearing date. Permission may be granted to a request made at the hearing upon a majority vote of the committee members present.

**6.3(5)** *Failure to appear or to provide information.* If any school corporation fails to appear as required by the committee or fails to provide any information requested by the committee, including the reports described in paragraph 6.3(3)*"e,"* the committee may direct the director of the department of management to withhold state foundation aid until the school corporation complies with the committee's request. When the school corporation satisfactorily complies with the committee request, the withheld state foundation aid will be released and paid to the school corporation with the next regularly scheduled payment of foundation aid.

**6.3(6)** *Decisions by the committee.*

*a.* A decision to table, deny, modify, or grant the request of a school corporation shall be made no later than the end of the day of the hearing.

*b.* The school corporation shall receive electronic notification when a summary of the final action taken by the committee is posted on the committee website.

*c.* The committee shall consider the intent of Iowa Code chapter 257 in making its decisions. The intent includes the following:

(1) Equalizing educational opportunities,

(2) Providing a good education to all Iowa children,

(3) Providing property tax relief,

(4) Decreasing the percentage of school costs paid by property tax, and

(5) Providing reasonable control of school costs.

*d.* In addition to the requirements in Iowa Code section 257.31, the committee shall also consider in making its decisions the following:

(1) The amount of unexpended fund balance available in all funds.

(2) The amount of unspent balance in the general fund.

*e.* In addition to the requirements in Iowa Code section 257.31, the committee may consider the following if materials are requested or provided by the department or school corporation:

(1) Local school district tax rates.

(2) Local taxpayer support for the request.

(3) Local effort to obtain alternative funding where available and applicable.

(4) Documented actual costs of the program or project that is the subject of the request not otherwise covered by funding for the same program or need.

(5) Sustainability of the program or need within the district or AEA budget without future requests.

(6) Number and cost of previous requests for the same need and the number and cost of all previous requests.

(7) Alternative procedures in the Iowa Code or administrative rules to provide funding for the same program or need.

(8) Life safety issues other than those covered in Iowa Code section 257.31(6) documented through an independent, authoritative source.

(9) Unusual or unique nature of the need.

(10) Any other information the committee members consider pertinent to the consideration of the request.

**6.3(7)** *Routine action by the committee.* School corporations do not need to be represented when action under consideration is for such items as cash reserve levies; timely filed request of a modified supplemental amount for adopted program plans for at-risk students, secondary students who attend alternative programs and alternative schools, and returning dropouts and dropout prevention; special education balances; or other situations that are considered collective actions as determined by the committee.

**6.3(8)** *Basic policies.* The committee has established the following basic policies that it shall consider in rendering its decisions.

*a.* Modified supplemental amount requests shall be considered only for costs up through the budget year, except where the Iowa Code expressly authorizes a modified supplemental amount to be granted for a subsequent year.

*b.* Modified supplemental amount requests shall be considered only for expenditures permitted from the general fund pursuant to the Iowa Code.

*c.* Modified supplemental amount requests may be brought before the committee for unusual, unique or unforeseeable circumstances.

*d.* Modified supplemental amount requests shall be considered only to the extent of the actual, documented costs.

**6.3(9)** *Use of the unexpended fund balance.* If the committee approves use of the unexpended fund balance, the school district shall report to the committee as required by the committee an accounting of expenditures on the project until the project is completed. If any portion of the amount granted by the committee remains unexpended at the completion of the project, the school district shall notify the committee on or before the committee's next regularly scheduled meeting. Any portion of the amount granted by the committee that remains unexpended at the completion of the project shall be returned to the unexpended fund balance in the general fund.

**6.3(10)** *Modified supplemental amount to an AEA.* If the committee approves a modified supplemental amount for special education support services, approves an additional amount to be added to district costs for media services or educational services, or approves a modified supplemental amount for unusual circumstances, the amount shall be included in the budget of each district in the AEA for the subsequent budget year in the proportion that the appropriate enrollment of each district in the AEA bears to the total enrollment of all districts in the AEA.

**289—6.4(257) General duties.**

**6.4(1)** *Review of rules, regulations, directives and forms.* The committee may recommend the revision of any rules, regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.

**6.4(2)** *Hearing decisions.* The committee shall maintain its decisions for each hearing. Materials provided by the requesting school corporation, materials provided by the department of education or department of management regarding each request, and the decisions of the committee are available for access by the public, including members of the general assembly.

**289—6.5(257) Budgets.**

**6.5(1)** *Generally accepted accounting principles.* All school districts and AEAs shall budget on the GAAP basis of budgeting as defined by GASB and as implemented in Uniform Financial Accounting for Iowa LEAs and AEAs (UFA) that is in effect on [publication date of Notice of Intended Action]. School districts and AEAs shall use the chart of accounts defined in the UFA.

**6.5(2)** *Accounting and reporting.* School districts and AEAs shall maintain financial records and prepare financial reports, including the certified annual report, in the manner and by the procedures prescribed by the department of education or department of management in the UFA and by GAAP. School districts and AEAs shall use the prescribed chart of accounts.

**6.5(3)** *Negative unspent balances (exceeding authorized budgets).* If the school district has incurred a negative unspent balance, it shall notify the committee no later than October 15 and begin developing its corrective action plan to avoid future negative unspent balances.

*a.* A listing of the unspent balance as well as the unexpended fund balance of each school district for each fiscal year shall be reviewed by the committee. The unspent balance and the unexpended fund balance shall be presented on the GAAP basis.

*b.* The amount of any negative unspent balance shall be automatically subtracted from the authorized budget of a given school district during the subsequent fiscal year.

*c.* The state board of education may be notified of the school districts with negative unspent balances each year. The notification shall include the amount by which the school district exceeded its authorized budget.

*d.* The board president of each school district with a negative unspent balance shall be notified of the amount by which the school district exceeded its authorized budget. The school districts shall inform the committee at the committee's next regularly scheduled session of the plans that are being implemented to avoid future negative unspent balances.

*e.* The committee may require the district to continue to report progress on the district's plans at regular intervals as determined by the committee until the committee is satisfied that the district's financial condition concerns have been resolved.

**6.5(4)** *Cash reserve levy.*

*a.* Annually the school budget review committee shall review the amount of property tax levied by each school district for the cash reserve authorized in Iowa Code section 298.10.

*b.* If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high or is in excess of the amount necessary for operations, the committee shall instruct the district to use the unexpended fund balance in lieu of levying property taxes and shall direct the director of the department of management to limit that school district's cash reserve levy to a level that is not excessive as determined by the committee and does not exceed the cash reserve limitation in paragraph 6.5(4)*"c."*

*c.* The cash reserve levies for the budget year shall not exceed 20 percent of the general fund expenditures for the year previous to the base year minus the general fund unexpended fund balance for the year previous to the base year. The expenditures and the fund balances shall be determined on the GAAP basis. For purposes of this subrule, "unexpended fund balance" shall mean the combined assigned and unassigned fund balances in the general fund.

*d.* A reduction in a district's property tax levy for a budget year for cash reserve shall not affect the school district's authorized budget.

**289—6.6** Reserved.

**289—6.7(257) Sharing.** The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in Iowa Code section 280.15.

**289—6.8** Reserved.

**289—6.9(257) Special education administrative costs.**

**6.9(1)** When a school district presents evidence of unusual circumstances that would justify charging administrative costs to the special education program, the committee may authorize such expenditures.

**6.9(2)** The committee shall use the following criteria in evaluating the evidence presented by the district:

*a.* The school district has a separate facility for special education that has a sufficient student population to warrant a certified special education administrator. In this case, the district, after it has received approval from the committee, may bill the prorated cost of the special education administrator to other resident districts as well as include the prorated portion related to its own resident students in the special education program expenditures.

*b.* The school district has one or more private facilities located within the district with a sufficient special education student population that is served by the district. In this case, the district, after it has received approval from the committee, may include the lower of the prorated actual administrative costs or the prorated approved administrative costs in the billing to other resident

districts in proportion to each district's resident students in the program and the prorated portion related to its own resident students in the special education program expenditures.

*c.* Districts making a request for administrative costs under this rule are limited to requesting the percentage of the employee(s) actual work time engaged in administrative work of the special education program offered at the private facility.

**289—6.10(257) Area education agency budget review.** Year-end special education support services assigned and unassigned fund balances exceeding 10 percent of the special education support services expenditures for that fiscal year may be reverted and reduced to 10 percent. The AEA shall report the necessary information for this calculation on its certified annual report to the department. The committee shall review the recommended reversion calculated by the department of education and shall make a recommendation to the department regarding final amounts to be reverted. The components of fund balances shall be determined in compliance with department of education guidance and GAAP.

These rules are intended to implement Iowa Code sections 257.30, 257.31, 257.32, 257.40, and 298.10 and chapter 260C.

# SCHOOL BUDGET REVIEW COMMITTEE[289]



## Regulatory Analysis

Notice of Intended Action to be published: 289—Chapter 8
"Waivers from Administrative Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 257.30(2)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 257.30 through 257.32

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

*Public Comment*

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the School Budget Review Committee no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Stephanie Edler
School Budget Review Committee
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.689.2258
Email: stephanie.edler@iowa.gov

*Purpose and Summary*

This proposed rulemaking removes duplicative and obsolete language and provides some additional flexibility when allowed by statute.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

School districts will bear the costs of compliance with this rule to demonstrate they are entitled to relief from the Committee.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities interacting with the Committee, as well as Iowa's taxpayers, will benefit.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

No impact noted.

- **Qualitative description of impact:**

No impact noted.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

No additional costs noted.

- **Anticipated effect on state revenues:**

No appreciable effects on state revenues are noted.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Not applicable. The statute requires rules.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Not applicable. The statute requires rules.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable. The statute requires rules.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable. The statute requires rules.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

None noted.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 289—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
WAIVERS FROM ADMINISTRATIVE RULES

**289—8.1(17A,ExecOrd11) Definitions.** For purposes of this chapter:

*"Committee"* means the school budget review committee.

*"Person"* means an individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

*"Waiver"* means action by the director that 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.

**289—8.2(17A,ExecOrd11) Scope.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the

issuance of a waiver from a particular rule, the more specific provision supersedes this chapter with respect to any waiver from that rule.

**289—8.3(17A,ExecOrd11) Applicability.** A waiver from a rule may be granted only if the committee has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. Statutory duties or requirements created by statute may not be waived.

**289—8.4(17A,ExecOrd11) Criteria for waiver.** In response to a petition completed pursuant to rule 289—4.6(17A,ExecOrd11), the committee may, in the committee's sole discretion, issue an order waiving in whole or in part the requirements of a rule if the committee finds, based on clear and convincing evidence, all of the following:

1. The application of the rule to the person at issue would result in an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirement of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and
5. The waiver from the requirements of the rule in the specific case would not have a negative impact on the student achievement of any person affected by the waiver.

**289—8.5(17A,ExecOrd11) Filing of petition.** All petitions for waiver must be submitted in writing to the School Budget Review Committee, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

**289—8.6(17A,ExecOrd11) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 289—4.4(17A,ExecOrd11). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board, the committee and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
6. A detailed statement of the impact on student achievement for any person affected by the granting of a waiver.
7. Any information known to the requester regarding the board's or committee's treatment of similar cases.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the committee with information relevant to the waiver.

**289—8.7(17A,ExecOrd11) Additional information.** Prior to issuing an order granting or denying a waiver, the committee 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 committee may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the committee.

**289—8.8(17A,ExecOrd11) Notice.** The committee shall acknowledge a petition upon receipt. The committee shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the committee may give notice to other persons. To accomplish this notice provision, the committee may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the committee attesting that notice has been provided.

**289—8.9(17A,ExecOrd11) Hearing procedures.** The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply in three situations: (1) to any petition for a waiver filed within a contested case; (2) when provided by rule or order; or (3) when required to do so by statute.

**289—8.10(17A,ExecOrd11) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

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

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

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

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

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

**8.10(6)** *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the committee, a waiver may be renewed if the committee finds that grounds for a waiver continue to exist.

**8.10(7)** *Time for ruling.* The committee shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the committee shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

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

**8.10(9)** *Service of order.* Within seven days of its issuance, any order issued under this uniform rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**289—8.11(17A,ExecOrd11) Public availability.** All orders granting a waiver petition shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. The committee may accordingly redact confidential information from petitions or orders prior to public inspection.

**289—8.12** Reserved.

**289—8.13(17A,ExecOrd11) Cancellation.** A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the committee issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

**289—8.14(17A,ExecOrd11) Violations.** Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**289—8.15(17A,ExecOrd11) Defense.** After the committee issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**289—8.16(17A,ExecOrd11) Judicial review.** Judicial review of the committee's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

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

**ARC 8776C**

# ADMINISTRATIVE SERVICES DEPARTMENT[11]

**Notice of Intended Action**

**Proposing rulemaking related to information technology and providing an opportunity for public comment**

The Department of Administrative Services hereby proposes to amend Chapter 117, "Procurement of Goods and Services of General Use," and Chapter 118, "Purchasing Standards for Service Contracts," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 8A.104(5).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 2024 Iowa Acts, House File 2708.

*Purpose and Summary*

2024 Iowa Acts, House File 2708, relates to the powers, duties, and responsibilities of state government entities associated with information technology, among other items. 2024 Iowa Acts, House File 2708, provides that the Department of Management shall be the sole authority in state government for the procurement of information technology goods and services for supported entities. The same goes for establishing information technology master agreements and for determining whether a procurement is an information technology procurement. These proposed amendments comport with 2024 Iowa Acts, House File 2708, by rescinding references to information technology within the scope of the Department's central procurement enterprise.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on November 13, 2024. A public hearing was held on the following date(s):

- December 3, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 30, 2025. Comments should be directed to:

Tami Wiencek
Department of Administrative Services
Hoover State Office Building

1305 East Walnut Street
Des Moines, Iowa 50319-0114
Phone: 515.725.2017
Fax: 515.281.6140
Email: tami.wiencek@iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 30, 2025<br>2:30 to 3 p.m. | Google Meet<br>Dial: 1.916.836.2562<br>PIN: 214 164 057# |
| January 30, 2025<br>3:30 to 4 p.m. | Google Meet<br>Dial: 1.302.440.5656<br>PIN: 132 977 762# |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind paragraph **117.1(1)"c".**

ITEM 2. Rescind the definitions of "Board," "Information technology device," "Information technology services," "Material modification," "Negotiated contract," "Operational standards," "Participating agency," "Software," "Systems software" and "Upgrade" in rule **11—117.2(8A)**.

ITEM 3. Rescind subparagraph **117.5(5)"a"(5)**.

ITEM 4. Renumber subparagraph **117.5(5)"a"(6)** as **117.5(5)"a"(5)**.

ITEM 5. Amend subparagraph **117.9(7)"a"(1)** as follows:

(1) ~~Information technology consulting~~ Consulting services,

ITEM 6. Rescind paragraph **117.9(7)"i".**

ITEM 7. Rescind and reserve rule **11—117.11(8A)**.

ITEM 8. Rescind paragraph **117.14(4)"a".**

ITEM 9. Reletter paragraphs **117.14(4)"b"** to **117.14(4)"e"** as **117.14(4)"a"** to **117.14(4)"d"**.

ITEM 10. Rescind and reserve subrule **118.2(1)**.

ITEM 11. Amend rule **11—118.3(8A)**, definition of "Service," as follows:

*"Service"* or *"services"* means work performed for a state agency or for its clients by a service provider and includes, but is not limited to:

1. Professional or technical expertise provided by a consultant, advisor or other technical or service provider to accomplish a specific study, review, project, task, or other work as described in the scope of work. By way of example and not by limitation, these services may include the following: accounting services; aerial surveys; aerial mapping and seeding; appraisal services; land surveying services;

construction manager services; analysis and assessment of processes, programs, fiscal impact, compliance, systems and the like; auditing services; communications services; services of peer reviewers, attorneys, financial advisors, and expert witnesses for litigation; ~~information technology~~ consulting services; services of investment advisors and managers; marketing services; policy development and recommendations; program development; public involvement services and strategies; research services; scientific and related technical services; software development and system design; and services of underwriters, physicians, and pharmacists; or

2. No change.

ITEM 12. Amend paragraph **118.7(1)"g"** as follows:

*g.* ~~The procurement is an information service that is systems software or an upgrade, or compatibility~~ Compatibility is the overriding consideration, ~~or~~ the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

## ARC 8761C

# EDUCATION DEPARTMENT[281]

### Notice of Intended Action

**Proposing rulemaking related to open enrollment and other enrollment options and providing an opportunity for public comment**

The State Board of Education hereby proposes to amend Chapter 17, "Open Enrollment and Other Enrollment Options," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 256.7(5).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 282.18.

*Purpose and Summary*

This proposed rulemaking clarifies language regarding transportation for open enrollment. It incorporates statutory amendments from 2024 Iowa Acts, House File 2278, which allows districts to provide transportation across district boundaries in certain circumstances, and 2024 Iowa Acts, Senate File 2435, which restores deadlines, makes exceptions to those deadlines, and limits open enrollment by students who are truant.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024. A public hearing was held on the following date(s):

- November 19, 2024

The Department of Education received no public comment at the hearing or otherwise.

*Fiscal Impact*

While there may be a fiscal impact on school districts, this rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 28, 2025. Comments should be directed to:

Thomas A. Mayes
Iowa Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend subrule 17.2(1) as follows:

**17.2(1)** *Parent/guardian responsibilities.* Iowa Code section 282.18 governs the application process and responsibilities for parents/guardians and school districts. An application completed and submitted under this ~~rule~~ chapter will include all information set forth in, and within the timelines provided by, Iowa Code section 282.18(2)*"a."*

ITEM 2. Adopt the following **new** subrules 17.6(6) and 17.6(7):

**17.6(6)** *Failure to meet deadlines in subrule 17.2(1).* Iowa Code section 282.18(3A) and 282.18(3B) as amended by 2024 Iowa Acts, Senate File 2435, govern applications that do not meet the applicable deadlines in subrule 17.2(1).

**17.6(7)** *Determination of truancy by receiving district.* Iowa Code section 282.18(11A) as amended by 2024 Iowa Acts, Senate File 2435, governs circumstances where the receiving district determines a student participating in open enrollment is "truant" as defined by Iowa Code section 299.8.

ITEM 3. Amend rule 281—17.8(282) as follows:

**281—17.8(282) Transportation.**

**17.8(1)** No change.

**17.8(2)** *Economic qualifications, eligibility and provisions for transportation assistance.* Open enrollment pupils who meet the economic eligibility provisions established by the department of education will receive transportation assistance from their resident district under the terms and conditions established by the department and state board of education as outlined in Iowa Code section 282.18(8)*"c."* The resident district may withhold from the amount it is required to pay to a receiving district for an open enrollment pupil the actual amount or the average cost per pupil transported amount it pays for transportation assistance, whichever is the lesser amount. A sending district shall not be responsible for paying a parent or guardian pursuant to this subrule if the pupil is transported by the receiving district to and from school in the receiving district pursuant to subrule 17.8(3).

**17.8(3)** *Exception to subrule 17.8(1).* The provisions about transportation in another district provided by subrule 17.8(1) are subject to the exceptions contained in Iowa Code section 282.18(8)*"b"* and *"c"* as amended by 2024 Iowa Acts, House File 2278.

# ARC 8760C

# EDUCATION DEPARTMENT[281]

## Notice of Intended Action

### Proposing rulemaking related to community colleges and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 21, "Community Colleges," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 260C.73.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 260C.

*Purpose and Summary*

This proposed rulemaking removes obsolete or duplicative language, as well as assigning greater weight to successful student outcomes in the community college accreditation process.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024. A public hearing was held on the following date(s):

- November 19, 2024

While no one attended the public hearing, the Department received two public comments, which the Department is still reviewing.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 28, 2025. Comments should be directed to:

Thomas A. Mayes
Iowa Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** definition of "Full-time equivalent enrollment" in rule **281—21.1(260C)**:

*"Full-time equivalent enrollment"* or *"FTEE"* equals 24 credit hours for credit courses or 600 contact hours for noncredit courses generated by all eligible students enrolled in eligible courses.

ITEM 2. Amend paragraphs **21.2(9)"d"**, **21.2(9)"e"** and **21.2(9)"g"** as follows:

*d. Associate of applied science (AAS).* The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for entry-level career and technical occupations. An associate of applied science degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied science degree program consists of a minimum of 15 semester (22.5 quarter) credit hours of general education and include at least one course from each of the following areas: communications, social science or humanities, and mathematics or science. A maximum of 3 semester (4.5 quarter) credit

hours of the required 15 general education credits may be ~~documented through an integrated,~~ embedded~~, and interdisciplinary model adopted by the chief academic officers of the 15 community colleges in consultation with the department~~ within an existing course in the technical core. The technical core of the associate of applied science degree will constitute a minimum of 50 percent of the course credits.

*e. Associate of applied arts (AAA).* The degree is awarded upon completion of a state-approved program of study that is primarily intended for career training in providing students with professional skills for employment in a specific field of work, such as arts, humanities, or graphic design. An associate of applied arts degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied arts degree program will consist of a minimum of 15 semester (22.5 quarter) credit hours of general education and include at least one course from each of the following: communications, social science or humanities, and mathematics or science. A maximum of 3 semester (4.5 quarter) credit hours of the required 15 general education credits may be ~~documented through an integrated,~~ embedded~~, and interdisciplinary model adopted by the chief academic officers of the 15 community colleges in consultation with the department~~ within an existing course in the technical core. The technical core of the associate of applied arts degree will constitute a minimum of 50 percent of the course credits.

*g. Diploma.* The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education. The general education component may be embedded within an existing course in the technical core and will be from any of the following areas: communications, social science or humanities, and mathematics or science. The technical core of the diploma will constitute a minimum of 70 percent of the course credits. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

ITEM 3. Amend rule 281—21.62(260C), introductory paragraph, as follows:

**281—21.62(260C) Accreditation components and criteria—additional state standards.** To be granted accreditation by the state board of education, an Iowa community college will also meet additional standards pertaining to minimum or quality assurance standards for faculty (Iowa Code section 260C.48(1)); faculty load (Iowa Code section 260C.48(2)); special needs and protected classes (Iowa Code section 260C.48(3)); career and technical education program evaluation (Iowa Code section 256.130(7)); facilities, parking lots and roads; ~~strategic planning;~~ institutional effectiveness and outcomes-based planning; quality faculty plan (Iowa Code section 260C.36); senior year plus programs (Iowa Code chapter 261E); and student services; as well as any other items referenced in this chapter.

ITEM 4. Amend paragraph **21.62(1)"c"** as follows:

*c.* Developmental education ~~and noncredit~~ instructors ~~are not subject to standards under this subrule~~ will possess a minimum of a bachelor's degree. Noncredit instructors are not subject to the standards in this subrule.

ITEM 5. Rescind paragraph **21.62(1)"f"**.

ITEM 6. Amend subrule 21.62(4) as follows:

**21.62(4)** *Career and technical education evaluation.* ~~The director of the department shall ensure that Iowa's community colleges annually review at least 20 percent of approved career and technical education programs.~~ The community college career and technical program review and evaluation system must ensure that the programs meet requirements as specified in 281—Chapter 46.

ITEM 7. Amend subrule 21.62(5) as follows:

**21.62(5)** *Facilities, parking lots and roads.*

*a.* ~~*Facilities*~~ *Infrastructure and facilities master planning.* Each community college shall present evidence of adequate planning, including a board-approved ~~facilities~~ plan that includes facilities, technology, and campus safety. At a minimum, the plan will include scheduling periodic maintenance, planning for facilities and infrastructure expansions and renovations, major equipment upgrades, and

processes for continuity of service and instruction. ~~Planning includes tentative program approval, a master campus plan, written educational specifications, site plot showing location of proposed and existing facilities, elevations and floor plans.~~

*b. Adequate facilities.* The site, buildings and equipment of the community college will be well maintained and in good condition. The physical plant and technological infrastructure will be adequate in size and properly equipped for the program offered. All remodeling of existing facilities will comply with Iowa Code chapter 104A and the federal Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

~~*b.*~~ *c. Accessibility and safety.* All new or remodeled facilities (buildings and programs offered in such facilities) and services in such facilities shall be made functional and usable for persons with special needs, comply with Iowa Code chapter 104A and the Americans With Disabilities Act, 42 U.S.C. §12101, and address issues of campus safety and security as required by Iowa Code chapter 260C and by the federal Clery Act, 20 U.S.C. §1092(f). All parking areas and roads will comply with all state and federal rules and regulations dealing with roads, parking ramps, and accessibility requirements.

~~*c. Adequate facilities.* All administrative facilities, classrooms, laboratories, and related facilities will be educationally adequate for the purpose for which they are designed.~~

*d. Library or learning resource center.* A library or learning resource center will be planned as part of the master campus plan and space made for library or learning resource center services within the initial construction.

(1) Facilities. Community college libraries or learning resource centers shall provide the facilities and resources needed to support the total educational program of the institution and shall show evidence that the facilities and the resources are being used effectively and efficiently. Adequate consideration shall be given to the seating, comfort, setting, and technology of the facility used to house the collection and learning resources.

(2) Staffing. The library or learning resource center will be adequately staffed with qualified professionals and skilled nonprofessional personnel.

(3) Collection. The library and learning resource center materials collection of a community college shall be accessible and adequate in size and scope to serve effectively the number and variety of programs offered and the number of students enrolled, including distance and satellite sites. The library and learning resource center materials collection will show evidence of having been selected by faculty as well as professional library or learning resource staff and shall be kept up to date through a planned program of acquisition and deletion. ~~The library and learning resource center materials collection will contain a range and number of print and nonprint materials and appropriate electronic information resources.~~

(4) No change.

*e.* and *f.* No change.

~~*g. Physical plant.* The site, buildings and equipment of the community college will be well maintained and in good condition. At a minimum, a five-year ongoing, systematic maintenance and facilities plan approved by the local community college board will be in evidence. The physical plant will be adequate in size and properly equipped for the program offered. All remodeling of existing facilities will comply with Iowa Code chapter 104A and the federal Americans with Disabilities Act, 42 U.S.C. §12101 et seq.~~

ITEM 8. Rescind subrule 21.62(6) and adopt the following **new** subrule in lieu thereof:

**21.62(6)** *Institutional effectiveness and outcomes-based planning.*

*a.* Institutional effectiveness. The community college will prepare a high-quality, board-approved strategic plan that is regularly reviewed and revised, at least once every five years. The plan will guide the college and its decision-making. It will contain a list of goals, objectives and metrics and will be developed with input from internal and external stakeholders. The college should regularly track and communicate progress towards meeting plan goals.

*b.* Outcomes-based planning. The community college will review outcomes data regularly provided by the department. As a part of the accreditation process, the college will complete a self-assessment based on this review of data, and will determine long range goals and action plans to address

opportunities for improvement and progress toward achieving statewide initiatives. Results of outcomes-based planning will be incorporated into the institutional strategic planning.

ITEM 9. Rescind subrule 21.62(7) and adopt the following **new** subrule in lieu thereof:

**21.62(7)** *Quality faculty plan.* The community college will establish a quality faculty committee consisting of instructors and administrators to develop and maintain a plan for hiring and developing quality faculty. Each college will comply with the appropriate standards defined in Iowa Code section 260C.36.

ITEM 10. Rescind subrule 21.62(9) and adopt the following **new** subrule in lieu thereof:

**21.62(9)** *Student services.* A program of student services will be provided to meet the needs of students in the community college. The program of student services, at a minimum, will include the following functional areas:

*a.* A systematic onboarding process that includes recruitment, assessment of college readiness, orientation to college processes and policies, and initial program and course selection.

*b.* A comprehensive program for financing college and understanding access to federal, state and local financial aid to facilitate community college enrollment.

*c.* A student-centered advising program related to career and academic goals focused on persistence, retention, completion, and transition to further education or employment.

*d.* Campus safety and security as required by Iowa Code chapter 260C, the federal Clery Act, 20 U.S.C. §1092(f), and 34 CFR Section 668.46.

*e.* Opportunities for students to participate in co-curricular experiences and programs that supplement classroom learning experiences and provide an optimal climate for social and academic development.

*f.* A plan for the assessment, evaluation and improvement of the student services program.

ITEM 11. Amend paragraph **21.63(1)"b"** as follows:

*b.* The department will conduct a comprehensive on-site accreditation evaluation of each community college on a ten-year interval. An interim evaluation midway between comprehensive evaluations will also be conducted. The format, length and scope of the interim evaluation will be determined by the department based on the results of the most recent comprehensive evaluation and an analysis of desk review materials and annual outcomes data prepared by the department. The department will prepare a staggered evaluation schedule that sets no more than three comprehensive or interim evaluations in any one year. No comprehensive or interim evaluation will be required for continued accreditation prior to a community college's first evaluation under the schedule. The department has the authority to conduct focused evaluation visits as needed.

ITEM 12. Amend paragraph **21.63(4)"e"** as follows:

*e. Failure to correct deficiencies.* If the deficiencies have not been corrected in a program of a community college, ~~the community college board of directors will take one of the following actions within 60 days from removal of accreditation:~~ the provisions of Iowa Code section 260C.47(5) apply.

~~(1) Merge the deficient program or programs with a program or programs from another accredited community college.~~

~~(2) Contract with another accredited postsecondary educational institution for purposes of program delivery at the community college.~~

~~(3) Discontinue the program or programs that have been identified as deficient.~~

## ARC 8759C

# EDUCATION DEPARTMENT[281]

**Notice of Intended Action**

**Proposing rulemaking related to career and technical education and providing an opportunity for public comment**

The State Board of Education hereby proposes to amend Chapter 46, "Career and Technical Education," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 256.129(2).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 256, subchapter VII, part 2.

*Purpose and Summary*

This proposed rulemaking modernizes language, removes unnecessary or duplicative language, and updates provisions related to work-based learning pursuant to 2024 Iowa Acts, Senate File 2411.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024. A public hearing was held on the following date(s):

- November 19, 2024

No one attended the public hearing and the Department of Education received no public comment.

*Fiscal Impact*

While components of 2024 Iowa Acts, Senate File 2411, have a fiscal impact, this rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 28, 2025. Comments should be directed to:

Thomas A. Mayes
Iowa Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind subrule 46.6(4) and adopt the following **new** subrule in lieu thereof:

**46.6(4)** *Postsecondary program review.*

*a. General.* The postsecondary program review process is to ensure career and technical education programs meet standards adopted by the board. The program review will include an assessment of the extent to which:

(1) The knowledge, skills, and abilities aligned with industry expectations are being mastered by the students enrolled;

(2) The program yields a positive return on investment for students;

(3) The general education curriculum in the program is aligned with the program outcomes;

(4) The program provides opportunities for students to pursue other educational opportunities, other co-curricular opportunities, or both at the community college;

(5) The program removes barriers for all students, including special populations defined by the Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. §2301 et seq., to access educational and employment opportunities;

(6) The curriculum is current and relevant;

(7) There is continued professional development of instructors;

(8) The equipment and facilities are adequate;

(9) Student outcomes, including, at a minimum, program enrollment rates, retention rates, completion rates, and employment rates and wages, are disaggregated, at a minimum, by gender, race and ethnicity, and other special populations defined by the Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. §2301 et seq., and addressed by the program; and

(10) The program articulates additional postsecondary opportunities that further the students' education and training.

*b. Process.* Each community college will establish a process that ensures at least 20 percent of career and technical education programs are reviewed on an annual basis. The department will ensure compliance with this paragraph through the community college accreditation process established in 281—Chapter 21.

*c. Additional components.* The following minimum components will also be addressed through the program review process outlined in paragraph 46.6(4)*"a."*

(1) Industry or professional standards. Community colleges will utilize program standards established and recognized by industry or professional organizations when available and appropriate. In lieu of these standards, community colleges will develop program standards through a structured group interview process, which involves committees of incumbent workers within an occupational cluster analyzing standards that include new and emerging technologies, and job-seeking, leadership, entrepreneurial, and occupational competencies. This analysis includes identifying standards that ensure program participants have access to instruction that leads to employment and further training. All standards will be analyzed for the reinforcement of academic skills.

(2) Advisory council. The community college will document how the program engages with the business community to recruit members for the advisory council under rule 281—46.8(258). Program review documentation will include a current member list with titles and employer; advisory committee meeting logistics including but not limited to meeting frequency, agendas, and minutes; advice the advisory council has suggested for the program; and any actions or results taken by the program that stem from this advice.

(3) Pathways with secondary institutions. Teachers and administrators from both secondary and postsecondary instructional levels (when applicable) meet to identify competencies required at each level and to jointly develop pathways between secondary and postsecondary levels for specific occupational areas. Such collaborative efforts will facilitate the secondary-postsecondary transition and help reduce duplication between the two levels.

ITEM 2. Amend subrule 46.10(3) as follows:

**46.10(3)** *Membership.* The membership of each partnership will consist of stakeholders in a position to contribute to the development and successful implementation of high-quality career and technical education programs. Each district that falls within the boundaries of the partnership will be represented on the partnership. Once established pursuant to subrule 46.10(1), the partnership is responsible for identifying and maintaining appropriate membership. Membership of the partnership will include the following:

*a.* to *c.* No change.

~~*d.* Representatives of a regional work-based learning intermediary network.~~

~~*e.*~~ *d.* Representatives of regional economic and workforce entities including regional advisory boards established under Iowa Code section 84A.4.

~~*f.*~~ *e.* Representatives of business and industry, including representatives of regional industry sector partnerships.

~~*g.*~~ *f.* Career and technical education secondary teachers and postsecondary faculty.

ITEM 3. Amend paragraph **46.11(1)"b"** as follows:

*b.* Establish a program of study that meets all of the following criteria:

(1) No change.

(2) Integrates academic coursework; includes foundational and transitory career and technical education coursework; includes either work-based learning or the potential to earn an industry-recognized credential or a community college credential as defined in 281—subrule 21.2(9); and utilizes the individual career and academic planning process established under 281—Chapter 49.

(3) No change.

(4) Allows students enrolled in the academy an opportunity to continue on to an associate degree and, if applicable, a postsecondary baccalaureate degree program.

Only institutions that comply with the provisions of this rule may use the term "career academy."

ITEM 4. Amend **281—Chapter 46**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter ~~258~~ 256, subchapter VII, part 2.

## ARC 8758C

# EDUCATION DEPARTMENT[281]

### Notice of Intended Action

### Proposing rulemaking related to state standards for progression in reading and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 62, "State Standards for Progression in Reading," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 256.7(31).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 279.68.

*Purpose and Summary*

This proposed rulemaking implements 2024 Iowa Acts, House File 2618, and expands support for students who are not proficient in reading.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024. A public hearing was held on the following date(s):

- November 19, 2024

No one attended the public hearing and the Department of Education received no public comment.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 28, 2025. Comments should be directed to:

Thomas A. Mayes
Iowa Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend subrule 62.3(4) as follows:

**62.3(4)** *Notice to parents.* The district will comply with Iowa Code section ~~279.68(2)~~ 279.68(1)*"b"* ~~and *"c."*~~ through *"d"* as amended by 2024 Iowa Acts, House File 2618, and section 279.68(2)*"b"* and *"c."*

ITEM 2. Amend subrule 62.4(4) as follows:

**62.4(4)** *Parent notice, involvement and support.* At a minimum and in addition to other provisions of this chapter, school districts will provide ~~the following to all parents or guardians of students who are persistently at risk in reading:~~ parents with the notices required in Iowa Code section 279.68(1)*"b,""c,"* and *"d"* as amended by 2024 Iowa Acts, House File 2618, including notices regarding retention in grade, and Iowa Code section 279.68(2)*"b"* and *"c."*

~~*a.* At regular intervals, a school district will apprise the parent or guardian of academic and other progress being made by the student and give the parent or guardian other useful information.~~

~~*b.* In addition to required reading enhancement and acceleration strategies provided to students, a school district will provide parents or guardians of students who are persistently at risk in reading with a plan outlined in a parental contract, including participation in regular parent-guided home reading.~~

ITEM 3. Amend subrule 62.6(1) as follows:

**62.6(1)** *Services beyond third grade.*

*a.* Students who are identified as persistently at risk in reading at the end of third grade remain entitled to intensive reading instruction. ~~Nothing in this chapter prohibits a school district from determining a student above third grade is persistently at risk in reading or from providing services to a student so identified.~~

*b.* Students in grades four through six who are "not reading proficiently" will receive services under this chapter. Students may be identified under this paragraph by any method identified in this chapter or by being identified as "not yet proficient" on the Iowa statewide assessment of student progress (ISASP). If a student is identified as not reading proficiently on the ISASP, the student remains identified under this chapter until the student attains proficiency on the ISASP.

## ARC 8757C

# EDUCATION DEPARTMENT[281]

### Notice of Intended Action

### Proposing rulemaking related to standards for practitioner and administrator preparedness programs and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 79, "Standards for Practitioner and Administrator Preparation Programs," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 256.7(3).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 256.16.

*Purpose and Summary*

This proposed rulemaking implements the following legislation from the 2024 Legislative Session related to practitioner preparation: 2024 Iowa Acts, House Files 255, 2545, and 2618, and Senate File 2411.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024. A public hearing was held on the following date(s):

- November 19, 2024

No one attended the public hearing; however, the Department received three public comments, which it is still analyzing.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

By statute (Iowa Code section 256.7(3)), this chapter is not subject to waiver.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 28, 2025. Comments should be directed to:

Thomas A. Mayes
Iowa Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>8 to 9 a.m. | Room B100<br>Grimes State Office Building<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend subrules 79.13(4) to 79.13(5) as follows:

**79.13(4)** Individual candidate assessment includes all of the following:

*a.* Measures used for candidate assessment are fair, reliable and valid.

*b.* Candidates are assessed on their demonstration/attainment of unit standards.

*c.* Multiple measures are used for assessment of the candidate on each unit standard.

*d.* Candidates are assessed on unit standards at different developmental stages.

*e.* Candidates within designated endorsement areas, as determined on the department website (educate.iowa.gov), complete the foundations of reading assessment.

~~*e.*~~ *f.* Candidates are provided with formative feedback and opportunities to utilize the feedback to reflect upon and guide their development and growth toward attainment of unit standards.

**79.13(5)** The unit will document regular reviews, evaluation and revision to the system of assessment.

*a.* No change.

*b.* Comprehensive unit assessment includes all of the following:

(1) Individual candidate assessment data on unit standards, as described in subrule 79.13(4), are analyzed.

(2) Individual candidate assessment data from the foundations of reading assessment as described in subrule 79.13(4) are analyzed, support is provided, and analysis is reported to the department.

If the pass rates for the foundation of reading assessment is below 90 percent for the candidates recommended for licensure, without evidence of opportunity for retaking the test, the department may require a self-evaluation and institutional report with evidence of scientifically based literacy preparation followed by a site visit.

~~(2)~~ (3) The aggregated assessment data are analyzed to evaluate programs.

~~(3)~~ (4) Findings from the evaluation of aggregated assessment data are shared with stakeholders and utilized for program improvement decisions.

ITEM 2. Amend subrule 79.13(7) as follows:

**79.13(7)** For teacher intern preparation programs, candidate assessment includes clear criteria for the following:

*a.* Acceptance requirements, including:

(1) Completion of a baccalaureate degree from ~~a regionally accredited institution~~ a college or university accredited by an institutional accrediting agency as recognized by the United States Department of Education that meets program-established required grade point criteria for the baccalaureate degree and content area;

(2) and (3) No change.

*b.* ~~Continuation in the program with clearly defined checkpoints/gates, including~~ Prior to teacher intern licensure, verification of an offer of employment as an intern from a school or district administrator.

*c.* No change.

*d.* If a candidate who was recommended for a teacher intern license exits the program or stops attending, the program is required to immediately report this change of status to the board of educational examiners.

ITEM 3. Amend paragraph **79.14(6)"a"** as follows:

*a.* ~~Includes a full-time experience for~~ Shall be a minimum of 14 weeks in duration during the teacher candidate's final year of the teacher preparation program.

ITEM 4. Adopt the following **new** subrule 79.14(9):

**79.14(9)** For teacher candidates with prior experience as a substitute teacher or a paraeducator, the terms of Iowa Code section 256.16(1)*"c"* as amended by 2024 Iowa Acts, House File 2411, apply. The unit will record evidence of prior experiences accepted under this subrule toward the student teaching experience.

ITEM 5. Amend subrule 79.15(3) as follows:

**79.15(3)** Literacy instruction and practical application include all of the following:

*a.* ~~Each~~ All teacher ~~candidate demonstrates~~ candidates demonstrate competency in literacy, including reading theory, knowledge, evidence-based reading strategies and approaches~~,~~; and integrating literacy instruction into content areas. The teacher candidate demonstrates competency in responsive teaching and making appropriate accommodations for students who struggle with literacy. Demonstrated competency shall address the needs of all students, including students with disabilities; students who are at risk of academic failure; students who have been identified as gifted and talented or English learners; and students with dyslexia, whether or not such students have been identified as children requiring special education under Iowa Code chapter 256B. Literacy ~~instruction~~ curriculum shall include evidence-based ~~best practices~~ reading instruction, determined by research, including those practices identified ~~by the Iowa reading research center~~ within the statewide literacy plan and institutions ensuring the preparation shall not include instruction or practical application on teaching foundational reading that incorporates the three-cueing system.

*b.* Each teacher candidate in specified endorsement areas listed on the department website (educate.iowa.gov), determined by the department, demonstrates competency in direct and explicit strategies; systematic and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension. Literacy instruction and practical application shall include evidence-based reading instruction and shall not include instruction or practical application on teaching foundational reading that incorporates the three-cueing system.

ITEM 6. Amend subrules 79.24(3) and 79.24(4) as follows:

**79.24(3)** Coursework and competencies to be completed ~~prior to the beginning of the candidate's initial employment as an intern~~ will include but not be limited to:

*a.* to *e.* No change.

**79.24(4)** Additional coursework and competencies to be completed ~~prior to~~ upon the recommendation for an initial teaching license will include:

*a.* to *d.* No change.

ITEM 7. Amend subrules 79.24(9) to 79.24(11) as follows:

**79.24(9)** Each teacher intern candidate will be engaged in field experiences that include opportunities for both observation of exemplary instruction and involvement in co-planning and co-teaching. Each teacher intern candidate will complete at least 50 hours of field experience ~~prior to the candidate's initial employment as an intern~~. The institution will enter into a written contract with the cooperating school or district providing ~~preinternship~~ field experiences.

**79.24(10)** The teacher intern preparation program will provide a teacher intern seminar during the ~~teacher internship~~ year leading to postintern licensure to support and extend coursework from the teacher intern content and facilitate teacher intern reflection.

**79.24(11)** In accordance with 281—Chapter 83, all teacher interns will be provided with a district-level mentor in addition to the program supervisor. The teacher intern will work under the teacher leader's supervision, including during co-teaching and planning time. The purpose of this district-level mentor is to provide coaching feedback dependent on the teacher intern's classroom experience. This district-level mentor shall not serve in an evaluative role. The district-level mentor shall complete specialized training for serving as a mentor as required in rule 281—83.3(284). The program will coordinate support between the teacher intern candidate's local district mentor and program supervisor.

# ARC 8627C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to nonpublic water wells and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 38, "Private Water Well Construction Permits," and Chapter 49, "Nonpublic Water Supply Wells," and to adopt a new Chapter 49, "Nonpublic Water Wells—Permits and Construction," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173(9).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.172, 455B.187, 455B.190 and 455B.190A.

*Purpose and Summary*

Proposed Chapter 49 establishes a schedule and required procedures for private well construction permitting and construction, including standards for private well construction as authorized in Iowa Code sections 455B.172, 455B.187, 455B.190, and 455B.190A. A private well construction permitting program and private well construction standards protect the groundwater of the state by ensuring proper well construction, which in turn protects the use of Iowa's groundwater resources now and in the future.

Existing Chapter 49 and Chapter 38 were reviewed consistent with Executive Order 10 (2023). As a result of that review, Chapter 38 will be rescinded and merged into new Chapter 49. This merger will eliminate redundancies, inconsistencies, unnecessary language, and duplicative language. Additionally, combining Chapter 38 with Chapter 49 allows for consistency and efficiencies in the rules related to nonpublic water well permitting and construction programs.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 4, 2025. Comments should be directed to:

Erik Day
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: erik.day@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at erik.day@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al erik.day@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 3, 2025 | Virtual meeting |
| 10 to 11 a.m. | A meeting registration link will be provided prior to the hearing |
| February 4, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at erik.day@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.402.7981 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al erik.day@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.402.7981 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 38**.

ITEM 2. Rescind 567—Chapter 49 and adopt the following **new** chapter in lieu thereof:

CHAPTER 49
NONPUBLIC WATER WELLS—PERMITS AND CONSTRUCTION

**567—49.1(455B) Purpose.** The purpose of this chapter is to protect the public health by protecting groundwater supplies from contamination by establishing uniform minimum standards and methods for nonpublic water supply well construction and reconstruction. This chapter provides minimum standards for installation of well pumps or equipment employed in withdrawing or obtaining water from a well for any use, except monitoring wells, including safeguards as may be necessary to protect from contamination the water in an aquifer and water being pumped from a well.

**567—49.2(455B) Definitions, references, and abbreviations.** In addition to the definitions in 567—Chapter 39, 567—Chapter 40, and 567—Chapter 82; the references and abbreviations in 567—Chapter 40; and Iowa Code sections 455B.101, 455B.171, 455B.190 and 455B.190A, the following definitions and abbreviations shall apply to this chapter:

**49.2(1)** *Definitions.*

*"Administrative authority"* means the county board of supervisors or its designee.

*"Agreement"* means a signed document between the department and the county board of supervisors with which the department delegates the authority to issue private well drilling permits to the county board of supervisors or its designee.

*"Anaerobic lagoon"* means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis, and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

1. A runoff control basin that collects and stores only precipitation-induced runoff from an open feedlot feeding operation; or
2. A waste slurry storage basin that receives waste discharges from confinement feeding operations and that is designed for complete removal of accumulated wastes from the basin at least semiannually; or
3. Any anaerobic treatment system that includes collection and treatment facilities for all off-gases.

*"Annular space"* means the open space between the well hole excavation and the well casing.

*"Cesspool"* means a covered excavation, lined or unlined, into which wastes from toilets or urinals are discharged for disposal. Cesspools are not an approved method of sewage disposal.

*"Compensation for well interference"* means payment to the owner of a nonregulated well for damages caused by a lowered water level in the well due to withdrawal of water for a permitted use.

*"Confinement building"* means a building used in conjunction with a confinement feeding operation to house animals.

*"Conforming well"* means a well that complies with the standards of this chapter, including wells properly plugged according to 567—Chapter 39.

*"Contiguous"* means any number of parcels of land that physically touch one another, including tracts of land separated by roads, railroads or streams, except that for the purpose of reporting on other existing wells on the property, the radius of a contiguous piece of land shall be limited to one mile from the site of the newly constructed well.

*"Contractor"* is defined in Iowa Code section 455B.171(3). For the purposes of this chapter, the term also includes a corporation, partnership, sole proprietorship, association or any other business entity, and any employee or officer of the entity.

*"Established grade"* means the permanent point of contact of the ground to artificial surface with the casing or curbing of the well.

*"GHEX"* means ground heat exchange.

*"GHEX loop borehole construction"* means the borehole excavation, emplacement of the closed loop, grouting of the loop, and installation of the heat exchange fluid.

*"GHEX loop boreholes"* means ground heat exchange borehole(s); ground-coupled, closed-loop, heat exchange borehole(s); or any excavation 20 feet or greater in depth that is augered, bored, cored, drilled, driven, dug, jetted, washed, or is otherwise constructed into which a closed loop used for ground heat exchange is installed. A GHEX loop borehole is not a water supply well.

*"GHEX loop system services"* means any construction, installation, rehabilitation, repair, or plugging of the various components of ground heat exchange systems, including the borehole, piping, grout, and heat-exchange fluid.

*"Health-related problem"* means well water that contains any contaminant at a level that exceeds MCLs (maximum contaminant levels) or HALs (health advisory levels) as adopted by the department.

*"Heavy drilling fluid"* means water used for drilling that, because of the natural clay content of the borehole or by addition of bentonite grout, has a solids density of at least 10 percent by weight or a mud weight of at least 9.25 lbs/gal.

*"Inactive well"* means a well that is not currently in use and is capped or sealed to prevent the entrance of contaminants into the well but is in such a condition that it can be activated to produce a safe supply of water.

*"Landowner"* means an individual, trust, partnership, corporation, government or governmental subdivision or agency, association, or other legal entity that has legal or equitable title to a piece of land.

*"Landowner's agent"* means a person who acts for or in place of the landowner by authority from the landowner.

*"Low permeability material"* means a geological unit of unconsolidated material (usually clay or till) or bedrock (usually shale) that is all or partially saturated and having permeability low enough (10-7 cm/sec) to give water in the aquifer artesian head.

*"Nonpublic water supply well"* means a well that does not supply a public water supply system (PWS).

*"Nonregulated well"* means a well used to supply water for a nonregulated use (a use of water less than 25,000 gallons per day that is not required to have a water use permit).

*"Open feedlot"* means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, forage growth, or residue cover is maintained during the period that animals are confined in the operation.

*"Permitted use"* means a use of water in excess of 25,000 gallons per day that requires a water use permit pursuant to 567—Chapter 50 and Iowa Code chapter 455B, subchapter III, part 4.

*"Pitless adapter"* means a device designed for attachment to one or more openings through a well casing. It shall be constructed so as to prevent the entrance of contaminants into the well through such openings, conduct water from the well, protect the water from freezing or extremes of temperature, and provide access to water system parts within the well.

*"Pitless unit"* means an assembly that extends the upper end of the well casing to above grade. It shall be constructed so as to prevent the entrance of contaminants into the well, conduct water from the well, and protect the water from freezing or extremes of temperature, and provide full access to the well and to water system parts within the well. It shall provide a pitless well cap for the top terminal of the well.

*"Private well"* means a well that does not supply a public water supply system.

*"Pumps and pumping equipment"* means any equipment or materials, including seals, tanks, fittings and controls utilized or intended for use in withdrawing or obtaining water for any use.

*"Runoff control basin"* means an impoundment designed and operated to collect and store runoff from an open feedlot.

*"Stuffing box"* means an approved receptacle in which packing may be compressed to form a watertight or airtight junction between two objects.

*"Upper terminus"* means the upper ten feet of the well casing as measured from the finished surface grade.

*"Well"* is synonymous with "water well" as defined in Iowa Code section 455B.171. The term does not include heat pump or geothermal heat exchange systems less than 20 feet deep or temporary dewatering wells in place for seven days or less.

*"Well construction"* means constructing a well and installing necessary casing, screen, liners, grout, seals, and other appurtenances.

*"Well liner"* means a pipe used to line the inside of a well hole but not designed to hold hydraulic or structural loading. Liners shall be installed within a casing or in an ungrouted open borehole.

*"Well plugging"* means the closure of an abandoned well with plugging materials by procedures that will permanently seal the well from contamination by surface drainage and permanently seal off the well from contamination into an aquifer. "Well plugging" includes the proper application of filling and sealing materials.

*"Well reconstruction"* means modification of the original construction of a well. "Well reconstruction" includes but is not limited to deepening the well, installing a liner, installing or replacing a screen with one of a different diameter or length, installing a pitless adapter, extending the casing, or hydrofracturing a well. Replacing a screen with one of identical diameter and length or replacing a pitless adapter is considered repair, not reconstruction.

*"Well rehabilitation"* means the physical or chemical cleaning of a well.

*"Well seal"* means a device used to cover or seal a well that establishes or maintains a junction between the well casing well and the piping, electric conduit, or equipment installed, so as to prevent water or other foreign material from entering the well at the uppermost terminal.

1. "Well cap" means a snug-fitting, watertight device used above flood level that excludes dust and vermin and allows for screened venting.

2. "Sanitary seal" means a watertight fitting that uses mechanical compression that is installed on wells that terminate in a wellhouse.

**49.2(2)** *Abbreviations.*

| Abbreviation | Meaning |
|---|---|
| ABS | acrylonitrile-butadiene-styrene |
| DR | dimension ratio |
| FDA | U.S. Food and Drug Administration |
| HDPE | high-density polyethylene |
| HTH | high test hypochlorite |
| psi | pounds per square inch |
| PVC | polyvinyl chloride |
| SCH | schedule, as in a SCH 40 rating |
| SD | separation distance (a.k.a. setback distance) |
| SDR | standard dimension ratio |
| USP | United States Pharmacopeia |

**567—49.3(455B) Applicability.** The provisions contained herein apply to the construction and reconstruction of all nonpublic water supply wells 20 feet or greater in depth.

**49.3(1)** *Nonconforming well construction installations.*

*a.* Certified well drillers and pump installers shall ensure that the reconstruction of nonconforming wells adheres to all applicable provisions of this chapter or to comparable construction or installation requirements approved by the administrative authority, except for separation distances (SDs).

*b.* When any construction or reconstruction is done on a nonconforming feature of a well, that feature shall be upgraded and brought into compliance with the material and installation standards in this chapter, except for SDs.

**49.3(2)** *Nonconforming water system installations.*

*a.* Certified pump installers shall ensure that the reconstruction or repair of nonconforming water systems adheres to all applicable provisions of this chapter or to comparable construction or installation requirements approved by the administrative authority.

*b.* When pump services are performed on a well that has a contamination problem, the well shall be upgraded and brought into compliance with the installation standards in this chapter, except for SDs.

*c.* When pump services are performed on a well that does not have a contamination problem, the well may be put back into service with nonconforming features. However, the certified installer shall notify the well owner in writing of the defects and include recommendations to correct these deficiencies.

**49.3(3)** *Construction permit required.*

*a.* In accordance with Iowa Code section 455B.187(2), a landowner or landowner's agent shall not construct a new private well without first obtaining a well construction permit from the department or a county authorized to issue permits pursuant to this chapter. Examples of private wells requiring well construction permits include but are not limited to domestic wells, livestock wells, irrigation wells, recreational-use wells, monitoring wells, heat pump wells, horizontal and lateral geothermal wells, industrial wells, and dewatering wells.

*b.* A private well construction permit is required for all replacement wells and for modification of the physical dimensions of a well.

**49.3(4)** *Exemptions.*

*a.* The permitting and construction rules in this chapter shall not apply to public water supply wells; elevator shafts; underground storage tank monitoring wells covered under 567—Chapter 135; or monitoring wells for solid waste disposal facilities covered in 567—Chapter 113.

*b.* All dewatering wells are exempt from the construction standards of this chapter, except that a construction permit is required if a dewatering well will be in place for more than seven consecutive days.

*c.* Private well construction permits are not required for temporary test holes or wells that are in place for seven consecutive days or less; soil borings; mineral, rock, gas, and other non-groundwater wells or exploration boreholes; and all monitoring wells required as part of a permit or a construction approval issued by the department.

**567—49.4(455B) General.**

**49.4(1)** Duties of administrative authority.

*a.* The administrative authority shall:

(1) Have the authority to visit well sites during any phase of the work without prior notice, and

(2) Require the issuance of permits and the submission of well logs by rule.

*b.* The administrative authority may also require posting of performance bonds and the collection and submission of other data.

**49.4(2)** No well construction or reconstruction shall be initiated until a permit has been issued by the proper authority. Construction permit issuance covered by this chapter shall be coordinated with water withdrawal permits issued by the department, pursuant to 567—Chapter 50.

**49.4(3)** All well services shall be performed by a certified well contractor or the property owner as specified in 567—Chapter 82.

**49.4(4)** It is the responsibility of the certified well contractor to ensure that a well construction permit has been issued prior to initiation of well construction or reconstruction and to ensure that all well services are performed in accordance with this chapter.

**49.4(5)** Waivers. Waivers to these rules may be granted by the administrative authority if sufficient information is provided to substantiate equal protection and the need for such action. Waiver requests and reasoning shall be in writing. Waiver approvals or rejections shall also be in writing. Where permitting authority has not been delegated to the county, the department will review and grant or deny any waiver requests within that jurisdiction.

**49.4(6)** Noncompliance. Violations of any of the provisions of this chapter may be addressed by the department pursuant to Iowa Code sections 455B.109, 455B.110, 455B.175 and 455B.191.

**567—49.5(455B) Private well construction permit applications and fees.**

**49.5(1)** *Application forms.*

*a.* An application for a private well construction permit shall be made on forms provided by the department. However, counties that have active delegation of authority to issue new private well construction permits pursuant to rule 567—49.7(455B) may develop and use their own application forms, subject to department approval.

*b.* Each application shall list all wells, including non-plugged abandoned wells, on the applicant's property contiguous to the well site described in the application and describe the location of each well

site. The location(s) shall be given as a legal land description (section, township and range) to the nearest quarter of a quarter of a quarter of a section, or as a latitude and longitude in degrees to four-decimal accuracy.

*c.* A proper application shall consist of a fully completed form and nonrefundable fee.

**49.5(2)** *Application fees.*

*a.* Each application for a private well construction permit shall be accompanied by a nonrefundable fee of $125 payable to the department of natural resources unless a county is authorized to issue private well construction permits pursuant to rule 567—49.7(455B).

*b.* In cases where the permitting authority is delegated to a county, it may set a different fee and designate the terms for fee payment and shall submit to the department a permit fee of $25 per application. This $25 fee shall be submitted quarterly by the counties in a manner provided by the department.

*c.* More than one proposed well for the same use on one contiguous piece of property of less than ten acres may be listed on one application and only one fee need be paid irrespective of the number of wells listed on the application form. Additional wells on the same property at a later time shall require another permit. Separate permits are required for individual wells and geothermal systems that are not interconnected and supply or will supply separate domestic or commercial dwellings.

*d.* The department is exempt from the fee payment requirements to the counties. The department shall remit fees directly to the department's private well permit program fund.

**567—49.6(455B) Private well construction permit issuance, conditions, expiration, and denial.**

**49.6(1)** *Issuance.* Upon receipt of a complete application, the department or contracting county shall issue a private well construction permit to the landowner or landowner's agent, except as provided in 49.6(6).

**49.6(2)** *Not a water withdrawal permit.* Each permit shall include notification that a private well construction permit is not a water withdrawal permit and does not eliminate the necessity of obtaining any water withdrawal permits required in 567—Chapters 50 and 53 through 55 for water withdrawal in excess of 25,000 gallons of water per day from any source or combination of sources in the state of Iowa.

**49.6(3)** *Construction by certified well contractor.* Each well construction permit shall require that each well be constructed by a certified well contractor in compliance with this chapter and 567—Chapter 82.

**49.6(4)** *Transferability.* A private well construction permit is not transferable.

**49.6(5)** *Expiration.* A private well construction permit shall expire one calendar year from the date of issuance. If the well construction is not started prior to the permit expiration date, a new application plus a new nonrefundable fee must be filed with the department or the county pursuant to 49.5(2).

**49.6(6)** *Permit denial.* The department or contracting county may deny a private well construction permit in the following circumstances:

*a.* If granting the permit would lead to the violation of state law, could result in groundwater contamination, or would lead to withdrawal from a protected source;

*b.* If the well could threaten public health or the environment; or

*c.* If the well would be an underground agricultural drainage injection well.

**49.6(7)** *Appeal of permit denial.* Any applicant aggrieved by a decision issued under the provisions of this chapter may file a notice of appeal with the director. The notice of appeal must be filed within 30 days of the date of the permit decision. The form of the notice of appeal and appeal procedures are governed by 561—Chapter 7. Appeal of a permit denied by a county that has been delegated authority to issue private well construction permits shall be administered by the county in accordance with its appeal or judiciary review process. Appeal to the department is possible only when the appeal involves well design or construction variances or if delegation to the county is suspended, rescinded, or revoked.

**567—49.7(455B) Delegation of construction permitting authority to a county.**

**49.7(1)** *Application.* A county board of supervisors, board of health, or the board's designee, hereafter referred to as a "county," requesting the authority to issue private well construction permits shall enter into an intergovernmental (28E) service agreement with the department in accordance with Iowa Code chapter 28E. The agreement shall be signed by the department and the county and include statements complying with this chapter and 567—Chapter 39. Additional information supporting an application may be requested by the department. The department may contract for all or part of the private well permitting services in those counties that do not receive or maintain delegation authority or for permit authorities retained by the department.

**49.7(2)** *Information to the department.* The delegation agreement shall provide for the method, format, and frequency of reporting all permit application information and remission of fees to the department.

**49.7(3)** *Authority.* After delegation of authority to a county, all applications in that county shall be made to the board or its designee, except that all new private well construction permit applications by state or federal agencies shall be made to the department.

**49.7(4)** *Delegation term.* A delegation of authority may be for up to five years and may be redelegated at the department's discretion.

**49.7(5)** *Permit number.* Each permit shall be given a unique number as prescribed by the department. This numbering system shall be consistent throughout the state.

**49.7(6)** *Emergency permits.* Contracting counties must have policies and procedures in place to accommodate the issuance of permits on an emergency basis for the immediate replacement or reconstruction of wells in response to the sudden and unforeseen loss or serious impairment of a well for its intended use.

**49.7(7)** *Delegation agreement revocation.* The department may revoke a county delegation agreement if the board of supervisors or the board's designee failed or refused to carry out the provisions of this chapter in a timely manner or violated any of the provisions of the delegation agreement with the department.

**567—49.8(455B) Well location and separation distances (SDs).**

**49.8(1)** Wells shall be located with consideration given to the lot size; soil contour, porosity, and absorbency; local groundwater conditions; flooding; and other factors necessary to implement the rules.

*a. Frost pits.* Wells cannot be located within frost pits. Frost pits that do not contain wells are allowed for the purpose of housing other appurtenances, such as pressure tanks and valves, provided the frost pits are not located closer than ten feet from any well.

*b. Relation to buildings.* Wells shall be located so that no building interferes with reasonable access for cleaning, treatment, repair, testing, inspection, or other maintenance. Wells cannot be located in basements.

*c. Easements.* No well shall be located on a property not owned by the well owner unless an easement allowing such placement is reviewed and approved by the administrative authority and the easement is legally recorded.

**49.8(2)** The following minimum lateral SDs in Table I below from all private wells shall apply for the common structures or sources of contamination listed in the table. The lack of specific distances to other possible sources of contamination, such as refuse disposal sites and high-pressure gas lines, does not minimize their potential hazard. Other possible sources shall be evaluated in each particular situation and a distance arrived at that is based on pertinent facts. The well contractor shall consult the administrative authority for assistance in determining a proper distance in such cases.

TABLE I: Private Well Separation Distances

| **Structure or Source of Contamination** | **Required Minimum Lateral Distance, as Measured Horizontally on the Ground Surface, in feet** | |
|---|---|---|
| | **Private Wells** | |
| | **Deep Well[1]** | **Shallow Well[1]** |
| WELLS: | | |
| Public wells: | | |
| Public water supply well – deep or shallow | 200 | 400 |
| Below-ground level finished water storage facility | 50 | |
| Private wells: | | |
| Existing private wells that do not conform to 567—Chapter 49 | 100 | |
| Existing private wells that conform to 567—Chapter 49 | 10 | |
| WASTEWATER DISPOSAL SYSTEMS: | | |
| PSDSs and onsite treatment systems – closed portion[2] | 50 | |
| PSDSs and onsite treatment systems – open portion[2] | 100 | |
| Wastewater treatment works[3,4,5] | 400 | |
| CHEMICALS: | | |
| Transmission pipelines (including but not limited to fertilizer, liquid petroleum, or anhydrous ammonia)[6] | 100 | 200 |
| Chemical and mineral storage or preparation areas, including areas for spray materials, commercial fertilizers, or chemicals that may contaminate groundwater, except for liquid propane gas (LPG) | 150 | |
| Liquid hydrocarbon storage tanks, except for LPG | 100 | |
| LPG storage tanks | 15 | |
| ANIMALS: | | |
| Animal enclosures (such as confinement buildings or open feedlots) | 100 | 200 |
| Animal Wastes: | | |
| Storage basins or lagoons, or runoff control basins | 1000[5] | |
| Solids stockpiles, solids settling facilities, or storage tanks | 100 | 200 |
| WATERBODIES: | | |
| Flowing streams, ponds, lakes, reservoirs, wetlands, or drainage channels[7] | 25 | |
| MISCELLANEOUS | | |
| Anaerobic lagoons[5] | 1000[8] | |
| Solid waste landfills and disposal sites[8] | 1000 | |
| Roadside ditches and road rights-of-way | 15 | |
| Cisterns, well pits (containing a well head), yard hydrants, or frost pits | 10 | |
| Property lines[9] | 4 | |
| Land application of septage[10] | 500 | |
| Land application of sewage sludge | 200 | |
| CONVEYANCES:[11] | | |
| Gravity sanitary sewers and sanitary sewer force mains including those carrying water treatment plant wastes: | | |
| Water main materials[12] | 25[13] | |
| Standard sanitary sewer materials[12] | 50[13] | |
| Storm sewers, general minimums | 10 | |
| Independent clear water drains or pump house floor drains | 10 | |
| Building sewer service lines and laterals[14] | 10 | |

[1]Deep and shallow wells are defined in rule 567—40.2(455B).

[2]PSDS (private sewage disposal system) is defined in 567—subrule 69.1(2). For the purposes of this table, "onsite treatment system" includes any wastewater treatment system not included in the definition of a PSDS (i.e., provides treatment or disposal of domestic sewage from more than four dwelling units or 16 or more individuals on a continuing basis) that is utilizing wastewater treatment technologies described in 567—Chapter 69 to treat domestic waste. Closed portion refers to the part of a treatment system that is fully contained and does not allow effluent or pretreated effluent to enter soil or groundwater (e.g., septic tank or impervious vault toilet). Open portion refers to the part of a treatment system that allows effluent or pretreated effluent to discharge into soil or groundwater for treatment or disposal (e.g., soil absorption system or unlined ISSF system). These SDs also apply to septic systems that are not considered privately owned.

[3]For the purposes of this table, "wastewater treatment works" includes lagoons and mechanical treatment plants as described in this superscript. The term "lagoons" includes aerated lagoon systems, advanced aerated lagoon systems, and waste stabilization lagoons, as defined in 567—subrule 81.1(1), and holding ponds, equalization basins, and sludge digestion or holding tanks, as described in the Iowa Wastewater Facilities Design Standards (IWFDS). The term does not include lagoons used to dispose of water treatment plant wastes and anaerobic lagoons used for animal wastes (as noted in superscript 5). The SD from lagoons shall be measured from the water surface. The term "mechanical treatment plants" includes activated sludge systems and fixed film biological treatment systems, as defined in 567—subrule 81.1(1), and any other wastewater disposal system that is not a PSDS, an onsite treatment system, or a lagoon.

[4]The 400-foot SD between an existing, nonpotable, deep or shallow private well owned by an industry and an industrial wastewater treatment works may be reduced to 200 feet at the department's discretion for industrial facilities expanding or upgrading their existing treatment works within the industry's existing property boundaries.

[5]The 400-foot SD between a private well and an anaerobic lagoon, earthen manure storage basin, earthen manure slurry storage basin, or runoff control basin shall be 1,000 feet. If an applicant for a private well construction permit demonstrates through percolation testing that the seepage loss through the lagoon or basin does not exceed 1/16 inch per day (0.0625 inch/day), the SD shall be 400 feet. The percolation test shall meet the requirements of ASTM D1587/D1587M-15 and 567—subrule 65.15(11).

[6]These private well SDs apply only if a more restrictive setback is not set by the pipeline owner.

[7]Includes drainage channels that may have a direct connection to the groundwater table or a surface water.

[8]Solid waste, when referring to landfills and disposal sites, means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.

[9]This distance applies unless a mutual easement is signed and recorded by both parties.

[10]Septage shall be land applied in accordance with 567—Chapter 68.

[11]The SDs are dependent upon two factors: the type of piping that is in the existing sewer or drain, as noted in the table, and that the piping was properly installed in accordance with the standards.

[12]These are the type of materials or pipe used to construct the type of sewer, main, or drain as specified, in accordance with 567—subrule 43.3(2) and Section 2.4 of the IWFDS.

[13]The 25- and 50-foot SDs do not apply to private closed-loop geothermal wells. The SD between closed-loop geothermal systems and both gravity sanitary sewers and sanitary sewer force mains shall be 10 feet.

[14]The SD for building sewer service lines and laterals shall be considered the minimum distance when constructing sewer lines and shall be increased where possible to provide better protection.

**567—49.9(455B) General construction requirements.** Wells shall be planned and constructed to adapt to the geologic and groundwater conditions of the proposed well site to ensure both the reasonable utilization of every natural protection against contamination of the water-bearing formation(s) and the

exclusion of possible sources of contamination, to attempt to produce bacterially safe water free of health-related problems.

**49.9(1)** *Water used in construction.* Water used in the construction process shall be obtained from a potable water source that will not result in well contamination. Drilling water shall be treated with 3 pints of 5.25 percent sodium hypochlorite solution per 100 gallons of water, 0.25 pounds of 65 percent calcium hypochlorite per 100 gallons of water, or other additives to produce an equivalent concentration of chlorine residual (50 ppm).

**49.9(2)** *Wellhead.*

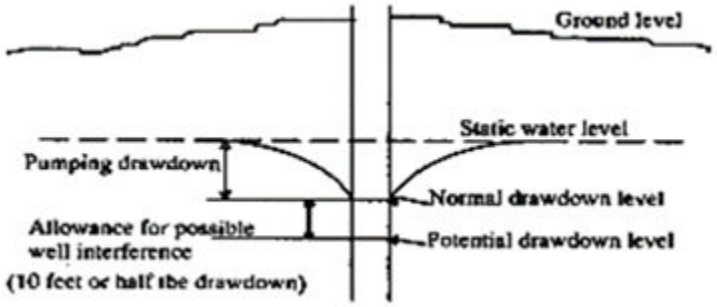
*a.* The upper terminal casing of all wells shall extend at least 12 inches above established grade or pump house floor, or the 100-year flood level, whichever is higher. A well cap or sanitary seal shall be installed immediately following well completion. A well cap shall be used on an exposed well; a sanitary seal only on a well terminating within a wellhouse. Any openings in the cap or seal, such as for pump wiring or water depth measurement, shall be properly grommeted or sealed, except for properly screened and oriented vent openings.

*b.* The ground surface immediately adjacent to the well casing shall be compacted and graded so that surface water is diverted away from the casing. Well platforms are not recommended, except those used as pump house floors.

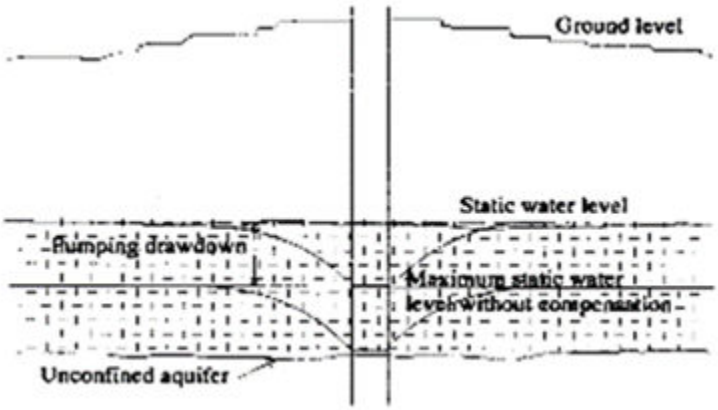
**49.9(3)** *Criteria for well interference protection.* 567—Chapter 54 provides an administrative process for owners of nonregulated wells to receive compensation for well interference caused by permitted uses. To be eligible for compensation due to well interference, nonregulated wells shall be constructed to allow for some potential well interference.

*a.* Allowance for potential well interference is accomplished by constructing a nonregulated well to anticipate a lowering of the well's static head, which may be caused by interference from a nearby permitted use well.

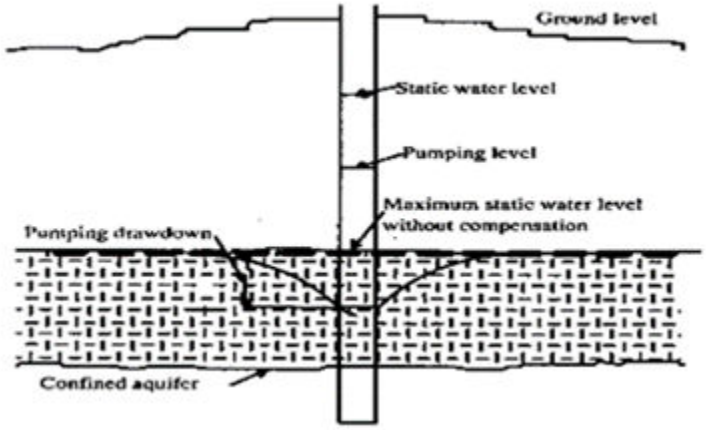
(1) A well shall be drilled deep enough to allow for pump setting at least 10 feet or half the normal pumping drawdown, whichever is greater, below the initial recommended setting depth.




(2) If a well draws from an unconfined aquifer, the static water level may drop to half the saturated thickness of the aquifer before well interference is considered, if the calculation in (1) above should indicate a shallower depth. Shallow aquifers that are only slightly confined may be classified as unconfined aquifers for this purpose.




(3) Where a well penetrates a confined aquifer, the static water level is protected only to the top of the aquifer if the calculation in (1) above should indicate a deeper level.




(4) Protected levels for flowing wells will be considered the top of the confined aquifer or 100 feet below the surface, whichever is higher. Flowing wells shall be constructed to accommodate a pump capable of supplying a sufficient water supply at protected levels.

(5) The well design also needs to consider drought and reduced well efficiency. Additional information is provided in 567—Chapter 54.

*b.* A well that is used to withdraw more than 25,000 gallons of water per day requires a water use permit from the department. Upon obtaining such a permit, the well is considered a permitted use.

(1) If a permitted use exists prior to the construction of a well without a water use permit, no compensation for well interference will be allowed unless a significant change in the permitted use occurs.

(2) A physical change to withdrawal facilities may be considered a significant change to a permitted use (e.g., moving the withdrawal location, installing a new well, or installing a higher capacity pump).

(3) A person desiring to construct a well not requiring a water use permit should first obtain information concerning nearby permitted use wells. The department shall provide information on permitted use wells upon request.

**49.9(4)** *Access port for water level measurement.* Permitted use wells shall be equipped with an access port having a minimum diameter of ¾ inch. The access port shall be fitted with a threaded cap or plug and be located to allow insertion of a steel tape or electric probe into the well for water level measurements. When a spool type of pitless adapter is used that obstructs clear access to the water, a ¾-inch pipe shall be attached to the spool and brought to the surface below the well cap to allow water level measurements. Wells not requiring a water use permit should be constructed with an access port for water level measurement for possible future well interference concerns.

**49.9(5)** *Interconnection of aquifers.* Permitted use wells shall use casing and grouting to maintain a hydraulic separation between distinct aquifers separated by confining intervals. Hydraulic separation of distinct aquifers for non-permitted use wells is not required; however, caution should be taken to prevent aquifer contamination, and the administrative authority shall be consulted for possible local regulations when interconnection of aquifers across confining intervals is anticipated.

**567—49.10(455B) Types of well construction.**

**49.10(1)** *Drilled wells.*

*a. Non-bedrock wells.*

(1) Casing depth. In no case shall less than 20 feet of permanent solid casing be installed in wells drilled in unconsolidated materials. If the alluvial aquifer where the water is to be drawn from is covered by less than 40 feet of low permeability materials, the well screen shall be set at the bottom of the water-bearing aquifer or at least 60 feet from the surface. Deeper depths may be required if nitrate contamination is excessive. If more than 40 feet of low permeability materials are present above the aquifer, the casing shall extend down at least to the top of the aquifer.

(2) Grouting.

1. Grout shall be placed to a minimum depth of 40 feet or along the full length of the casing where less than 40 feet of casing is set. Grouting the full length of the casing below 40 feet may be necessary to isolate any contaminated water lenses or aquifers.

2. If a layer of low permeability material at least 5 feet thick is encountered less than 40 feet from the surface, the grout may be terminated no less than 5 feet below the top of this low permeability material, but in no case less than 20 feet from the ground surface.

3. Grout shall be placed in accordance with 49.11(3), except when driving casing. When driving casing, a cone-shaped depression or temporary outer casing that is filled with bentonite products must be maintained around the well casing. The bottom of the driven casing shall be equipped with a drive shoe.

(3) Annular space.

1. The borehole diameter shall be at least three inches greater than the outside diameter of the well casing to the minimum grouting depth.

2. When steel well casing pipe is installed using percussion methods, the annular space shall be at least five inches greater than the outside diameter of the well casing to a minimum depth of 25 feet.

(4) If the depth of casing is greater than 40 feet, the annular space below 40 feet may be filled with heavy drilling fluid taken from the borehole as long as the top 40 feet of annular space is properly grouted. In this case, the annular space below 40 feet shall be kept as small as possible to avoid settling.

*b. Bored and augered non-bedrock wells with concrete, fiberglass, or clay tile casing.* The casing shall be at least 18 inches in diameter and buried-slab construction is required.

(1) Casing.

1. The top of the concrete, fiberglass, or vitrified clay pipe casing shall be terminated not less than 10 feet below ground surface and extend to a minimum depth of 20 feet.

2. Casing shall be fitted with a reinforced concrete, fiberglass, or steel plate, into which a watertight steel or thermoplastic casing is firmly embedded in or connected to a pipe that is cast or welded into the plate.

3. The embedded casing shall be at least 5 inches in diameter and shall extend from the plate to not less than 12 inches above established grade or the 100-year flood level, whichever is higher.

4. A pitless adapter shall be installed below frost depth on newly installed plastic or steel casing.

(2) Grout. A 12-inch grout seal shall be poured over and around the plate.

(3) Annular space. The annular space between the steel or thermoplastic casing and the borehole shall be backfilled with clean compacted soil free of debris or large organic material. During the backfilling process, the earth shall be thoroughly tamped to minimize settling. Grading around the well shall then be accomplished in accordance with 49.9(2).

*c. Bedrock wells.*

(1) Casing depth. Casing shall extend to a depth of at least 40 feet and be seated in firm rock. When the uppermost bedrock consists of creviced limestone or dolomite that does not produce water, the casing shall extend through the creviced formation, be seated in firm rock, and be properly grouted.

(2) Grouting.

1. For bedrock wells, full-length grouting of the casing is strongly recommended. Grout shall be placed to a minimum depth of 40 feet in accordance with 49.11(3), except when driving casing using percussion or casing-hammer/rotary drilling.

2. When driving casing, a cone-shaped depression or temporary outer casing that is filled with bentonite products shall be maintained around the outside of the casing. The bottom of the driven casing shall be equipped with a drive shoe.

3. If a layer of low permeability material at least 5 feet thick is encountered less than 40 feet from the surface, the grout may be terminated no less than 5 feet below the top of this low permeability material, but in no case less than 20 feet from the ground surface.

4. Where local conditions warrant, the administrative authority may require more extensive grouting to protect any aquifer(s) that are penetrated.

(3) Annular space.

1. The borehole shall be at least three inches greater than the outside diameter of the well casing for the upper 40 feet or the minimum grouting depth.

2. When steel casing pipe is installed using percussion, or casing-hammer/rotary methods, the annular space shall be at least five inches greater than the outside diameter of the well casing to a minimum depth of 25 feet.

3. When bedrock wells are full-length pressure-grouted through the casing, the borehole diameter shall be three inches larger than the outside diameter of the casing for the minimum depth of at least 25 feet.

(4) If the depth of casing is greater than 40 feet, the annular space below 40 feet may be filled with heavy drilling fluid taken from the borehole as long as the top 40 feet of annular space is properly grouted. In this case, the annular space below 40 feet shall be kept as small as possible to avoid settling.

(5) In fractured rock, where circulation of slurry cannot be maintained, grouting may be done with bentonite chips. The chips shall be hydrated with one gallon of water per bag of bentonite.

**49.10(2)** *Driven, direct push, and sandpoint wells.* Well construction in sandy areas with a high water table is not recommended for potable water supplies. These types of wells shall meet the requirements of this chapter, except for casing depth and grouting requirements.

**49.10(3)** *Flowing artesian wells.*

*a.* Drilling operations shall extend into but not through the formation confining the water. The casing shall be installed and the annular space full-length pressure-grouted and allowed to set. After the grout is set, the drill hole shall be extended into the confined water-bearing formation.

*b.* Flow control from the well shall be provided by valved pipe connections or a receiving tank set at an altitude corresponding to that of the artesian head. Under no circumstances shall the water flow uncontrolled to waste.

*c.* A direct connection between the discharge pipe and a receiving tank, sewer, or other source of contamination is prohibited.

**567—49.11(455B) Material standards.** All materials utilized in well water construction shall conform to the standards and guidance of the AWWA, API, ASTM, and NGWA, except as modified by this rule.

**49.11(1)** *Well casing.*

*a. Steel well casing and couplings.*

(1) Steel well casing pipe shall have the weights and dimensions specified in Table II. Well casing pipe shall be new steel pipe meeting one of the following standards:

1. ASTM A-53-96,
2. ASTM A-106-95,
3. ASTM A-589-95a - Type I, II or III,
4. API SPEC 5CT (5th Edition, 4/1/95),

5. API SPEC 5D (3rd Edition, 8/1/92), or

6. API SPEC 5L (41st Edition, 4/1/95).

(2) Each length of casing shall be legibly marked in accordance with API or ASTM marking specifications with the manufacturer's or processor's name or trademark, size in inches, weight in pounds per foot, whether seamless or welded (type of weld), and the API or ASTM specification or trade monogram.

(3) All casing pipe joints shall be watertight welded construction or threaded couplings.

(4) Minimum casing pipe and coupling weights and dimensions are shown in Table II below:

**Table II - Minimum Casing Pipe and Coupling Weights and Dimensions**

| Size (inches) | Weight (lbs/ft) | | Pipe | | | | Couplings | |
|---|---|---|---|---|---|---|---|---|
| | Threads & coupling | Plain end | Thickness (inches) | External diameter (inches) | Internal diameter (inches) | Threads per inch | External diameter (inches) | Length (inches) |
| 1 | 1.70 | 1.68 | .133 | 1.315 | 1.049 | 11-1/2 | 1.576 | 2-5/8 |
| 1-1/4 | 2.30 | 2.27 | .140 | 1.660 | 1.380 | 11-1/2 | 1.900 | 2-3/4 |
| 1-1/2 | 2.75 | 2.72 | .145 | 1.900 | 1.610 | 11-1/2 | 2.200 | 2-3/4 |
| 2 | 3.75 | 3.65 | .154 | 2.375 | 2.067 | 11-1/2 | 2.750 | 2-7/8 |
| 2-1/2 | 5.90 | 5.79 | .203 | 2.875 | 2.469 | 8 | 3.250 | 3-15/16 |
| 3 | 7.70 | 7.58 | .216 | 3.500 | 3.068 | 8 | 4.000 | 4-1/16 |
| 3-1/2 | 9.25 | 9.11 | .226 | 4.000 | 3.548 | 8 | 4.625 | 4-3/16 |
| 4 | 11.00 | 10.79 | .237 | 4.500 | 4.026 | 8 | 5.200 | 4-5/16 |
| 5 | 15.00 | 14.62 | .258 | 5.563 | 5.047 | 8 | 6.296 | 4-1/2 |
| 6 | 19.46 | 18.97 | .280 | 6.625 | 6.065 | 8 | 7.390 | 4-11/16 |
| 6-5/8 OD | 20.00 | 19.49 | .288 | 6.625 | 6.049 | 8 | 7.390 | 4-11/16 |
| 7 OD | 20.00 | 19.54 | .272 | 7.000 | 6.366 | 8 R | 7.657 | 4-11/16 |
| 8 | 29.35 | 28.55 | .322 | 8.625 | 8.071 | 8 | 9.625 | 5-1/16 |
| 10 | 41.85 | 40.48 | .365 | 10.750 | 10.136 | 8 | 11.750 | 5-9/16 |
| 12 | 51.15 | 49.56 | .375 | 12.750 | 12.090 | 8 | 14.000 | 5-15/16 |
| 14 OD | 57.00 | 54.57 | .375 | 14.000 | 13.250 | 8 | 15.000 | 6-3/8 |
| 16 OD | 65.30 | 62.58 | .375 | 16.000 | 15.250 | 8 | 17.000 | 6-3/4 |
| 18 OD | 73.00 | 70.59 | .375 | 18.000 | 17.250 | 8 | 19.000 | 7-1/8 |
| 20 OD | 81.00 | 78.60 | .375 | 20.000 | 19.250 | 8 | 21.000 | 7-5/8 |

R = Round Threads

*b. Thermoplastic casing and couplings.*

(1) Materials. Thermoplastic well casing pipe and couplings shall:

1. Be new PVC or ABS material having a minimum pressure rating of 200 psi and meeting one of the following standards: ASTM F 480-12, ASTM D2241-09, AWWA C-900-16, or ASTM 1785-21; and

2. Have an SDR of 21, 17, or 13.5, a DR of 18 or 14, or a SCH 40 or 80 rating, depending upon the specification.

(2) Potable water standards. The thermoplastic well casing pipe, pipe couplings, cement, primer, and other components shall be approved for well casing pipe in potable water supplies by the NSF 61-2016 or the health effects portion of NSF 14-2012 as they relate to well casing pipe, or an approved equivalent organization.

(3) Markings. Each length of casing shall be legibly marked with the manufacturer's or processor's name or trademark, the size in inches, and the ASTM F 480 specification or trade monogram.

(4) Casing joints. Thermoplastic pipe shall be assembled with either flush-threaded joints, integral-bell, solvent-cemented joints, one-piece solvent-cemented couplings, or a nonmetallic restrained joint system in accordance with ASTM F 480-12.

(5) When cement grout is used with thermoplastic casing, the manufacturer's specifications for use shall be followed, except in the top 40 feet.

(6) Thermoplastic pipe extending above ground shall be protected from ultraviolet light exposure.

(7) Under no circumstances shall thermoplastic well casing be driven.

**49.11(2)** *Grouting guides.* Casing that is to be grouted shall have a minimum of two sets of centering guides attached to the casing to allow for unobstructed flow and deposition of grout.

**49.11(3)** *Grouting materials and procedures.*

*a. Concrete grout.* This mixture shall consist of cement, sand aggregate, and water, in the proportion of one bag cement (94 lbs.) and an equal volume of aggregate to not more than six gallons of clean water. Concrete grout shall not be used below the water table. Admixtures to reduce permeability or control setting time shall meet ASTM C 494-19. Concrete grout may be used with administrative authority permission where large void spaces need to be filled.

*b. Neat cement grout.* This mixture shall consist of one bag of cement (94 lbs.) to not more than six gallons of clean water. Admixtures to reduce permeability or control setting time shall meet ASTM C 494-19.

*c. Bentonite grout.* This is a mixture of water and commercial sodium-bentonite clay manufactured for the purpose of well grouting. Mixing shall be per manufacturer's specifications. Sodium-bentonite mixtures that have high viscosity but contain less than 10 percent solids are designed for drilling purposes and shall not be used as grout. Organic polymers used in grout mixtures shall meet NSF 60-2016.

*d. Bentonite pellets, chips, or granular bentonite.* A layer of bentonite pellets, chips, or granular bentonite not exceeding five feet may be used between the gravel pack and grout. Bentonite pellets are otherwise not permissible.

*e. Exclusion.* Drilling fluids and cuttings may not be used as grouting material.

*f. Application.* Grouting shall be performed by pumping the mixture into the annular space from the bottom upward through the casing or through a tremie pipe until the annular space is filled. Grouting shall be done in one continuous operation, if possible. The bottom of the tremie pipe shall remain submerged in grout while grouting.

*g. Exceptions.* If buried-slab, percussion, or casing-hammer/rotary methods are used to construct a well, grouting shall be performed in accordance with 49.10(1) and 49.10(2). If slurry circulation cannot be maintained, grouting shall be performed in accordance with 49.10(1)*"c"*(5).

**567—49.12(455B) Well reconstruction.** All well reconstruction shall meet the requirements of this chapter, except for SDs. If the well feature in need of reconstruction cannot be brought into compliance with these rules, the well shall be properly plugged.

**49.12(1)** *Liner installation.* If reconstruction will involve the placement of a liner, a certified well contractor shall determine whether or not the proposed reconstruction is being done in order to correct a health-related problem. Based on the determination, the reconstruction shall be performed in accordance with either 49.12(1)*"a"* or *"b"* below.

*a. Standards for liner installation to correct a health-related problem.*

(1) The liner shall:

1. Have a minimum of two sets of centering guides to allow the proper placement of grout, and
2. Extend to the ground surface or top of the pitless adapter.

(2) In no case shall the liner be driven into place.

(3) The annular space between the old casing and the liner shall be pressure-grouted in place throughout its entire length using an approved grout.

*b. Standards for liner installation to correct a problem that is not health-related.*

(1) The liner shall extend at least ten feet above the static water level or, if a caving zone is present, shall extend above this region.

(2) The liner may be pressure-grouted in place if there is a sufficient annular space for proper grout application.

*c. Liner materials.* Liners shall meet the well casing standards in 49.11(1). Liners may be composed of either steel or thermoplastic with a minimum inside diameter of four inches. Steel liners shall be new and have a minimum wall thickness of .188 inches. Plastic liners shall have an SDR of 26 or less or be SCH 40 or SCH 80. If the installation does not meet the definition of a liner, casing material shall be used.

**49.12(2)** *Upper terminus.* All well reconstruction performed on the upper terminus of a well shall meet the standards of this chapter, except for SDs.

**567—49.13(455B) Drilling mud disposal.** Drilling fluid and mud remaining after construction of a well shall not be disposed of in a stream or storm sewer; nor shall these materials be discharged into a sanitary sewer without permission of the owner and operator of the wastewater treatment facility.

**567—49.14(455B) Pumps, pumping equipment, and wiring.**

**49.14(1)** *General pump installation requirements.* Pump installation shall be planned and carried out so the pump will be:

*a.* Installed so that it and its surroundings are not exposed to chemical or biological contamination;

*b.* Properly sized so as to provide the volume of water necessary, where obtainable, for an adequate water supply;

*c.* Designed to meet the well characteristics and not exceed the yield of the well, except for low yield seepage/storage wells;

*d.* Installed without repriming or breaking suction;

*e.* Installed in a manner that provides adequate protection against contamination of the water supply from any surface or subsurface sources; and

*f.* Accessible for maintenance, repair, and removal.

**49.14(2)** *Lubrication.* Pump motor lubricant or coolant oil shall be NSF H1 approved or be FDA Generally Recognized As Safe (GRAS)-approved for incidental food contact.

**49.14(3)** *Other power pumps.* Other power pumps located over the well shall be mechanically joined to the casing or on a pump foundation or stand in a manner that effectively seals the top of the well. A sanitary seal shall be used where the pump is not located over the well, and the pump delivery or suction pipe emerges from the top.

**49.14(4)** *Hand pumps or similar devices.*

*a.* A hand pump, hand pump head, hand pump stand, or similar device shall be constructed so that there are no openings into the interior of the pump or well casing where rain or surface water, dirt, insects, or animals, or other foreign matter can enter.

*b.* Hand pumps shall:

(1) Be provided with a casing vent as described in 49.17(2);

(2) Have a closed, downward-directed spout and a sealed pump rod packing assembly; and

(3) Be attached to a well casing by a sealed flange or other method approved by the administrative authority. The flange shall not be less than 12 inches above a concrete slab or the ground surface.

*c.* Where a well casing functions as a hand pump cylinder wall, the plunger shall not be less than 25 feet below the ground surface. Casing wall weep holes are not allowed.

**49.14(5)** *Pump wiring.* Pump wiring within the well shall be double-jacketed copper wire meeting the NEC specifications for wire sizing unless the pump manufacturer requires a non-jacketed wire. Wire outside of the casing shall meet NEC specifications, at a minimum. Wire shall be secured to the drop pipe at a minimum of 20-foot intervals.

**567—49.15(455B) Drop pipe.**

**49.15(1)** *Discharge pipe.* Galvanized, black, or stainless steel drop pipe shall be minimum SCH 40 wall thickness when threaded. Minimum SCH 10 stainless is allowed with mechanical joint type systems. PVC drop pipe shall be minimum SCH 80 wall thickness. SCH 80 machined PVC, brass, stainless steel couplings, or equivalent thickness cast couplings (including mechanical joints), shall be used with PVC pipe. Polyethylene drop pipe shall meet the minimum specifications of ASTM D3350-21. Only brass or stainless steel fittings can be used on polyethylene drop pipe. If polyethylene drop pipe is used, the outside diameter of the pump shall be at least one inch smaller than the inside diameter of the well casing.

**49.15(2)** *Check valve.* For potable water installations, all pumps shall have a check valve within 20 feet of the pump for pump installations without drain-back aeration. For pump installations with drain-back aeration, the check valve shall be below the pitless adapter.

**567—49.16(455B) Pitless adapters and pitless units.**

**49.16(1)** Pitless adapters and pitless units conforming to WSC Pitless Adapter Standard—1997 (PAS-97) are considered compliant with these rules.

**49.16(2)** No well casing shall be cut off or cut into below ground surface except to install a pitless well adapter below the frost level.

**49.16(3)** A pitless subsurface pipe connection to a well casing pipe shall be made with a weld-on, clamp-on, or bolt-on pitless adapter or weld-on or threaded pitless unit. Aboveground discharge pitless adapters with a drain-back into the well are prohibited on systems under continuous pressure.

**49.16(4)** If the pitless adapter is gasketed, the opening in the casing shall be sawed to the diameter recommended by the manufacturer with a hole saw and not cut with a torch. The pitless adapter used shall have the correct curvature to fit the diameter of the casing.

**567—49.17(455B) Well caps, seals, and vents.**

**49.17(1)** *Caps and seals.*

*a.* A well cap shall be used on any well not protected by a wellhouse and shall seal tightly against the casing to prevent surface water, dirt, insects, or any foreign matter from entering the well.

*b.* The well casing shall terminate at least one foot above the finished grade surface.

*c.* A split-top sanitary seal may only be used on a well terminating within a wellhouse.

*d.* Any openings in the cap or seal, such as for pump wiring, water depth measurement, or chemical feed, shall be properly grommeted or sealed, except for properly screened and oriented vent openings.

*e.* There shall be no openings through the well cap except for a factory-installed vent, air-line chemical feed, and power supply wiring unless a proposal is submitted to and approved by the administrative authority. To be approved, a proposal shall show that any entrance into the well cap is watertight, prevents surface water from entering the water supply, is secured in position, is only removable with tools, and is resistant to weathering and corrosion.

*f.* Well pump systems that are not under continuous pressure and have no pressure tank may discharge out of the top of the well if all connections are watertight welds or grommeted openings. Venting, heights, and other cap requirements shall be met.

**49.17(2)** *Vents.* A well cap used on a well that has a pitless adapter or pitless unit shall have a screened vent hole at least ½ inch in diameter, pointing downward, with not less than 24-mesh noncorrosive screen. Vent openings shall terminate at least 12 inches above finished ground surface. Venting is required on all wells, except Class 3 wells or flowing wells.

**567—49.18(455B) Underground piping and wiring.**

**49.18(1)** Underground piping from the well casing to the pressure tank shall be a minimum 100 psi pressure rating, NSF Standard 61, and meet ASTM standards for potable water.

**49.18(2)** Underground wiring from a well shall either be enclosed in a watertight electrical conduit extending from the entrance of the conduit into the casing to a minimum of three feet below ground level, threaded into the well cap, or sealed into the cap or casing in a watertight manner. The internal passage of the conduit shall be sealed around the wire with a nonhardening, pliable sealing compound.

**567—49.19(455B) Filters, water treatment equipment, and sampling faucets.**

**49.19(1)** Filters and water treatment equipment shall be installed and operated in accordance with manufacturers' directions.

**49.19(2)** In all pressure water systems, provision shall be made for collection of water samples directly from the well by installation of a sampling faucet before the pressure tank, prior to encountering any water treatment equipment.

*a.* The sampling faucet shall be installed at least 12 inches above the floor, have a downturned spout, and be in an accessible location.

*b.* All sample faucets shall be metal and have a smooth (nonthreaded) outlet.

**567—49.20(455B) Hydropneumatic (pressure) tanks.**

**49.20(1)** *Sizing.* Pressure tanks shall have an effective water volume large enough to allow the well pump to operate at least one minute between low-pressure activation and high-pressure shut off while no water is being used by the system. The minimum allowable pressure at the pressure tank is 30 psi.

**49.20(2)** *Constant pressure pump.* Constant pressure/variable speed pumps shall operate at a minimum pressure of 30 psi. Pressure tank size shall be according to manufacturer's recommendation.

**49.20(3)** *Pressure relief valve.* Tanks shall have a pressure relief valve sized according to the pump capacity, if the pump is capable of developing pressure greater than the working pressure of any system component. The pressure relief valve shall be located prior to any shut-off valve on the distribution system side of the tank.

**49.20(4)** *Pressure gauge.* Tanks shall have a pressure gauge capable of reading at least 100 psi.

**49.20(5)** *Tank appurtenances.* If a non-bladder tank is used, it shall be equipped with a means of adding or venting air from the tank to maintain the proper air-water ratio.

**49.20(6)** *Tank location.* Buried pressure tanks are prohibited. If pressure tanks are not located in a residence or other heated structure, they shall be located in a buried vault or aboveground structure.

*a. Buried vault (frost pit).* The vault and vault opening shall be sized to allow ease of access for the installation and maintenance of necessary equipment. The vault shall be as watertight as possible, allow for drainage via drain tile or sump pump, and have at least one foot of rock or gravel above the tile. All wiring in the vault shall be in watertight conduit. No buried vault shall be allowed within a 100-year flood plain.

*b. Aboveground structure.* The structure and access opening shall be sized to allow the installation and maintenance of necessary equipment. The structure shall be insulated and heated to prevent tank freezing. Structures with concrete floors shall be at least four inches above the surrounding ground and be sloped to a drain or to the door to facilitate drainage. If the structure is located over the well, it shall have a hinged roof or removable hatch over the well or have other provisions for pulling the well pump.

**567—49.21(455B) Connections.**

**49.21(1)** *Electrical connections.* At a minimum, all electrical installation shall be performed and maintained in accordance with the current NEC. A certified pump installer may perform wiring from the pump to the electrical panel unless local ordinances require additional licensing.

**49.21(2)** *Interconnections and cross connections.* No connection between a well or boring and another well, boring, water supply system, any chemical injection, or contamination source is allowed unless the connection is:

*a.* Protected by an air gap;

*b.* Protected by a backflow preventer as approved by the department;

*c.* Inspected upon completion, and inspected annually by a certified backflow prevention assembly tester in accordance with 641—Chapter 26; or

*d.* Between wells or borings that meet the construction standards of this chapter, are used for the same purpose, and have equivalent quality water supply.

**567—49.22(455B) Backflow prevention for chemical injection systems for nonpotable wells.**

**49.22(1)** *Backflow prevention for irrigation.* Where a chemical injection system is connected directly to a well used for irrigation that is not used as a potable water supply, a single-check spring-loaded backflow preventer shall be installed between the point of chemical injection on the pump discharge piping and the well, in accordance with the manufacturer's instructions. The check valve shall withstand a minimum hydraulic pressure of 150 psi without leaking. The backflow device shall be provided with:

*a.* Valving so that water can be drained from the system to prevent freezing;

*b.* A vacuum relief valve to prevent backsiphoning of chemicals into the well;

*c.* An automatic low-pressure drain at least ¾ inches in diameter, positioned so that when draining occurs liquid will flow away from the well. This drain shall be at least six inches above grade, and shall quickly drain the check valve water when operation of the well pump is discontinued;

*d.* A watertight seal around the check valve; and

*e.* An inspection port four inches in diameter to allow inspection of check valve operation.

**49.22(2)** *Pump control interconnection.* The well pump and the chemical injection pump shall be electrically connected so that, when the well pump stops, the chemical pump will shut off automatically.

**567—49.23(455B) Ground heat exchange (GHEX) closed-loop borehole systems.** In addition to the other provisions of this chapter, the following provisions apply to the construction of GHEX loop systems 20 feet or greater in depth.

**49.23(1)** Piping shall be a minimum of 160 psi pressure-rated HDPE and be pressure-tested with air or potable water for 15 minutes at a pressure of 1.5 times the system operating pressure, after installation in the borehole.

**49.23(2)** Connection to piping shall use socket fusion or butt fusion joining methods.

**49.23(3)** Only potable water, or food-grade or USP-grade propylene glycol or calcium chloride, may be used as heat transfer fluid.

*a.* Heat transfer fluids containing additives shall be NSF certified as HT1 in the NSF White Book.

*b.* Any other materials or additives shall be NSF 60 certified.

*c.* Additives shall be mixed only in concentrations recommended by the manufacturer.

*d.* A permanent sign shall be attached to the heat pump specifying the exact mixture of heat transfer fluid contained and stating that only approved heat transfer fluids may be used.

**49.23(4)** A flow measurement device shall be installed on each system.

**49.23(5)** Water make-up lines to the vertical heat exchanger shall be protected with a backflow prevention device.

**49.23(6)** Grouting shall be performed for the full length of the borehole via tremie pipe from the bottom upwards with the tremie submerged in grout during the entire process. The grout shall be checked for subsidence at least 24 hours after the initial grouting. If subsidence has occurred, the grouting process shall be repeated and rechecked until the borehole is fully grouted and subsidence has stopped.

**49.23(7)** All buried piping, including the top of vertical boreholes and the full length of horizontal piping, shall be permanently marked with magnetic tape, magnetic wire, or survey pins to allow for underground detection or utility location at the ground surface.

**49.23(8)** Within 30 days of GHEX borehole system installation, an as-built aerial map or engineering document shall be submitted to the permitting authority with the well record form showing the location and GPS coordinates of each vertical and horizontal borehole and all horizontal piping from the borehole into the building and vault. The permitting authority shall upload the document to the department's private well database.

**567—49.24(455B) Well disinfection.** Wells and water systems shall be disinfected by the contractor following construction completion and whenever any well services are performed.

**49.24(1)** Prior to disinfection, all new, repaired or rehabilitated wells shall be pumped to waste until the water is free of drilling mud, drill cuttings, and sand, and the water is clear.

**49.24(2)** A chlorine solution, such as a sodium or calcium hypochlorite, shall be used for well disinfection. Chlorine compounds and any additives shall be NSF 60 (2016) certified.

**49.24(3)** Disinfectant shall:

*a.* Be dispersed throughout the entire water column in the well,

*b.* Be brought into contact with the inside of the well casing pipe above the static water level, and

*c.* Remain in the well for a minimum of two hours if a concentration of at least 100 mg/L chlorine is achieved, or a minimum of 24 hours if at least 50 mg/L is achieved.

**49.24(4)** For emergency situations, a contact time of a minimum of 30 minutes shall be provided at a chlorine concentration of at least 200 mg/L.

**49.24(5)** The amount of HTH or household bleach required for a chlorine concentration of 200 mg/L is given in Table III below:

**Table III - Amount of chlorine disinfectant required for every 25 feet of water in well**

| Well casing diameter (in inches) | 4 | 6 | 8 | 12 | 18 | 24 | 30 | 36 |
|---|---|---|---|---|---|---|---|---|
| Amount of pelleted HTH (in ounces containing approx. 70 percent $Ca(OCl)_2$) | 0.7 | 1.5 | 2.6 | 5.6 | 13 | 23 | 36 | 52 |
| Amount of chlorine bleach (in pints containing 5.25 percent NaOCl) | 0.5 | 1.2 | 2.1 | 4.7 | 10.6 | 18.8 | 29.3 | 42.2 |

**49.24(6)** Dry disinfectant shall be dissolved in a separate container of water before introduction into the well. The solution shall contain not more than eight ounces of pelleted HTH disinfectant per five gallons of water.

**567—49.25(455B) Water sampling and analysis.**

**49.25(1)** The owner of a new, reconstructed, or rehabilitated well shall submit a water sample to a certified laboratory for coliform bacteria and nitrate analysis, or allow the administrative authority to collect this water sample. The water sample shall be collected at least 10 days after, but not more than 30 days after, a well is put into service following construction, reconstruction, or rehabilitation. The analysis results shall be submitted to the administrative authority.

**49.25(2)** If the water sample analysis detects the presence of bacteria, the disinfection procedure described in rule 567—49.24(455B) shall be repeated.

**567—49.26(455B) Well abandonment.** Abandoned wells are a contamination hazard to the water bearing formation as well as a physical hazard for people.

**49.26(1)** *Plugging rules.* Abandoned wells shall be properly plugged as required in 567—Chapter 39.

**49.26(2)** *Waste disposal prohibition.* Under no circumstances shall abandoned wells be used for the disposal of debris, solid waste, septic tank sludge or effluents; for any other type of unauthorized disposal of waste materials; or as a receptacle for field tile drainage.

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

# ARC 8614C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

## Notice of Intended Action

### Proposing rulemaking related to requirements for properly plugging abandoned wells and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 39, "Requirements for Properly Plugging Abandoned Wells," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173(9).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.172 and 455B.190 and Executive Order 10.

*Purpose and Summary*

Proposed Chapter 39 establishes a schedule and required procedures for the proper plugging of abandoned wells as authorized in Iowa Code section 455B.190. The proper plugging of abandoned wells protects the groundwater of the state by permanently sealing off contamination to individual aquifers.

The well plugging procedures are tailored to the type of well. This chapter was reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 4, 2025. Comments should be directed to:

Erik Day
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: erik.day@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at erik.day@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al erik.day@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 3, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| February 4, 2025<br>2 to 3 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at erik.day@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.402.7981 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al erik.day@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.402.7981 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 39 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 39
## REQUIREMENTS FOR PROPERLY PLUGGING ABANDONED WELLS

**567—39.1(455B) Purpose and applicability.** This chapter implements Iowa Code section 455B.190 by providing a schedule and required procedures for the proper plugging of abandoned wells to protect the groundwater by permanently sealing off contamination to individual aquifers.

**39.1(1)** Wells covered by these rules are those accessing groundwater (withdrawing water from or injecting water into the groundwater) and can include but are not limited to public and nonpublic water wells, test wells, observation wells, monitoring wells, agricultural drainage wells, heat pump recirculation wells, and cooling water wells.

**39.1(2)** Wells or subsurface structures not covered by these rules include small-diameter (2-inch or less) test holes, observation wells or monitoring wells installed for a limited time that can be sealed by withdrawing the casing and allowing the hole to collapse; soil borings; septic tanks; underground storage tanks; and cisterns, if not used for accessing groundwater.

**39.1(3)** For additional guidance and background information, refer to "Guidelines for Plugging Abandoned Water Wells," Technical Information Series 15, Geological Survey Bureau, Iowa DNR, 1988, available on the department's website at www.iowadnr.gov.

**567—39.2(455B) Definitions.** In addition to the definitions in 567—Chapter 40, 567—Chapter 49, 567—Chapter 82, and Iowa Code sections 455B.101, 455B.171, 455B.190 and 455B.190A, the following definitions shall apply to this chapter:

*"Agricultural lime"* means all calcium and magnesium products sold for agricultural purposes in the carbonate form, not including quicklime or hydrated lime, of a size comparable with that of crushed stone, gravel, or pea gravel.

*"Approved"* means accepted or acceptable under an applicable specification stated or cited in these rules.

*"Aquifer"* means a water-bearing geologic formation capable of yielding a usable quantity of water to a well or spring.

*"Bentonite"* means a naturally occurring, highly plastic, colloidal clay composed largely of the mineral montmorillonite that expands upon wetting.

*"Bentonite grout"* or *"slurry"* means a mixture of 10 percent processed bentonite (by weight) and water that is free of contaminants, turbidity, and settleable solids.

*"Bentonite pellets"* means a form of processed bentonite that can be used directly for sealing applications in well plugging operations.

*"Bentonite products"* means the forms of bentonite that can be used for sealing material in wells, including graded bentonite, bentonite pellets, and bentonite grout.

*"Capped"* means the application of a layer of sealing material at the top of the well casing.

*"Casing"* means a tubular retaining structure installed in an excavated hole to maintain the well opening.

*"Concrete"* means a mixture of one sack (94 pounds) of Portland cement, up to but not exceeding an equal amount by volume of sand and up to but not exceeding an equal amount by volume of gravel or crushed stone and not more than six gallons of water that is free of contaminants, turbidity, and settleable solids.

*"Confined aquifer"* means an aquifer in which the groundwater is under pressure greater than atmospheric pressure. The static water level in a well tapping a confined aquifer rises to a level above the top of the aquifer.

*"Crushed stone"* means stone (predominantly limestone), crushed and well graded, with 100 percent passing a 1-inch sieve, in accordance with the 1984 edition of Iowa Department of Transportation (DOT) specification No. 4120.04 for Class A crushed stone.

*"Frost pit"* means a sunken area located directly over or within four feet of a well and used to house the equipment for discharging water from a well into the water system.

*"Graded bentonite"* means bentonite that is crushed and sized for pouring and easy handling. Like processed bentonite, it swells when hydrated with water and will form a plastic, essentially impermeable mass.

*"Gravel"* means stone screened from river sand or quarried, with 100 percent passing a ¾-inch sieve, in accordance with the 1984 edition of the Iowa DOT specification No. 4120.02 for Class B gravel.

*"Groundwater"* means any water beneath the surface of the earth.

*"Grout"* means a material used to seal the annular space between the casing and borehole or between casings, or to seal wells during plugging. Approved grouts include bentonite products, concrete, neat cement, or sand cement grout.

*"Limestone"* means sedimentary rock that contains greater than 50 percent calcium carbonate and has a strong reaction with hydrochloric acid (HCL).

*"Neat cement"* means a mixture of one sack (94 pounds) of Portland cement to not more than six gallons of water that is free from contaminants, turbidity, or settleable solids. Bentonite up to 2 percent by weight of cement may be added to reduce shrinkage.

*"Pea gravel"* means gravel sized from ⅛ inch to ⅜ inch in diameter.

*"Processed bentonite"* means bentonite that has been kiln-dried and processed into pellets for direct use in well sealing applications or into powder or coarse granules for use in bentonite grout for sealing.

*"Rock"* means stone screened from river sand or quarried, free of debris, foreign matter, and any toxic or agricultural chemical residue, up to 2½ inches in diameter.

*"Sand"* means clean, medium-textured quartz (concrete sand), at least 25 percent with diameters between 0.25 and 2.0 mm, less than 35 percent with diameters between 0.05 and 0.25 mm, and less than 5 percent with diameters between 0.002 and 0.05 mm.

*"Sand cement grout"* means a mixture of one sack (94 pounds) of Portland cement, an equal amount by volume of sand and not more than six gallons of water that is free from contaminants, turbidity, and settleable solids.

*"Sandpoint well"* means a small-diameter water well constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.

*"Sealing"* means the proper placement of sealing materials into an abandoned well to seal off flow into, out of, or between aquifers.

*"Standby well"* means a water well that is temporarily taken out of service with the expectation of being returned to service at a future date.

*"Static water level"* means the water level in a water well or aquifer when the well is not flowing or being pumped, sometimes referred to as the water line. The static water level for an abandoned well is determined just prior to commencing plugging operations.

*"Tremie pipe"* means a device, usually a small-diameter pipe, that carries grouting materials to the bottom of the hole and that allows pressure grouting from the bottom up without introduction of air pockets.

*"Unconfined aquifer"* means an aquifer in which the static water level does not rise above the top of the aquifer (i.e., the pressure of the water in the aquifer is approximately equal to that of the atmosphere).

**567—39.3(455B) Abandoned well plugging schedule.** All classes of wells that are abandoned must be properly plugged within 90 days of the date of abandonment.

**567—39.4(455B) Abandoned well owner responsibilities.**

**39.4(1)** *Plugging requirements.* The well owner is responsible for ensuring an abandoned well is plugged pursuant to this chapter.

**39.4(2)** *Record.* It is the responsibility of the owner to complete, certify, and submit to the department, or the local county health department when seeking private well grant funds, the well plugging form documenting that an abandoned well has been plugged in accordance with the requirements in this chapter, within 30 calendar days of the completed plugging. The well plugging form shall include confirmation of the well plugging by the designated agent for the county or a certified well contractor. The form is available on the department's website at www.iowadnr.gov.

**567—39.5(455B) Abandoned well plugging materials.**

**39.5(1)** *Sealing materials.* Approved sealing materials are bentonite products (graded bentonite, bentonite pellets, and bentonite grout), neat cement, sand cement grout, and concrete. If graded bentonite or bentonite pellets are used, they may be added by pouring in place and agitating to avoid bridging.

**39.5(2)** *Filling materials.* Approved filling materials include agricultural lime, sand, pea gravel, gravel, and crushed stone. Soil may only be used to backfill the top four feet above the final sealing cap. The filling materials shall be free of debris, foreign matter, and any toxic or agricultural chemical residue. Filling materials are not required for well plugging.

**567—39.6(455B) Abandoned well plugging procedures.**

**39.6(1)** *Freedom from obstructions.* Abandoned wells must be checked before they are plugged in order to ensure there are no obstructions that may interfere with plugging operations. Drop pipes, check valves, pumps, and other obstructions shall be removed if practical.

**39.6(2)** *Removal of casing and housing for all wells.* Casing pipe and any curbing, frost pit, or pump house structure shall be removed to a depth of four feet below the ground surface. The remaining depth shall be sealed, as specified based on well type, backfilled with soil, and graded so that surface water is directed away from the abandoned well location.

**39.6(3)** *Class 1 wells.*

*a.* Class 1 wells may be plugged by pouring filling and sealing materials from the top of the well or by using tremie pipes or dump bailers. Sand cement grout or concrete placed below the static water level shall be placed by tremie pipe or dump bailer.

*b.* Filling materials shall be placed up to one foot below the static water level. A minimum of one foot of sealing materials shall be placed on top of the filling material up to the static water level as a seal. Filling material may then be added up to four feet below the ground surface.

*c.* A minimum of one foot of sealing materials shall be placed where the casing, curbing, frost pit, or pump house structure is removed. The sealing materials shall extend six or more inches beyond the outside diameter of the top of the remaining well casing and shall terminate three feet below the ground surface. The remaining three feet (below the ground surface) shall then be backfilled with soil and graded so that surface water is directed away from the abandoned well location.

**39.6(4)** *Class 2 wells other than bedrock wells.*

*a.* If the details of well construction are unknown or obstructions that may interfere with well plugging cannot be removed, the well shall be tremied full of neat cement or bentonite grout up to four feet below the ground surface. If bentonite grout is used from the static water level to the top of the well,

it should be capped by neat cement, sand cement grout, or concrete terminating four feet below the ground surface.

*b.* Filling material shall be placed in the bottom of the well up to four feet below the static water level. Sealing materials consisting of any bentonite products or neat cement shall be added above the filling material up to four feet below ground surface. If bentonite grout or neat cement is used, it shall be placed by tremie pipe. Concrete and sand cement grout are permissible starting at the static water level.

**39.6(5)** *Class 2 bedrock wells.* If the details of well construction are unknown or obstructions that may interfere with well plugging cannot be removed, the well shall be tremied full of neat cement or bentonite grout up to four feet below the ground surface. If bentonite grout is used from the static water level to the top of the well, it should be capped by neat cement, sand cement grout, or concrete terminating four feet below the ground surface.

*a. Bedrock wells completed in a single confined aquifer.*

(1) Before the well is plugged, a bridge plug or packer shall be placed at or below the bottom of the casing to stop the flow of water where the pressure in the confined aquifer causes the water to flow from the well to the surface. In such cases, filling materials shall be placed in the lower portion of the well before the bridge plug or packer is set.

(2) Filling material shall be placed from the bottom of the well up to ten feet below the bottom of the casing or uncased confining layer, whichever is lower. Sealing materials consisting of any bentonite products, sand cement grout, or neat cement shall be placed from either the top of the filling material to at least ten feet above the bottom of the casing or uncased confining layer or to the static water level, whichever is higher.

1. If bentonite grout, neat cement, or sand cement grout is used, it shall be placed by tremie pipe. The casing shall then be filled up to four feet below the ground surface with sealing materials.

2. If bentonite grout is used from the static water level to the top of the well, it should be capped by neat cement, sand cement grout, or concrete terminating four feet below the ground surface.

(3) It is preferable to omit filling materials and use approved sealing materials to fill the entire well up to four feet below the ground surface.

*b. Bedrock wells completed in a single unconfined aquifer.* The plugging procedure for these wells is the same as for bedrock wells completed in a single confined aquifer, except that a bridge plug or packer is not required to stop the flow of water since this problem will not exist in this type of well.

*c. Bedrock wells completed in multiple aquifers.*

(1) For the lowest aquifer, filling material shall be placed from either the bottom of the well up to ten feet below the bottom of the casing or uncased confining layer, whichever is lower. Neat cement tremied in place shall then be placed as a sealing material on top of the fill and extend upward at least 20 feet. Sealing materials shall then be placed in at least the top ten feet of each subsequent aquifer and extend at least ten feet into either the confining layer or casing above, whichever is higher. The same type of filling materials and sealing procedures shall apply for each subsequent aquifer.

(2) Filling material may be placed from the top of the uppermost aquifer seal up to the static water level of the well. The casing shall then be filled with sealing materials to four feet below the ground surface. If bentonite grout is used from the static water level to the top of the well, it should be capped by neat cement, sand cement grout, or concrete terminating four feet below the ground surface.

(3) It is preferable to omit filling materials and use approved sealing materials to fill the entire well up to four feet below the ground surface. Sand cement grout or concrete shall be applied with a tremie pipe or dump bailer when applied below the static water level.

**39.6(6)** *Class 3 wells.* The preferred method of plugging a sandpoint well is to pull the casing and sandpoint out of the ground, allowing the hole to collapse and fill. If the sandpoint and casing cannot be extracted, they shall be tremied full of neat cement or completely sealed with bentonite products.

**567—39.7(455B) Designation of standby wells.**

**39.7(1)** *Standby wells.* All standby wells shall:

*a.* Be disinfected prior to being taken out of use for a long period of time and when placed back in service, in accordance with rule 567—49.24(455B);

*b.* Be checked for bacteria and nitrates, as a minimum, when placed back in service;

*c.* Not be subject to contamination by surface drainage or from other causes;

*d.* Be provided with an airtight well casing cover when the well is not in use; and

*e.* Be repaired so that there is no degradation of groundwater and it is suitable for use prior to being classified as a standby well.

**39.7(2)** *Caveat.* Nothing in these rules shall be construed as exempting public water supply wells from any other requirements set forth in state rules.

**567—39.8(455B) Waivers.** A waiver to these rules may be granted by the department provided sufficient information substantiating the need for a waiver is submitted in accordance with the department's waiver procedures in 561—Chapter 10. When satisfactory justification has been submitted to the director demonstrating that a waiver to these rules will result in equivalent or improved effectiveness and equivalent protection of all aquifers penetrated by the affected well, a waiver to these rules may be granted by the director. A waiver denial may be appealed to the commission pursuant to 567—Chapter 7.

These rules are intended to implement Iowa Code sections 455B.172 and 455B.190.

## ARC 8616C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to scope of division, definitions, forms, public notice and education, consumer confidence reports, reporting, and record maintenance and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 40, "Scope of Division—Definitions—Forms—Rules of Practice"; to adopt a new Chapter 40, "Scope of Division, Definitions, Forms, Public Notice and Education, Consumer Confidence Reports, Reporting, and Record Maintenance"; and to rescind Chapter 42, "Public Notification, Public Education, Consumer Confidence Reports, Reporting, and Record Maintenance," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3), 455B.173, 455B.173(5) and 455B.173(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.171 through 455B.188 and 455B.190 through 455B.192 and the Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.).

*Purpose and Summary*

Proposed Chapter 40 establishes the rules of practice for the Department's administration of the water supply programs in the State and provides definitions used in the administration of those programs. The programs with definitions included in proposed Chapter 40 include the public water supply program (including SDWA implementation), the private well program, the water use and allocation program, the water supply and well contractor operator certification programs, the drinking water laboratory certification program, the Drinking Water State Revolving Fund loan program, the water supply construction standards, and the water supply construction permitting program.

Existing Chapters 40 and 42 were reviewed and edited consistent with Executive Order 10. Accordingly, new Chapter 40 incorporates rule language from existing Chapter 42, which is proposed to be rescinded. This includes rules for the public water system supervision program related to public

notice, public education, consumer confidence reports, reporting, and record maintenance, all of which are necessary elements of the SDWA.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Carmily Stone
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: carmily.stone@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at carmily.stone@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al carmily.stone@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 30, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |
| January 31, 2025 | Virtual meeting |
| 9 to 10 a.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at carmily.stone@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.681.3548 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al carmily.stone@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.681.3548 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 40 and adopt the following **new** chapter in lieu thereof:

DIVISION B
DRINKING WATER

## CHAPTER 40
## SCOPE OF DIVISION, DEFINITIONS, FORMS, PUBLIC NOTICE AND EDUCATION, CONSUMER CONFIDENCE REPORTS, REPORTING, AND RECORD MAINTENANCE

**567—40.1(455B) Scope of division.**

**40.1(1)** The department conducts the public water supply program and establishes minimum standards for private water supply system construction. The public water supply program includes the following: establishing drinking water standards, including maximum contaminant levels, treatment techniques, maximum residual disinfectant levels, action levels, monitoring, viability assessment, consumer confidence reporting, public notice, public water supply system (PWS) operator certification standards, environmental drinking water laboratory certification program, a state revolving fund loan program consistent with the federal Safe Drinking Water Act (SDWA), and establishing construction standards. The construction, modification, and operation of any PWS requires a permit from the department. Certain construction permits are issued upon certification by a licensed professional engineer that a project meets standards, and in certain instances, permits are issued by local authorities. Private water supplies are regulated by local boards of health.

**40.1(2)** The chapters listed below contain the requirements and provisions for the noted portions of the public water supply program.

567—Chapter 39: proper well closure or abandonment.

567—Chapter 40: scope of division, public notice and education, consumer confidence reports, reporting, and recordkeeping requirements.

567—Chapter 41: drinking water standards and monitoring requirements.

567—Chapter 43: design, construction, fee, operating, and operation permit requirements.

567—Chapter 44: drinking water state revolving fund program.

567—Chapter 49: nonpublic water supply wells.

567—Chapter 50: water use, withdrawals, and diversions.

567—Chapter 53: protected water sources.

567—Chapter 54: water use permit restrictions and well interference compensation.

567—Chapter 55: aquifer storage and recovery.

567—Chapter 81: operator certification.

567—Chapter 82: water well contractor certification.

567—Chapter 83: laboratory certification.

**567—40.2(455B) Definitions, references, and abbreviations.** The terms, references, and abbreviations defined in this rule are applicable to this division and the chapters listed in rule 567—40.1(455B), unless otherwise specified.

**40.2(1)** *Defined terms.*

*"Action level"* or *"AL"* means the lead or copper concentration(s) in water that determine, in some cases, the treatment requirements that a water system is required to complete.

*"Acute health effect"* means the health effect of a contaminant that is an immediate rather than a long-term risk to health.

*"Animal confinement"* means a lot, yard, corral, or similar structure in which the concentration of livestock or poultry is such that a vegetative cover is not maintained.

*"Animal pasturage"* means a fenced area where vegetative cover is maintained and animals are enclosed.

*"Animal waste"* means animal wastes consisting of excreta, leachings, feed losses, litter, washwaters or other associated wastes.

*"Animal waste stockpiles"* means the stacking, composting or containment of animal wastes.

*"Animal waste storage basin or lagoon"* means a fully or partially excavated or diked earthen structure used for containing animal waste, including earthen side slopes or floor.

*"Animal waste storage tank"* means a completely fabricated structure, with or without a cover, either formed in place or transported to the site, used for containing animal wastes.

*"Antisiphon device"* means a device that prevents back siphonage by means of a relief valve that automatically opens to the atmosphere, preventing the creation of subatmospheric pressure within a pipe, thereby preventing water from reversing its flow.

*"Authority"* means the Iowa finance authority (IFA) as established by Iowa Code chapter 16.

*"Backflow"* means the flow of water or other liquids, mixtures, or substances into a potable water supply's distribution system from any source other than its permitted source.

*"Backflow preventer"* is a device or means to prevent backflow into a potable water system.

*"Back siphon"* means the flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel as a result of negative or subatmospheric pressure within the distribution system.

*"Best available technology"* or *"BAT"* means the best technology, treatment techniques, or other means that the state finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available after taking cost into consideration.

*"CFR"* or *"Code of Federal Regulations"* means the federal administrative rules adopted by the United States in effect as of July 1, 2024. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in Division B unless a date of adoption is set forth in a specific rule.

*"Cistern"* means a tank that stores rainwater from roofs.

*"Clean compliance history"* means, for the purposes of 567—paragraph 41.2(1)*"e"*(4)"2," a record of no monitoring violations and no coliform treatment technique trigger exceedances or treatment technique violations under 567—subrule 41.2(1).

*"Combined filter effluent"* or *"CFE"* is generated when the effluent water from the individual filters in operation is combined into one stream. Representative samples of the combined filter effluent are monitored to determine compliance with treatment technique requirements.

*"Composite correction program"* or *"CCP"* is a systematic procedure that identifies and corrects the unique factor combinations in the areas of design, operation, maintenance and administration that limit the performance of a filtration plant. A CCP includes a comprehensive performance evaluation (CPE) and comprehensive technical assistance (CTA).

*"Comprehensive technical assistance"* or *"CTA"* is a CCP's performance improvement phase that is implemented if the CPE results indicate improved performance potential by a filtration plant, in which the system must identify and address plant-specific factors.

*"Consecutive PWS"* means an active PWS that purchases or obtains all or a portion of its water from another PWS, also called a wholesale system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

*"Conservation easement"* means an interest in land that entitles a person to use the land possessed by another (affirmative easement), or to restrict uses of the land subject to the easement (negative

easement). A conservation easement restricts the landowner to uses that are compatible with resource conservation.

*"Contiguous"* means directly adjacent along all or most of one side of a legally defined piece of property. Tracts of land involved in the same operation or water supply and separated only by roads, railroads, or bike trails are deemed contiguous tracts.

*"Corrosive water"* means a water that, due to its physical and chemical characteristics, may cause leaching or dissolving of the constituents of the transporting system in which it is contained.

*"Cross connection"* means any actual or potential connection between a potable water supply and any other source or system through which it is possible to introduce into the potable system any used water, industrial fluid, gas, or other substance other than the intended potable water with which the system is supplied.

*"CT"* means the product of the residual disinfectant concentration (C, in mg/L) determined before or at the first customer and the corresponding disinfectant contact time (T, in minutes), C x T. If a PWS applies disinfectants at more than one point prior to the first customer, it must determine the CT for each disinfectant sequence at or before the first customer to determine the total inactivation ratio (also known as total percent inactivation). When determining the total inactivation ratio, a PWS must determine C for each disinfection sequence and the corresponding T before any subsequent disinfection application point(s). The CT is dependent upon the microorganism to be inactivated and is affected by the disinfectant type, pH, and water temperature.

*"Customers"* in consumer confidence reports are defined as billing units or service connections to which a CWS delivers water.

*"Deep well"* means a well located and constructed such that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

*"Disinfection profile"* is defined in 40 CFR §141.2. The procedure for developing a disinfection profile is contained in 567—paragraph 43.9(2)*"b"* and 567—subrule 43.10(2).

*"Drinking water state revolving fund"* or *"DWSRF"* means the department-administered fund intended to develop drinking water revolving loans to help finance drinking water infrastructure improvements, source water protection, system technical assistance, and other activities intended to encourage and facilitate PWS rule compliance and public health protection.

*"DWSRF funds"* means the combination of a particular fiscal year's federal capitalization grant appropriation plus the 20 percent state of Iowa match, and any additional funds made available through the program.

*"Eligible cost"* means the cost of all labor, material, machinery, equipment, loan initiation and loan service fees, project planning, design and construction engineering services, legal fees and expenses directly related to projects, capitalized interest during the construction of projects, and all other expansion, construction, and rehabilitation of all or part of projects included in the funding request placed on the draft intended use plan as a fundable project, subject to commission approval.

*"Emergency/standby well or connection"* means a well or a connection to another PWS that is used less than 30 calendar days per calendar year.

*"Federal cross-cutters"* means the federal laws and authorities that apply to projects funded through the DWSRF.

*"Federal fiscal year"* or *"FFY"* means the federal fiscal year starting October 1 and ending September 30.

*"First draw sample"* means a one-liter tap water sample, collected in accordance with 567—paragraph 41.4(1)*"c,"* that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

*"GAC10"* means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a 180-day carbon reactivation frequency, except that the reactivation frequency for GAC10 is 120 days when used as a BAT for compliance with the MCL locational running annual average for TTHMs and HAAs.

*"Health advisory"* or *"HA"* means a group of levels set by the EPA below which no harmful health effect is expected from a given contaminant in drinking water. The HAs used by the department are listed in the most current edition of the EPA's Drinking Water Regulations and Health Advisories, available at www.epa.gov/sdwa/drinking-water-health-advisories-has. The lifetime HA is the concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects over a lifetime of exposure, with a margin of safety. The long-term HA is the concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects up to approximately seven years (10 percent of an individual's lifetime of exposure), with a margin of safety.

*"Human consumption"* means water used as part of or in connection with drinking; washing; food processing; incidental to commercial food preparation, such as water used in beverages or other food items; ice used in drinks or in salad bars; water for washing of food; water used for washing dishes, pans or utensils used in food preparation or service; water used for cleanup and washing of food preparation or service areas; or water for bathing, showering, hand washing, or oral hygiene purposes. Human consumption does not include water for production of packaged or bulk food products regulated by other state or federal regulatory agencies, such as livestock slaughtering or bottled or canned food and beverages; cooling water; industrial or commercial wash waters used for nonfood products; irrigation water; or water used in toilets or urinals.

*"Impoundment"* means a reservoir, pond, or lake in which surface water is retained for a period of time, ranging from several months upward, created by constructing a barrier across a watercourse and used for water storage, regulation, or control.

*"Individual filter effluent"* or *"IFE"* means the effluent water from a specific filter. Representative samples of the IFE are monitored to determine compliance with TT requirements.

*"Influenced groundwater"* or *"IGW,"* also known as groundwater under the direct influence (GWUDI) of surface water, means any groundwater that is under the direct or indirect influence of surface water, as determined by the presence of (1) significant occurrence of insects or other macroorganisms, algae or large-diameter pathogens such as *Cryptosporidium* or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that correlate to climatological or surface water conditions or other parameters as specified in 567—43.5(455B).

*"Initial compliance period"* means the first full three-year compliance period of a compliance cycle.

*"Intended use plan"* or *"IUP"* means a plan identifying the intended uses of funds available for loans in the DWSRF for each fiscal year as described in Section 1452 of the SDWA.

*"Lead free,"* when used with respect to solder and flux, refers to solders and flux containing not more than 0.2 percent lead and not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures in accordance with 42 U.S.C. 300-g-6. The following requirements of 40 CFR 143, Subpart B, that pertain to PWSs are adopted by reference: 40 CFR §143.10, 40 CFR §143.11, and 40 CFR §143.12(b-f).

*"Lead service line"* or *"LSL"* means a service line made of lead that connects the water main to the building inlet and any lead pigtail, gooseneck, or other fitting that is connected to such a lead line. A lead gooseneck is not considered a lead service line unless it exceeds ten feet.

*"Level 2 assessment"* is defined in 40 CFR §141.2. A Level 2 assessment is conducted by a department water supply inspector and will typically include the system operator. The department may tailor specific assessment elements with respect to a system's size and type and a distribution system's size, type and characteristics. A system must comply with any expedited actions or additional actions required by the department in the case of an *E. coli* MCL violation.

*"Maintenance"* means the replacement of equipment or materials that are necessary to maintain the operation of a PWS but do not alter capacity, water quality or treatment method, or effectiveness.

*"Nonacute health effect"* means the health effect of a contaminant which is a long-term rather than immediate risk to health.

*"Nontransient noncommunity water system"* or *"NTNC"* means a PWS, other than a CWS, that regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. Examples of NTNCs are schools, day-care centers, factories,

offices and other PWSs that provide water to a fixed population of 25 or more people. In addition, other service areas, such as hotels, resorts, hospitals and restaurants, are considered as NTNCs if they regularly serve at least 25 or more of the same persons for four or more hours per day, for four or more days per week, for 26 or more weeks of the year.

*"Point-of-use treatment device"* or *"POU"* is a treatment device applied to a single tap or multiple taps that reduces contaminants in drinking water at those taps but is not intended to treat all of the water in the facility.

*"Population served"* means the total number of persons served by a PWS that provides water intended for human consumption. For municipalities that serve only the population within their incorporated boundaries, it is the last official (or officially amended) U.S. census population. For all other CWSs, it is either the actual counted population that is verifiable by the department or the population calculated by multiplying the number of service connections by an occupancy factor of 2.5 persons per service connection. For municipalities that also serve outside their incorporated boundaries, the served population must be added to the official census population as determined either by verifiable count or by the 2.5 persons per service connection occupancy factor. For NTNC and TNC systems, it is the average number of daily employees plus the average number of other persons served, such as customers or visitors during the peak month of the year, regardless of whether each person actually uses the water for human consumption. Where a system provides water to another PWS (consecutive PWS) that is required to have an operation permit, the population of the recipient PWS shall not be counted as a part of the system providing the water. CWSs and NTNCs will pay their operation permit fees based upon the population served.

*"Potable water"* means water that is suitable for human consumption. Drinking water that meets the requirements of 567—Chapters 40, 41, and 43 is considered to be potable water.

*"Privy"* means a structure used for the deposition of human body wastes.

*"Project"* includes the planning, design, construction, alteration or extension of any PWS but does not include the maintenance of a system.

*"Project priority list"* means the list of projects in priority order that may qualify for DWSRF loan assistance contained in the IUP document prepared pursuant to 567—44.8(455B). The priority list identifies all projects eligible for funding and the points assigned to each project pursuant to 567—44.7(455B).

*"Public water supply system"* or *"PWS"* means a system that provides water to the public for human consumption through pipes or other constructed conveyances, if such a system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. This includes any collection, treatment, storage, and distribution facilities under the system operator's control and used primarily in connection with such a system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such a system. The term does not include any special irrigation district. A PWS is either a community water system (CWS) or a noncommunity water system (NCWS).

*"Public water supply system control"* is defined as one of the following forms of authority over a service line: authority to set standards for construction, repair, or maintenance of the service line; authority to replace, repair, or maintain the service line; or ownership of the line. Contaminants added to the water under circumstances controlled by the water consumer or user, with the exception of those contaminants resulting from the corrosion of piping and plumbing caused by water quality, are excluded from this definition.

*"Regional water system"* means a PWS in which the projected number of service connections, in at least 50 percent of the distribution system's length, does not average more than eight service connections per linear mile of water main.

*"Sanitary sewer pipe"* means a sewer complying with the department's standards for sewer construction.

*"Sanitary survey"* means a review and on-site inspection conducted by the department of a PWS's water source(s), facilities, equipment, operation and maintenance (O&M), and records for the purpose of evaluating the adequacy of such source(s), and facilities, equipment, and O&M for producing and

distributing safe drinking water, in order to identify improvements necessary to maintain or improve drinking water quality pursuant to 567—subrule 43.1(7).

*"SDWA"* or *"Act"* means the Safe Drinking Water Act as amended (42 U.S.C. 300f et seq.).

*"Sedimentation"* means a water treatment process for solid particle removal from a suspension before filtration by gravity or separation.

*"Septic tank"* means a watertight structure into which wastewater is discharged for solids separation and digestion.

*"Service connections"* means the total number of active and inactive service lines originating from a water distribution main for the purpose of delivering water intended for human consumption. For municipalities, rural water districts, mobile home parks, housing developments, and similar facilities, this includes, but is not limited to, occupied and unoccupied residences and buildings, provided that there is a service line connected to the water main (or another service line), and running onto the property. For rental properties which are separate PWSs, this includes, but is not limited to, the number of rental units. Connections to a system that delivers water by a constructed conveyance other than a pipe are excluded from this definition if:

1. The water is used exclusively for purposes other than human consumption;
2. The department determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for human consumption; or
3. The department determines that the water provided for human consumption is centrally treated or treated at the entry point by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

*"Service line sample"* means a sample of water, one liter in volume, that has been standing for at least six hours in a service line, collected in accordance with 567—paragraph 41.4(1)*"c,"* and used to determine a lead or copper concentration.

*"Shallow well"* means a well located and constructed such that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

*"Significant deficiency"* includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the department determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

*"Significant noncompliance"* or *"SNC"* means the failure to comply with any national primary drinking water standard as adopted by the state of Iowa according to criteria established by the EPA administrator.

*"Source/entry point"* or *"SEP"* means the entry point of water into the distribution system that is representative of each source after application of all treatment and before the first service connection. This point is used for the collection of certain compliance samples. If a representative sample of all water sources cannot be obtained, as determined by the department, separate SEPs with the appropriate monitoring requirements will be assigned by the department.

*"Special irrigation district"* means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with numbered paragraphs "2" and "3" in the definition of "service connections."

*"Standard specifications"* means specifications submitted to the department for use as a reference in reviewing future plans for proposed water main construction.

*"Ten States Standards"* means the "Recommended Standards for Water Works," 2022 edition, a report of the Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, available on their website at www.health.state.mn.us/communities/environment/water/tenstates/standards.html.

*"Transient noncommunity water system"* or *"TNC"* is defined in 40 CFR §141.2.

*"Treatment technique"* or *"TT"* means a treatment process required to minimize the level of a contaminant in drinking water. A treatment technique is specified in cases where it is not technically or economically feasible to establish an MCL, and it is an enforceable procedure or level of technological performance which PWSs must follow to ensure control of a contaminant.

*"Uncovered finished water storage facility"* is defined in 40 CFR §141.2. Such facilities are prohibited.

*"Unregulated contaminant"* means a contaminant for which no MCL has been set, but which does have federal monitoring requirements for certain PWSs set forth in 40 CFR §141.40, and additional reporting requirements in 567—40.7(455B).

*"Viability"* means the technical, financial, and managerial ability to comply with applicable national primary drinking water standards as adopted by the state of Iowa. Viability is the ability of a system to remain in compliance insofar as the requirements of the SDWA.

*"Waterborne disease outbreak"* means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a PWS that is deficient in treatment, as determined by the Iowa department of health and human services.

*"Water distribution system"* is defined in Iowa Code section 455B.211. The term includes any storage facilities and pumping stations.

*"Water main pipe"* means a water main complying with the department's standards for water main construction.

**40.2(2)** *Definitions in Iowa Code and the CFR.* The following terms are defined in the referenced locations.

*a.* Iowa Code section 455B.101: "commission," "department," and "director."

*b.* Iowa Code section 455B.171: "maximum contaminant level."

*c.* 40 CFR §141.2: "bag filters," "bank filtration," "cartridge filters," "coagulation," "combined distribution system" or "CDS," "community water system" or "CWS," "compliance cycle," "compliance period," "comprehensive performance evaluation" or "CPE," "confluent growth," "contaminant," "conventional filtration treatment," "corrosion inhibitor," "diatomaceous earth filtration," "direct filtration," "disinfectant," "disinfection," "dose equivalent," "effective corrosion inhibitor residual," "enhanced coagulation," "enhanced softening," "filter profile," "filtration," "finished water," "flocculation," "flowing stream," "GAC20," "gross alpha particle activity," "gross beta particle activity," "haloacetic acids" or "HAA5," "halogen," "lake" or "reservoir," "large water system," "legionella," "level 1 assessment," "locational running annual average" or "LRAA," "man-made beta particle and photon emitters," "maximum contaminant level" or "MCL," "maximum contaminant level goal" or "MCLG," "maximum residual disinfectant level" or "MRDL," "maximum residual disinfectant level goal" or "MRDLG," "medium-size water system," "membrane filtration," "noncommunity water system" or "NCWS," "optimal corrosion control treatment," "performance evaluation sample," "picocurie" or "pCi," "plant intake," "point of disinfectant application," "point-of-entry treatment device" or "POE," "presedimentation," "rem," "repeat compliance period," "residual disinfectant concentration," "sanitary defect," "seasonal system," "single-family structure," "slow sand filtration," "small water system," "standard sample," "supplier of water," "surface water" or "SW," "SUVA," "too numerous to count," "total organic carbon" or "TOC," "total trihalomethanes" or "TTHM," "trihalomethane" or "THM," "two-stage lime softening," "virus," and "wholesale system."

**40.2(3)** *References and abbreviations.*

*a. References.* The abbreviated name of the professional associations and societies whose standards are referenced in this division and the websites where the standards, methods, or guidance documents may be obtained are listed in the following table. Unless otherwise noted in a specific rule of this division, the effective date of the specific standards, editions, or volumes is September 1, 2024.

| Abbreviated Name | Association/Society Name | Standards/Publications Website |
|---|---|---|
| ANSI | American National Standards Institute | webstore.ansi.org |
| APHA | American Public Health Association | www.apha.org |
| API | American Petroleum Institute | www.api.org/products-and-services/standards |

| Abbreviated Name | Association/Society Name | Standards/Publications Website |
|---|---|---|
| ASHRAE | American Society of Heating, Refrigerating and Air-Conditioning Engineers | www.ashrae.org/technical-resources/standards-and-guidelines |
| ASME | American Society of Mechanical Engineers | www.asme.org/codes-standards |
| ASTM | Annual Book of Standards published by ASTM International | www.astm.org/products-services/standards-and-publications.html |
| AWS | American Welding Society | www.aws.org/Standards-and-Publications |
| AWWA | American Water Works Association | www.awwa.org/Publications/Standards |
| Iowa DOT | Iowa department of transportation | iowadot.gov/specifications |
| NACE | National Association of Corrosion Engineers International, part of the Association for Materials Protection and Performance (AMPP) | www.ampp.org/standards/ampp-standards/about-ampp-standards |
| NARA | National Archives and Records Administration | www.archives.gov |
| NEC | National Electrical Code, part of the National Fire Codes published by the National Fire Protection Association (NFPA) | www.nfpa.org |
| NEMI | National Environmental Methods Index | www.nemi.gov |
| NGWA | National Ground Water Association | www.ngwa.org/publications-and-news/industry-resource-library |
| NSF | National Sanitation Foundation | www.nsf.org/nsf-standards |
| NTIS | National Technical Information Service, a bureau of the U.S. Department of Commerce | www.ntis.gov |
| Standard Methods, SM, or SM Online | Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association (APHA), American Water Works Association (AWWA), and Water Environment Federation (WEF) | www.standardmethods.org |
| USGS | United States Geological Survey | www.usgs.gov |
| WSC | Water Systems Council | www.watersystemscouncil.org/resources/well-standards |

*b. Abbreviations.* In addition to the abbreviations listed in the definitions in 40.2(1), the following abbreviations are used in this division.

| Abbreviation | Meaning |
|---|---|
| ALE | action level exceedance |
| ASR | aquifer storage and recovery |
| CCR | consumer confidence report |
| CCT | corrosion control treatment |
| CDC | Centers for Disease Control and Prevention |
| CEU | continuing education unit |
| DBP | disinfection byproduct |
| DIT | direct integrity test |
| DOC | dissolved organic carbon |
| DRC | direct responsible charge |
| EPA | U.S. Environmental Protection Agency |
| FDA | U.S. Food and Drug Administration |
| ft | foot |
| GAC | granular activated carbon |
| GW | groundwater |
| HAA | haloacetic acids |

| **Abbreviation** | **Meaning** |
|---|---|
| HAL | health advisory level |
| HPC | heterotrophic plate count |
| ID | identification (number) |
| IDSE | initial distribution system evaluation |
| IFA | Iowa finance authority |
| IGS | Iowa geological survey |
| IOC | inorganic chemical |
| IWFDS | Iowa Wastewater Facilities Design Standards |
| L | liter |
| LRV | log removal value |
| LSLR | lead service line replacement |
| MDL | method detection limit |
| µg/L | microgram per liter |
| mg/L | milligram per liter |
| mL | milliliter |
| mm | millimeter |
| MOR | monthly operating report |
| mrem | 1/1000 of a rem |
| MRT | maximum residence time |
| MS | matrix spike |
| NRCS | Natural Resources Conservation Service (part of the U.S. Department of Agriculture) |
| NTU | nephelometric turbidity units |
| O&M | operation and maintenance |
| OCC | optimal corrosion control |
| OCCT | optimal corrosion control treatment |
| OEL | operational evaluation level |
| OWQP | optimal water quality parameter |
| OXID | oxidation |
| P/A | presence-absence |
| PAC | powdered activated carbon |
| PCB | polychlorinated biphenyl |
| pCi/L | picocuries per liter |
| PE | public education |
| PN | public notice |
| PQL | practical quantification level |
| psi | pounds per square inch |
| PTA | packed tower aeration |
| PVC | polyvinyl chloride |
| QCRV | quality control release value |
| RAA | running annual average |
| RDC | residual disinfectant concentration |
| SCH | schedule (as in schedule 40 rating) |
| SDR | standard dimension ratio |
| SEP | source/entry point |
| SMP | standard monitoring plan |
| SMR | self-monitoring requirement |
| SOC | synthetic organic chemical |
| SW/IGW | surface water/influenced groundwater |
| SRF | state revolving fund (see DWSRF) |
| TRC | total residual chlorine |
| U.S.C. | United States Code |
| URTH | unacceptable risk to health |
| UV | ultraviolet |
| VOC | volatile organic chemical |

| Abbreviation | Meaning |
|---|---|
| WCP | watershed control program |

**567—40.3(17A,455B) Forms.** All forms used by the public to apply for department approvals and to report on activities related to the department's public water supply program may be obtained on the department's website at www.iowadnr.gov or upon request. Properly completed forms shall be submitted to the department as noted in the form instructions.

**40.3(1)** *Construction permit application forms.* The required public water supply construction permit application forms (also known as schedules) and other forms are listed below.

| Schedule No. | Form Name | Form Number |
|---|---|---|
| - | Water Supply Service Agreement | 542-3121 |
| 1a | General Information | 542-3178 |
| 1b | Minor Water Main Construction Permit | 542-3151 |
| 1c | Fee Calculations | 542-3179 |
| 2a | Water Mains, General | 542-3030 |
| 2b | Water Mains, Specifications | 542-3031 |
| 2c | Notification of Minor Water Main Construction | 542-3152 |
| 3a | Water System, Design Capacity Data | 542-3032 |
| 3b | Source Information | 542-3029 |
| 3c | Water Quality Data | 542-3028 |
| 4 | Site Approval | 542-3078 |
| 5a | Well Construction | 542-3027 |
| 5b | Well Appurtenances | 542-3026 |
| 5c | Well Profile | 542-3077 |
| 5d | Surface Water Supply | 542-3139 |
| 6a | Distribution Water Storage Facilities | 542-3140 |
| 7 | Schematic Flow Diagram | 542-3142 |
| 8 | Aeration | 542-3143 |
| 9 | Clarification-Sedimentation | 542-3144 |
| 10 | Suspended Solids Contact | 542-3145 |
| 11 | Ion Exchange | 542-3146 |
| 12 | Filters | 542-3147 |
| 13a | Chemical Addition | 542-3241 |
| 13b | Dry Chemical Addition | 542-3130 |
| 13c | Gas Chlorination | 542-3131 |
| 13d | Fluoridation | 542-3132 |
| 13e | Sampling and Testing | 542-3133 |
| 14 | Pumping Station | 542-3134 |
| 15 | Water Storage Facilities | 542-3135 |
| 16a | Wastewater General | 542-3136 |
| 16b | Waste Treatment Ponds | 542-3137 |
| 16c | Filtration and Mechanical | 542-3138 |
| 16d | Discharge to Sewer | 542-3103 |
| - | Notification of Completion of Construction | 542-3019 |

**40.3(2)** *Operation permit and public water supply forms.* The required public water supply sampling forms and the operation permit application and monthly operating report (MOR) forms are available from the department.

**567—40.4(17A,455B) PWS construction permit application procedures.**

**40.4(1)** *General procedures.* Applications for written department approval for any new construction or for reconstruction pursuant to 567—Chapter 43 shall consist of complete plans and specifications, an application fee, and appropriate water supply construction permit application schedules.

*a.* The department will review a construction permit application and issue a construction permit for project approval if the review shows that a project meets all construction standards, in accordance with 567—Chapter 43. Projects that do not meet all construction standards will not be approved unless a waiver pursuant to 567—paragraph 43.3(2)*"b"* is granted. A waiver may be requested when plans and specifications are submitted or after a design discrepancy is pointed out to the applicant.

*b.* The department may review project plans and specifications and provide comments or recommendations to the applicant. Departmental comments and recommendations are advisory, except when departmental review determines that a facility does not comply with department-approved plans or specifications or the construction standards, pursuant to the criteria for project design certification. The system owner must correct any deficiencies in a timely manner, as set forth by the department.

**40.4(2)** *Site survey.* For public water sources and for below-ground level finished water storage facilities, a site survey and approval must be made by the department. The manner and procedures for applying for and processing a site survey are the same as in 40.4(1), except that the following information must be submitted by the applicant's engineer.

*a.* A preliminary engineering report or cover letter containing a brief description of the proposed source or storage facility and assurance that the project is in conformance with the long-range planning of the area.

*b.* Completed Schedules 1a and 4.

*c.* A detailed map showing all potential sources of contamination (567—Chapter 43, Table A, contains more information) within:

(1) 1,000 feet of a proposed well location, with a scale no smaller than one inch = 200 feet;

(2) 200 feet of a proposed below-ground level finished water storage facility;

(3) 2,500 feet from a proposed surface water source, with a scale no smaller than one inch = 660 feet;

(4) 2,500 feet from an impoundment (within the drainage area), with a scale no smaller than one inch = 660 feet; or

(5) Six miles upstream of a proposed river intake.

**40.4(3)** *Modifications of an approved construction project.* Persons seeking to modify a water supply construction project after receiving a construction permit from the department shall submit the appropriate fee and either an addendum to plans and specifications, a change order, or revised plans and specifications at least 30 days prior to the planned modification. The department shall review the submitted material within 30 days of submission and shall issue a supplemental permit if the proposed modifications meet department standards.

**40.4(4)** *Certification of project design.* A permit shall be issued for the construction, installation, or modification of a PWS or for a water supply distribution system extension if a qualified, licensed professional engineer certifies that the plans and specifications comply with federal and state laws and regulations or that a waiver to standards has been granted by the department.

**567—40.5(455B) Public notice (PN).**

**40.5(1)** *Applicability.* Each owner or operator of a public water supply system (PWS) must give notice for all violations of public drinking water rules and for other situations, as listed in this subrule. The term "violations" includes violations of, or failure to comply with, the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures in 567—Chapters 40, 41, and 43. The term "other situations" includes all situations determined by the department to require a PN, including the violations and situations listed in 40.5(2), 40.5(3), and 40.5(4), and any other situation where the department determines that PN is needed. PN is not required for ammonia monitoring conducted pursuant to 567—subrule 41.11(2).

*a. PN tiers.* PN requirements are divided into three tiers to account for the seriousness of a violation or situation and of any potential adverse health effects that may be involved. The PN requirements for each violation or situation are determined by the tier to which it is assigned.

(1) Tier 1 PN is required for all drinking water violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.

(2) Tier 2 PN is required for all other drinking water violations and situations with potential to have serious adverse effects on human health.

(3) Tier 3 PN is required for all other drinking water violations and situations not included in Tier 1 or Tier 2.

*b. General PN requirements.* Each PWS must provide PN to persons served by the system, in accordance with this rule. A copy of the notice must also be sent to the department, in accordance with 40.8(1)*"c."*

(1) Consecutive systems. PWSs that sell or otherwise provide drinking water to other PWS (i.e., to consecutive systems) are required to provide PN to the owner or operator of the consecutive system. The consecutive system is responsible for providing PN to the persons it serves and must meet the appropriate tier requirements for the violation.

(2) Physically or hydraulically isolated distribution systems. If a PWS has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the department may allow the system to limit distribution of the PN only to persons served by that portion of the system that is out of compliance. Department permission to limit distribution of the notice must be granted in writing.

**40.5(2)** *Tier 1 PN requirements.*

*a. Tier 1 PN—when required.* The following violations or situations require Tier 1 PN:

(1) Violation of the *E. coli* MCL, as specified in 567—paragraph 41.2(1)*"a."*

(2) Violation of either the nitrate or nitrite MCL, as defined in 567—subparagraph 41.3(1)*"b"*(1).

(3) Failure by the system to collect a confirmation sample within 24 hours of its receipt of the first sample result showing a nitrate or nitrite MCL exceedance, when directed by the department, as specified in 567—paragraph 41.3(1)*"c"*(7)"2."

(4) Exceedance of the nitrate MCL by NCWSs, where permitted to exceed the MCL by the department under 567—paragraph 41.3(1)*"a,"* as required in 40.5(7)*"c."*

(5) Violation of the chlorine dioxide MRDL when one or more samples, taken in the distribution system on the day following an MRDL exceedance in the sample collected at the entrance to the distribution system, exceeds the MRDL, as defined in 567—paragraph 43.6(1)*"b."*

(6) Failure by the system to collect the required chlorine dioxide samples in the distribution system on the day following an MRDL exceedance in the sample collected at the entrance to the distribution system.

(7) Violation of the TT requirement by a surface water (SW) or influenced groundwater (IGW) PWS resulting from an exceedance of the maximum allowable turbidity limit, as specified in 567—Chapter 43, where the department determines, after consultation with the system, that a Tier 1 PN is required or where the department consultation does not take place within 24 hours after the system learns of the violation.

(8) Occurrence of a waterborne disease outbreak or other waterborne emergency, such as a failure or significant interruption in key water treatment processes, a natural disaster disrupting the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.

(9) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the department either in its rules or on a case-by-case basis.

(10) Detection of *E. coli*, enterococci, or coliphage in source water samples, as specified in 567—paragraphs 41.7(3)*"a"* and *"b."*

*b. Tier 1 PN—timing.* PWSs must:

(1) Provide PN as soon as practical but no later than 24 hours after learning of the violation;

(2) Initiate consultation with the department as soon as practical, but no later than 24 hours after learning of the violation or situation, to determine additional PN requirements. For consultation after

normal business hours, use the department's Environmental Emergency Reporting Hotline, 515.725.8694; and

(3) Comply with any additional PN requirements established as a result of department consultation. Additional requirements may include the timing, form, manner, frequency, and content of repeat PNs (if any) and other actions designed to reach all persons served.

All NTNCs must notify the parent or legal guardian of each child under 18 years of age and any nursing home resident of the Tier 1 violation as soon as possible and within 72 hours, including the PN content in 40.5(5).

*c. Tier 1 PN—form and manner.* PWSs must provide PN within 24 hours in a form and manner reasonably calculated to reach all persons served. The form and manner used must fit the specific situation and must be designed to reach residential, transient, and nontransient users of the system. To reach all persons served, systems shall use one or more of the following forms of delivery. The department may require multiple forms of delivery in specific situations.

(1) Appropriate broadcast media, such as radio or television;

(2) Posting of the PN in conspicuous locations throughout the area served;

(3) Hand delivery of the PN to persons served; or

(4) Another delivery method approved in writing by the department.

**40.5(3)** *Tier 2 PN requirements.*

*a. Tier 2 PN—when required.* The following violations or situations require Tier 2 PN:

(1) All violations of the MCL, MRDL, and TT requirements, except where a Tier 1 PN is required under 40.5(2);

(2) Violations of the monitoring and testing procedure requirements, where the department determines that a Tier 2 rather than a Tier 3 PN is required, accounting for potential health impacts and persistence of the violation;

(3) Failure to comply with any compliance schedule in an operation permit, administrative order, or court order pursuant to 567—subrule 43.2(5);

(4) Failure to comply with an HA as determined by the department; and

(5) Failure to take corrective action or failure to maintain at least 4-log virus treatment (using inactivation, removal, or a department-approved combination of 4-log virus inactivation and removal) before or at the first customer under 567—paragraph 41.7(4)*"a."*

*b. Tier 2 PN—timing.* PWSs must:

(1) Provide the initial PN as soon as practical but no later than 30 days after learning of a violation. If PN is posted, it must remain in place for as long as the violation or situation persists but in no case for less than seven days, even if the violation or situation is resolved. The department may allow additional time for the initial notice of up to three months from the date the system learns of the violation; however, such an extension must be made in writing on a case-by-case basis.

(2) Repeat the PN every three months as long as the violation or situation persists unless the department determines that circumstances warrant a different repeat frequency. A determination that a repeat PN frequency of longer than every three months is allowed must be made in writing on a case-by-case basis. The repeat PN frequency may not be less than once per year. Repeat PNs for an *E. coli* MCL violation, a TT violation under 567—paragraph 41.2(1)*"a"* or *"l,"* or a turbidity TT violation under 567—43.9(455B) or 567—43.10(455B) must be made every three months or more frequently.

(3) A PWS using SW or IGW with a TT violation resulting from a single exceedance of the maximum allowable turbidity limit, pursuant to 567—43.9(455B) or 567—43.10(455B), must consult with the department as soon as practical, but no later than 24 hours after learning of the violation, to determine whether a Tier 1 or Tier 2 PN is required to protect public health. For consultation after normal business hours, use the department's Environmental Emergency Reporting Hotline, 515.725.8694. If the consultation does not occur within the 24-hour period, the PWS must distribute a Tier 1 PN within the next 24 hours, or no later than 48 hours after learning of the violation, following the requirements of 40.5(2)*"b"* and *"c."*

*c. Tier 2 PN—form and manner.* PWSs must provide the initial PN and any repeat PN in a form and manner that is reasonably calculated to reach persons served in the required time period. The PN

form and manner may vary based on the specific situation and type of PWS, but the PN must meet the requirements of this paragraph unless directed otherwise in writing by the department.

*d. Tier 2 PN—CWS PN methods.* CWSs must provide PN by the following methods:

(1) Mail or other direct delivery to each customer receiving a bill and to other service connections receiving water from the PWS; and

(2) Any other method reasonably calculated to reach other persons regularly served by the system if they would not normally be reached by mail or direct delivery. Such persons may include those who do not pay water bills or do not have service connection addresses, such as renters, students, nursing home residents, or prison inmates. Other methods may include:

1. Publication in a local newspaper;
2. Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as apartment building owners or large private employers;
3. Posting in public places served by the system or on the Internet; or
4. Delivery to community organizations.

*e. Tier 2 PN—NCWS PN methods.* NCWSs (TNCs or NTNCs) must provide PN by the following methods:

(1) Posting PN in conspicuous locations throughout the distribution system frequented by persons served by the system or by mail or direct delivery to each customer and service connection (where known); and

(2) Any other method reasonably calculated to reach other persons served who would not normally be reached by posting, mail, or direct delivery. Such persons may include those who may not see a posted PN because it is not in a location they routinely visit. Other methods may include:

1. Publication in a local newspaper or newsletter distribution to customers;
2. Use of email to notify employees or students; or
3. Delivery of multiple copies in central locations, such as community centers.

In addition to the previous requirements, NTNCs that serve children under 18 years of age (such as child care facilities, schools, and hospitals) or nursing home residents (including elder care facilities) must provide PN in writing to the parent or legal guardian of each person within the department-specified time period. The PN content must meet the requirements of 40.5(5).

**40.5(4)** *Tier 3 PN requirements.*

*a. Tier 3 PN—when required.* The following violations or situations require Tier 3 PN:

(1) Monitoring violations or a failure to comply with a department-required testing procedure, except where a Tier 1 PN is required under this rule or where the department determines that a Tier 2 PN is required;

(2) Availability of unregulated contaminant monitoring results, as required of certain PWSs by 40 CFR §141.40, in accordance with 40.5(7)*"a"*;

(3) Exceedance of the fluoride level of 2.0 mg/L and not exceeding the MCL of 4.0 mg/L, in accordance with 40.5(7)*"b"*;

(4) Failure to report required data or analytical results to the department;

(5) Failure to meet the requirements of this chapter for PN, PE, or the development and distribution of the Consumer Confidence Report (CCR);

(6) Failure to retain a certified operator in accordance with 567—subrule 43.1(5), where the department determines that PN is required;

(7) Failure to maintain department-required records; and

(8) Any other situation where the department determines PN is needed.

*b. Tier 3 PN—timing.*

(1) Initial PN.

1. For violations or situations listed in 40.5(4)*"a"*(1), 40.5(4)*"a"*(4), or 40.5(4)*"a"*(5), PWSs must provide the initial PN within 12 months after learning of the violation or situation. If the violation pertains to a contaminant that could have acute health effects as determined by the department, such as coliform bacteria, nitrate, nitrite, or turbidity, the initial notice must be provided within three months. If

the PN is posted, it must remain in place for as long as the violation or other situation persists, but in no case less than seven days, even if the violation or situation is resolved.

2. For availability of unregulated contaminant monitoring results pursuant to 40.5(4)*"a"*(2), the system must provide the initial PN within 12 months of receiving the results.

3. For 40.5(4)*"a"*(3), 40.5(4)*"a"*(6), or 40.5(4)*"a"*(7), the initial PN timing is at the department's discretion but the notice must be made within 12 months of the violation or situation.

(2) Repeat PN.

1. For violations or situations listed in 40.5(4)*"a"*(1), 40.5(4)*"a"*(3), 40.5(4)*"a"*(4), or 40.5(4)*"a"*(5), PWSs must repeat the PN every 12 months in which the violation or situation persists. If the violation pertains to a contaminant that could have acute health effects, such as coliform bacteria, nitrate, nitrite, or turbidity, the system must repeat the PN every three months in which the violation or situation persists. If the PN is posted, it must remain in place for as long as the violation or other situation persists, but in no case less than seven days, even if the violation or situation is resolved.

2. For availability of unregulated contaminant monitoring results pursuant to 40.5(4)*"a"*(2), the system is not required to repeat the PN once the initial PN requirement has been met.

3. For 40.5(4)*"a"*(3), 40.5(4)*"a"*(6), or 40.5(4)*"a"*(7), the requirement for and timing of the repeat PN is at the department's discretion. If required, the repeat PN must be made within 12 months of the initial PN.

*c. Tier 3 PN—form and manner.* PWSs must provide the initial PN and any repeat PN in a form and manner that is reasonably calculated to reach persons served in the required time period. The PN form and manner may vary based on the specific situation and type of system, but it must meet the requirements of this paragraph unless directed otherwise in writing by the department.

*d. Tier 3 PN—CWS PN methods.* CWSs must provide PN by:

(1) Mail or other direct delivery to each customer receiving a bill and to other service connections receiving water from the PWS; and

(2) Any other method reasonably calculated to reach other persons regularly served by the system if they would not normally be reached by mail or direct delivery. Such persons may include those who do not pay water bills or do not have service connection addresses, such as renters, students, nursing home residents, or prison inmates. Other methods may include:

1. Publication in a local newspaper;

2. Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as apartment building owners or large private employers;

3. Posting in public places or on the internet; or

4. Delivery to community organizations.

(3) Use of the CCR for initial and repeat PNs. For CWSs, the CCR required under 567—40.7(455B) may be used as a vehicle for initial and repeat Tier 3 PNs as long as:

1. The CCR is provided to persons served within the time frames under 40.5(4)*"b"*;

2. The Tier 3 PN in the CCR follows the content requirements under 40.5(5); and

3. The CCR is distributed following the delivery requirements under 40.5(4)*"c"*(1) and 40.5(4)*"c"*(2).

*e. Tier 3 PN—NCWS PN methods.* NCWSs (TNCs and NTNCs) must provide PN by:

(1) Posting PN in conspicuous locations throughout the distribution system frequented by persons served by the system or by mail or direct delivery to each customer and service connection (where known); and

(2) Any other method reasonably calculated to reach other persons served if they would not normally be reached by the posted, mailed, or delivered notice. Such persons may include those who may not see a posted PN because it is not in a location they routinely visit. Other methods may include:

1. Publication in a local newspaper or newsletter distributed to employees;

2. Use of email to notify employees or students; or

3. Delivery of multiple copies in central locations, such as community centers.

**40.5(5)** *PN content.*

*a. Required elements.* Each PN must contain the following:

(1) A description of the violation or situation, including the contaminant(s) of concern and, as applicable, the contaminant level(s);

(2) When the violation or situation occurred;

(3) Any potential adverse health effects from the violation or situation, including the standard language in 40.5(5)*"c"*(1) or 40.5(5)*"c"*(2), where applicable;

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(5) Whether alternative water supplies or bottled water should be used or require a boil-water order;

(6) What actions consumers should take, including when they should seek medical help, if known;

(7) What the system is doing to correct the violation or situation;

(8) When the system expects to return to compliance or resolve the situation;

(9) The name, business address, and telephone number of the PWS owner, operator, or designee as a source of additional information concerning the PN; and

(10) A statement to encourage the PN recipient to distribute the notice to other persons served, using the standard language under 40.5(5)*"c"*(3), where applicable.

*b. Appearance and presentation.*

(1) Each PN must:

1. Be displayed in a conspicuous way when printed or posted;
2. Not contain overly technical language or very small print;
3. Not be formatted in a way that defeats the purpose of the notice; and
4. Not contain language that nullifies the purpose of the notice.

(2) Each PN must comply with multilingual requirements, as follows:

1. For PWSs serving a large proportion of non-English speaking consumers, as determined by the department, a PN must contain information about its importance in the appropriate language(s) or contain a telephone number or address where persons served may contact the system to obtain a translated copy of the notice or to request assistance in the appropriate language.

2. In cases where the department has not determined what constitutes a large proportion of non-English speaking consumers for a PWS, a PN must contain the same information as in 40.5(5)*"b"*(2)"1" above, where appropriate, to reach a large proportion of non-English speaking persons served by the system.

*c. Standard language.* PWSs must include the following statements in PNs:

(1) Health effects for MCL, MRDL, or TT violations. Each PN must include the health effects language in Appendix B to 40 CFR Part 141, Subpart Q, for the specific contaminant, disinfectant residual, or TT that incurred the violation.

(2) Monitoring and testing procedure violations. Each PN must include the following statement, including the bracketed language necessary to complete the notice, for all monitoring and testing procedure violations:

"We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we [use either the phrase "did not monitor or test" or "did not complete all monitoring or testing," whichever is more applicable] for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time."

(3) Language to encourage PN distribution to all persons served. Each PN must include the following statement, where applicable:

"Please share this information with all the other people who drink this water, especially those who may not have received this notice directly, such as people in apartments, nursing homes, schools, and businesses. You can do this by posting this notice in a public place or distributing copies by hand or mail."

**40.5(6)** *PN for new billing units or new customers.*

*a. Community water systems (CWSs).* CWSs must give a copy of the most recent PN for any continuing violation or other ongoing situations requiring PN to all new billing units or new customers prior to or at the time service begins.

*b. Noncommunity water systems (NCWSs).* NCWSs (TNCs and NTNCs) must continuously post the PN in conspicuous locations in order to inform new consumers of any continuing violation or other situation requiring PN for as long as the violation or other situation persists.

**40.5(7)** *Special PNs.*

*a. Availability of unregulated contaminant monitoring results.*

(1) Applicability. The owner or operator of a CWS or NTNC required to monitor under the federal unregulated contaminant monitoring rule must notify persons served by the system of the availability of such sample results no later than 12 months after the monitoring results are known.

(2) Form and manner. The special PN must follow the Tier 3 PN requirements in 40.5(4)*"c"* and must identify a person and provide the telephone number to contact for information on the monitoring results.

*b. Fluoride level between 2.0 and 4.0 mg/L at CWSs or NTNCs.*

(1) Applicability. CWSs and NTNCs that exceed the fluoride level of 2.0 mg/L as determined by the last single sample taken in accordance with 567—paragraph 41.3(1)*"c"* but do not exceed the MCL of 4.0 mg/L must provide the special PN in accordance with this paragraph to persons served. If the NTNC is a school or child care facility serving children under nine years of age, the system shall provide the PN in writing to the legal guardians of each child within the department-specified time period.

(2) Initial PN. A fluoride PN must be provided as soon as practical but no later than three months from the day the system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the Public Health Dental Director, Iowa Department of Health and Human Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

(3) Repeat PN. The PWS must repeat the fluoride PN at least every three months for as long as the fluoride level exceeds 2.0 mg/L. If the PN is posted, it must remain in place for as long as the fluoride level exceeds 2.0 mg/L but in no case less than seven days (even if the exceedance is eliminated). The department may require the repeat PN to be conducted more frequently.

(4) Form and manner. The form and manner of the fluoride PN, including repeat PNs, must follow the Tier 3 PN requirements in 40.5(4)*"c."*

(5) Mandatory language. A fluoride PN must contain the following language, including the bracketed language necessary to complete the notice:

"This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth, called dental fluorosis. The drinking water provided by your public water system [PWS name] has a fluoride concentration of [analytical result] mg/L.

"Dental fluorosis, in its moderate or severe forms, may result in a brown staining and pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.

"Drinking water containing more than 4.0 mg/L of fluoride (the U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4.0 mg/L of fluoride, but we are required to notify you when we discover that the fluoride levels in your drinking water exceed 2.0 mg/L because of this cosmetic dental problem.

"For more information, please call [PWS contact person] of [PWS name] at [telephone number]. Some home water treatment units are also available to remove fluoride from drinking water. In Iowa, home water treatment units are regulated under 641—Chapter 14, and the water treatment unit registration program is administered by the Health & Safety Division of the Iowa Department of Inspections, Appeals, and Licensing. In addition, you may call the National Sanitation Foundation (NSF) International at 1-877-867-3435."

*c. Nitrate level between 10 and 20 mg/L for NCWSs, where allowed by the department.* NCWSs granted permission by the department under 567—paragraph 41.3(1)*"a"* to exceed the nitrate MCL must:

(1) Provide PN to persons served according to the Tier 1 PN requirements under 40.5(2)*"a"* and *"b."*

(2) Provide continuous posting of the fact that nitrate levels exceed 10 mg/L and the potential health effects of exposure, according to the Tier 1 PN delivery requirements under 40.5(2)*"c"* and the content requirements under 40.5(5).

*d. Repeated failure to conduct source water monitoring for Cryptosporidium.*

(1) Applicability. The owner or operator of any PWS that is required to monitor source water under 567—43.11(455B) must notify persons served by the system that required monitoring has not been completed no later than 30 days after the system has failed to collect samples in any three months of monitoring, as specified in 567—paragraph 43.11(3)*"a."* This special PN must be repeated as specified in 40.5(3).

(2) Form and manner. This special PN must follow the Tier 2 PN requirements in 40.5(3) and be presented as required in 40.5(5)*"b."*

(3) Mandatory language. This special PN must contain the following language, including the language necessary to fill in the brackets.

"We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the [treatment plant name] is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by [required bin determination date]. We ["did not monitor or test" or "did not complete all monitoring or testing"] on schedule and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of [date]. For more information, please call [PWS contact person] of [PWS name] at [telephone number]."

(4) Each special PN must include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

*e. Failure to determine bin classification or mean Cryptosporidium level.*

(1) Applicability. The owner or operator of a PWS that is required to determine a bin classification under 567—subrule 43.11(5) must notify persons served by the system that the required determination has not been made no later than 30 days after the system has failed to report the determination, as specified in 567—paragraph 43.11(5)*"c."* This special PN must be repeated as specified in 40.5(3). This PN is not required if the system is in compliance with a department-approved schedule to address the violation.

(2) Form and manner. This special PN must follow the Tier 2 PN requirements in 40.5(3) and be presented as required in 40.5(5)*"b."*

(3) Mandatory language. This special PN must contain the following language, including the language necessary to fill in the brackets.

"We are required to monitor the source of your drinking water for *Cryptosporidium* in order to determine by [date] whether water treatment at the [treatment plant name] is sufficient to adequately remove *Cryptosporidium* from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of [date]. For more information, please call [PWS contact person] of [PWS name] at [telephone number]."

(4) Each special PN must include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

**40.5(8)** *PN by department on behalf of a PWS.* The department may provide PN on behalf of a PWS owner or operator in compliance with this rule. However, the PWS owner or operator remains responsible for ensuring the PN requirements of this rule are met.

**40.5(9)** *Small water system—operation permit PN requirements.* When the department determines that a small PWS cannot promptly comply with one or more MCLs pursuant to 567—Chapter 41 and that there is no immediate, unreasonable health risk to persons served by the system, an operation permit will be drafted with interim contaminant levels or a compliance schedule. The department may require the applicant to present the reasons the small water system cannot come into immediate compliance. Prior to issuance of a final permit with a compliance schedule, notice and opportunity for public participation must be given in accordance with this subrule. The PN shall be circulated in a manner designed to inform interested and potentially interested persons of any proposed interim contaminant level or compliance schedule.

*a. Small water system—PN preparation.* A PN shall be prepared by the department and circulated by the applicant within its geographical area through publication in a local newspaper with general circulation or through mail or direct delivery to the system's customers. The PN shall be mailed by the department to any person upon request.

*b. Small water system—public comment period.* The department shall provide a period of at least 30 days following the PN date during which time interested persons may submit their written views on the tentative determinations with respect to the operation permit. All written comments submitted during the 30-day comment period shall be retained by the department and considered in the formulation of the department's final determination with respect to the operation permit. The department may extend the comment period.

*c. Small water system—PN content.* A PN of a proposed operation permit shall contain at least the following:

(1) The name, address, website, and telephone number of the department.

(2) The name and address of the applicant.

(3) A statement of the department's tentative determination to issue the operation permit.

(4) A brief description of each applicant's operations that necessitate the proposed permit conditions.

(5) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by 40.5(9)*"b."*

(6) The right to request a public hearing pursuant to 40.5(9)*"d"* and any other means by which interested persons may influence or comment upon those determinations.

(7) The website location where interested persons may obtain further information, request a copy of the proposed operation permit prepared pursuant to this subrule, and inspect and copy the application forms and related documents.

*d. Small water system—public hearings.* The applicant or any interested agency, person or group of persons may request or petition for a public hearing with respect to a proposed operation permit.

(1) Any such request or petition shall:

1. Clearly state the issues to be addressed at a hearing;

2. Be filed with the department within the 30-day period prescribed in 40.5(9)*"b"*; and

3. Indicate the interest of the party filing the petition or request and the reasons why a hearing is warranted.

(2) The department shall hold an informal and noncontested case hearing if there is a significant public interest in holding a hearing, including the filing of requests or petitions for a hearing. Frivolous or insubstantial hearing requests may be denied by the department. Instances of doubt should be resolved in favor of holding a hearing.

(3) Any hearing held pursuant to this subrule shall be held in the geographical area of the system, or other appropriate area, at the department's discretion.

(4) The department may, as appropriate, consider related groups of permit applications at a hearing.

*e. Small water system—PN for public hearings.* PN of any hearing held pursuant to this subrule shall:

(1) Be circulated at least as widely as the notice under 40.5(9)*"a"* at least 30 days in advance of the hearing.

(2) Contain at least the following:

1. The name, address, website, and telephone number of the department;
2. The name and address of each applicant whose application will be considered at the hearing;
3. A brief reference to the previously issued PN, including identification number and date of issuance;
4. The time and location for the hearing;
5. The purpose of the hearing;
6. A concise statement of the issues raised by the person requesting the hearing;
7. The website location where interested persons may obtain further information, request a copy of the draft operation permit or modification prepared pursuant to this subrule, and inspect and copy the application forms and related documents; and
8. A brief description of the nature of the hearing, including the rules and procedures to be followed.

*f. Small water system—operation permit decision.* The department shall issue or deny an operation permit within 30 days after a public hearing held pursuant to this subrule, or, if no public hearing is held, within 30 days after the end of the period for requesting a hearing.

**567—40.6(455B) Lead consumer notice and public education (PE) for lead action level exceedance (ALE).**

**40.6(1)** *Lead consumer notice.*

*a. Reporting.* All CWSs and NTNCs must provide a consumer notice of the individual lead tap water monitoring results required by 567—paragraph 41.4(1)*"c"* to the persons served at the tested sites (taps). Any system with a lead ALE shall also implement the PE requirements of 40.6(2).

*b. Consumer notice timing.* A system must provide the notice as soon as practical but no later than 30 days after the system learns of the tap monitoring results.

*c. Consumer notice content.* A consumer notice must contain the following:

(1) Results of the lead tap water monitoring for the tested tap,

(2) An explanation of the health effects of lead,

(3) A list of steps consumers can take to reduce exposure to lead in drinking water,

(4) PWS contact information, and

(5) The lead MCLG of 0 mg/L, the 90th percentile lead AL of 0.015 mg/L, and the definitions for these two terms from 567—40.2(455B).

*d. Consumer notice delivery.* The notice must be provided to persons served at the tested tap either by mail or by another department-approved method. For example, upon department approval, an NTNC could post results on a bulletin board in the facility. Systems must provide the notice to customers at sample taps tested, including consumers who do not receive water bills.

*e. Inclusion of copper results.* Systems may also include copper testing results in the consumer notice, along with the 90th percentile copper ALE of 1.3 mg/L, copper MCLG of 1.3 mg/L, and copper health effects language.

**40.6(2)** *Lead PE for lead ALE.* Systems with a lead ALE based on tap water samples collected in accordance with 567—paragraph 41.4(1)*"c"* shall prepare and deliver PE materials and sample the tap water of any customer who requests it in accordance with this subrule.

*a. Content of materials.* Systems must include the following statements in written PE materials in the same order as listed in this paragraph. Language in 40.6(2)*"a"*(1), 40.6(2)*"a"*(2), and 40.6(2)*"a"*(5) must be included exactly as written, except for the bracketed text for which the system must substitute system-specific information. Any additional information presented by a system must be consistent with this paragraph and be in plain language that can be understood by the general public. Systems must submit all PE materials to the department prior to delivery. The department may require a system to obtain approval of the content of PE materials prior to delivery. PE materials must:

(1) Include the following statements exactly as written.

"IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. [Insert system name] found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious

health problems, especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water.

"Health effects of lead. Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development."

(2) Discuss lead and sources of lead, as follows:

1. Explain what lead is.

2. Explain possible sources of lead in drinking water, explain how lead enters drinking water, and include information on home/building plumbing materials and service lines that may contain lead.

3. Discuss other important sources of lead exposure in addition to drinking water (e.g., paint).

(3) Discuss steps the consumers can take to reduce their exposure to lead in drinking water, as follows:

1. Encourage running the water to flush out the lead.

2. Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

3. Explain that boiling the water does not reduce lead levels.

4. Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or water treatment.

5. Suggest that parents have their child's blood tested for lead.

(4) Explain why there are elevated levels of lead in the system's drinking water (if known) and what the system is doing to reduce the lead levels in homes/buildings in this area.

(5) Include the following statement exactly as written.

"For more information, call us at [insert your telephone number] or visit our website at [insert your website link here]. For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA's website at www.epa.gov/lead or contact your health care provider."

(6) Include the following if the system is a CWS:

1. Tell consumers how to get their water tested.

2. Discuss lead in plumbing components and the difference between low lead and lead free.

*b. Outreach to non-English speaking consumers.* For PWSs serving a large proportion of non-English speaking consumers, as determined by the department, the PE materials must contain information about the importance of PE in the appropriate language(s) or contain a telephone number or address where persons served may contact the system to obtain a translated copy of the PE materials or to request assistance in the appropriate language.

*c. PE materials delivery by CWS.* A CWS that exceeds the lead ALE on the basis of tap water samples collected in accordance with 567—paragraph 41.4(1)*"c"* must conduct the following PE tasks within 60 days of the date of notification of the ALE. All PE materials must meet the content requirements of paragraph 40.6(2)*"a."*

(1) Deliver PE materials to all bill-paying customers.

(2) Contact customers who are most at risk by delivering PE materials to local public health agencies, even if they are not located within the system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or the CWSs users. Systems must contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community-based organizations serving target populations, which may include organizations outside the system's service area. If such lists are provided, systems must deliver PE materials to all organizations on the provided lists.

(3) Contact customers who are most at risk by delivering PE materials to the following organizations that are located within the system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or the CWSs users:

1. Public and private schools or school boards;
2. Women, Infants, and Children (WIC) and Head Start programs;
3. Public and private hospitals and medical clinics;
4. Pediatricians;
5. Family planning clinics; and
6. Local welfare agencies.

(4) Make a good-faith effort to locate the following organizations within the service area and deliver PE materials, along with an informational notice encouraging distribution to all potentially affected customers or users. This effort to contact at-risk customers may include requesting a contact list of these organizations from the local public health agencies, even if the agencies are not located within the system's service area:

1. Licensed child care centers;
2. Public and private preschools;
3. Obstetricians, gynecologists, doulas, and midwives.

(5) No less often than quarterly, provide information with each water bill as long as the system exceeds the lead AL. The water bill must include the following statement exactly as written, except for the text in brackets for which the system must substitute system-specific information:

"[*Insert system name*] found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information, please call [*insert system telephone number*] or visit [*insert system website link here*]."

The message or delivery mechanisms can be modified in consultation with the department; specifically, the department may allow a separate mailing of PE materials to customers if the system cannot place the information on water bills.

(6) Post PE material on the system's website if the system serves a population greater than 100,000.

(7) Submit a press release to newspaper, television, and radio stations.

(8) In addition to those items previously listed, systems must implement at least three activities from one or more of the following categories. The educational content and appropriate activities must be determined in consultation with the department.

1. Public service announcement;
2. Paid advertisement;
3. Public area information displays;
4. Emails to customers;
5. Public meetings;
6. Household deliveries;
7. Targeted individual customer contact;
8. Direct material distribution to all multifamily homes and institutions; and
9. Other department-approved methods.

*d. Continuing and special population PE by a CWS.*

(1) As long as a CWS exceeds the AL, it must repeat the following activities:

1. Repeat the tasks in 40.6(2)*"c"*(1), 40.6(2)*"c"*(2), and 40.6(2)*"c"*(8) every 12 months.
2. Repeat the tasks in 40.6(2)*"c"*(5) with each billing cycle.
3. A CWS serving a population greater than 100,000 shall post and retain PE materials on a publicly accessible website pursuant to 40.6(2)*"c"*(6).
4. Repeat the task in 40.6(2)*"c"*(7) twice every 12 months on a schedule agreed upon with the department. The department can allow activities in 40.6(2)*"c"* to extend beyond the 60-day requirement on a case-by-case basis; however, this extension must be approved in writing by the department in advance of the 60-day deadline, and the system must already have initiated PE activities prior to the end of the 60-day deadline.

(2) A CWS meeting either of the following criteria may apply to the department in writing for reduced PE and community notice requirements:

1. The CWS is a facility, such as a prison or hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing POU treatment devices; or

2. The CWS provides water as part of the cost of services provided and does not separately charge for water consumption.

If the department approves the request in writing, the CWS is not required to include the language in 40.6(2)*"a"*(6) and must deliver the PE materials in accordance with 40.6(2)*"e,"* in lieu of 40.6(2)*"c"* and *"d."*

(3) A CWS serving 3,300 or fewer people may limit certain aspects of its PE programs as follows:

1. The system must implement at least one of the activities in 40.6(2)*"c"*(8).

2. The system may limit the distribution of the PE materials in 40.6(2)*"c"*(2) and 40.6(2)*"c"*(3) to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

3. The department may waive the requirements of 40.6(2)*"c"*(7) for the system provided it distributes notices to every household served.

*e. Delivery of and continuing PE by an NTNC.*

(1) PE delivery by an NTNC. Within 60 days of the date of notification of the ALE, an NTNC shall deliver the specified PE materials as follows:

1. Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

2. Distribute informational pamphlets or brochures on lead in drinking water to each person served by the NTNC. The department may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as at least the same coverage is achieved. If the system serves children 18 years of age and under, such as a school or child care facility, the PE materials must be provided to the parents or legal guardians of the children.

(2) Continuing PE by an NTNC. An NTNC shall repeat the tasks in 40.2(2)*"e"*(1) at least once during each calendar year in which the system exceeds the lead AL. The department can allow activities in 40.2(2)*"e"*(1) to extend beyond the 60-day requirement on a case-by-case basis; however, this extension must be approved in writing by the department in advance of the 60-day deadline, and the system must already have initiated PE activities prior to the end of the 60-day deadline.

*f. Discontinuation of PE activities.* A CWS or NTNC may discontinue delivery of PE materials if it has met the lead AL during the most recent six-month monitoring period conducted pursuant to 567—paragraph 41.4(1)*"c."* Such systems shall recommence PE in accordance with this subrule if it subsequently exceeds the lead AL during any monitoring period.

*g. Supplemental monitoring and notification of results.* A system that fails to meet the lead AL on the basis of tap samples collected in accordance with 567—paragraph 41.4(1)*"c"* shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system itself required to collect and analyze the sample.

**567—40.7(455B) Consumer confidence reports (CCRs).**

**40.7(1)** *Applicability and purpose.* This rule applies to all CWSs and establishes the requirements for the content of annual CCRs that CWSs must deliver to their customers. These CCRs must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants in the drinking water in an accurate and understandable manner. The department may assign PN requirements and assess administrative penalties to any CWS that fails to fulfill the requirements of this rule.

**40.7(2)** *CCR delivery frequency.*

*a. Existing CWSs.* Existing CWSs must deliver CCRs annually by July 1.

*b. New CWSs.* New CWSs must deliver their first CCR by July 1 of the year after their first full calendar year in operation and annually thereafter.

*c. CWSs that sell water to another CWS.* A CWS that sells water to another CWS must deliver the applicable information in 40.3(7) to the buyer (or consecutive) system:

(1) Annually by April 1, or

(2) On a date mutually agreed upon by the seller and the purchaser and specifically included in a contract between the parties.

When a consecutive system sells water to another CWS, the seller must provide all applicable information in 40.3(7) to the CWS buying the water from them.

**40.7(3)** *CCR content—source water identification and definitions.* Each annual CCR must contain the following information.

*a. Source water identification.* A CCR must identify the source(s) of water delivered by the CWS, including:

(1) Type of water (e.g., SW, groundwater (GW), GW purchased from another PWS).

(2) Commonly used name of the aquifer, reservoir, or river (if any) and location of the body(ies) of water.

(3) The availability of a source water assessment and the means to obtain it if an assessment has been completed. Systems are encouraged to highlight significant sources of contamination in the source water area if information is available. Where a system has received a source water assessment from the department, the CCR must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the department or its designee or written by the owner or operator.

*b. Definitions.* Each CCR using any of the following terms must include the applicable definitions of MCL, MCLG, MRDL, and MRDLG from 40 CFR §141.153.

(1) A CCR that contains data on a contaminant for which EPA has set a TT or an AL must include the applicable definitions from 40 CFR §141.153.

(2) A CCR that contains information regarding a Level 1 or Level 2 assessment required under 567—subrule 41.2(1) must include the applicable assessment definitions from 40 CFR §141.153.

**40.7(4)** *CCR content—information on detected contaminants.* This subrule specifies the information required in each CCR for contaminants subject to mandatory monitoring as follows: regulated contaminants subject to an MCL, AL, MRDL, or TT; contaminants for which monitoring is required by either 40 CFR §141.40 (unregulated contaminants), 567—subrule 41.9(1) (sodium), or 567—41.13(455B) (other contaminants); and, except as provided under 40.7(6)*"a,"* contaminants with department-required monitoring that are detected in the finished water (disinfection byproducts (DBPs) or microbial contaminants), and *Cryptosporidium*. Ammonia monitoring conducted pursuant to 567—subrule 41.9(2) is not subject to this paragraph. For the purposes of this subrule, "detected" means at or above the levels prescribed as follows: inorganic contaminants in 567—subparagraph 41.3(1) *"e"*(1); VOCs and SOCs in 567—paragraph 41.5(1)*"b"*; radionuclide contaminants in 567—paragraph 41.8(1)*"c"*; DBPs in 567—paragraph 83.6(7)*"a"*(6)"3"; and other contaminants with HAs, as assigned by the department.

*a.* Contaminant data must be displayed in one or more tables. Any additional monitoring results that a CWS chooses to include in its CCR must be displayed separately.

(1) Contaminant data must be derived from data collected to comply with departmental monitoring and analytical requirements. Where a system is allowed to monitor for contaminants less often than once a year, the CCR table(s) must include the results, the most recent sampling date, and a brief statement indicating that the data in the CCR are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

(2) For detected regulated contaminants listed in Appendix A to 40 CFR Part 141, Subpart O, the table(s) must contain:

1. The contaminant MCL, expressed as a number equal to or greater than 1.0 (as provided in Appendix A to 40 CFR Part 141, Subpart O);

2. The contaminant MCLG, expressed in the same units as the MCL;

3. If there is no MCL for a detected contaminant, the table(s) must indicate that there is a TT, or specify the AL applicable to that contaminant, and the CCR must include the definition for TT or AL, as appropriate.

(3) For contaminants subject to an MCL, except turbidity and *E. coli*, the table(s) must contain the highest contaminant level used to determine compliance with a primary drinking water standard and the range of detected levels, expressed in the same units as the MCL, as follows:

1. When MCL compliance is determined annually or less frequently: the highest detected level at any sampling point and the range of detected levels.

2. When MCL compliance is determined by calculating a running annual average (RAA) of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points. For TTHM and HAA5 MCLs, systems must include the highest locational running annual average (LRAA) for TTHM and HAA5 and the range of individual sample results for all monitoring locations. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the LRAAs for all locations that exceed the MCL.

3. When MCL compliance is determined on a systemwide basis by calculating an RAA of all samples at all sampling points: the average and range of detection. When rounding of results to determine MCL compliance is allowed by the regulations, rounding should be done prior to multiplying the results by the factor in Appendix A to 40 CFR Part 141, Subpart O.

(4) For turbidity: The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 567—43.5(455B), 567—43.9(455B), or 567—43.10(455B) for the filtration technology being used when turbidity is being reported pursuant to the cited rules. The CCR should include an explanation of the reasons for measuring turbidity.

(5) For lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the AL.

(6) For *E. coli* analytical results under 567—subrule 41.2(1): the total number of positive samples.

(7) The likely source(s) of detected contaminants to the best of the owner's or operator's knowledge. If specific contaminant information is in sanitary surveys or source water assessments, it should be used. If the owner or operator lacks specific information on the likely contaminant source, the CCR must include one or more of the typical contaminant sources (from Appendix A to 40 CFR Part 141, Subpart O) that are most applicable to the system.

(8) If a CWS distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the CCR should identify each separate distribution system and the table(s) should contain a separate column for each service area. Alternatively, systems may produce separate CCRs tailored to include data for each service area.

(9) The table(s) must clearly identify any data indicating MCL, MRDL, or TT violations, and the CCR must contain a clear and readily understandable explanation of the violation, including:

1. The length of the violation;

2. The potential adverse health effects;

3. Actions taken by the system to address the violation; and

4. The relevant language from Appendix A to 40 CFR Part 141, Subpart O, describing the potential health effects.

(10) For detected unregulated contaminants for which monitoring is required, except *Cryptosporidium*, the table(s) must contain the average and range at which the contaminant was detected. The CCR may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(11) CWSs may list the most recent results of the special sodium monitoring requirement, according to 567—subrule 41.11(1), in the CCR instead of providing a separate PN.

(12) If a contaminant that does not have an MCL, MRDL, TT, or AL is detected in the water, the PWS must contact the department for the specific health effects language, health advisory level (HAL), and contamination sources.

*b.* If monitoring indicates that *Cryptosporidium* may be present in the source water or the finished water, or that radon may be present in the finished water, the CCR must include:

(1) A summary of the *Cryptosporidium* monitoring results;

(2) The radon monitoring results; and

(3) An explanation of the results' significance.

*c.* If a system has performed additional monitoring that indicates the presence of other contaminants in the finished water, it must report any results that may indicate a health concern. To determine if results may indicate a health concern, a CWS can inquire about a current or proposed MCL, MRDL, TT, AL, or HA by contacting the department or by calling the National Safe Drinking Water Hotline (800.426.4791). The department considers the detection of a contaminant above a proposed MCL or HAL to indicate possible health concerns. For such contaminants, the CCR should include:

(1) The monitoring results; and

(2) An explanation of the results' significance, noting the existence of an HA or a proposed regulation.

*d.* If a system was required to comply with the federal Information Collection Rule pursuant to 40 CFR Part 141, it must include the results of monitoring in compliance with 40 CFR §141.142 and 40 CFR 141.143. These results need only be included for five years from the date of the sample or until any of the detected contaminants become regulated and subject to routine monitoring requirements, whichever comes first.

**40.7(5)** *CCR content—compliance with 567—Chapters 41 and 43.* In addition to the requirements of 40.7(4)*"a"*(8), the CCR must note any violation of a requirement listed below that occurred during the year covered by the report and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation. The system must note any violation of the following:

*a.* Monitoring and reporting of compliance data pursuant to 567—Chapters 41 and 43, including any contaminant with a MCL, TT, AL, or HA;

*b.* The following TTs:

(1) Filtration and disinfection prescribed by 567—43.5(455B). For systems that have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes that constitutes a violation, the CCR must include the following statement with the explanation of potential adverse health effects:

"Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(2) Lead and copper control requirements. For systems that fail to take one or more actions prescribed by 567—Chapters 41 and 43 pertaining to lead and copper, the CCR must include the relevant language from Appendix A to 40 CFR Part 141, Subpart O.

(3) Acrylamide and epichlorohydrin control technologies. Systems in violation of 567—subparagraph 41.5(1)*"b"*(3) must include the relevant language from Appendix A to 40 CFR Part 141, Subpart O, in their CCR.

*c.* Recordkeeping of compliance data pursuant to 567—Chapters 41 and 43;

*d.* Special monitoring requirements; and

*e.* Violation of an operation permit compliance schedule, administrative order, or judicial order.

**40.7(6)** *CCR content—operation permit or administrative order with a compliance schedule.* If a system has been issued a compliance schedule with an extension for compliance, the CCR must contain:

*a.* An explanation of the reasons for the extension;

*b.* The date on which the extension was issued;

*c.* A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the compliance schedule; and

*d.* A notice of any opportunity for public input in the review or renewal of the compliance schedule.

**40.7(7)** *CCR content—mandatory CCR language explaining contaminant occurrence.* CCRs must contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water. This explanation may include the statements in 40.7(7)*"b"*(1)

through 40.7(7)*"b"*(3). Subparagraph 40.7(7)*"b"*(4) is provided as a minimal alternative to 40.7(7)*"b"*(1) through 40.7(7)*"b"*(3). Systems may also develop their own comparable language. A CCR must include the language of 40.7(8).

*a.* "The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and radioactive material, and can pick up substances resulting from the presence of animals or from human activity."

*b.* "Contaminants that may be present in source water include:"

(1) "Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife."

(2) "Inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban storm runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming."

(3) "Pesticides and herbicides, which may come from a variety of sources such as agriculture, storm water runoff, and residential uses."

(4) "Organic chemical contaminants, including synthetic and volatile organics, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff and septic systems."

(5) "Radioactive contaminants, which can be naturally occurring or be the result of oil and gas production and mining activities."

*c.* "In order to ensure that tap water is safe to drink, the department prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. The U.S. Food and Drug Administration (FDA) regulations establish limits for contaminants in bottled water which must provide the same protection for public health."

*d.* "Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the National Safe Drinking Water Hotline ((800)426-4791)."

**40.7(8)** *Required additional health information.*

*a. All systems.*

(1) All CCRs must prominently display the following statement:

"Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. The EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the national Safe Drinking Water Hotline ((800)426-4791)."

(2) Systems may write their own educational statements for arsenic in 40.7(8)*"b"*(1), nitrates in 40.7(8)*"c,"* and lead in 40.7(8)*"d"* but only in consultation with the department.

*b. Arsenic.*

(1) A CWS that detects arsenic at levels above 0.005 mg/L and less than or equal to 0.010 mg/L must include in its CCR a short information statement about arsenic, using language such as:

"While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems."

(2) A CWS that detects arsenic above 0.010 mg/L and less than or equal to 0.05 mg/L must include in its CCR the arsenic health effects language in Appendix A to 40 CFR Part 141, Subpart O.

*c. Nitrates.*

(1) A system that detects nitrate at levels above 5.0 mg/L (half the MCL) but below the MCL must include in its CCR a short informational statement about the impacts of nitrate on children, using language such as:

"Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider."

(2) A system that detects nitrite at levels above 0.50 mg/L (half the MCL) but below the MCL must include in its CCR a short informational statement about the impacts of nitrite on children, using language such as:

"Nitrite in drinking water at levels above 1 ppm is a health risk for infants of less than six months of age. High nitrite levels in drinking water can cause blue baby syndrome. If you are caring for an infant you should ask advice from your health care provider."

*d. Lead.* All systems must include in their CCR a short informational statement about lead in drinking water and the effects it has on children, using language such as:

"If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from material and components associated with service lines and home plumbing. [insert name of system] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the National Safe Drinking Water Hotline (800)426-4791 or at www.epa.gov/safewater/lead."

*e. Total trihalomethanes (TTHMSs).* A CWS that detects TTHMs above 0.080 mg/L but below the MCL in 567—subrule 41.5(1) as an annual average, monitored and calculated under the provisions of 567—paragraph 41.5(1)*"e,"* must include in its CCR the health effects language for total trihalomethanes listed in Appendix A to 40 CFR Part 141, Subpart O.

**40.7(9)** *Additional mandatory CCR requirements.*

*a.* The CCR must include the telephone number of the owner, operator, or designee of the CWS as a source of additional information concerning the report.

*b.* In communities with a large proportion of non-English speaking residents, as determined by the department, the CCR must contain information regarding the importance of the CCR in the appropriate language(s) or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

*c.* The CCR must include information (e.g., time and place of regular board meetings) about opportunities for public participation in decisions that may affect the quality of the water.

*d.* Systems may include such additional information as they deem necessary for the PE, consistent with, and not detracting from, the purpose of the CCR.

*e.* Systems required to comply with the GW rule (567—41.7(455B)) must include the following in the CCR, when applicable:

(1) Any GW system that receives notice from the department of a significant deficiency must inform its customers of any significant deficiency that is uncorrected at the time of the next CCR. The system must continue to inform the public annually until the department determines that particular deficiency is corrected. Each CCR must include the following:

1. The nature of the particular significant deficiency and the date the deficiency was identified by the department; and

2. For each significant deficiency, the department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed.

If directed by the department, a system with one or more significant deficiencies that have been corrected before the next CCR must inform its customers of the deficiencies, how the deficiencies were corrected, and the date(s) of correction.

(2) Any GW system that receives notice from the department or laboratory of a fecal indicator-positive GW source sample that is not invalidated under 567—paragraph 41.7(3)*"d"* must inform its customers of such a sample in the next CCR. The system must continue to inform the public annually until the department determines that the fecal contamination in the GW source is addressed under 567—paragraph 41.7(4)*"a."* Each CCR must include the following:

1. The fecal contamination source (if known) and the dates of the fecal indicator-positive GW source samples;

2. Whether the fecal contamination in the GW source has been addressed under 567—paragraph 41.7(4)*"a"* and the date of such action;

3. For each fecal contamination in the GW source that has not been addressed under 567—paragraph 41.7(4)*"a,"* the department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

4. The potential health effects, using the "Fecal coliform or *E. coli*" or "Fecal Indicators (enterococci or coliphage)" health effects language in Appendix A to 40 CFR Part 141, Subpart O.

*f.* Pursuant to 567—subrule 41.2(1), any system required to conduct a Level 1 or Level 2 assessment that is not due to an *E. coli* MCL violation must include in the CCR the statements below in 40.7(9)*"f"*(1) through 40.7(9)*"f"*(3), as appropriate, filling in the blanks accordingly and including the appropriate statements in 40.7(9)*"f."*

(1) "Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that the potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments."

(2) "During the past year, we were required to conduct [*insert number of required Level 1 assessments*] Level 1 assessment(s). [*Insert number of completed Level 1 assessments*] Level 1 assessment(s) were completed. In addition, we were required to take [*insert number of required corrective actions*] corrective actions, and we completed [*insert number of completed corrective actions*] of these actions."

(3) "During the past year, [*insert number of required Level 2 assessments*] Level 2 assessments were required to be completed for our water system. [*Insert number of completed Level 2 assessments*] Level 2 assessment(s) were completed. In addition, we were required to take [*insert number of required corrective actions*] corrective actions, and we completed [*insert number of completed corrective actions*] of these actions."

(4) Any system that has failed to complete all the required assessments or correct all identified sanitary defects is in violation of the TT requirement and must also include one or both of the following statements in its CCR, as appropriate:

1. "During the past year, we failed to conduct all of the required assessment(s)."

2. "During the past year, we failed to correct all identified defects that were found during the assessment."

*g.* Pursuant to 567—subrule 41.2(1), any system required to conduct a Level 2 assessment due to an *E. coli* MCL violation must include the statements in 40.7(9)*"g"*(1) and 40.7(9)*"g"*(2) in its CCR as appropriate, filling in the blanks accordingly and including the appropriate text in 40.7(9)*"g"*(3).

(1) "*E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found *E. coli* bacteria, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments."

(2) "We were required to complete a Level 2 assessment because we found *E. coli* bacteria in our water system. In addition, we were required to take [*insert number of required corrective actions*] corrective actions, and we completed [*insert number of completed corrective actions*] of these actions."

(3) Any system that has failed to complete the required assessment or correct all identified sanitary defects is in violation of the TT requirement and must also include one or both of the following statements in its CCR, as appropriate:

1. "We failed to conduct the required assessment."
2. "We failed to correct all sanitary defects that were identified during the assessment that we conducted."

*h.* Pursuant to 567—subrule 41.2(1), if a system detects *E. coli* and has violated the *E. coli* MCL, in addition to completing the CCR table(s) as required in 40.7(4), the system must include in its CCR one or more of the following statements to describe any noncompliance, as applicable:

(1) "We had an *E. coli*-positive repeat sample following a total coliform-positive routine sample."

(2) "We had a total coliform-positive repeat sample following an *E. coli*-positive routine sample."

(3) "We failed to take all required repeat samples following an *E. coli*-positive routine sample."

(4) "We failed to test for *E. coli* when any repeat sample tested positive for total coliform."

*i.* Pursuant to 567—subrule 41.2(1), if a system detects *E. coli* and has not violated the *E. coli* MCL, in addition to completing the CCR table(s) as required in 40.7(4), the system may include in its CCR a statement that explains that although the system has detected *E. coli*, the system is not in violation of the *E. coli* MCL.

**40.7(10)** *CCR delivery.*

*a. Required CCR recipients.* Each CWS must mail or otherwise directly deliver one copy of the CCR to each customer.

(1) Systems must make a good-faith effort to reach consumers who do not get water bills, using department-recommended means. An adequate good-faith effort will be tailored to the consumers who are served by the system but are not bill-paying customers. A good-faith effort would include a mix of methods appropriate to the particular system. Reports could be:

1. Posted on the Internet;
2. Mailed to postal patrons in metropolitan areas;
3. Advertised in the news media;
4. Published in a local newspaper;
5. Posted in public places;
6. Delivered for distribution by single-billed customers such as apartment buildings or large private employers;
7. Delivered to community organizations.

(2) No later than the date the system is required to distribute the CCR to its customers, each CWS must provide the CCR to the department, followed within three months by a certification that the CCR has been distributed to customers and that it is correct and consistent with the previously submitted compliance monitoring data.

(3) No later than the date the system is required to distribute the CCR to its customers, each CWS must deliver the report to any other agency or clearinghouse identified by the department, such as the Iowa department of health and human services or county board of health.

*b. CCR availability.* Each CWS must make its CCR available to the public upon request. Each CWS serving 100,000 or more persons must post its current year's CCR to a publicly accessible website.

*c. CCR mailing requirement waiver for systems serving 10,000 or fewer in population.* All CWSs serving fewer than 10,000 persons will qualify for a mailing waiver, except for those systems that have one or more exceedances of a MCL, TT, AL, or HA; an administrative order; a court order; significant noncompliance with monitoring or reporting requirements; or an extended compliance schedule in an operation permit. Even if a PWS qualifies for a mailing waiver, 40.7(10)*"a"* and *"b"* still apply to all CWSs. A mailing waiver is not allowed for the CCR covering the year during which one of the previously listed exceptions occurred. Systems qualifying for a mailing waiver must:

(1) Publish their CCR in one or more local newspapers serving the area where the system is located;

(2) Inform customers that their CCR will not be mailed, either in the newspapers in which the CCR is published or by other department-approved means; and

(3) Make their CCR available to the public upon request.

*d. CCR mailing requirements waiver for systems serving 500 or fewer in population.* All CWSs serving 500 or fewer persons will qualify for a mailing waiver, except for those systems that have one or more exceedances of an MCL, TT, AL, or HA; an administrative order; a court order; significant noncompliance with monitoring or reporting requirements; or an extended compliance schedule in an operation permit. Systems serving 500 or fewer persons that qualify for the waiver may forego the requirements of 40.7(10)*"c"*(1) and 40.7(10)*"c"*(2) if they provide notice at least once per year to their customers that the CCR is available upon request, by mail, door-to-door delivery, or by posting in conspicuous places within the service area acceptable to the department. A mailing waiver is not allowed for the CCR covering the year during which one of the previously listed exceptions occurred. Even if a PWS serving 500 or fewer persons qualifies for a mailing waiver, 40.7(10)*"a"*(2), 40.7(10)*"a"*(3) and 40.7(10)*"b"* still apply.

**567—40.8(455B) Reporting.**

**40.8(1)** *Reporting requirements other than for lead and copper.*

*a.* When required by the department, a PWS shall report to the department within ten days following a test, measurement, or analysis required by this chapter and 567—Chapters 41 and 43, the results of that test, measurement, or analysis in the form and manner prescribed by the department. This shall include reporting of all positive detects within the same specific analytical method.

*b.* Except where a different reporting period is specified in this rule or 567—Chapters 41 and 43, a PWS shall report to the department within 48 hours after any failure to comply with the monitoring requirements in 567—Chapters 41 and 43. The PWS shall also notify the department within 48 hours of failure to comply with any primary drinking water regulations.

*c.* The PWS, within ten days of completion of each initial and repeat PNs required in 567—40.5(455B), shall submit to the department a certification that it has fully complied with the PN rules. The certification must include a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

*d.* Additional reporting requirements for the GW rule are listed in 567—paragraph 41.7(6)*"a."*

*e.* Additional reporting requirements for the coliform rule are listed in 567—paragraph 41.2(1)*"n."*

**40.8(2)** *Lead and copper reporting requirements.* All PWSs shall report all of the following to the department.

*a. Reporting for tap water monitoring and water quality parameter (WQP) monitoring.*

(1) Except as provided below in 40.8(2)*"a"*(1)"6," a system shall report the information specified below for all tap water samples specified in 567—paragraph 41.4(1)*"c"* and all WQP samples specified in 567—paragraph 41.4(1)*"d"* within the first ten days following the end of each applicable monitoring period specified in 567—41.4(455B). For monitoring periods with a duration of less than six months, the end of the monitoring period is the last date samples can be collected during that period.

1. The results of all tap samples for lead and copper, including the location of each site and the site selection criteria;

2. Documentation for each tap water lead or copper sample for which the system requests invalidation pursuant to 567—paragraph 41.4(1)*"c"*(6)"2";

3. The 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with 567—subparagraph 41.4(1)*"b"*(3));

4. With the exception of initial tap sampling conducted pursuant to 567—paragraph 41.4(1)*"c"*(4) "1," the system shall designate any site that was not sampled during previous monitoring periods and include an explanation of why sampling sites have changed;

5. For samples collected under 567—subparagraphs 41.4(1)*"d"*(2) through 41.4(1)*"d"*(5), tap sample results for pH; where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica; and SEP sample results for applicable WQPs; and

6. The results of all WQP samples collected under 567—subparagraphs 41.4(1)*"d"*(3) through 41.4(1)*"d"*(6) during each six-month monitoring period in 567—subparagraph 41.4(1)*"d"*(4) within the first ten days following the end of the monitoring period unless the department has specified a more frequent reporting requirement.

(2) Certain systems that do not have enough taps that can provide first-draw samples and that have met the six-hour stand time criteria, such as an NTNC with 24-hour operation or a CWS meeting the criteria of 40.6(2)*"d"*(2), must either:

1. If the department has not approved the non-first-draw sample sites, provide written documentation to the department identifying stand times and locations for enough non-first-draw samples to make up its sampling pool under 567—paragraph 41.4(1)*"c"*(2)"5" by July 1, 2003; or

2. If the department has already approved the non-first-draw sample sites, identify each site that did not meet the six-hour minimum stand time and the length of stand time for that particular substitute sample (collected pursuant to 567—paragraph 41.4(1)*"c"*(2)"5.") Certain systems already include this information in writing with the lead and copper tap sample results required by 567—paragraph 41.4(1)*"d"*(1)"1."

(3) At a time specified by the department or, if no specific time is specified, then as early as possible prior to the addition of a new source or any long-term change in water treatment, a system subject to this subparagraph shall send written documentation to the department describing the addition or change. The department must review and approve the addition or change before it is implemented by the system.

1. Systems subject to this subparagraph are those that have optimized corrosion control under 567—subparagraph 43.7(1)*"b"*(3), are subject to reduced monitoring pursuant to 567—paragraph 41.4(1)*"c"*(4)"4," or are subject to a monitoring waiver pursuant to 567—subparagraph 41.4(1)*"c"*(7).

2. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing process. Long-term changes can include dose changes to existing chemicals but do not include chemical dose fluctuations associated with daily water quality changes.

3. Examples of modifications include the switching of secondary disinfectants, coagulants, or corrosion inhibitor products. In those instances where prior department approval of a new source addition or long-term treatment change is not required, systems are encouraged to provide notification to the department beforehand to minimize the risk that the new source addition or treatment change will adversely affect optimal corrosion control (OCC).

(4) Any small system applying for or subject to a monitoring waiver under 567—subparagraph 41.4(1)*"c"*(7) shall provide the following information to the department in writing by the specified deadline:

1. By the start of the first applicable monitoring period in 567—subparagraph 41.4(1)*"c"*(4), any small system applying for a monitoring waiver shall provide documentation demonstrating that it meets the waiver criteria of 567—paragraphs 41.4(1)*"c"*(7)"1" and "2."

2. No later than nine years after the monitoring previously conducted pursuant to 567—paragraph 41.4(1)*"c"*(7)"2" or 41.4(1)*"c"*(7)"4," first bulleted paragraph, each small system desiring to maintain its monitoring waiver shall provide the information required by 567—paragraph 41.4(1)*"c"*(7)"4," first and second bulleted paragraphs.

3. No later than 60 days after the system becomes aware that it is no longer free of lead- or copper-containing materials, as appropriate, each small system with a monitoring waiver shall provide written notification, setting forth the circumstances resulting in the lead- or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials.

(5) Each GW system that limits WQP monitoring to a subset of entry points under 567—paragraph 41.4(1)*"d"*(3)"3" shall provide, by the commencement of such monitoring, written correspondence to the department that identifies the selected entry points and includes information

sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

*b. Source water monitoring reporting.*

(1) Systems shall report the sampling results for all source water samples collected within the first ten days following the end of each source water monitoring period in accordance with 567—paragraph 41.4(1)*"e."*

(2) With the exception of the first round of source water sampling conducted pursuant to 567—subparagraph 41.4(1)*"e"*(2), the system shall specify any site that was not sampled during previous monitoring periods and include an explanation of why the sampling point has changed.

*c. Corrosion control treatment (CCT) reporting.* By the applicable dates in 567—subrule 43.7(1), systems shall report the following:

(1) For systems demonstrating that they have already optimized corrosion control, information required in 567—subparagraph 43.7(1)*"b"*(2) or 43.7(1)*"b"*(3).

(2) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment (OCCT) under 567—paragraph 43.7(2)*"a."*

(3) For systems required to evaluate the effectiveness of CCTs under 567—paragraph 43.7(2)*"c,"* the information required by that paragraph.

(4) For systems required to install OCC designated by the department under 567—paragraph 43.7(2)*"d,"* a letter certifying that the system has completed installing that treatment.

*d. Source water treatment reporting.* By the applicable dates in 567—subparagraph 43.7(3)*"b"*(1), systems shall provide the following to the department:

(1) If required under 567—subparagraph 43.7(3)*"b"*(1), their recommendation regarding source water treatment; and

(2) For systems required to install source water treatment under 567—subparagraph 43.7(3)*"b"*(1), a letter certifying that the system has completed installing the designated treatment within 24 months of the department designation.

*e. Lead service line replacement (LSLR) reporting.* Systems shall report the following to the department to demonstrate compliance with 567—subrule 43.7(4):

(1) No later than 12 months after the end of a monitoring period in which a system exceeds the lead AL when sampling pursuant to 567—paragraph 43.7(4)*"a,"* the system must submit written documentation of the material evaluation pursuant to 567—subparagraph 41.4(1)*"c"*(1), identify the initial number of lead service lines (LSLs) in its distribution system at the time it exceeds the lead AL, and provide its schedule for replacing annually at least 7 percent of the initial number of LSLs in its distribution system.

(2) No later than 12 months after the end of a monitoring period in which a system exceeds the lead AL when sampling pursuant to 567—paragraph 43.7(4)*"a,"* and every 12 months thereafter, the system shall demonstrate in writing that it has either:

1. Replaced in the previous 12 months at least 7 percent of the initial LSLs (or a greater number of lines specified by the department under 567—paragraph 43.7(4)*"e"* in its distribution system), or

2. Conducted sampling that demonstrates that the lead concentration in all service line samples from individual line(s), taken pursuant to 567—paragraph 41.4(1)*"c"*(2)"3," is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced plus those lines meeting the criteria in 567—paragraph 43.7(4)*"c"* shall either equal at least 7 percent of the initial number of lead lines identified under 40.8(2)*"e"*(1) above or equal the percentage specified by the department under 567—paragraph 43.7(4)*"e."* An LSL meeting the criteria of 567—paragraph 43.7(4)*"c"* may only be used to comply with the 7-percent criteria for a specific year and may not be used again to calculate compliance with the 7-percent criteria in future years.

(3) The annual letter submitted under 40.8(2)*"e"*(2) above shall contain the following:

1. The number of LSLs scheduled to be replaced during the previous year of the system's replacement schedule;

2. The number and location of each LSL replaced during the previous year of the system's replacement schedule; and

3. If measured, the water lead concentration and location of each LSL sampled, the sampling method, and the sampling date.

(4) Any system that collects LSL samples following partial LSL replacement required by 567—subrule 43.7(4) shall report the results within the first ten days of the month following the month in which the system receives the laboratory results or as specified by the department. Systems shall also submit any additional requested information in a time and manner prescribed by the department to verify that all partial LSL replacement activities have taken place.

*f. PE program reporting.*

(1) Any system subject to the PE requirements in 40.6(2) shall, within ten days after the end of each period in which the system is required to perform PE, send written documentation to the department containing:

1. A demonstration that the system has delivered the PE materials that meet the content and delivery requirements in 40.6(2); and

2. A list of all the newspapers, radio stations, television stations, facilities, and organizations to which the system delivered PE materials during the PE period.

(2) Unless required by the department, a system that previously submitted the information required by 40.7(7)*"a"* need not resubmit the same information, provided there have been no changes in the distribution list and the system certifies that the PE materials were distributed to the same list previously submitted. This certification is due within ten days after the end of each period in which the system is required to perform PE.

(3) No later than three months following the end of the monitoring period, each system must mail a sample copy of the consumer notice of tap results to the department along with a certification that the notice has been distributed in a manner consistent with 40.6(1).

*g. Additional monitoring data reporting.* A system that collects sampling data in addition to that required by 567—Chapters 41 and 43 shall report the results to the department within the first ten days following the end of the applicable monitoring period under 567—paragraphs 41.4(1)*"c,""d,"* and *"e"* during which the samples are collected.

**40.8(3)** *PWS operation and maintenance.*

*a. Required operation records.*

(1) Monthly operation records (MORs) shall be completed by all PWSs on forms provided by the department or on similar forms unless a PWS meets all of the following conditions:

1. Supplies an annual average of not more than 25,000 gpd or serves no more than an average of 250 individuals daily;

2. Is a CWS and does not provide any type of treatment, or is a NCWS (NTNC or TNC) that has only a cation-exchange softening or iron/manganese removal treatment unit, and meets the requirements of 40.8(3)*"a"*(4)"7";

3. Does not utilize either a SW or an IGW, either in whole or in part, as a water source;

4. Does not use a TT such as blending to achieve compliance with an MCL, TT, AL, or HA.

(2) MORs shall be completed as described in 40.8(3)*"a"*(4), submitted to the department within ten days after the end of each month the system serves water to the public, and maintained at the facility for department inspection for a period of five years. For CWSs and NTNCs, the MOR must be signed by the certified operator in charge. For TNCs, the MOR, if required by the department, must be signed by the owner or the owner's designee.

(3) In addition to the requirements of this paragraph, all PWSs using a SW or IGW source must also comply with the applicable recordkeeping requirements in 567—Chapter 43.

(4) MORs shall be completed as follows. Daily monitoring is seven days a week unless otherwise specified by the department.

1. Pumpage or flow. NCWS shall measure and record the total water used each week. Daily measurement and recording is recommended. CWS shall measure and record the total water used each day. Pumpage or flow reporting may be required in an operation permit where needed to verify MCL compliance.

2. General treatment effectiveness. Where treatment is practiced, the intended effect of the treatment shall be measured and recorded at locations and by methods which best indicate effectiveness of the treatment process, at a frequency specified in Appendix A of this chapter.

3. Primary standard treatment effectiveness. Where the raw water quality does not meet the requirements of 567—Chapters 41 and 43 and treatment is practiced to comply with an MCL, AL, TT, or HA, the primary standard constituent or an appropriate department-designated indicator constituent shall be measured and recorded daily. Reporting of these results will be required in the operation permit to verify MCL compliance.

4. Secondary standard treatment effectiveness. Where treatment is practiced to achieve the recommended level of any constituent designated in the federal secondary standards, measurements shall be conducted and recorded at a frequency specified in Appendix A of this chapter.

5. Chemical application. Chemicals, such as fluoride, iodine, bromine, and chlorine, that are potentially toxic in excessive concentration shall be measured and recorded daily. Recording shall include the amount of chemical applied each day. Where the PWS is attempting to maintain a residual of the chemical throughout the system, the residual in the system shall be measured and recorded daily. The quantity of all other chemicals applied shall be measured and recorded at least once each week.

6. Static and pumping water levels must be measured and recorded once per month for all GW sources. More or less frequent measurements may be approved by the department where historical data justifies it.

7. NCWS are exempt from the self-monitoring requirements for cation-exchange softening and iron/manganese removal if the treatment unit:

- Is a commercially available "off-the-shelf" unit designed for home use;
- Is self-contained, requiring only a piping connection for installation;
- Operates throughout a range of 35 to 80 psi; and
- Has not been installed to remove a contaminant that has an MCL, TT, AL, or HA.

*b. Chemical quality and application.* Any chemical added to raw, partially treated, or finished water must be suitable for the intended use in a potable water system. The chemical must be certified by an ANSI-accredited third party for conformance with the ANSI/NSF Standard 60, if such certification exists for the particular product, unless certified chemicals are not reasonably available for use, in accordance with department guidelines. If the chemical is not certified for conformance with the ANSI/NSF Standard 60 or no certification is available, the person seeking to supply or use the chemical must prove to the department's satisfaction that the chemical is not toxic or otherwise a potential hazard in a potable PWS.

PWSs shall keep a record of all chemicals used. This record should include a clear identification of the chemical by brand or generic name and the dosage rate. When chemical treatment is applied with the intent of obtaining an in-system residual, the residuals will be monitored regularly. When chemical treatment is applied and in-system residuals are not expected, the treatment effectiveness will be monitored through an appropriate indicative parameter.

(1) Continuous disinfection.

1. When required. Continuous disinfection must be provided at all PWSs, except for GW supplies that either have no treatment facilities or have only fluoride, sodium hydroxide, or soda ash addition; meet the bacterial standards in 567—subrule 41.2(1); and do not show other actual or potential hazardous contamination by microorganisms. For an NCWS that only uses a cation-exchange softening unit meeting the requirements of 40.8(3)*"a"*(4), this requirement is based on both the system's history of coliform bacteria detection and its compliance with the coliform bacteria monitoring requirements in 567—subrule 41.2(1).

2. Method. Chlorine is the preferred disinfecting agent. Chlorination may be accomplished with liquid chlorine, calcium or sodium hypochlorites, or chlorine dioxide. Other disinfecting agents will be considered, provided a residual can be maintained in the distribution system, reliable application equipment is available, and residual testing procedures are recognized in the Standard Methods.

3. Chlorine residual. A minimum free available chlorine residual of 0.3 mg/L or a minimum total available chlorine residual of 1.5 mg/L must be continuously maintained throughout the distribution

system, except for those points in the distribution system that terminate as dead ends or areas that represent very low use when compared to usage throughout the rest of the distribution system, as determined by the department. All systems using water to which chlorine has been added must monitor daily in the distribution system to ensure the minimum disinfectant residual concentration is met, including both wholesale systems and consecutive systems.

4. Measurement. Chlorine may be measured by a test kit or an online analyzer meeting the specifications in 40.8(3)*"b"*(1)"5" and "6."

5. Test kit. A test kit capable of measuring free and combined chlorine residuals in increments no greater than 0.1 mg/L in the range below 0.5 mg/L, in increments no greater than 0.2 mg/L in the range from 0.5 mg/L to 1.0 mg/L, and in increments no greater than 0.3 mg/L in the range from 1.0 mg/L to 2.0 mg/L must be provided at all chlorination facilities. The test kit must use an analysis method recognized in the Standard Methods.

6. Online analyzer. Free and total chlorine may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Continuous monitoring instruments must be verified with a grab sample measurement at least every seven days. The analyzer concentration must be within plus or minus 0.1 mg/L or plus or minus 15 percent (whichever is larger) of the grab sample measurement. If the verification is not within this range, immediate actions must be taken to resolve the issue and another verification must be conducted.

7. Leak detection, control, and operator protection. A bottle of at least 56 percent ammonium hydroxide must be provided at all gas chlorination installations for leak detection. Leak repair kits must be available where ton chlorine cylinders are used.

8. Other disinfectant residuals. If an alternative disinfecting agent is approved by the department, the residual levels and test kit type will be assigned by the department in accordance with and based upon the analytical methods in the Standard Methods.

(2) Phosphate compounds.

1. When phosphate compounds are added to any PWS that uses iron or manganese removal or ion-exchange softening, the compounds must be applied after the iron or manganese removal or ion-exchange softening treatment units unless the department has approved an engineering report demonstrating the suitability for addition prior to these units in accordance with 567—subrule 43.3(2). The department may require the discontinuance of phosphate addition where it interferes with other treatment processes or system operation or if there is a significant increase in microorganism populations associated with phosphate application.

2. The total phosphate concentration in finished water must not exceed 10 mg/L as $PO_4$.

3. Chlorine shall be applied to the phosphate solution in sufficient quantity to give an initial concentration of 10 mg/L in the phosphate solution. A chlorine residual must be maintained in the phosphate solution at all times.

4. Test kits capable of measuring polyphosphate and orthophosphate in a range from 0.0 to 10.0 mg/L in increments no greater than 0.1 mg/L must be provided.

5. Continuous application or injection of phosphate compounds directly into a well is prohibited.

(3) Fluorosilicic acid. Where fluorosilicic acid ($H_2SiF_6$, also called hydrofluosilicic acid) is added to a PWS, a fluoride test kit with a minimum range of from 0.0 to 2.0 mg/L in increments no greater than 0.1 mg/L must be provided. Distilled water and standard fluoride solutions of 0.2 mg/L and 1.0 mg/L must be provided.

*c. Reporting and recordkeeping requirements for systems using surface water (SW) and groundwater under the direct influence of surface water (IGW).* In addition to the monitoring requirements in 40.8(3)*"a"* and *"b"* above, a PWS that uses a SW or IGW source must report monthly to the department the information specified in this subrule when filtration is installed.

(1) Turbidity measurements required by 567—subrule 43.5(3) must be reported within ten days after the end of each month the system serves water to the public. The following information must be reported.

1. The total number of filtered water turbidity measurements taken during the month.

2. The number and percentage of filtered water turbidity measurements taken during the month that are less than or equal to the turbidity limits in 567—paragraphs 43.5(3)*"b"* through *"e"* for the filtration technology being used.

3. The date and value of any turbidity measurements taken during the month which exceed 1 NTU. If at any time the turbidity exceeds 1 NTU, the system must inform the department as soon as possible, but no later than 24 hours after the exceedance is known, in accordance with the PN requirements in 40.5(2). This is in addition to the monthly reporting requirement, pursuant to 567—43.5(455B).

(2) The disinfection information in 567—subrule 43.5(2) and 40.8(3)*"b"* above must be reported within ten days after the end of each month the system serves water to the public. The following information must be reported.

1. For each day, the lowest measurement of residual disinfectant concentration in mg/L in water entering the distribution system.

2. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.3 mg/L free residual chlorine or 1.5 mg/L total residual chlorine (TRC) and when the department was notified of the occurrence. If at any time the residual falls below 0.3 mg/L free residual chlorine or 1.5 mg/L TRC in the water entering the distribution system, the system must notify the department as soon as possible but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/L free residual chlorine or 1.5 mg/L TRC within four hours. This is in addition to the monthly reporting requirement in 567—43.5(455B).

3. The information on the samples taken in the distribution system in conjunction with the total coliform monitoring in 567—paragraph 43.5(2)*"d"* and pursuant to 567—subparagraph 41.2(1)*"c"*(7).

(3) The total inactivation ratio must be calculated each day the treatment plant is in operation, pursuant to 567—paragraph 43.5(2)*"a,"* and reported on the MOR. If the total inactivation ratio is below 1.0, the system must notify the department within 24 hours.

*d. Reporting and recordkeeping requirements for DPBs, disinfectants, and DBP precursors.*

(1) General.

1. In addition to the monitoring requirements in 40.8(3)*"a"* and *"b"* above, a CWS or NTNC that adds a chemical disinfectant to the water in any part of the treatment process or that provides water containing a chemical disinfectant must report monthly to the department the information specified in the tables in this paragraph by the dates in 567—subparagraphs 41.6(1)*"a"*(3) and 43.6(1)*"a"*(3). A TNC that adds chlorine dioxide as a disinfectant or oxidant must report monthly to the department the information specified in this paragraph by the dates in 567—paragraph 43.6(1)*"a"*(3)"3."

2. Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the PN provisions of 567—40.5(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected.

(2) DBPs.

**DBPs Reporting Table**

| **If you are a system monitoring for ...** | **You must report the following ...** |
|---|---|
| TTHMs and HAA5 under 567—subparagraph 41.6(1)*"c"*(4) on a quarterly or more frequent basis | 1. Number of samples taken during the last quarter.<br>2. Location, date, and result of each sample taken during the last quarter.<br>3. Arithmetic average of all samples taken in the last quarter.<br>4. Annual arithmetic average of the quarterly arithmetic averages for the last four quarters.*<br>5. Whether the MCL was exceeded.<br>6. Under Stage 2, any OELs that were exceeded during the quarter, including the location and date and the calculated TTHM and HAA5 levels. |
| TTHMs and HAA5 under 567—subparagraph 41.6(1)*"c"*(4) less frequently than quarterly, but at least annually | 1. Number of samples taken during the last year.<br>2. Location, date, and result of each sample taken during the last monitoring period. |

| If you are a system monitoring for ... | You must report the following ... |
|---|---|
| | 3. Arithmetic average of all samples taken over the last year.*<br>4. Whether the MCL was exceeded. |
| TTHMs and HAA5 under 567—subparagraph 41.6(1)*"c"*(4) less frequently than annually | 1. Location, date, and result of the last sample taken.<br>2. Whether the MCL was exceeded. |
| Chlorite under 567—subparagraph 41.6(1)*"c"*(3) | 1. Number of samples taken each month for the last three months.<br>2. Location, date, and result of each sample taken during the last quarter.<br>3. For each month in the reporting period, arithmetic average of all samples taken in each three sample sets taken in the month.<br>4. Whether the MCL was exceeded and in which month it was exceeded. |
| Bromate under 567—subparagraph 41.6(1)*"c"*(2) | 1. Number of samples taken during the last quarter.<br>2. Location, date, and result of each sample taken during the last quarter.<br>3. Arithmetic average of the monthly arithmetic averages of all samples taken in the last year.<br>4. Whether the MCL was exceeded. |

*The calculation of the RAA will transition from a systemwide RAA calculation under Stage 1 to an LRAA under Stage 2. The transition will commence according to the system schedule listed in 567—paragraph 41.6(1)*"b."* Beginning at the end of the fourth calendar quarter that follows the compliance date, and at the end of each subsequent quarter, the system must report the arithmetic average of quarterly results for the last four quarters of each monitoring location. If the calculated LRAA based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the system must report this information to the department no later than the due date of the next compliance report.

(3) Disinfectants. The reporting in the following table is in addition to the requirements in 567—subparagraph 41.2(1)*"c"*(7).

**Disinfectants Reporting Table**

| If you are a system monitoring for ... | You must report the following ... |
|---|---|
| Chlorine or chloramines under 567—paragraph 43.6(1)*"c"*(1)"2" | 1. Number of samples taken during each month of the last quarter.<br>2. Monthly arithmetic average of all samples taken in each month for the last 12 months.<br>3. Arithmetic average of all monthly averages for the last 12 months.<br>4. Whether the MRDL was exceeded. |
| Chlorine dioxide under 567—paragraph 43.6(1)*"c"*(1)"3" | 1. Dates, results, and locations of samples taken during the last quarter.<br>2. Whether the MRDL was exceeded.<br>3. Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute. |

(4) DBP precursors and enhanced coagulation or enhanced softening.

**DBP Precursors and Enhanced Coagulation or Enhanced Softening Reporting Table**

| If you are a ... | You must report the following ... |
|---|---|
| System monitoring TOC monthly or quarterly under 567—subparagraph 43.6(1)*"c"*(2) and required to meet the enhanced coagulation or enhanced softening requirements in 567—subparagraph 43.6(3)*"b"*(2) or 43.6(3)*"b"*(3) | 1. Number of paired (source water and treated water, prior to continuous disinfection) samples taken during the last quarter.<br>2. Location, date, and result of each paired sample and associated alkalinity taken during the last quarter.<br>3. For each month in the reporting period that paired samples were taken, arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. |

| If you are a ... | You must report the following ... |
|---|---|
| | 4. Calculations for determining compliance with TOC percent removal requirements in 567—subparagraph 43.6(3) *"c"*(1).<br>5. Whether the system is in compliance with enhanced coagulation or enhanced softening percent removal requirements in 567—paragraph 43.6(3)*"b"* for the last four quarters. |
| System monitoring TOC monthly or quarterly under 567—subparagraph 43.6(1)*"c"*(2) and meeting one or more of the alternative compliance criteria in 567—subparagraph 43.6(3)*"a"*(2) or 43.6(3)*"a"*(3) | 1. Alternative compliance criterion that the system is using.<br>2. Number of paired samples taken during the last quarter.<br>3. Location, date, and result of each paired sample and associated alkalinity taken during the last quarter.<br>4. RAA based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in 567—paragraph 43.6(3)*"a"*(2)"1" or "3" or of treated water TOC for systems meeting the criterion in 567—paragraph 43.6(3) *"a"*(2)"2."<br>5. RAA based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in 567—paragraph 43.6(3)*"a"*(2)"5" or of treated water SUVA for systems meeting the criterion in 567—paragraph 43.6(3)*"a"*(2) "6."<br>6. RAA of source water alkalinity for systems meeting the criterion in 567—paragraph 43.6(3)*"a"*(2)"3" and of treated water alkalinity for systems meeting the criterion in 567—paragraph 43.6(3)*"a"*(3)"1."<br>7. RAA for both TTHM and HAA5 for systems meeting the criterion in 567—paragraph 43.6(3)*"a"*(2)"3" or "4."<br>8. RAA for the amount of magnesium hardness removal (as CaCO3, in mg/L) for systems meeting the criterion in 567—paragraph 43.6(3)*"a"*(3)"2."<br>9. Whether the system is in compliance with the particular alternative compliance criterion in 567—subparagraph 43.6(3)*"a"*(2) or 43.6(3)*"a"*(3). |
| SW/IGW system on reduced monitoring for TTHM/HAA5 under 567—paragraph 41.6(3)*"d"* | For each treatment plant that treats surface or IGW source water, report the following:<br>1. Number of source water TOC samples taken each month during the last quarter.<br>2. Date and result of each sample taken during the last quarter.<br>3. Quarterly average of monthly samples taken during the last quarter or the quarterly sample result.<br>4. RAA of quarterly averages from the past four quarters.<br>5. Whether the TOC RAA exceeded 4.0 mg/L. |

**567—40.9(455B) Record maintenance.** Any PWS owner or operator shall retain the applicable records specified in this rule on its premises or at a convenient location near its premises.

**40.9(1)** *Analytical records.*

*a. Basic information.* Actual laboratory reports shall be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(1) Sampling date, place, and time and the name of the person who collected the sample;

(2) Sample identification, indicating whether it was a routine distribution system sample, check sample, raw or process water sample, or other special purpose sample;

(3) Analysis date;

(4) Laboratory and person responsible for performing analysis;

(5) Analytical technique or method used; and

(6) Analysis results.

*b. Record retention for specific analytes.*

(1) Microbiological and turbidity. Records of microbiological and turbidity analyses made pursuant to 567—Chapters 41 and 43 shall be kept for not less than five years.

(2) Radionuclides, inorganic compounds, and organic compounds. Records of chemical analyses made pursuant to 567—Chapter 41 shall be kept for not less than ten years. Additional lead and copper requirements are listed in 40.9(2).

**40.9(2)** *Lead and copper.* A system subject to 40.8(2) shall retain original records of all data and analyses, reports, surveys, PE, letters, evaluations, and schedules and any other information required by 567—41.4(455B) and 567—Chapter 43. These records shall be kept for not less than 12 years.

**40.9(3)** *Records of action.* Records of action taken by a system to correct violations of primary drinking water regulations (including administrative orders) shall be kept for not less than five years after the last action taken with respect to the particular violation involved.

**40.9(4)** *Sanitary surveys.* Copies of any written reports, summaries, or communications relating to any sanitary surveys of a system shall be kept for not less than ten years after survey completion.

**40.9(5)** *Operation or construction permits.* Records concerning an operation or a construction permit issued pursuant to 567—Chapter 43 shall be kept for a period ending not less than ten years after a system achieves compliance with an MCL, TT, AL, or HA or after a system completes the associated construction project.

**40.9(6)** *PN.* Records of PNs, including the CCR, PN examples, and PN certifications, shall be kept for not less than five years.

**40.9(7)** *Self-monitoring.* MORs must be completed as described in 40.8(3)*"a"*(4). MORs and all data generated at the facility to comply with the self-monitoring requirements must be maintained at the facility for department inspection for not less than five years. The data shall be in a form that allows easy retrieval and interpretation. Examples of data that must be retained include but are not limited to recorder charts, logbooks, bench sheets, SCADA records, and electronic files.

**40.9(8)** *Monitoring plans.* Copies of monitoring plans developed pursuant to this chapter and 567—Chapters 41 and 43 shall be kept for the same period of time as the records of analyses taken under the plans are required to be kept unless otherwise specified.

**40.9(9)** *GW rule.* Additional recordkeeping requirements for the GW rule are listed in 567—paragraph 41.7(6)*"b."*

**40.9(10)** *Level 1 and 2 assessment forms and corrective action.* The recordkeeping requirements in this subrule pertain to the coliform bacteria sampling requirements in 567—subrule 41.2(1).

*a.* Systems must maintain any assessment form, regardless of who conducts the assessment, and documentation of corrective actions completed as a result of an assessment or other available summary documentation of the sanitary defects and corrective actions taken under 567—paragraph 41.2(1)*"m."* These records shall be maintained at the facility for department inspection for not less than five years after completion of the assessment or corrective action.

*b.* Systems must maintain a record of any repeat sample taken that meets department criteria for an extension of the 24-hour period for collecting repeat samples in accordance with 567—paragraph 41.2(1)*"j."*

These rules are intended to implement Iowa Code sections 455B.171 through 455B.188 and 455B.190 through 455B.192.

## APPENDIX A:
## MINIMUM SELF-MONITORING REQUIREMENTS (SMRs)

I. Minimum SMRs for TNCs (excluding SW or IGW PWSs).

(1) The SMRs only apply to those systems meeting the monthly operation report (MOR) criteria in 40.8(3)*"a"*(1), 40.8(3)*"a"*(2), and 40.8(3)*"a"*(3).

(2) TNCs are exempt from the SMRs for point-of-use (POU) treatment devices unless the device is used to remove a contaminant that has an MCL, TT, or HA, in which case additional SMRs will be assigned by the department.

(3) Daily monitoring for TNCs applies only when the facility is in operation.

(4) Additional or more frequent monitoring requirements may be assigned by the department in the operation permit.

(5) Additional SMRs are required if treatment is used to remove a regulated contaminant or a contaminant that has an MCL, TT, or HA. See Section II for the SMRs for specific treatment types.

All TNCs* that meet the MOR criteria in 40.8(3)*"a"*(1), 40.8(3)*"a"*(2), and 40.8(3)*"a"*(3) must measure the following parameters, as applicable.

| Parameter | Sample Site | Frequency |
|---|---|---|
| GENERAL REQUIREMENTS | | |
| Pumpage (Flow) | raw: | 1/week |
| | finished: | 1/week |
| Disinfectant Residual*** | finished: | 1/day |
| | distribution system**: | 1/day |
| Disinfectant, quantity used | day tank/scale: | 1/day |
| Static Water and Pumping Water Levels (Drawdown)**** | each active well: | 1/month |
| ION EXCHANGE OR REVERSE OSMOSIS FOR NITRATE REMOVAL | | |
| Nitrate | finished: | 1/day |
| UV LIGHT | | |
| Lamp Status (On/Off) | each lamp: | 1/day |

*TNCs must measure and record the total water used each week, but daily measurements are recommended, and may be required by the department for specific PWSs.

**Conduct this monitoring at representative points in the distribution system that adequately demonstrate compliance with 40.8(3)*"b"*(1).

***The department may reduce the required sample site locations for a system with a minimal distribution system and only hydropneumatic tank storage.

****More or less frequent measurements may be approved by the department where justified by historical data.

II. Minimum SMRs for CWS, NTNC, and SW/IGW TNC.

(1) The SMRs only apply to those systems meeting the MOR criteria in 40.8(3)*"a"*(1), 40.8(3)*"a"*(2), and 40.8(3)*"a"*(3).

(2) NTNCs are exempt from the SMRs for POU treatment devices unless the device is used to remove a contaminant that has an MCL, TT, AL, or HA; in which case, additional SMRs will be assigned by the department.

(3) Daily monitoring for NTNCs applies only when the facility is in operation.

(4) These are the minimum SMRs. Additional or more frequent monitoring requirements may be assigned in an operation permit.

A. General Requirements. All PWSs meeting the MOR criteria in 40.8(3)*"a"*(1), 40.8(3)*"a"*(2), and 40.8(3)*"a"*(3) must measure the following parameters, as applicable. TNCs that provide treatment

other than a cation exchange softening unit or iron/manganese removal treatment unit must meet the requirements in the CWS column.

| Parameter | PWS Type: | NTNC* & SW/IGW TNC | CWS |
|---|---|---|---|
| | Sample Site | Frequency | |
| Pumpage (Flow) | raw: | 1/week | 1/day |
| | finished: | 1/week | 1/day |
| Consecutive systems (flow) | all master meters: | 1/day | |
| Static Water and Pumping Water Levels (Drawdown)** | each active well: | 1/month | |

*NTNCs must measure and record the total water used each week, but daily measurements are recommended, and may be required by the department for specific PWSs.

**If requested by the system, the department may allow an alternate frequency for systems with pressure tanks or controls that operate the well to ensure constant pump discharge pressure.

B. Chemical Addition. All PWSs that apply chemicals in the treatment process must monitor the following parameters for the applicable processes.

| Parameter | Pumpage or Flow: | <0.1 MGD | 0.1-0.5 MGD | >0.5 MGD |
|---|---|---|---|---|
| | Sample Site | Frequency | | |
| DISINFECTION | | | | |
| Disinfectant Residual** | finished: | 1/day | | |
| | distribution system*: | 1/day | | |
| Calculated MRDL (monthly average) | distribution system: | 1/month | | |
| Calculated MRDL (RAA) | distribution system: | 1/calendar quarter | | |
| Disinfectant, quantity used | day tank/scale: | 1/day | | |
| FLUORIDATION | | | | |
| Fluoride | raw: | 1/quarter | 1/month | |
| | finished: | 1/day | | |
| Fluoride, quantity used | day tank/scale: | 1/day | | |
| pH ADJUSTMENT | | | | |
| pH | finished: | 1/week | 2/week | 1/day |
| Caustic Soda, quantity used | day tank/scale: | 1/week | | |
| PHOSPHATE ADDITION | | | | |
| Phosphate, as $PO_4$ | finished: | 1/week | 2/week | 1/day |
| Phosphate, quantity used | day tank/scale: | 1/week | | |
| AMMONIA ADDITION | | | | |
| Chemical, quantity used | day tank/scale: | 1/day | | |
| Total residual chlorine (TRC) | finished: | 1/day | | |
| | distribution system: | 1/day | | |
| Monochloramine | finished: | 1/day | | |
| | distribution system: | 1/day | | |
| Free ammonia | finished: | 1/day | | |
| | distribution system: | 1/day | | |
| OTHER CHEMICALS | | | | |

| | | | | |
|---|---|---|---|---|
| Chemical | finished: | 1/week | 2/week | 1/day |
| Chemical, quantity used | day tank/scale: | 1/week | | |

*Conduct this monitoring at representative points in the distribution system that adequately demonstrate compliance with 40.8(3)*"b"*(1).

**The department may reduce the required sample sites for a system with a minimal distribution system; only hydropneumatic tank storage; or, if it is a CWS, if it serves fewer than 100 persons.

C. Iron or Manganese Removal. All CWS, NTNC, and publicly owned TNC systems with iron or manganese removal equipment must monitor for the following parameters. This monitoring is not required if the removal equipment is purchased "off the shelf," is self-contained (requiring only a piping connection for installation), and operates throughout a range of 35 to 80 psi. Any chemicals applied during the treatment process must be measured under section II.B of this appendix. Systems with manganese removal must conduct the manganese monitoring. If a system utilizes the treatment only for iron removal, manganese self-monitoring is not required.

| Parameter | Pumpage or Flow: / Sample Site | <0.1 MGD | 0.1-0.5 MGD | >0.5 MGD |
|---|---|---|---|---|
| | | Frequency | | |
| Iron | raw: | 1/quarter | 1/month | |
| | finished: | 1/week | 2/week | 1/day |
| Manganese* | raw: | 1/quarter | 1/month | |
| | finished: | 1/day | | |
| IRON/MANGANESE REMOVAL EQUIPMENT INSTALLED FOR ARSENIC REMOVAL | | | | |
| Iron | raw: | 1/month | | |
| | finished: | 1/day | | |

*A system may be allowed to conduct manganese self-monitoring 1/week if it meets all of the following criteria: an average annual pumpage of less than 0.1 MGD, raw water manganese less than 0.3 mg/L, and agrees to conduct quarterly PN.

D. Lime Softening of GW (Excluding IGW) and pH Adjustment for Iron and Manganese Removal, by precipitation and coagulation processes utilizing lime, soda ash, or other chemical additions. Testing is only required if a specific chemical is added.

| Parameter | Pumpage or Flow: / Sample Site | <0.1 MGD | 0.1-0.5 MGD | >0.5 MGD |
|---|---|---|---|---|
| | | Frequency | | |
| Alkalinity | raw: | 1/quarter | 1/month | |
| | finished: | 1/day | | |
| Hardness as $CaCO_3$ | raw: | 1/quarter | 1/month | |
| | finished: | 1/day | | |
| Iron | raw: | 1/quarter | 1/month | |
| | finished: | 1/week | 2/week | 1/day |
| Manganese | raw: | 1/quarter | 1/month | |
| | finished: | 1/day | | |
| pH | raw: | 1/week | | |
| | finished: | 1/day | | |
| Temperature | raw: | 1/week | | |

E. Cation Exchange (Zeolite) Softening. All CWS, NTNC, and publicly owned TNC systems with ion exchange softening equipment must monitor for the following parameters. This monitoring is not required if the ion exchange softening equipment is purchased "off the shelf," is self-contained (needing only a piping connection for installation), and operates throughout a range of 35 to 80 psi. Any chemicals applied during the treatment process must be measured under section II.B of this appendix. An annual sodium sample of the finished water is required by 567—paragraph 41.11(1)*"f"* for all CWSs that use cation exchange softening, and the sodium monitoring in the following table will meet that requirement.

| **Parameter** | **Pumpage or Flow:** **Sample Site** | **<0.1 MGD** **Frequency** | **0.1-0.5 MGD** | **>0.5 MGD** |
|---|---|---|---|---|
| Hardness as $CaCO_3$ | raw: | 1/quarter | 1/month | |
| | finished: | 1/week | 2/week | 1/day |
| pH | finished: | 1/week | 2/week | 1/day |
| Sodium | finished: | 1/year | | |
| Bypass, in flow or percent bypassed | bypass: | 1/day | | |
| ION EXCHANGE FOR RADIONUCLIDE REMOVAL | | | | |
| Hardness as $CaCO_3$ | raw: | 1/month | | |
| | finished: | 1/day | | |

F. Filtration and Disinfection Requirements for SWs or IGWs.

| Parameter | Pumpage or Flow: Sample Site | All Frequency |
|---|---|---|
| CT Ratio* | finished: | 1/day |
| Calculated V Value | distribution system: | 1/month |
| Calculated MRDL (monthly average) | distribution system: | 1/month |
| Calculated MRDL (RAA) | distribution system: | 1/calendar quarter |
| Disinfectant Residual** | finished: | continuous |
| | distribution system**: | 1/day |
| Disinfectant, quantity used | day tank/scale: | 1/day |
| pH | finished: | 1/day |
| Temperature | raw: | 1/day |
| | finished: | 1/day |
| Turbidity | IFE: | At least every 15 minutes |
| | raw and CFE: | 567—subrules 43.5(3) and 43.5(4), 567—43.9(455B), and 567—43.10(455B) contain specific requirements; continuous turbidity monitoring may be substituted for grab sample monitoring if the continuous process is validated using a department-approved turbidity protocol. |
| Turbidity, 95th percentile calculation | CFE: | Monthly, per 567—paragraph 43.5(3)*"b"* |
| Continuous turbidity monitoring instrument*** | Each turbidimeter: | Each turbidimeter must be verified with a grab sample measurement at least once per week. |

*Determine the total inactivation ratio ($CT_{calc}/CT_{required}$) before the first customer during peak hourly flow each day the treatment plant is in operation; 567—paragraph 43.5(2)*"a"* contains more information.

**Conduct this monitoring to demonstrate compliance with 40.8(3)*"b,"* 567—subrules 43.5(2) and 43.5(4), and 567—43.6(455B).

***The calibration of each turbidimeter used for compliance must be verified to demonstrate IFE compliance with 567—paragraphs 43.9(4)*"a"* and 43.10(5)*"a"* and CFE compliance with 567—subparagraph 43.5(4)*"b"*(1) and 43.9(3) and 43.10(4).

G. Clarification or Lime Softening of SW or IGW.

| Parameter | Pumpage or Flow: / Sample Site | All / Frequency |
|---|---|---|
| Alkalinity | raw: | 1/day |
| | raw: | SW/IGW systems; 1/month at same time raw TOC sample is collected |
| | finished: | 1/day |
| Carbon dioxide ($CO_2$), quantity used | tank/scale/feeder: | 1/week |
| Caustic Soda, quantity used | day tank/scale: | 1/week |
| CT Ratio* | finished: | 1/day |
| Disinfectant Residual** | finished: | continuous |
| | distribution system**: | 1/day |
| Disinfectant, quantity used | day tank/scale: | 1/day |
| Continuous disinfectant monitoring instrument | location of instrument: | The calibration of instruments used for continuous disinfectant monitoring must be verified with a grab sample measurement at least every 7 days |
| Hardness as $CaCO_3$ | raw: | 1/day |
| | finished: | 1/day |
| Lime, quantity used | day tank/scale/feeder: | 1/week |
| pH | raw: | 1/day |
| | finished: | 1/day |
| Temperature | raw: | 1/day |
| | finished: | 1/day |
| TOC | raw: | 1/month at same time the CFE sample is taken |
| | CFE: | 1/month at same time the raw sample is taken |
| | Source water alkalinity: | 1/month at same time the raw sample is taken |
| Turbidity | raw and CFE: | 567—subrules 43.5(3) and 43.5(4), 567—43.9(455B), and 567—43.10(455B) contain specific requirements |
| | IFE: | At least every 15 minutes |

*Determine the total inactivation ratio ($CT_{calc}/CT_{required}$) before the first customer during peak hourly flow each day the treatment plant is in operation; 567—paragraph 43.5(2)*"a"* contains more information.

**Conduct this monitoring to demonstrate compliance with 40.8(3)*"b,"*567—subrules 43.5(2) and 43.5(4), and 567—43.6(455B). Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring at the frequencies in 567—subparagraph 43.5(4)*"b"*(2).

H. Reverse Osmosis, Nanofiltration, or Electrodialysis.

| Parameter | Pumpage or Flow: / Sample Site | <0.1 MGD | >0.1 MGD |
|---|---|---|---|
| | | Frequency | |
| Alkalinity | raw: | 1/quarter | 1/month |
| | finished: | 1/day | |
| Antiscalant, quantity used | day tank/scale: | 1/week | |
| Bypass flow or percent bypassed | bypass: | 1/day | |
| Cleaning chemical, quantity used | day tank/scale: | 1/week | |
| Hardness as $CaCO_3$ | raw: | 1/quarter | 1/month |
| | finished: | 1/day | |
| Iron | raw: | 1/day | |
| Manganese | raw: | 1/day | |
| pH | raw: | 1/week | |
| | finished: | 1/day | |
| Total Dissolved Solids | raw: | 1/month | |

I. Anion Exchange (i.e., Nitrate Reduction).

| Parameter | Pumpage or Flow: / Sample Site | <0.1 MGD | >0.1 MGD |
|---|---|---|---|
| | | Frequency | |
| Bypass flow or percent bypassed | bypass: | 1/day | |
| Nitrate | raw: | 1/day | |
| | finished: | 1/day | |
| Source water | Document which sources were in use during each month and when well or source rotation occurs | | |
| Sulfate* | raw: | 1/week | |
| | finished: | 1/week | |

*If required by the department.

J. Activated Carbon or Air-Stripping for TTHM, VOC, or SOC Removal (GAC or PAC).

| Parameter | Pumpage or Flow: / Sample Site | <0.1 MGD | >0.1 MGD |
|---|---|---|---|
| | | Frequency | |
| TOC | finished: | 1/quarter | 1/month |

K. Lead and Copper: Corrosion Control and WQPs. The specific SMRs for corrosion control and WQPs are listed in 567—paragraph 41.4(1)*"d"* and 567—subrules 43.7(1) and 43.7(2).

L. Hydrous Manganese Oxide (HMO) Filtration and Manganese Co-precipitation for Radium Removal.

| Parameter | Pumpage or Flow: / Sample Site | All / Frequency |
|---|---|---|
| Chemical additive, quantity used | day tank/scale: | 1/day |
| Manganese | raw: | 1/month |
| | finished: | 1/day |
| Pumpage or Flow | raw: | 1/day |
| Bypass flow, percent bypass, or blend | bypass/blend: | 1/day |

M. Acrylamide and Epichlorohydrin Addition.

| Parameter | Pumpage or Flow: / Sample Site | All / Frequency |
|---|---|---|
| Chemical additive, third-party or manufacturer's certification* | Combination of dose and monomer level: | Annually |

*Levels must not exceed values specified in 567—subparagraph 41.5(1)*"b"*(2).

N. Source Blending for Contaminant Control. Specific SMRs for source water blending to achieve compliance with an MCL, TT, AL, or HA will be specified in an operation permit on a case-by-case basis, in accordance with 40.8(3)*"a"*(4).

O. 4-log Treatment of Viruses for GW Systems. Operation permits will include operational requirements for the approved 4-log virus treatment in accordance with 567—paragraph 41.7(4)*"b."* All GW systems that provide at least 4-log virus treatment must measure the following parameters, where applicable.

| Parameter | Population Served: / Sample Site | 25 - 3,300 / Frequency | >3,300 / Frequency |
|---|---|---|---|
| Chemical disinfectant* | finished: | 1/day** | continuously |
| Contact tank level | level: | 1/day | |
| Peak flow rate | flow meter: | continuously | |
| pH | finished: | 1/day | |
| Temperature*** | finished: | 1/day | |

*Monitor residual disinfectant concentration using the analytical methods in 567—subparagraph 43.5(4)*"a"*(5) at a department-approved location. Record the concentration each day that water is served to the public.

**GW systems must collect a daily grab sample during the hour of peak flow or at another department-specified time.

***Daily temperature monitoring is assigned initially for one year so that the lowest temperature can be determined and assigned for subsequent compliance monitoring.

P. Biological Treatment Process for Ammonia Removal. Operation permits may include additional mandatory operational requirements for the treatment process.

| Parameter | Pumpage or Flow: Sample Site | All Frequency |
|---|---|---|
| Ammonia, as N** | finished*: | 1/week |
| | distribution system*: | 1/week |
| Dissolved oxygen (DO) | contactor inlet: | 1/day |
| | contactor outlet: | 1/day |
| Nitrite, as N** | finished*: | 1/day |
| | distribution system*: | 1/day |

*One sample from the finished water must be collected monthly, split for analysis, and analyzed by a certified laboratory and the system.

**The department may reduce the required sampling frequency once nitrification is achieved in the biological filter or contactor and the system is consistently using free available chlorine for disinfection.

Q. Membrane Filtration (including micro and ultra filtration).

| Parameter | Pumpage or Flow: Sample Site | All Frequency |
|---|---|---|
| Antiscalant, quantity used | day tank/scale: | 1/week |
| Cleaning chemical, quantity used | day tank/scale: | 1/week |
| Direct integrity test (DIT)* | each membrane unit: | 1/day* |
| Indirect integrity test** | each membrane unit: | continuous** |
| Log removal value (LRV)* | each membrane unit: | 1/day* |
| Upper control limit*** | each membrane unit: | If the DIT result exceeds the control limit, the system must remove the membrane from service |
| Continuous turbidity monitoring equipment**** | | Each turbidimeter used for compliance must be verified with a grab sample measurement at least once per week |

*Conduct DITs on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation and to verify repairs.

**Unless the department approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring conducted at a frequency of no less than once every 15 minutes on each membrane unit.

***Systems must establish a control limit within the DIT sensitivity limits in order to demonstrate compliance with 567—paragraphs 43.11(12)*"b"*(3)"4" and "5."

****The calibration of each turbidimeter used for compliance must be verified to demonstrate compliance with 567—paragraphs 43.9(4)*"a"* and 43.10(5)*"a."*

R. CWS and NTNC Systems Using Ozone Treatment. CWS and NTNC systems that use ozone in their treatment process must comply with the bromide requirements of subrule 567—43.6(2).

| Parameter | Pumpage or Flow: Sample Site | All Frequency |
|---|---|---|
| Bromate | finished: | 1/month* |

*The department may allow systems required to analyze for bromate to reduce bromate monitoring from monthly to once per quarter if a system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based on representative monthly measurements for one year. Systems must continue bromide monitoring to remain on reduced bromate monitoring.

S. Ultraviolet Light (UV). All CWS and NTNC systems must comply with these requirements.

| Parameter | Pumpage or Flow: Sample Site | All Frequency |
|---|---|---|
| Alarm during off-specification conditions | each reactor: | 1/5 minutes |
| UV intensity | each lamp: | 1/day |
| UVT | each lamp: | 1/day |
| Ratio of minimum UV dose calculated and recorded every 4 hours to the required UV dose, OR calculate and record the log inactivation every four hours | each reactor: | 1/day |
| Lamp status | each lamp: | 1/4 hours** |
| Individual UV reactor flow | each reactor: | 1/4 hours |
| | max UV flow: | daily |
| | total UV flow: | daily total |
| Total volume of off-specification water | each reactor: | 1/day |
| | all reactors: | monthly total |
| Percent of off-specification water produced | all reactors: | monthly total |
| Perform UVT analyzer check protocol | - | 1/week |
| Perform UV sensor verification* | each sensor: | 1/month |

*Reference sensor(s) must be calibrated at least once per year at a qualified facility against a traceable standard. Calibration records must be maintained for inspection during sanitary surveys. If the reference sensor is found to be out of calibration, the calibration frequency should be increased.

**Systems serving fewer than 500 persons may record lamp status 1/day.

T. Chlorine Dioxide. All CWS, NTNC and TNC systems must comply with these requirements. In the event of an acute or nonacute violation, systems must also comply with 567—paragraph 43.6(1)*"e."*

| Parameter | Pumpage or Flow: Sample Site | All Frequency |
|---|---|---|
| Chlorine dioxide | finished: | 1/day |
| Chlorite | finished: | 1/day |

U. Copper Ion Generator.

| Parameter | Pumpage or Flow: Sample Site | All Frequency |
|---|---|---|
| Copper residual | finished: | 1/week |
| | injection stream: | 1/week |

ITEM 2. Rescind and reserve **567—Chapter 42**.

## ARC 8631C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to water supplies and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 41, "Water Supplies," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.171 through 455B.188 and 455B.190 through 455B.192 and the federal Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.).

*Purpose and Summary*

Proposed Chapter 41 establishes certain SDWA requirements. Specifically, it establishes programs and processes for administration of these rules in Iowa. The SDWA regulations established include but are not limited to the establishment of coverage, regulated contaminant requirements (including but not limited to biological contaminants, inorganic contaminants, lead and copper, organic contaminants, disinfection byproducts, and radionuclides), and the federal groundwater rule. Establishing coverage is essential for obtaining and maintaining primacy to enforce the SDWA, and requires that the rules in 567—Chapters 40 through 44 and 83 apply to public water supply systems unless a set of conditions are met. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Carmily Stone
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: carmily.stone@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at carmily.stone@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al carmily.stone@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 30, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |
| January 31, 2025 | Virtual meeting |
| 9 to 10 a.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at carmily.stone@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.681.3548 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al carmily.stone@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.681.3548 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 41 and adopt the following **new** chapter in lieu thereof:

CHAPTER 41
WATER SUPPLIES

**567—41.1(455B) Primary drinking water regulations—coverage.** 567—Chapters 40 through 44 and 83 shall apply to each public water supply system (PWS) unless the PWS meets all of the following conditions:

1. Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
2. Obtains all of its water from, but is not owned or operated by, a PWS to which such regulations apply;
3. Does not sell water to any person; and
4. Is not a carrier which conveys passengers in interstate commerce.

**567—41.2(455B) Biological maximum contaminant level (MCL), treatment technique (TT), and monitoring requirements.**

**41.2(1)** *Coliform bacteria and Escherichia coli (E. coli).* The provisions of this subrule include both MCL and TT requirements and apply to all PWSs. Failure to comply with the applicable requirements in this subrule is a violation of the national primary drinking water regulations.

*a. MCL.* A PWS must determine compliance with the *E. coli* MCL for each month in which the system is required to monitor for total coliforms. A system is in compliance with the *E. coli* MCL for samples taken under this subrule unless any of the following conditions occur. For purposes of the public notification (PN) requirements in rule 567—40.5(455B), MCL violation may pose an acute health risk. A system is not in compliance if it:

(1) Has an *E. coli*-positive repeat sample following a total coliform-positive routine sample;
(2) Has a total coliform-positive repeat sample following an *E. coli*-positive routine sample;
(3) Fails to take all required repeat samples following an *E. coli*-positive routine sample; or
(4) Fails to test for *E. coli* when any repeat sample tests positive for total coliform.

*b. Analytical methodology.*

(1) Sample volume. The standard sample volume required for analysis is 100 mL, regardless of the analytical method used.

(2) Presence/absence (P/A) required. Only the P/A of total coliforms and *E. coli* must be determined in any compliance sample; a determination of density is acceptable but is not required.

(3) Holding time and temperature. The time from sample collection to initiation of test medium incubation shall not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 degrees Celsius during transit.

(4) Dechlorinating agent required for chlorinated water. If water having a residual chlorine (measured as free, combined, or total chlorine) will be analyzed, sufficient sodium thiosulfate (Na2S2O3) must be added to the sample bottle before sterilization to neutralize any residual chlorine in the water sample. Dechlorination procedures are addressed in Standard Methods (SM) Section 9060A.2, 20th and 21st editions.

(5) Systems must conduct total coliform and E. coli analyses in accordance with one of the analytical methods in the following table.

**Bacteria Analytical Methods**

| Methodology Category | Method Name[1] | Method Citation[1] |
|---|---|---|
| **Total Coliform Bacteria Methods:** | | |
| Lactose Fermentation | Standard Total Coliform Fermentation Technique | SM 9221 B.1, B.2 (20th, 21st, and 22nd ed.)[2, 3]<br>SM Online 9221 B.1, B.2-99, B-06[2, 3] |
| | P/A Coliform Test | SM 9221 D.1, D.2 (20th and 21st ed.)[2, 7]<br>SM Online 9221 D.1, D.2-99[2, 7] |
| Membrane Filtration | Standard Total Coliform Membrane Filter Procedure | SM 9222 B, C (20th and 21st ed.)[2, 4]<br>SM Online 9222 B-97[2, 4], 9222 C-97[2, 4] |
| | Membrane Filtration using MI Medium | EPA Method 1604[2] |
| | m-ColiBlue24 Test[2, 4] | |

| Methodology Category | Method Name[1] | Method Citation[1] |
|---|---|---|
| | Chromocult[2, 4] | |
| Enzyme Substrate | Colilert | SM 9223 B (20th, 21st and 22nd ed.)[2, 5]<br>SM Online 9223 B-97, B-04[2, 5] |
| | Colilert-18 | SM 9223 B (21st and 22nd ed.)[2, 5]<br>SM Online 9223 B-04[2, 5] |
| | Colisure | SM 9223 B (20th, 21st and 22nd ed.)[2, 5, 6]<br>SM Online 9223 B-97, B-04[2, 5, 6] |
| | E*Colite Test[2] | |
| | Readycult Test[2] | |
| | modified Colitag Test[2] | |
| | Tecta EC/TC Test[2] | |
| ***E. coli* Methods:** | | |
| *E. coli* Procedures (following Lactose Fermentation Methods) | EC-MUG Medium | SM 9221 F.1 (20th, 21st and 22nd ed.)[2]<br>SM Online 9221 F-06[2] |
| *E. coli* Partition | EC broth with MUG (EC-MUG) | SM 9222 G.1*c*(2) (20th and 21st ed.)[2, 8] |
| | NA-MUG Medium | SM 9222 G.1*c*(1) (20th and 21st ed.)[2] |
| Membrane Filtration | Membrane Filtration using MI Medium | EPA Method 1604[2] |
| | m-ColiBlue24 Test[2, 4] | |
| | Chromocult[2, 4] | |
| Enzyme Substrate | Colilert | SM 9223 B (20th, 21st and 22nd ed.)[2, 5]<br>SM Online 9223 B-97, B-04[2, 5, 6] |
| | Colilert-18 | SM 9223 B (21st and 22nd ed.)[2, 5]<br>SM Online 9223 B-04[2, 5] |
| | Colisure | SM 9223 B (20th, 21st and 22nd ed.)[2, 5, 6]<br>SM Online 9223 B-97, 04[2, 5, 6] |
| | E*Colite Test[2] | |
| | Readycult[2] | |
| | modified Colitag Test[2] | |
| | Tecta EC/TC Test[2] | |

[1] Methods are listed in 41.2(1)*"b"*(6). For SM, either the 20th (1998) or 21st (2005) edition may be used. For SM Online, the year in which each method was approved is designated by the last two digits following the hyphen in the method number, and the methods listed are the only online versions that may be used. For vendor methods, the date in 41.2(1)*"b"*(6) is the date/version of the approved method, and the methods listed are the only versions that may be used. Laboratories should use only the approved versions of the methods, as product package inserts may not match the approved versions.

[2]Incorporated by reference. See 41.2(1)*"b"*(6).

[3]Lactose broth may be used in lieu of lauryl tryptose broth (LTB) if the system conducts at least 25 parallel tests between lactose broth and LTB using the water normally tested and if the findings from this comparison demonstrate that the false-positive rate and the false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

[4]All filtration series must begin with membrane filtration equipment that has been sterilized by autoclaving. Exposure of filtration equipment to UV light is not adequate to ensure sterilization. Subsequent to the initial autoclaving, exposure of the filtration equipment to UV light may be used to sanitize the funnels between filtrations within a filtration series. Alternatively, membrane filtration equipment that is presterilized by the manufacturer may be used.

[5]Multiple-tube and multi-well enumerative formats for this method are approved for use in P/A determination under this subrule.

[6]Colisure results may be read after an incubation time of 24 hours.

[7]A multiple-tube enumerative format, as described in SM for the Examination of Water and Wastewater 9221, is approved for this method for use in P/A determination under this subrule.

[8]The following changes must be made to the EC broth with MUG (EC-MUG) formulation: Potassium dihydrogen phosphate, $KH_2PO_4$, must be 1.5 g, and 4-methylumbelliferyl-beta-D-glucuronide must be 0.05 g.

(6) Methods incorporated by reference. The methods in this subrule are incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51. All approved material is available for inspection at www.regulations.gov, in hard copy at the EPA's Drinking Water Docket, (Docket ID EPA-HQ-OW-2008-0878), or from NARA.

1. APHA, SM 20th edition (1998):

- SM 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," B.1, B.2, "Standard Total Coliform Fermentation Technique;" D.1, D.2, "Presence-Absence (P/A) Coliform Test;" and F.1, "Escherichia coli Procedure: EC-MUG Medium."
- SM 9222, "Membrane Filter Technique for Members of the Coliform Group," B, "Standard Total Coliform Membrane Filter Procedure," C, "Delayed-Incubation Total Coliform Procedure," G.1c(1), "Escherichia coli Partition Method: NA-MUG Medium," and G.1c(2), "Escherichia coli Partition Method: EC Broth with MUG (EC-MUG)."
- SM 9223, "Enzyme Substrate Coliform Test," B, "Enzyme Substrate Test," Colilert and Colisure.

2. SM, 21st edition (2005):

- SM 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," B.1, B.2, "Standard Total Coliform Fermentation Technique;" D.1, D.2, "Presence-Absence (P/A) Coliform Test," and F.1, "Escherichia coli Procedure: EC-MUG Medium."
- SM 9222, "Membrane Filter Technique for Members of the Coliform Group," B, "Standard Total Coliform Membrane Filter Procedure;" C, "Delayed-Incubation Total Coliform Procedure;" G.1.c(1), "Escherichia coli Partition Method: NA-MUG Medium;" and G.1.c(2), "Escherichia coli Partition Method: EC Broth with MUG (EC-MUG)."
- SM 9223, "Enzyme Substrate Coliform Test," B, "Enzyme Substrate Test," Colilert and Colisure.

3. SM Online:

- SM 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group" (1999), B.1, B.2-99, B-06, "Standard Total Coliform Fermentation Technique" and D.1, D.2-99, "Presence-Absence (P/A) Coliform Test."
- SM 9222, "Membrane Filter Technique for Members of the Coliform Group" (1997), B-97, "Standard Total Coliform Membrane Filter Procedure" and C-97, "Delayed-Incubation Total Coliform Procedure."
- SM 9223, "Enzyme Substrate Coliform Test" (1997), B-97, "Enzyme Substrate Test," Colilert and Colisure.

4. Charm Sciences, Inc., 659 Andover Street, Lawrence, MA 01843-1032: E*Colite—"Charm E*Colite Presence/Absence Test for Detection and Identification of Coliform Bacteria and Escherichia coli in Drinking Water," January 9, 1998.

5. CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA 95403: modified Colitag, ATP D05-0035—"Modified Colitag Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water," August 28, 2009.

6. EMD Millipore (a division of Merck KGaA, Darmstadt, Germany), 290 Concord Road, Billerica, MA 01821:

- Chromocult—"Chromocult Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and Escherichia coli for Finished Waters," November 2000, Version 1.0.
- Readycult—"Readycult Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and Escherichia coli in Finished Waters," January 2007, Version 1.1.

7. EPA's Water Resource Center (MC-4100T), EPA Method 1604, EPA 821-R-02-024—"EPA Method 1604: Total Coliforms and Escherichia coli in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium)," September 2002, www.nemi.gov.

8. Hach Company, www.hach.com: m-ColiBlue24—"Membrane Filtration Method m-ColiBlue24 Broth," Revision 2, August 17, 1999.

9. SM, 22nd edition (2012):

- SM 9221, "Multiple-Tube Fermentation Technique for Members of the Coliform Group," B.1, B.2, "Standard Total Coliform Fermentation Technique," and F.1, "Escherichia coli Procedure: EC-MUG Medium."
- SM 9223, "Enzyme Substrate Coliform Test," B, "Enzyme Substrate Test," Colilert and Colisure.

10. Veolia Water Solutions and Technologies, Suite 4697, Biosciences Complex, 116 Barrie Street, Kingston, Ontario, Canada K7L 3N6: Tecta EC/TC. "Presence/Absence Method for Simultaneous Detection of Total Coliforms and Escherichia coli in Drinking Water," April 2014.

(7) Laboratory certification. Systems must have all compliance samples required under this subrule analyzed by a laboratory certified in accordance with 567—Chapter 83. The laboratory used by the system must be certified for each method and associated contaminant used for compliance monitoring analyses under this subrule.

*c. Sampling plan.*

(1) Written sampling plan required. Systems must collect total coliform samples according to their written sampling plan.

1. Systems must develop a written sampling plan that identifies sample locations and a sample collection schedule that are representative of water throughout the distribution system. Major elements of the plan shall include, but not be limited to, the following:

- Map of the distribution system served by the system;
- List of routine compliance sample locations for each sample period;
- List of repeat compliance sample locations for each routine compliance sample location;
- Any other sample locations necessary to meet the requirements of this subrule;
- Sample collection schedule;
- Proper sampling technique instructions;
- Log of samples taken; and
- For GW systems subject to 567—41.7(455B), triggered source water monitoring plan.

2. The system shall review the sampling plan every two years, update it as needed, and retain it on file at the facility. The plan must be made available to the department upon request and for review during sanitary surveys and must be revised at the department's direction.

3. Monitoring under this subrule may take place at a customer's premises, dedicated sampling station, or other designated compliance sampling location.

(2) Sampling schedule. Systems must collect routine samples at regular time intervals throughout the month. Systems that use only GW and serve 4,900 or fewer people, or regional water systems that use only GW and serve less than 121 miles of pipe, may collect all required routine samples on a single day, if the samples are taken from different sites.

(3) Minimum number of routine samples. Systems must take at least the minimum number of required routine samples even if the system has had an *E. coli* MCL violation or has exceeded the coliform TT triggers in 41.2(1)*"i."* Such samples must be designated as "routine" when submitted to the laboratory.

(4) Additional sampling. A system may conduct more compliance monitoring than is required to uncover or investigate potential problems in the distribution system. A system may take more than the minimum number of required routine samples, and must include the additional routine sample results when calculating whether the coliform TT trigger in 41.2(1)*"i"*(1)"1" and "2" has been exceeded, only if the samples are taken in accordance with the existing sampling plan and are representative of water throughout the distribution system. Such samples must be designated as "routine" when submitted to the laboratory.

(5) Repeat samples. Systems must identify repeat monitoring locations in the sampling plan. Repeat samples must be analyzed at the same laboratory as the corresponding original routine sample(s), unless written approval for use of a different laboratory is granted by the department. A system must collect at least one repeat sample at the following locations: from the sampling tap where the original routine total coliform-positive sample was taken, at a tap within five service connections upstream of the original sample location, and at a tap within five service connections downstream of the original sample location. Such samples must be designated as "repeat" when submitted to the laboratory.

1. If the sampling location of a total coliform-positive sample is at or within one service connection from the end of the distribution system, the system must still take all required repeat samples. However, the department may allow an alternative sampling location in lieu of one of the upstream or downstream sampling locations.

2. A GW system with two or more wells that is required to conduct triggered source water monitoring under 41.7(3) must collect GW source sample(s) in addition to the required repeat samples.

3. A GW system with a single well that is required to conduct triggered source water monitoring may, with written department approval, collect one of its required repeat samples at the triggered source water sample monitoring location. The system must demonstrate to the department's satisfaction that the sampling plan remains representative of water quality in the distribution system. If approved, the sample result may be used to meet the requirements of 41.7(3) and this subrule. If a repeat sample taken at the triggered source water monitoring location is *E. coli*-positive, the system has violated the *E. coli* MCL, and must also comply with the requirements for additional source water samples under 41.7(3)*"a"*(3).

4. The department may review, revise, and approve, as appropriate, repeat sampling proposed by a system under 41.2(1)*"c"*(5). The system must demonstrate that the sampling plan remains representative of the water quality in the distribution system.

(6) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether the coliform TT trigger has been exceeded. Such samples must be designated as "special" when submitted to the laboratory and cannot be used for compliance. Repeat samples are not considered special purpose samples and must be used to determine whether the coliform TT trigger has been exceeded.

(7) Residual disinfectant measurement. Any system adding a chemical disinfectant to the water must meet the requirements of 567—subparagraph 40.8(3)*"b"*(1). The minimum required residual disinfectant measurements are as follows, unless otherwise directed by the department in writing:

1. GW systems. A system that uses only GW and adds a chemical disinfectant, or provides water that contains a disinfectant, must measure and record total chlorine residual disinfectant concentration at least at the same points in the distribution system and at the same time as routine and repeat total coliform bacteria samples are collected, as specified in 41.2(1)*"e"* through *"g."* The system shall report the total residual disinfectant concentration to the laboratory with the bacteria sample and comply with the reporting requirements in 567—subrule 40.8(3).

2. Surface water (SW) and influenced groundwater (IGW) systems.

- Any SW or IGW PWS must meet the requirements for minimum residual disinfectant entering the distribution system pursuant to 567—paragraph 43.5(4)*"b"*(2)"1"; and
- A system that uses SW or IGW must comply with the requirements in 567—subparagraph 43.5(4)*"b"*(2)"2" for daily distribution system residual disinfectant monitoring. The system must measure and record the free and total chlorine residual disinfectant concentration at least at the same points in the distribution system and at the same time as routine and repeat total coliform bacteria samples are collected, as specified in 41.2(1)*"e"* through *"g."* The residual disinfectant measurements required in this subrule may be used to satisfy the requirement in 567—paragraph 43.5(4)*"b"*(2)"2" on the day(s) when a routine or repeat total coliform bacteria sample(s) is collected, in lieu of separate samples. The system shall report the residual disinfectant concentration to the laboratory with the bacteria sample and comply with the applicable reporting requirements of 567—subrule 40.8(3).

*d. Invalidation of total coliform samples.* A total coliform-positive sample invalidated under this paragraph does not count toward meeting the minimum monitoring requirements of this subrule.

(1) The department may invalidate a total coliform-positive sample only if the following conditions are met:

1. The laboratory establishes that improper sample analysis caused the total coliform-positive result.

2. The department, on the basis of the results of the required repeat samples, determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. "Domestic or other non-distribution system plumbing problem" means a coliform

contamination problem in a PWS with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken. The department cannot invalidate a total coliform-positive sample on the basis of repeat samples unless all repeat samples collected at the same tap as the original total coliform-positive sample are also total coliform-positive and all repeat samples collected at a location other than the original tap are total coliform-negative. The department cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative or if the system has only one service connection.

3. The department has substantial grounds to believe that the total coliform-positive result is due to a circumstance or condition that does not reflect water quality in the distribution system. The system must still collect all repeat samples required under 41.2(1)*"g"* and use them to determine whether a coliform TT trigger in 41.2(1)*"i"* has been exceeded.

The decision and supporting rationale for invalidating a total coliform-positive sample under this subparagraph must be in writing and signed by the supervisor of the water supply operations section or water supply engineering section and the department official who recommended the decision. The department must make this document available to EPA and the public. The documentation must state the specific cause of the total coliform-positive sample and what action the system has taken, or will take, to correct this problem. The department may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative or because of poor sampling technique.

(2) Laboratory invalidation. A laboratory must invalidate a total coliform sample (unless total coliforms are detected, in which case the sample is valid) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined, produces a turbid culture in the absence of an acid reaction in the P/A coliform test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter. If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as that of the original within 24 hours of being notified of the interference and must have the sample analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until a valid result is obtained. The department may waive the 24-hour time limit on a case-by-case basis.

*e. Routine monitoring for specific groundwater (GW) NCWS serving 1,000 or fewer people.* This paragraph applies to NCWS using only GW (not IGW) as a source and serving 1,000 or fewer people. GW NCWS that serve schools, preschools, and child care facilities, and all PWSs owned or managed by state agencies, must monitor at the same frequency as a like-sized CWS, in accordance with 41.2(1)*"f"*(1), 41.2(1)*"f"*(2), or 41.2(1)*"f"*(3).

(1) General. Following any total coliform-positive sample taken under this paragraph, systems must comply with the repeat monitoring and *E. coli* analytical requirements in 41.2(1)*"g."* Once all monitoring required by this paragraph and 41.2(1)*"g"* for a calendar month has been completed, systems must determine whether any coliform TT triggers in 41.2(1)*"i"* have been exceeded. If any trigger has been exceeded, systems must complete the assessments required by 41.2(1)*"i."*

(2) Monitoring frequency for total coliforms. Systems must monitor each calendar quarter that they provide water to the public, with the following exceptions:

1. A system on quarterly monitoring that experiences any of the following events must begin monthly monitoring in the month following the event. A system must continue on monthly monitoring until it meets the requirements for returning to quarterly monitoring. The events include:

- An *E. coli* MCL violation;
- The triggering of one Level 2 assessment under 41.2(1)*"i"* in a rolling 12-month period.
- The triggering of two Level 1 assessments under 41.2(1)*"i"* in a rolling 12-month period.
- One coliform TT violation.
- Two coliform monitoring violations in a rolling 12-month period.
- One monitoring coliform violation and one Level 1 assessment under 41.2(1)*"i"* in a rolling 12-month period.

2. A system on monthly monitoring for reasons other than those identified above in 41.2(1)*"e"*(2) "1" is not considered to be on increased monitoring for the purposes of 41.2(1).

3. Seasonal systems must sample each month in which they are in operation. All seasonal systems must demonstrate completion of a department-approved start-up procedure before serving water to the public, which includes a requirement for a coliform-negative start-up sample.

(3) Sampling frequency evaluation during a sanitary survey. During each sanitary survey, the department must evaluate the status of a system, including the distribution system, to determine whether the system is on an appropriate monitoring schedule. The department may modify a system's monitoring schedule, as necessary, or may allow a system to stay on its existing monitoring schedule, consistent with this paragraph.

(4) Returning from monthly to quarterly sampling for nonseasonal NCWSs. The department may reduce the monitoring frequency for a nonseasonal NCWS on monthly monitoring triggered under 41.2(1)*"e"*(2)"1" to quarterly monitoring if the system meets the following criteria. For the purposes of this subparagraph, "protected water source" means either the well meets separation distances from sources of microbial contamination pursuant to 567—subrule 43.3(7), Table A; or the system has department-approved 4-log virus inactivation treatment in continuous usage.

1. The system must have a completed sanitary survey or voluntary Level 2 assessment within the previous 12 months, be free of sanitary defects, and have a protected water source;

2. The system must have a clean compliance history for at least the previous 12 months; and

3. The department must review the approved sampling plan, which must designate the monitoring time period(s) based on site-specific considerations (e.g., during periods of highest demand or highest vulnerability to contamination). The system must collect compliance samples during these time periods.

(5) Additional routine monitoring for systems on quarterly sampling in the month following a total coliform-positive routine sample. Systems collecting samples on a quarterly frequency must conduct additional routine monitoring the month following one or more total coliform-positive samples (with or without a Level 1 TT trigger). Systems must collect at least three routine samples during the next month. Systems may either collect samples at regular time intervals throughout the month or may collect all required routine samples on a single day if samples are taken from different sites. Systems must use the results of additional routine samples in coliform TT trigger calculations under 41.2(1)*"i."*

*f. Routine monitoring requirements for other systems.*

(1) GW CWS serving 1,000 or fewer people. This subparagraph applies to CWS using only GW (not IGW) as a source and serving 1,000 or fewer people. The routine total coliforms monitoring frequency for such systems is one sample per month.

(2) SW/IGW PWS serving 1,000 or fewer people. This subparagraph applies to all PWSs serving 1,000 or fewer people that use SW/IGW sources, including consecutive systems.

1. The routine total coliforms monitoring frequency for such systems is one sample per month. Systems may not reduce monitoring frequency.

2. Seasonal systems must sample each month in which they are in operation, and the monitoring frequency cannot be reduced. All seasonal systems must demonstrate completion of a department-approved start-up procedure before serving water to the public, which includes a requirement for a coliform-negative start-up sample.

(3) PWSs serving more than 1,000 people. This subparagraph applies to all PWSs serving more than 1,000 people, except regional water systems. The regional water system requirements are in 41.2(1)*"f"*(4) below.

1. The routine total coliforms monitoring frequency for PWSs serving more than 1,000 people is based upon the population served by the system, as follows:

| Population Served | Minimum Number of Routine Samples per Month | Population Served | Minimum Number of Routine Samples per Month |
|---|---|---|---|
| 1,001 to 2,500 | 2 | 41,001 to 50,000 | 50 |
| 2,501 to 3,300 | 3 | 50,001 to 59,000 | 60 |
| 3,301 to 4,100 | 4 | 59,001 to 70,000 | 70 |
| 4,101 to 4,900 | 5 | 70,001 to 83,000 | 80 |
| 4,901 to 5,800 | 6 | 83,001 to 96,000 | 90 |
| 5,801 to 6,700 | 7 | 96,001 to 130,000 | 100 |

| Population Served | Minimum Number of Routine Samples per Month | Population Served | Minimum Number of Routine Samples per Month |
|---|---|---|---|
| 6,701 to 7,600 | 8 | 130,001 to 220,000 | 120 |
| 7,601 to 8,500 | 9 | 220,001 to 320,000 | 150 |
| 8,501 to 12,900 | 10 | 320,001 to 450,000 | 180 |
| 12,901 to 17,200 | 15 | 450,001 to 600,000 | 210 |
| 17,201 to 21,500 | 20 | 600,001 to 780,000 | 240 |
| 21,501 to 25,000 | 25 | 780,001 to 970,000 | 270 |
| 25,001 to 33,000 | 30 | 970,001 to 1,230,000 | 300 |
| 33,001 to 41,000 | 40 | | |

2. Seasonal systems must sample each month in which they are in operation, and the monitoring frequency cannot be reduced. All seasonal systems must demonstrate completion of a department-approved start-up procedure before serving water to the public, which includes a requirement for a coliform-negative start-up sample.

3. CWSs may not reduce the number of required routine samples.

4. If the department, on the basis of a sanitary survey or monitoring results history, determines that some greater monitoring frequency is more appropriate, that frequency shall be the frequency required under these rules. The increased frequency shall be confirmed or changed on the basis of subsequent surveys.

(4) Regional PWSs. This subparagraph applies to all regional water systems. The supplier of water for a regional PWS shall sample for coliform bacteria at a frequency based upon the miles of pipe in its distribution system.

1. The routine total coliforms monitoring frequency for regional PWSs is based on the miles of pipe in a system's distribution system, as indicated in the following table. The sampling frequency for a regional water system shall not be less than as set forth in this subparagraph, based upon the population equivalent served. The following table represents sampling frequency per miles of pipe in a distribution system and is determined by calculating one-half the square root of the miles of pipe.

| Miles of Pipe | Minimum Number of Routine Samples per Month | Miles of Pipe | Minimum Number of Routine Samples per Month |
|---|---|---|---|
| 0 – 9 | 1 | 1,850 – 2,025 | 22 |
| 10 – 25 | 2 | 2,026 – 2,209 | 23 |
| 26 – 49 | 3 | 2,210 – 2,401 | 24 |
| 50 – 81 | 4 | 2,402 – 2,601 | 25 |
| 82 – 121 | 5 | 2,602 – 2,809 | 26 |
| 122 – 169 | 6 | 2,810 – 3,025 | 27 |
| 170 – 225 | 7 | 3,026 – 3,249 | 28 |
| 226 – 289 | 8 | 3,250 – 3,481 | 29 |
| 290 – 361 | 9 | 3,482 – 3,721 | 30 |
| 362 – 441 | 10 | 3,722 – 3,969 | 31 |
| 442 – 529 | 11 | 3,970 – 4,225 | 32 |
| 530 – 625 | 12 | 4,226 – 4,489 | 33 |
| 626 – 729 | 13 | 4,490 – 4,671 | 34 |
| 730 – 841 | 14 | 4,672 – 5,041 | 35 |
| 842 – 961 | 15 | 5,042 – 5,329 | 36 |
| 962 – 1,089 | 16 | 5,330 – 5,625 | 37 |
| 1,090 – 1,225 | 17 | 5,626 – 5,929 | 38 |
| 1,226 – 1,364 | 18 | 5,930 – 6,241 | 39 |
| 1,365 – 1,521 | 19 | 6,242 – 6,561 | 40 |
| 1,522 – 1,681 | 20 | 6,562 and greater | 41 |
| 1,682 – 1,849 | 21 | | |

2. Regional PWSs may not reduce the number of required routine samples.

3. If the department, on the basis of a sanitary survey or monitoring results history, determines that some greater monitoring frequency for a regional PWS is more appropriate, that frequency shall be the frequency required under these rules. The increased frequency shall be confirmed or changed on the basis of subsequent surveys.

(5) Requirements for all systems subject to this paragraph. Following any total coliform-positive sample taken under this paragraph, systems must comply with the repeat monitoring requirements and *E. coli* analytical requirements in 41.2(1)*"g."* Once all monitoring required by this paragraph and 41.2(1)*"g"* for a calendar month has been completed, systems must determine whether any coliform TT triggers in 41.2(1)*"i"* have been exceeded. If any trigger has been exceeded, systems must complete assessments pursuant to 41.2(1)*"i."*

*g. Repeat monitoring.* If a routine sample taken under 41.2(1)*"e"* and *"f"* is total coliform-positive, a system must collect a set of repeat samples. The department cannot waive this requirement.

(1) A system must:

1. Collect no fewer than three repeat samples for each total coliform-positive routine sample.

2. Collect repeat samples within 24 hours of receipt of the positive result. The department may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem collecting the repeat samples within 24 hours that is beyond its control. In the case of an extension, the department must specify how much time a system has to collect the repeat samples.

3. Collect all repeat samples on the same day, except that the department may allow a system with a single service connection to collect the required set of repeat samples over a three-day period. "System with a single service connection" means a system that supplies drinking water to consumers through a single service line.

4. Collect an additional set of repeat samples as specified above in 41.2(1)*"g"*(1) through 41.2(1)*"g"*(3) if one or more repeat samples in the current set of repeat samples is total coliform-positive. A system must collect the additional set of repeat samples within 24 hours of receipt of a positive result, unless the department extends the time limit in 41.2(1)*"g"*(2). A system must continue to collect additional sets of repeat samples until either total coliforms are not detected in one complete set of repeat samples or it determines that a coliform TT trigger in 41.2(1)*"i"* has been exceeded as a result of a total coliform-positive repeat sample and notifies the department. If a TT trigger is exceeded as a result of a total coliform-positive routine sample, systems only need to conduct one round of repeat monitoring for each total coliform-positive routine sample.

(2) Results of all routine and repeat samples taken under 41.2(1)*"e"* through *"g"* that are not invalidated by the department must be used to determine whether a coliform TT trigger in 41.2(1)*"i"* has been exceeded.

*h. E. coli testing requirements.*

(1) If any routine or repeat sample is total coliform-positive, a system must analyze that total coliform-positive culture medium to determine the presence of *E. coli*. If *E. coli* are present, the system must notify the department by the end of the same day the system receives notification of the test result. If the notification is outside of the department's routine office hours, the system shall call the department's Environmental Emergency Reporting Hotline at 515.725.8694.

(2) The department has the discretion to allow a system, on a case-by-case basis, to forgo E. coli testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is *E. coli*-positive. Accordingly, the system must notify the department as specified above in 41.2(1)*"h"*(1), and the provisions of 41.2(1)*"a"* apply.

*i. Coliform TT triggers.* Systems must conduct assessments in accordance with 41.2(1)*"j"* after exceeding any TT trigger.

(1) Level 1 TT triggers.

1. For systems taking 40 or more samples per month, the system exceeds 5.0 percent total coliform-positive samples for the month.

2. For systems taking fewer than 40 samples per month, the system has two or more total coliform-positive samples in the same month.

3. The system fails to take every required repeat sample after any single total coliform-positive sample.

(2) Level 2 TT triggers.

1. An *E. coli* MCL violation, as specified in 41.2(1)*"m"*(1).

2. A second Level 1 trigger as defined above in 41.2(1)*"i"*(1) within a rolling 12-month period, unless the department has determined a likely reason that the samples that caused the first Level 1 TT trigger were total coliform-positive and has established that the system has corrected the problem.

*j. Assessment requirements.* Systems must ensure that Level 1 and 2 assessments are conducted to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. Level 1 assessments may be conducted by a system owner or operator. Level 2 assessments must be conducted by the department with the assistance of the system owner or operator.

(1) General. Systems must conduct assessments consistent with any department directives and ensure that the assessor evaluates minimum elements, including:

1. A review and identification of inadequacies in sample sites;

2. Sampling protocol and processing;

3. Atypical events that could affect or indicate an impairment in distributed water quality;

4. Changes in distribution system operation or maintenance that could affect distributed water quality (including water storage);

5. Source and treatment considerations that bear on distributed water quality, where appropriate (e.g., small GW systems); and

6. Existing water quality monitoring data.

(2) Level 1 assessment. A system must conduct a Level 1 assessment if it exceeds one of the TT triggers in 41.2(1)*"i"*(1).

1. A system must complete a Level 1 assessment as soon as practical after any trigger in 41.2(1)*"i"*(1). The assessment form must describe the sanitary defects detected and corrective actions completed and include a proposed timetable for any other corrective action completion. It may also be noted on the assessment form that no sanitary defects were identified. A system must submit the completed Level 1 assessment form to the department within 30 days of learning that it has exceeded a trigger.

2. If the department reviews the completed Level 1 assessment and determines that it is not sufficient (including any proposed timetable for corrective action completion), the department must consult with the system. If the department requires revisions after consultation, the system must submit a revised assessment form to the department on an agreed-upon schedule, not to exceed 30 days.

3. Upon submission of an assessment form, the department must determine if the system has identified the likely cause for the Level 1 trigger and, if so, establish that the system has corrected the problem or has included an acceptable schedule to correct the problem.

(3) Level 2 assessment. A system must ensure that a Level 2 assessment is conducted if it exceeds one of the TT triggers in 41.2(1)*"i"*(2). A system must comply with any department-required expedited or additional actions in the case of an E. coli MCL violation.

1. A system must ensure that a Level 2 assessment is completed by the department as soon as practical after any trigger in 41.2(1)*"i"*(2). The assessment form must describe the sanitary defects detected and corrective actions completed and include a proposed timetable for any other corrective action completion. It may also be noted on the assessment form that no sanitary defects were identified. A system must submit a completed Level 2 assessment form to the department within 30 days of learning that the system has exceeded a trigger.

2. If the department reviews the completed Level 2 assessment and determines that it is not sufficient (including any proposed timetable for corrective action completion), the department must consult with the system. If the department requires revisions after consultation, the system must submit a revised assessment form to the department on an agreed-upon schedule, not to exceed 30 days.

3. Upon submission of an assessment form, the department must determine if a system has identified the likely cause for the Level 2 trigger and determine whether the system has corrected the problem or has included an acceptable schedule to correct the problem.

(4) Corrective actions. A system must correct sanitary defects found through either a Level 1 or 2 assessment. Corrective action(s) that are not completed by a system prior to the submission of the assessment form must be completed in compliance with a timetable approved by the department in consultation with the system. Systems must notify the department when each scheduled corrective action is completed.

(5) Consultation. At any time during the assessment or corrective actions phase, either the system or the department may request a consultation with the other party to determine appropriate actions. A system may consult with the department on all relevant information that may impact its ability to comply with this subrule.

*k. Reporting requirements.*

(1) *E. coli.*

1. A system must notify the department by the end of the same day when it learns of an *E. coli*-positive violation or routine sample.

2. If a notification is outside of the department's routine office hours, the system shall call the department's Environmental Emergency Reporting Hotline at 515.725.8694.

(2) A system that has violated the coliform TT in 41.2(1)*"i"* must report the violation to the department no later than the end of the next business day after learning of the violation and must provide PN in accordance with rule 567—40.5(455B).

(3) A system required to conduct an assessment under the provisions of 41.2(1)*"i"* must submit an assessment form within 30 days. Systems must notify the department in accordance with 41.2(1)*"j"*(4) when each scheduled corrective action is completed.

(4) A system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the department within ten days of discovering the violation and must provide PN in accordance with rule 567—40.5(455B).

(5) A seasonal system must certify, prior to serving water to the public, that it has complied with the department-approved start-up procedure.

*l. Recordkeeping requirements.* Additional recordkeeping requirements are listed in 567—subrule 40.9(10).

*m. Violations.* A system is in violation and must conduct PN in accordance with rule 567—40.5(455B) in any of the following instances.

(1) *E. coli* MCL violation. A system is in violation of the MCL for *E. coli* when any of the following occurs:

1. An *E. coli*-positive repeat sample following a total coliform-positive routine sample;

2. A total coliform-positive repeat sample following an *E. coli*-positive routine sample;

3. Failure to take all required repeat samples following an *E. coli*-positive routine sample; or

4. Failure to test for *E. coli* when any repeat sample tests positive for total coliform.

(2) TT violation. A system is in violation of a TT trigger when any of the following occurs:

1. Exceedance of a TT trigger specified in 41.2(1)*"i"* and failure to conduct the required assessment within the time frame specified in 41.2(1)*"j"*;

2. Exceedance of a TT trigger specified in 41.2(1)*"i"* and failure to conduct the required corrective actions within the time frame specified in 41.2(1)*"j"*(4); or

3. A seasonal system failing to complete a department-approved start-up procedure prior to serving water to the public, including collection of a finished water sample that tests total coliform-negative.

(3) Monitoring violation. A system is in violation of monitoring requirements if it fails to either:

1. Take every required routine or additional routine sample in a compliance period; or

2. To analyze for *E. coli* following a total coliform-positive routine sample.

(4) Reporting violation. A system is in violation of the reporting requirements if it fails to:

1. Submit a monitoring report in a timely manner after a system properly conducts monitoring;

2. Submit a completed assessment form in a timely manner after a system properly conducts an assessment;

3. Notify the department in a timely manner following an *E. coli*-positive sample, as required by 41.2(1)*"h"*(1); or

4. Submit the certification of completion of department-approved start-up procedure by a seasonal system.

*n. Best available technology (BAT).* The EPA identifies, and the department has adopted, the following as the best technology, TTs, or other means available for all systems in achieving compliance with the *E. coli* MCL in 41.2(1)*"a."* The following is also identified as affordable technology, TTs, or other means available to systems serving 10,000 or fewer people for achieving compliance with the *E. coli* MCL.

(1) Protection of wells from fecal contamination by appropriate placement and construction.

(2) Maintenance of a disinfectant residual throughout the distribution system.

(3) Proper distribution system maintenance, including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, cross-connection control, and continual maintenance of a minimum positive water pressure of 20 psi in all parts of the distribution system at all times.

(4) Filtration or disinfection of surface water (SW) or influenced groundwater (IGW) in accordance with rules 567—43.5(455B), 567—43.9(455B), and 567—43.10(455B) or disinfection of GW in accordance with rule 567—41.7(455B) using strong oxidants such as, but not limited to, chlorine, chlorine dioxide, or ozone.

(5) For GW systems, compliance with the requirements of the department's wellhead protection program.

**41.2(2)** *Heterotrophic plate count (HPC) bacteria.*

*a. Applicability.* All PWSs that use a SW source or source under the direct influence of SW must provide treatment consisting of disinfection, as specified in 567—subrule 43.5(2), and filtration treatment, as specified in 567—subrule 43.5(3). The HPC is an alternate method to demonstrate a detectable disinfectant residual in accordance with 567—paragraph 43.5(2)*"d."*

*b. Analytical methodology.* PWSs shall conduct HPC bacteria analysis in accordance with 567—subrule 43.5(2) and the following analytical method. When HPC bacteria are being measured in lieu of a detectable residual disinfectant pursuant to 567—paragraph 43.5(2)*"d,"* measurements must be conducted by a laboratory certified by the department to do such analysis. The time from sample collection to initiation of analysis may not exceed eight hours, and systems must hold the samples below 10 degrees Celsius during transit to the laboratory.

(1) Method. The HPC shall be performed in accordance with one of the following methods:

1. Method 9215B Pour Plate Method, SM, 18th (1992), 19th (1995), 20th (1998), 21st (2005), and 22nd (2012) editions. The cited method in any of these editions may be used. SM Online method 9215 B-04 may be used.

2. SimPlate Method, "IDEXX SimPlate TM HPC Test Method for Heterotrophs in Water," November 2000, IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, ME 04092.

(2) Reporting. A PWS shall report the results of HPC bacteria in accordance with 567—subparagraph 40.8(3)*"c"*(2).

**41.2(3)** *Macroscopic organisms and algae.*

*a. Applicability.* This subrule applies to CWSs, NTNCs, and TNCs using SW or IGW, as defined by 567—subrule 43.5(1).

*b. MCLs for macroscopic organisms and algae.* Finished water shall be free of any macroscopic organisms such as plankton, worms, or cysts. The finished water algal cell count shall not exceed 500 organisms per mL or 10 percent of the total cells found in the raw water, whichever is greater.

*c. Analytical methodology.* Algal cell measurement shall be in accordance with Method 10200F: Phytoplankton Counting Techniques, SM, 18th edition, pp. 10-13 to 10-16. Such measurement shall be required only when the department determines, on the basis of complaints or otherwise, that excessive algal cells may be present.

**567—41.3(455B) MCLs and monitoring requirements for inorganic contaminants other than lead or copper.**

**41.3(1)** *MCLs and other requirements for inorganic chemical (IOC) contaminants.*

*a. Applicability.* The MCLs, BATs, and analytical methods for IOC contaminants specified in this subrule apply to CWSs and NTNCs as specified herein. The fluoride MCL applies only to CWSs and NTNCs that primarily serve children (child care facilities and schools). The nitrate, nitrite, and total nitrate and nitrite MCLs apply to CWSs, NTNCs and TNCs. At the department's discretion, nitrate levels not to exceed 20.0 mg/L may be allowed in a NCWS if the supplier of water demonstrates to the department's satisfaction that:

(1) Such water will not be available to children under six months of age;

(2) The system is meeting the PN requirements of rule 567—40.5(455B), including continuous posting of the fact that nitrate levels exceed 10 mg/L and the potential health effects of exposure;

(3) The following public health authorities will be notified annually of nitrate levels that exceed 10 mg/L, in addition to the reporting requirements of 567—Chapters 40 and 41: the local county health officials, including the health department, sanitarian, and public health administrator, and the Iowa department of health and human services; and

(4) No adverse health effects shall result.

*b. IOC MCLs.*

(1) The following table specifies the IOC MCLs:

| IOC Contaminant | EPA Contaminant Code | MCL (mg/L) |
|---|---|---|
| Antimony | 1074 | 0.006 |
| Arsenic | 1005 | 0.010 |
| Asbestos | 1094 | 7 million fibers/liter (longer than 10 micrometers in length) |
| Barium | 1010 | 2 |
| Beryllium | 1075 | 0.004 |
| Cadmium | 1015 | 0.005 |
| Chromium | 1020 | 0.1 |
| Cyanide (as free Cyanide) | 1024 | 0.2 |
| Fluoride* | 1025 | 4.0 |
| Mercury | 1035 | 0.002 |
| Nitrate | 1040 | 10 (as nitrogen) |
| Nitrite | 1041 | 1.0 (as nitrogen) |
| Total Nitrate and Nitrite | 1038 | 10 (as nitrogen) |
| Selenium | 1045 | 0.05 |
| Thallium | 1085 | 0.002 |

*The recommended fluoride level is 0.7 mg per liter as published by the U.S. Department of Health and Human Services, Public Health Service (July-August 2015). At this optimum level in drinking water, fluoride has been shown to have beneficial effects in reducing the occurrence of tooth decay.

(2) Compliance calculations. IOC MCL compliance shall be determined using the analytical result(s) obtained at each source/entry point (SEP). When the department requires a system to collect nitrate or nitrite samples in its distribution system, IOC MCL compliance shall also be determined using the analytical result(s) obtained at each discrete sampling point in the distribution system. Arsenic sampling results must be reported to the nearest 0.001 mg/L.

1. Sampling frequencies greater than annual. For PWSs monitoring at a frequency greater than annual, compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium is determined by a running annual average (RAA) at any sampling point. If the RAA at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the RAA to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit (MDL) shall be calculated at

zero for the purpose of determining the RAA. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

2. Sampling frequencies of annual or less. For PWSs monitoring annually or less frequently, the system is out of compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the department, it must be collected as soon as possible from the same sampling location, but not to exceed two weeks, and the compliance determination will be based on the average of the two samples. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

3. Nitrate and nitrite. Compliance with the nitrate and nitrite MCLs is determined based on one sample if the level of these contaminants is below the MCLs. If the level of nitrate or nitrite exceeds the MCLs in the initial sample, a confirmation sample may be required in accordance with 41.3(1)*"c"*(7)"2" and compliance shall be determined based on the average of the initial and confirmation samples.

(3) Additional requirements. The department may assign additional requirements deemed necessary to protect public health, including PN requirements or earlier compliance dates than indicated in rule. When a system is not in compliance with an MCL in this paragraph, the supplier of the water shall notify the department according to 567—subrule 40.8(1) and provide PN according to rule 567—40.5(455B).

*c. IOC monitoring requirements.*

(1) Routine IOC monitoring (excluding asbestos, nitrate, and nitrite). CWSs and NTNCs shall monitor to determine compliance with the IOC MCLs, in accordance with this subrule. TNCs shall monitor to determine compliance with the nitrate and nitrite MCLs as required by 41.3(1)*"c"*(5) and 41.3(1)*"c"*(6). All new systems or systems that use a new source of water must demonstrate compliance with the IOC MCLs within a time period specified by the department. A system must also comply with the specified initial sampling frequencies to ensure it can demonstrate MCL compliance. Routine and increased monitoring shall be conducted in accordance with this paragraph. A source of water that is determined by the department to be a new SEP is considered to be a new source for the purposes of this rule.

(2) Department designated sampling schedules. Each PWS shall monitor at the time designated by the department during each compliance period. The monitoring protocol is as follows:

1. GW sampling points. GW systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a source/entry point or SEP). Systems shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

2. SW sampling points. SW systems shall take a minimum of one sample at every SEP after any application of treatment or in the distribution system at a point that is representative of each SEP. For purposes of this paragraph, SW systems include systems with a combination of SW and GW sources. Systems shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

3. Multiple sources. If a PWS draws water from more than one source and the sources are combined before distribution, it must sample at an SEP during periods of normal operating conditions (i.e., when water is representative of all sources being used).

4. Composite sampling. The department may reduce the total number of samples that must be analyzed by compositing. In systems serving less than or equal to 3,300 persons, composite samples from a maximum of five samples are allowed, provided that the detection limit of the analysis method is less than one-fifth of the MCL. Sample compositing must be done in the laboratory. If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any IOC, a follow-up sample must be taken within 14 days at each sampling point included in the composite. The follow-up samples must be analyzed for the contaminants that exceeded one-fifth of the MCL in the composite sample. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use the duplicates instead of resampling, provided the holding time of the duplicates is not exceeded. Duplicates must be analyzed and the results reported to the department within 14 days after

sample analysis. If the system serves a population greater than 3,300 persons, compositing may only be allowed at sampling points within a single system. For systems serving less than or equal to 3,300 persons, the department may allow compositing among different systems provided the five-sample limit is maintained. Detection limits for each IOC analytical method are in 41.3(1)*"e"*(1).

(3) Asbestos monitoring frequency. Monitoring to determine compliance with the asbestos MCL shall be conducted as follows:

1. Initial sampling frequency. Each CWS and NTNC is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle.

2. Asbestos waiver. If a PWS believes it is not vulnerable to asbestos contamination either in its source water or due to the presence of asbestos-cement pipe, or both, it may apply for a waiver of the asbestos monitoring requirement in this subparagraph. If the department grants the waiver, the system is not required to monitor. The department may grant a waiver based on a consideration of potential asbestos contamination of the water source, the use of asbestos-cement pipe for finished water distribution, and the corrosive nature of the water. An asbestos waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver must monitor in accordance with the initial sampling frequency in this subparagraph.

3. Distribution system vulnerability. A PWS vulnerable to asbestos contamination due solely to the presence of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

4. Source water vulnerability. A PWS vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the department designated sampling schedules in 41.3(1)*"c"*(2).

5. Combined vulnerability. A PWS vulnerable to asbestos contamination due both to its source water supply and the presence of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

6. Asbestos MCL exceedance. A PWS that exceeds the asbestos MCL shall monitor quarterly beginning in the next quarter after the violation occurred.

7. Asbestos below the MCL. The department may decrease the quarterly monitoring requirement to the initial sampling frequency in this subparagraph provided a system is reliably and consistently below the asbestos MCL. In no case can the department make this determination unless a GW system takes a minimum of two quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four quarterly samples.

8. Grandfathered asbestos data. If monitoring data are generally consistent with the requirements of this subparagraph, the department may allow PWSs to use that data to satisfy the monitoring requirement for the initial compliance period beginning.

(4) Monitoring frequency for other IOCs. Monitoring to determine compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium shall be conducted as follows:

1. IOCs sampling frequency. GW systems shall take one sample at each sampling point once every three years. SW systems (or combined SW/GW systems) shall take one sample annually at each sampling point.

2. IOC sampling waiver. The PWS may apply for a waiver from the IOC sampling frequencies specified in this subparagraph. A PWS shall take a minimum of one sample while a waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

3. IOC waiver and grandfathered data. The department may grant a waiver provided SW systems have monitored annually for at least three years and GW systems have conducted a minimum of three rounds of monitoring. Both SW and GW systems shall demonstrate that all previous analytical results were less than the MCL. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed. Systems may be granted a waiver for cyanide monitoring, provided the department determines that the system is not vulnerable due to a lack of any industrial source of cyanide.

4. IOC sampling frequency during a waiver. In determining the appropriate reduced monitoring frequency, the department will consider: reported concentrations from all previous monitoring; the

degree of variation in reported concentrations; and other factors which may affect contaminant concentrations, such as changes in GW pumping rates, system configuration, system operating procedures, or stream flow characteristics.

5. Effect of an IOC waiver. A decision to grant a waiver shall be made in writing and include the basis for the determination. The determination may be initiated by the department or upon an application by a PWS. A PWS shall specify the basis for its request. The department may review and, where appropriate, revise its determination of the appropriate monitoring frequency when a system submits new monitoring data or when other data relevant to a system's appropriate monitoring frequency become available.

6. Exceedance of an IOC MCL. PWSs that exceed the IOC MCLs shall monitor quarterly beginning in the next quarter after the violation occurred.

7. IOCs reliably and consistently below the MCL. The department may decrease the quarterly monitoring requirement to the IOC sampling frequencies specified in "1" and "3" of this subparagraph provided it has determined that a PWS is reliably and consistently below the MCL. The department shall not make this determination unless a GW system takes a minimum of two quarterly samples and a SW system takes a minimum of four quarterly samples.

(5) Nitrate monitoring frequency. All PWSs (CWSs, NTNCs, and TNCs) shall monitor to determine compliance with the nitrate MCL.

1. Initial nitrate sampling. All PWSs served by GW systems shall monitor annually.

2. GW repeat nitrate sampling frequency. For GW PWS, the repeat monitoring frequency is:

- Quarterly for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/L as N. The department may allow a GW system to reduce its sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/L as N.
- Monthly for at least one year following any one sample in which the concentration is greater than or equal to 10.0 mg/L as N.

3. SW repeat nitrate sampling frequency. The department may allow a PWS SW system to reduce the sampling frequency to:

- Annually if all analytical results from four consecutive quarters are less than 5.0 mg/L as N.
- Quarterly for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/L as N. The department may allow a SW system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/L as N.
- Monthly for at least one year following any nitrate MCL exceedance.

4. Scheduling annual nitrate repeat samples. After the initial round of quarterly sampling is completed, each CWS and NTNC monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(6) Nitrite monitoring frequency. All PWSs shall monitor to determine compliance with the nitrite MCL.

1. Initial nitrite sampling. All PWSs shall take one sample at each sampling point.

2. Nitrite repeat monitoring. After the initial sample, systems where an analytical result for nitrite is less than 0.50 mg/L as N shall monitor at the department-specified frequency.

3. Nitrite increased monitoring. For all PWSs, the repeat monitoring frequency is:

- Quarterly for at least one year following any one sample in which the concentration is greater than or equal to 0.50 mg/L as N. The department may allow a system to reduce the sampling frequency to annually after determining a system is reliably and consistently less than 0.50 mg/L.
- Monthly for at least one year following any nitrite MCL exceedance.

4. Scheduling of annual nitrite repeat samples. Systems monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

(7) IOC confirmation sampling.

1. IOC confirmation sample deadline (other than nitrate and nitrite). Where the results of an analysis for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride,

mercury, nickel, selenium, or thallium indicate an MCL exceedance, the department may require the collection of one additional sample as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

2. Nitrate and nitrite confirmation sample deadline. Where nitrate or nitrite sampling results indicate an MCL exceedance and the sampling frequency is quarterly or annual, a system shall take a confirmation sample within 24 hours of its receipt of the analytical results. PWSs unable to comply with the 24-hour confirmation sampling requirement must immediately notify the consumers served by the area served by the PWS in accordance with 567—40.5(455B) Tier 1 PN and complete an analysis of a confirmation sample within two weeks of receipt of the analytical results of the first sample. Where the sampling frequency is monthly, a confirmation sample will not be used to determine MCL compliance.

3. Compliance calculations and confirmation samples. If a required confirmation sample collected within the time specified in "1" of this subparagraph is taken for any contaminant, the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance with the IOC MCLs. The department has the discretion to invalidate results of obvious sampling errors.

(8) Designation of increased sampling frequency. The department, at its discretion, may require more frequent monitoring than specified for asbestos, other IOCs, nitrate, and nitrite in 41.3(1)*"c"*(3) through 41.3(1)*"c"*(6), or confirmation samples for positive and negative results. PWSs may apply to conduct more frequent monitoring than the minimum monitoring specified in this subrule. Any increase or decrease in monitoring under this subparagraph will be designated in an operation permit or administrative order. To increase or decrease such frequency, the department shall consider:

1. Reported concentrations from previously required monitoring,
2. The degree of variation in reported concentrations,
3. Blending or treatment processes conducted to comply with an MCL, TT, or AL, and
4. Other factors, including changes in pumping rates in GW supplies, significant changes in a system's configuration, operating procedures, source of water, or streamflow changes.

(9) Grandfathered data. For the initial analysis required in this paragraph (41.3(1)*"c"*), data for surface waters acquired within one year prior to the effective date and data for GWs acquired within three years prior to [the effective date of this paragraph] may be substituted at the department's discretion.

*d. Analytical and sampling methodology.*

(1) IOC analytical methods. IOC contaminants shall be analyzed using the following methods, or their equivalent as determined by EPA. Criteria for analyzing arsenic, barium, beryllium, cadmium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, NTIS PB95-104766.

**IOC Contaminant Analytical Methods**

| Contaminant | Methodology[15] | EPA | ASTM[3] | SM | SM Online[26] | Other | MDL in mg/L |
|---|---|---|---|---|---|---|---|
| Antimony | Atomic absorption; furnace | | | 3113B[4, 27, 33] | 3113 B-04, B-10 | | 0.003 |
| | Atomic absorption; platform | 200.9[2] | | | | | 0.0008[12] |
| | ICP-MS[35] | 200.8[2] | | | | | 0.0004 |
| | Atomic absorption; hydride | | D3697-92, 02, 07, 12 | | | | 0.001 |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Arsenic[16] | ICP-MS | 200.8[2] | | | | | 0.0014 |
| | Atomic absorption; platform | 200.9[2] | | | | | 0.0005[15] |
| | Atomic absorption; furnace | | D2972-97C, 03C, 08C | 3113B[4, 27, 33] | 3113 B-04, B-10 | | 0.001 |
| | Atomic absorption; hydride | | D2972-97B, 03B, 08B | 3114B[4, 27, 33] | 3114 B-09 | | 0.001 |

| Contaminant | Methodology[15] | EPA | ASTM[3] | SM | SM Online[26] | Other | MDL in mg/L |
|---|---|---|---|---|---|---|---|
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Asbestos | Transmission electron microscopy | 100.1[9] | | | | | 0.01 MFL |
| | Transmission electron microscopy | 100.2[10] | | | | | |
| Barium | ICP | 200.7[2] | | 3120B[18, 27, 33] | 3120 B-99 | | 0.002 |
| | ICP-MS[35] | 200.8[2] | | | | | |
| | Atomic absorption; direct | | | 3111D[4, 27, 33] | 3111 D-99 | | 0.1 |
| | Atomic absorption; furnace | | | 3113B[4, 27, 33] | 3113 B-04, B-10 | | 0.002 |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Beryllium | ICP[35] | 200.7[2] | | 3120B[18, 27, 33] | 3120 B-99 | | 0.0003 |
| | ICP-MS[35] | 200.8[2] | | | | | 0.0003 |
| | Atomic absorption; platform | 200.9[2] | | | | | 0.00002[12] |
| | Atomic absorption; furnace | | D3645-97B, 03B, 08B | 3113B[4, 27, 33] | 3113 B-04, B-10 | | 0.0002 |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Cadmium | ICP[35] | 200.7[2] | | | | | 0.001 |
| | ICP-MS[35] | 200.8[2] | | | | | |
| | Atomic absorption; platform | 200.9[2] | | | | | |
| | Atomic absorption; furnace | | | 3113B[4, 27, 33] | 3113 B-04, B-10 | | 0.0001 |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Chromium | ICP[35] | 200.7[2] | | 3120B[18, 27, 33] | 3120 B-99 | | 0.007 |
| | ICP-MS[35] | 200.8[2] | | | | | |
| | Atomic absorption; platform | 200.9[2] | | | | | |
| | Atomic absorption; furnace | | | 3113B[4, 27, 33] | 3113 B-04, B-10 | | 0.001 |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Cyanide | Manual distillation (followed by 1 of the 4 methods listed below:) | | D2036-98A, D2036-06A | 4500-CN-C[18, 27, 33] | | | |
| | Spectrophotometric; amenable[14] | | D2036-98B, D2036-06B | 4500-CN-G[18, 27, 33] | 4500-CN-G-99 | | 0.02 |
| | Spectrophotometric; manual[13] | | D2036-98A, D2036-06A | 4500-CN-E[18, 27, 33] | 4500-CN-E-99 | I-3300-85[5] | 0.02 |
| | Spectrophotometric; semi-automated[13] | 335.4[6] | | | | | 0.005 |
| | Selective electrode[13] | | | 4500-CN-F[18, 27, 33] | 4500-CN-F-99 | | 0.05 |
| | UV, distillation, spectrophotometric[22] | | | | | Kelada 01[20] | 0.0005 |
| | Micro distillation, flow injection, spectrophotometric[13] | | | | | QuikChem 10-204-00-1-X[21] | 0.0006 |
| | Ligand exchange with amperometry[14] | | D6888-04 | | | OIA-1677, DW[25] | 0.0005 |
| | GC/MS headspace | | | | | ME355.01[29] | |
| | IC[36] | 300.0[6], 300.12[3] | D4327-97, 03, 11 | 4110B[18, 27, 33] | 4110 B-00 | | |

| Contaminant | Methodology[15] | EPA | ASTM[3] | SM | SM Online[26] | Other | MDL in mg/L |
|---|---|---|---|---|---|---|---|
| Fluoride | Manual distillation; colorimetric; SPADNS | | | 4500F-B,D[18, 27, 33] | 4500 F-B,D-97 | | |
| | Manual electrode | | D1179-93B, 99B, D1179-04B, 10B | 4500F-C[18, 27, 33] | 4500 F-C-97 | | |
| | Automated electrode | | | | | 380-75WE[11] | |
| | Automated alizarin | | | 4500F-E[18, 27, 33] | 4500 F-E-97 | 129-71W[11] | |
| | Capillary ion electrophoresis | | | | | D6508, Rev.2[24] | |
| | Arsenite-free colorimetric; SPADNS | | | | | Hach SPADNS 2 Method 10225[31] | |
| Magnesium | Atomic absorption; direct | | D511-93, 03B, 09B, 14B | 3111B[4, 27, 33] | 3111 B-99 | | |
| | ICP[35] | 200.7[1] | | 3120B[18, 27, 33] | 3120 B-99 | | |
| | Complexation Titrimetric Methods | | D511-93, 03A, 09A, 14B | 3500-Mg E[4] 3500-Mg B[19, 27, 33] | 3500-Mg B-97 | | |
| | IC | | D6919-03, 09 | | | | |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Mercury | Manual, cold vapor | 245.1[2] | D3223-97, 02, 12 | 3112B[4, 27, 33] | 3112 B-09 | | 0.0002 |
| | Automated, cold vapor | 245.2[1] | | | | | 0.0002 |
| | ICP-MS[35] | 200.8[2] | | | | | |
| Nickel | ICP[35] | 200.7[2] | | 3120B[18, 27, 33] | 3120 B-99 | | 0.005 |
| | ICP-MS[35] | 200.8[2] | | | | | 0.0005 |
| | Atomic absorption; platform | 200.9[2] | | | | | 0.0006[12] |
| | Atomic absorption; direct | | | 3111B[4, 27, 33] | 3111 B-99 | | |
| | Atomic absorption; furnace | | | 3113B[4, 27, 33] | 3113 B-04, 10 | | 0.001 |
| | AVICP-AES[35] | 200.5, Revision 4.2[28] | | | | | |
| Nitrate | IC[36] | 300.0[6], 300.1[23] | D4327-97, 03, 11 | 4110B[18, 27, 33] | 4110 B-00 | B-1011[8] | 0.01 |
| | Automated cadmium reduction | 353.2[6] | D3867-90A | 4500-$NO_3$F[18, 27, 33] | 4500-$NO_3$-F-00 | | 0.05 |
| | Ion selective electrode | | | 4500-$NO_3$-D[18, 27, 33] | 4500-$NO_3$-D-00 | 601[7] | 1 |
| | Manual cadmium reduction | | D3867-90B | 4500-$NO_3$-E[18, 27, 33] | 4500-$NO_3$-E-00 | | 0.01 |
| | Capillary ion electrophoresis | | | | | D6508, Rev.2[24] | 0.076 |
| | Reduction/colorimetric | | | | | Systea Easy (1-Reagent)[30] NECi Nitrate-Reductase[34] | |
| | Colorimetric; direct | | | | | Hach TNTplus™ 835/836 Method 10206[32] | |
| Nitrite | IC[36] | 300.0[6], 300.1[23] | D4327-97, 03, 11 | 4110B[18, 27, 33] | 4110 B-00 | B-1011[8] | 0.004 |
| | Automated cadmium reduction | 353.2[6] | D3867-90A | 4500-$NO_3$-F[18, 27, 33] | 4500-$NO_3$-F-00 | | 0.05 |
| | Manual cadmium reduction | | D3867-90B | 4500-$NO_3$-E[18, 27, 33] | 4500-$NO_3$-E-00 | | 0.01 |
| | Spectrophotometric | | | 4500-$NO_2$-B[18, 27, 33] | 4500-$NO_2$-B-00 | | 0.01 |

| Contaminant | Methodology[15] | EPA | ASTM[3] | SM | SM Online[26] | Other | MDL in mg/L |
|---|---|---|---|---|---|---|---|
| | Capillary ion electrophoresis | | | | | D6508, Rev. 2[24] | 0.103 |
| | Reduction/colorimetric | | | | | Systea Easy (1-Reagent)[30] NECi Nitrate-Reductase[34] | |
| Selenium | Atomic absorption; hydride | | D3859-98, 03A, 08A | 3114B[4, 27, 33] | 3114 B-09 | | 0.002 |
| | ICP-MS[35] | 200.8[2] | | | | | |
| | Atomic absorption; platform | 200.9[2] | | | | | |
| | Atomic absorption; furnace | | D3859-98, 03B, 08B | 3113B[4, 27, 33] | 3113 B-04, 10 | | 0.002 |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Sodium | ICP[35] | 200.7[2] | | | | | |
| | Atomic absorption; direct | | | 3111B[4, 27, 33] | 3111 B-99 | | |
| | IC[36] | | D6919-03, 09 | | | | |
| | AVICP-AES[17] | 200.5, Revision 4.2[28] | | | | | |
| Thallium | ICP-MS[35] | 200.8[2] | | | | | |
| | Atomic absorption; platform | 200.9[2] | | | | | 0.0007[12] |

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the sources listed below. Information regarding the documents can be obtained from the Safe Drinking Water Hotline at 800.426.4791. Documents may be inspected at EPA's Drinking Water Docket or at the Office of Federal Register.

[1]"Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1983. NTIS, PB84-128677.

[2]"Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA-600/R-94-111, May 1994. NTIS, PB95-125472.

[3]ASTM, 1994, 1996, 1999 or 2003, Vols. 11.01 and 11.02; the methods listed are the only versions that may be used.

[4]18th and 19th editions, SM, 1992 and 1995, respectively.

[5]Techniques of Water Resources Investigation of the USGS, Book 5, Chapter A-1, 3rd edition, 1989, Method I-3300-85. Information Services, USGS, Federal Center, Box 25286, Denver, CO 80225-0425.

[6]"Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600-R-93-100, August 1993. NTIS, PB94-120821.

[7]The procedure shall be done in accordance with the Technical Bulletin 601, "Standard Method of Test for Nitrate in Drinking Water," July 1994, PN221890-001, Analytical Technology, Inc. ATI Orion, 529 Main Street, Boston, MA 02129.

[8]Method B-1011, "Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography," August 1987. Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

[9]Method 100.1, "Analytical Method for Determination of Asbestos Fibers in Water," EPA-600/4-83-043, EPA, September 1983. NTIS, PB83-260471.

[10]Method 100.2, "Determination of Asbestos Structure Over 10 Microns in Length in Drinking Water," EPA-600/R-94-134, June 1994. NTIS, PB94-201902.

[11]Industrial Method No. 129-71W, "Fluoride in Water and Wastewater," December 1972, and Method No. 380-75WE, "Fluoride in Water and Wastewater," February 1976, Technicon Industrial Systems. Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12]Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

[13]Screening method for total cyanides.

[14]Measures "free" cyanides when distillation, digestion, or ligand exchange is omitted.

[15]Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium by Method 200.7, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony and thallium by Method 200.9, and antimony by Method 3113B, unless multiple in-furnace depositions are made.

[16]If ultrasonic nebulization is used in arsenic determination by Method 200.8, the arsenic must be in the pentavalent state to provide uniform signal response. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain 1 mg/L of sodium hypochlorite.

[17]AVICP-AES means axially viewed inductively coupled plasma-atomic emission spectrometry.

[18]18th, 19th, and 20th editions, SM, 1992, 1995, and 1998, respectively.

[19]20th edition, SM, 1998.

[20]Kelada 01 Method, "Kelada Automated Test Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate," Revision 1.2, August 2001, EPA #821-B-01-009 for cyanide, NTIS PB 2001-108275. Note: A 450W UV lamp may be used in this method instead of the 550W lamp specified if it provides performance within the quality control acceptance criteria of the method in a given instrument. Similarly, modified flow cell configurations and flow conditions may be used in the method, provided that the quality control acceptance criteria are met.

[21]QuikChem Method 10-204-00-1-X, "Digestion and distillation of total cyanide in drinking water and wastewaters using MICRO DIST and determination of cyanide by flow injection analysis," Revision 2.1, November 30, 2000, Lachat Instruments, 6645 W. Mill Road, Milwaukee, WI 53218.

[22]Measures total cyanides when UV-digestor is used, and "free" cyanides when UV-digestor is bypassed.

[23]"Methods for the Determination of Organic and Inorganic Compounds in Drinking Water," Volume 1, EPA 815-R-00-014, August 2000. NTIC, PB2000-106981.

[24]Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte," Waters Corp., 34 Maple Street, Milford, MA 01757.

[25]Method OIA-1677, DW "Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry," January 2004. EPA-821-R-04-001. ALPKEM, a division of OI Analytical, P.O. Box 9010, College Station, TX 77542-9010.

[26]SM Online. The year that each method was approved is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[27]SM, 21st edition (2005).

[28]EPA Method 200.5, Revision 4.2: "Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry," 2003. EPA/600/R-06/115, www.nemi.gov.

[29]Method ME355.01, Revision 1.0, "Determination of Cyanide in Drinking Water by GC/MS Headspace," May 26, 2009. www.nemi.gov or H & E Testing Laboratory, 221 State Street, Augusta, ME 04333.

[30]Systea Easy (1-Reagent), "Systea Easy (1-Reagent) Nitrate Method," February 4, 2009. www.nemi.gov or Systea Scientific, LLC, 900 Jorie Blvd., Suite 35, Oak Brook, IL 60523.

[31]Hach Company Method, "Hach Company SPADNS 2 (Arsenic-free) Fluoride Method 10225 – Spectrophotometric Measurement of Fluoride in Water and Wastewater," January 2011, www.hach.com.

[32]Hach Company Method, "Hach Company TNTplusTM 835/836 Nitrate Method 10206 – Spectrophotometric Measurement of Nitrate in Water and Wastewater," January 2011, www.hach.com.

[33]SM, 22nd edition (2012).

[34]Nitrate Elimination Company, Inc. (NECi). "Method for Nitrate Reductase Nitrate-Nitrogen Analysis of Drinking Water," February 2016. Superior Enzymes, Inc., 334 Hecla Street, Lake Linden, MI 49945.

[35]IPC means inductively coupled plasma, and ICP-MS means inductively coupled plasma mass spectrometry.

[36]IC means ion chromatography.

(2) IOC sampling methods. Samples for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this subparagraph shall be collected using the sample preservation, container, and maximum holding time procedures specified in the table below:

**IOC Sampling Methods**

| Contaminant | Preservative[1] | Container[2] | Time[3] |
|---|---|---|---|
| Antimony | $HNO_3$ | P or G | 6 months |
| Arsenic | $HNO_3$ | P or G | 6 months |
| Asbestos | 4 degrees C | P or G | 48 hours for filtration[5] |
| Barium | $HNO_3$ | P or G | 6 months |
| Beryllium | $HNO_3$ | P or G | 6 months |
| Cadmium | $HNO_3$ | P or G | 6 months |
| Chromium | $HNO_3$ | P or G | 6 months |
| Cyanide | 4 degrees C, NaOH | P or G | 14 days |
| Fluoride | None | P or G | 1 month |
| Mercury | $HNO_3$ | P or G | 28 days |
| Nickel | $HNO_3$ | P or G | 6 months |
| Nitrate[4] | 4 degrees C | P or G | 48 hours |
| Nitrite[4] | 4 degrees C | P or G | 48 hours |
| Selenium | $HNO_3$ | P or G | 6 months |
| Thallium | $HNO_3$ | P or G | 6 months |

[1]When indicated, samples must be acidified at the time of collection to pH < 2 with concentrated acid, or adjusted with sodium hydroxide to pH > 12. Samples collected for metals analysis may be preserved by acidification at the laboratory, using a 1:1 nitric acid solution (50 percent by volume), provided the shipping time and other instructions in Section 8.3 of EPA Methods 200.7, 200.8, and 200.9 are followed. When chilling is indicated, the sample must be shipped and stored at 4 degrees Celsius or less.

[2]P: plastic, hard or soft; G: glass, hard or soft.

[3]All samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers, or holding times that is specified in the method.

[4]Nitrate may only be measured separate from nitrite in samples that have not been acidified. Measurement of acidified samples provides a total nitrate (sum of nitrate plus nitrite) concentration.

[5]Instructions for containers, preservation procedures, and holding times as specified in Method 100.2 must be adhered to for all compliance analyses, including those conducted with Method 100.1.

**41.3(2)** Reserved.

**567—41.4(455B) Lead, copper, and corrosivity.**

**41.4(1)** *Lead, copper, and corrosivity regulation by the setting of a TT requirement.* The lead and copper rules establish a TT that includes requirements for corrosion control treatment (CCT), source water treatment, lead service line (LSL) replacement, and public education (PE). These requirements are triggered, in some cases, by lead and copper action levels (ALs) measured in samples collected at consumers' taps.

*a. Applicability.* Unless otherwise indicated, the provisions of this subrule apply to CWSs and NTNCs (hereinafter referred to as "PWSs" or "systems").

*b. Action levels (ALs).*

(1) The lead AL is exceeded if the lead concentration in more than 10 percent of tap water samples collected during any monitoring period, in accordance with 41.4(1)*"c,"* is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

(2) The copper AL is exceeded if the copper concentration in more than 10 percent of tap water samples collected during any monitoring period, in accordance with 41.4(1)*"c,"* is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(3) 90th percentile calculation. The 90th percentile lead and copper levels shall be computed as follows:

1. The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from lowest concentration to highest concentration. Each sample shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest concentration. The number assigned to the sample with the highest concentration shall be equal to the total number of samples taken.

2. The number of samples taken during the monitoring period shall be multiplied by 0.9.

3. The contaminant concentration in the numbered sample yielded by this calculation is the 90th percentile contaminant level.

4. For systems serving fewer than 100 people that collect five samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

5. For a PWS allowed by the department to collect fewer than five samples, in accordance with 41.4(1)*"c"*(3), the sample result with the highest concentration is considered the 90th percentile value.

*c. Lead and copper tap water monitoring requirements.*

(1) Sample site selection.

1. General. PWSs shall complete a materials evaluation of their distribution systems by the date indicated in 41.4(1)*"c"*(4) in order to identify a pool of sampling sites that meets the requirements of this subrule, and which is sufficiently large to ensure that the system can collect the number of lead and copper tap samples required in 41.4(1)*"c"*(3). All sites from which first-draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have POU or POE treatment devices designed to remove inorganic contaminants.

2. Information sources. A PWS shall use the information on lead, copper, and galvanized steel collected under 41.4(1)*"f"* when conducting a materials evaluation. When an evaluation of the information is insufficient to locate the requisite number of lead and copper sampling sites meeting the targeting criteria in this subparagraph, the PWS shall review additional information to indicate locations

that may be particularly susceptible to high lead or copper concentrations. The additional information includes all building department plumbing codes, permits, and records that indicate the plumbing materials installed within all structures connected to the distribution system; all distribution system inspections and records that indicate the material composition of the service connections that connect a structure to the distribution system; and all existing water quality information, including the results of all prior analyses of the system or individual structures connected to the system. System shall seek to collect such additional information where possible in the course of normal operations.

3. Tier 1 CWS sampling sites. The Tier 1 sampling sites selected for a CWS's sampling pool shall consist of single-family structures containing copper pipes with lead solder installed after 1982 or containing lead pipes; or served by an LSL. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

4. Tier 2 CWS sampling sites. Any CWS with insufficient Tier 1 sampling sites shall complete its sampling pool with Tier 2 sampling sites, consisting of buildings, including multiple-family residences containing copper pipes with lead solder installed after 1982 or containing lead pipes; or served by an LSL.

5. Tier 3 CWS sampling sites. Any CWS with insufficient Tier 1 and Tier 2 sampling sites shall complete its sampling pool with Tier 3 sampling sites, consisting of single-family structures containing copper pipes with lead solder installed before 1983. A CWS with insufficient Tier 1, Tier 2, and Tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. A representative site is defined as a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

6. Tier 1 NTNC sampling sites. The Tier 1 sampling sites selected for a NTNC shall consist of buildings containing copper pipes with lead solder installed after 1982 or containing lead pipes; or served by an LSL.

7. Other NTNC sampling sites. An NTNC with insufficient Tier 1 NTNC sites shall complete its sampling pool with sites containing copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the NTNC shall use representative sites throughout the distribution system. A representative site is defined as a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

8. LSL sampling sites. Any PWS whose distribution system contains LSLs shall draw 50 percent of the samples collected during each monitoring period from sites containing lead pipes or copper pipes with lead solder, and 50 percent of the samples from sites served by an LSL. A system that cannot identify a sufficient number of sampling sites served by an LSL shall collect first-draw samples from all of the sites identified as being served by such lines.

(2) Sample collection methods.

1. Tap samples for lead and copper collected in accordance with this subparagraph shall be first-draw samples, except for LSL samples collected under 567—subrule 43.7(4) and 41.4(1)*"c"*(2)"5."

2. First-draw tap samples for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First-draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be collected at an interior tap from which water is typically drawn for consumption. First-draw samples may be collected by the system, or it may allow residents to collect first-draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acidification of first-draw samples may be done up to 14 days after the sample is collected. After acidification, the sample must stand in the original container for the time specified in the approved EPA method before the sample can be analyzed. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

3. LSL samples collected to determine if the service line is directly contributing lead (as described in 567—subrule 43.7(4)) shall be one liter in volume, have stood motionless in the LSL for at least six hours, and be collected at the tap after flushing the volume of water between the tap and the LSL. The

volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the LSL; tapping directly into the LSL; or if the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature, indicative of water that has been standing in the LSL.

4. A PWS shall collect each first-draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, a system cannot gain entry to a sampling site in order to collect a follow-up tap sample, it may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

5. An NTNC system, or a CWS system meeting the criteria of 567—subparagraph 40.6(2)*"d"*(2) that does not have enough taps that can supply first-draw samples, may apply to the department in writing to substitute non-first-draw samples. Such systems must collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. The department may waive the requirement for prior approval of non-first-draw sample sites selected by the system through written notification to the system. Non-first-draw samples collected in lieu of first-draw samples in accordance with this subparagraph shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption.

(3) Number of samples. PWS shall collect at least one sample during each monitoring period specified in 41.4(1)*"c"*(4) from the number of sites specified below in the "standard monitoring" column. A system conducting reduced monitoring under 41.4(1)*"c"*(4) shall collect at least one sample from the number of sites specified below in the "reduced monitoring" column during each monitoring period. Reduced monitoring sites shall be representative of the sites required for standard monitoring. A PWS with fewer than five drinking water taps used for human consumption that meet the sample site criteria of 41.4(1)*"c"*(1) and that can be used to reach the required number of sample sites specified in this subparagraph must collect at least one sample from each tap and then must collect additional samples from those taps on different days during the monitoring period to meet the required number of sites. Alternatively, the department may allow these systems to collect a number of samples less than the number of sites specified in 41.4(1)*"c"*(1), provided that 100 percent of all taps that can be used for human consumption are sampled. This reduction of the minimum number of samples must be approved in writing by the department, based upon on-site verification or a request from the system. The department may specify sampling locations when a system is conducting reduced monitoring.

**Required Number of Lead/Copper Samples**

| System Size (Number of People Served) | Standard Monitoring (Number of Sites) | Reduced Monitoring (Number of Sites) |
|---|---|---|
| greater than 100,000 | 100 | 50 |
| 10,001 to 100,000 | 60 | 30 |
| 3,301 to 10,000 | 40 | 20 |
| 501 to 3,300 | 20 | 10 |
| 101 to 500 | 10 | 5 |
| less than or equal to 100 | 5 | 5 |

(4) Monitoring periods.

1. Initial tap sampling. The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates:

| System Size (Number of People Served) | First Six-month Monitoring Period Begins on: |
|---|---|
| greater than 50,000 (large system) | January 1, 1992 |
| 3,301 to 50,000 (medium system) | July 1, 1992 |
| less than or equal to 3,300 (small system) | July 1, 1993 |

All large systems shall monitor during two consecutive six-month periods. All small and medium-size systems shall monitor during each six-month monitoring period until the system exceeds the lead or copper AL and is, therefore, required to implement the CCT requirements under 567—paragraph 43.7(1)

*"a,"* in which case it shall continue monitoring in accordance with this subparagraph, or the system meets the lead and copper ALs during two consecutive six-month monitoring periods, in which case it may reduce monitoring in accordance with this subparagraph.

2. Monitoring after installation of CCT and source water treatment. Large systems that install optimal corrosion control treatment (OCCT) pursuant to 567—subparagraph 43.7(1)*"d"*(4) shall monitor during two consecutive six-month monitoring periods by the date specified in 567—subparagraph 43.7(1)*"d"*(5). Small or medium-size systems that install OCCT pursuant to 567—subparagraph 43.7(1)*"e"*(5) shall monitor during two consecutive six-month monitoring periods, as specified in 567—subparagraph 43.7(1)*"e"*(6). Systems that install source water treatment shall monitor during two consecutive six-month monitoring periods by the date specified in 567—subparagraph 43.7(3)*"a"*(4).

3. Monitoring after the department specifies WQP values for optimal corrosion control (OCC). After the department specifies the values for WQP under 567—paragraph 43.7(2)*"f,"* the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the department specifies the OCC values under 567—paragraph 43.7(2)*"f."*

4. Reduced monitoring: a small or medium-size PWS that meets the lead and copper ALs during each of two consecutive six-month monitoring periods may reduce the number of lead and copper samples according to 41.4(1)*"c"*(3) and reduce the sampling frequency to once per year. A small or medium-size system collecting fewer than five samples as specified in 41.4(1)*"c"*(3) that meets the lead and copper ALs during each of two consecutive six-month monitoring periods may reduce the sampling frequency to once per year. This reduced sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. A system shall not ever reduce the number of samples required below the minimum of one sample per available tap.

5. Reduced monitoring: any PWS that meets the lead AL and maintains the range of values for the WQPs reflecting OCCT specified in 567—paragraph 43.7(2)*"f"* during each of two consecutive six-month monitoring periods may reduce the monitoring frequency to once per year and reduce the number of lead and copper samples according to 41.4(1)*"c"*(3), upon written department approval. This monitoring shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. The department shall review monitoring, treatment, and other relevant information submitted by the system in accordance with 567—subrule 40.8(2) and shall notify a system in writing when it determines that a system is eligible to commence reduced monitoring. The department will review and, where appropriate, revise its determination when a system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

6. Reduced monitoring: a small or medium-size PWS that meets the lead and copper ALs during three consecutive years of monitoring may reduce the monitoring frequency for lead and copper from annually to once every three years. Any system that meets the lead AL and maintains the range of values for the WQP reflecting OCCT specified in 567—paragraph 43.7(2)*"f"* during three consecutive years of monitoring may reduce the monitoring frequency from annually to once every three years if it receives written department approval. Samples collected once every three years shall be collected no later than every third calendar year. The department shall review monitoring, treatment, and other relevant information submitted by a system in accordance with 567—subrule 40.8(2) and shall notify a system in writing when it determines that a system is eligible to commence reduced monitoring. The department will review and, where appropriate, revise its determination when a system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

7. A PWS that reduces the number and frequency of sampling shall collect samples from sites included in the pool of targeted sampling sites identified in 41.4(1)*"c"*(1). Systems sampling annually or less frequently shall conduct lead and copper tap sampling during June through September unless the department, at its discretion, has approved a different sampling period. If approved, the sampling period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. The department shall designate a sampling period

representing normal operation for an NTNC system that does not operate during June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known. Sampling shall begin during the approved or designated sampling period in the calendar year immediately following the end of the second consecutive six-month monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems initiating triennial monitoring.

8. Systems monitoring annually or triennially that have been collecting samples during June through September and that receive department approval to alter their sample collection period must collect their next round of samples during a time period that ends no later than 21 months (for annual monitoring) or 45 months (for triennial monitoring) after the previous round of sampling. Subsequent rounds of sampling must be collected annually or triennially, as required by this paragraph.

9. Small systems that have been granted waivers pursuant to 41.4(1)*"c"*(7), that have been collecting samples during June through September, and that receive department approval to alter their sample collection period as previously stated must collect their next round of samples before the end of the nine-year period.

10. Any PWS that demonstrates for two consecutive six-month monitoring periods that the 90th percentile tap water level computed under 41.4(1)*"b"*(3) is less than or equal to 0.005 mg/L for lead and is less than or equal to 0.65 mg/L for copper may reduce the number of samples in accordance with 41.4(1)*"c"*(3) and reduce the sampling frequency to once every three calendar years, if approved by the department.

11. A small or medium-size PWS subject to reduced monitoring that exceeds the lead or copper AL shall resume sampling according to 41.4(1)*"c"*(4)"3" and collect the number of samples specified for standard monitoring in 41.4(1)*"c"*(3). Any such system shall also conduct WQP monitoring in accordance with 41.4(1)*"d"*(2), 41.4(1)*"d"*(3), or 41.4(1)*"d"*(4), as appropriate, during the monitoring period in which it exceeded the AL. Any such system may resume annual lead and copper tap monitoring at the reduced number of sites specified in 41.4(1)*"c"*(3) after completing two subsequent consecutive six-month rounds of monitoring meeting the criteria of 41.4(1)*"c"*(4)"4" and may resume triennial lead and copper monitoring at the reduced number of sites after demonstrating through subsequent rounds of monitoring that it meets the criteria of either 41.4(1)*"c"*(4)"6" or "10" and upon written department approval.

12. Any water system subject to reduced monitoring frequency that fails to meet the lead AL during any four-month monitoring period or that fails to operate at or above the minimum value or within the range of values for the OWQP specified in 567—paragraph 43.7(2)*"f"* for more than nine days in any six-month period specified in 41.4(1)*"d"*(4) shall resume tap water sampling according to 41.4(1)*"c"*(4) "3," collect the number of samples specified for standard monitoring in 41.4(1)*"c"*(3), and resume monitoring for WQP within the distribution system in accordance with 41.4(1)*"d"*(4). This standard tap water sampling shall begin no later than the six-month period beginning January 1 of the calendar year following the lead AL exceedance or WQP excursion. Systems may resume reduced monitoring for lead and copper at the tap and for WQPs within the distribution system under the following conditions:

- A system may resume annual lead and copper monitoring at the tap at the reduced number of sites specified in 41.4(1)*"c"*(3) after completing two subsequent six-month rounds of monitoring meeting the criteria of 41.4(1)*"c"*(4)"5" and upon written department approval. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.
- A system may resume triennial lead and copper monitoring at the tap at the reduced number of sites after demonstrating, through subsequent rounds of monitoring, that it meets the criteria of either 41.4(1)*"c"*(4)"6" or"10" and upon written department approval.
- A system may reduce the number of WQP tap water samples required in 41.4(1)*"d"*(5)"1" and the sampling frequency required in 41.4(1)*"d"*(5)"2." Such a system may not resume triennial monitoring for WQPs at the tap until it demonstrates that it has requalified for triennial monitoring, pursuant to 41.4(1)*"d"*(5)"2."

13. Any PWS subject to a reduced monitoring frequency under 41.4(1)*"c"*(4)"4" through "12" must notify the department of any upcoming long-term change in treatment or addition of a new source in accordance with 567—subparagraph 40.8(2)*"a"*(3). The department must review and approve the addition of a new source or long-term change in water treatment before it is implemented. The department may require a system to resume sampling pursuant to 41.4(1)*"c"*(4)"3" and collect the number of samples specified for standard monitoring under 41.4(1)*"c"*(3), or take other appropriate steps such as increased WQP monitoring or reevaluation of CCT.

(5) Additional monitoring. The results of any monitoring conducted in addition to the minimum requirements of this paragraph shall be considered by a system and the department in making any determinations under this subrule.

(6) Invalidation of lead or copper tap water samples. A sample invalidated under this paragraph does not count toward determining the lead or copper 90th percentile levels under 41.4(1)*"b"*(3) or toward meeting the minimum monitoring requirements of 41.4(1)*"c"*(3).

1. The department may invalidate a lead or copper tap water sample if one or more of the following conditions are met:

- The laboratory establishes that improper sample analysis caused erroneous results;
- The department determines the sample was taken from a site that did not meet the site selection criteria of 567—41.4(455B);
- The sample container was damaged in transit to the laboratory;
- There is a substantial reason to believe that the sample was subject to tampering;
- The sample is not representative of water that would be consumed from the tap; or
- The department determined that a major disruption of the water flow occurred in the system or building plumbing prior to sample collection, which resulted in lead or copper levels that were not representative of the system.

2. A system must report the results of all samples to the department and all supporting documentation for samples it believes should be invalidated.

3. A sample invalidation decision under 41.4(1)*"c"*(6)"1" must be documented in writing and include the reason(s) for invalidation. The department may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

4. Systems must collect replacement samples for any samples invalidated under this subparagraph if, after the sample invalidation(s), a system has too few samples to meet the minimum requirements of 41.4(1)*"c"*(3). Replacement samples must be taken as soon as possible, but no later than 20 days after the invalidation date, or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not also be used to meet the monitoring requirements of a subsequent monitoring period. Replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(7) Monitoring waivers for small systems. Any small system meeting the criteria of this subparagraph may apply to the department to reduce the lead and copper monitoring frequency under this subrule to once every nine years if it meets all of the materials criteria and monitoring criteria specified in this subparagraph.

1. Materials criteria. A system must demonstrate that its distribution system, service lines, and all plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and copper-containing materials, as defined below:

- Lead. A PWS must provide certification and supporting documentation to the department that it is free of all lead-containing materials. The system must not contain any plastic pipes that contain lead plasticizers or plastic service lines that contain lead plasticizers. The system must be free of LSLs, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 U.S.C. 300-g-6(e).
- Copper. A PWS must provide certification and supporting documentation to the department that the system contains no copper pipes or copper service lines.

2. Monitoring criteria. A system must have completed at least one six-month round of standard tap water monitoring for lead and copper at approved sites and from the number of sites required by 41.4(1)*"c"*(3) and demonstrate that the 90th percentile levels do not exceed 0.005 mg/L for lead and 0.65 mg/L for copper for any and all rounds of monitoring conducted since the system became free of all lead- and copper-containing materials.

3. Waiver determination. The department shall notify a system of its waiver determination in writing, including the basis of its decision and any condition of the waiver. The department may require as a waiver condition that a system conduct specific activities, such as limited monitoring or periodic customer outreach to remind them to avoid installation of materials that would void the waiver. A system must continue monitoring for lead and copper at the tap as required by 41.4(1)*"c"*(4)"1" through "4," as appropriate, until it receives written department approval for a waiver.

4. Monitoring frequency for systems with waivers.

- A system with a waiver must conduct tap water monitoring for lead and copper in accordance with 41.4(1)*"c"*(4)"4" at the reduced number of sampling sites identified in 41.4(1)*"c"*(3) at least once every nine years and provide the materials certification specified in 41.4(1)*"c"*(7)"1" for both lead and copper to the department along with the monitoring results. Samples collected every nine years shall be collected no later than every ninth calendar year.
- A system with a waiver must notify the department of any upcoming long-term change in treatment or addition of a new source, pursuant to 567—subparagraph 40.8(2)*"a"*(3). The department must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the system. The department has the authority to add or modify waiver conditions if it deems such modifications are necessary.
- If a system with a waiver becomes aware that it is no longer free of lead-containing or copper-containing materials, it shall notify the department in writing no later than 60 days after becoming aware of such a change.

5. Continued waiver eligibility. If a system continues to satisfy the requirements of 41.4(1)*"c"*(7) "4," the waiver will be renewed automatically unless either of the conditions below occur. A system whose waiver has been revoked may reapply for a waiver at such time as it again meets the appropriate materials and monitoring criteria in "1" and "2" of this subparagraph.

- A system no longer satisfies the materials criteria of 41.4(1)*"c"*(7)"1" or has a 90th percentile lead level greater than 0.005 mg/L or a 90th percentile copper level greater than 0.65 mg/L.
- The department notifies the system in writing that the waiver has been revoked, including the basis of its decision.

6. Requirements following waiver revocation. A system whose waiver has been revoked by the department is subject to the following CCT and lead and copper tap water monitoring requirements:

- If a system exceeds the lead or copper AL, it must implement CCT in accordance with the deadlines specified in 567—paragraph 43.7(1)*"e"* and any other applicable parts of 567—41.4(455B).
- If a system meets both the lead and copper ALs, it must monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sample sites specified in 41.4(1)*"c"*(3).

*d. Water quality parameter (WQP) monitoring requirements.* All large PWSs (and all small and medium-size PWSs that exceed the lead or copper AL) shall monitor WQPs in addition to lead and copper in accordance with this subrule. The requirements of this subrule are summarized in the table at the end of 41.4(1)*"d"*(6). The WQPs must be reported in accordance with the monthly operation report (MOR) requirements in 567—subrule 40.8(3).

(1) General.

1. Sample collection methods. Tap samples shall be representative of water quality throughout the distribution system and account for the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this subrule is not required to be conducted at taps targeted for lead and copper sampling under 41.4(1)*"c"*(1)"1." Systems may conduct tap sampling for WQPs at sites used for coliform sampling. Samples collected at the SEP(s) shall be from locations representative of each source after treatment. If a system

draws water from more than one source and the sources are combined before distribution, it must sample at an SEP during periods of normal operating conditions.

2. Number of samples.

● Systems shall collect two tap samples for applicable WQPs during each monitoring period specified in 41.4(1)*"d"*(2) through 41.4(1)*"d"*(5) from the following number of sites.

**Required Number of Samples: WQPs**

| System Size (Number of People Served) | Number of Sites for WQPs |
|---|---|
| greater than 100,000 | 25 |
| 10,001 to 100,000 | 10 |
| 3,301 to 10,000 | 3 |
| 501 to 3,300 | 2 |
| 101 to 500 | 1 |
| less than or equal to 100 | 1 |

● Except as provided in 41.4(1)*"d"*(3)"3," systems shall collect two samples for each applicable WQP at each SEP during each six-month monitoring period specified in 41.4(1)*"d"*(2). During each monitoring period specified in 41.4(1)*"d"*(3) through 41.4(1)*"d"*(5), systems shall collect one sample for each applicable WQP at each SEP.

(2) Initial sampling.

1. During each six-month monitoring period specified in 41.4(1)*"c"*(4)"1":

● Large PWS shall measure the applicable WQP specified below at taps and at each SEP.

● Small and medium-size systems shall measure the applicable WQPs at taps and at each SEP, during which the system exceeds the lead or copper AL.

2. Tap water and SEP monitoring shall include: pH; alkalinity; orthophosphate, when an inhibitor containing a phosphate compound is used; silica, when an inhibitor containing a silicate compound is used; calcium; conductivity; and water temperature.

(3) Monitoring after installation of corrosion control. Large systems that install OCCT pursuant to 567—subparagraph 43.7(1)*"d"*(4) shall measure the WQPs at the locations and frequencies specified below during each six-month monitoring period specified in 41.4(1)*"c"*(4)"2." Small or medium-size systems that install OCCT shall conduct such monitoring during each six-month monitoring period specified in 41.4(1)*"c"*(4)"2" in which the system exceeds the lead or copper AL.

1. Tap water monitoring shall include two samples for: pH; alkalinity; orthophosphate, when an inhibitor containing a phosphate compound is used; silica, when an inhibitor containing a silicate compound is used; and calcium, when calcium carbonate stabilization is used as part of corrosion control.

2. Except as provided in 41.4(1)*"d"*(3)"3," monitoring at each SEP shall include one sample every two weeks (biweekly) for: pH; a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration when alkalinity is adjusted as part of OCC; and a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable) when a corrosion inhibitor is used as part of OCC.

3. Any GW system can limit SEP sampling to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated GW sources mixes with water from treated GW sources, a system must monitor for WQPs both at representative SEPs receiving treatment and representative SEPs receiving no treatment. Prior to the start of any monitoring under this paragraph, the system shall provide the department with written information identifying the selected SEPs and documentation sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system, including information on seasonal variability.

(4) Monitoring after the department specifies WQPs for OCC. After the department specifies the values for applicable WQP reflecting OCCT under 567—paragraph 43.7(2)*"f,"* all large systems shall measure the applicable WQPs according to 41.4(1)*"d"*(3) and determine compliance with 567—paragraph 43.7(2)*"g"* every six months, with the first six-month period to begin on either January 1 or July 1, whichever comes first. Any small or medium-size system shall conduct such monitoring during each monitoring period specified in 41.4(1)*"c"*(4)"3" in which the system exceeds the lead or

copper AL. For any such small and medium-size system subject to a reduced monitoring frequency pursuant to 41.4(1)*"c"*(4)"4" through "12" at the time of the AL exceedance, the start of the applicable six-month monitoring period under this paragraph shall coincide with the end of the applicable monitoring period under 41.4(1)*"c"*(4)"4" through "12." Compliance with department-designated optimal WQP values shall be determined as specified in 567—paragraph 43.7(2)*"g."*

(5) Reduced monitoring.

1. PWSs that maintain the range of values for the WQP reflecting OCCT during each of two consecutive six-month monitoring periods under 41.4(1)*"c"*(4) shall continue monitoring at the SEP(s) as specified in 567—paragraph 43.7(2)*"f."* Such systems may collect two tap samples for applicable WQPs from the following reduced number of sites during each six-month monitoring period.

**Reduced WQP Monitoring**

| System Size (Number of People Served) | Reduced Number of Sites for WQP |
|---|---|
| greater than 100,000 | 10 |
| 10,001 to 100,000 | 7 |
| 3,301 to 10,000 | 3 |
| 501 to 3,300 | 2 |
| 101 to 500 | 1 |
| less than or equal to 100 | 1 |

2. A PWS that maintains the range of values for the WQPs reflecting OCCT specified in 567—paragraph 43.7(2)*"f"* during three consecutive years of monitoring may reduce the sample collection frequency for the number of tap samples for the applicable WQPs specified in 41.4(1)*"d"*(5) from every six months to annually. This sampling shall begin during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs. Any system that maintains the range of values for the WQP reflecting OCCT specified in 567—paragraph 43.7(2)*"f"* during three consecutive years of annual monitoring may reduce the sample collection frequency for number of tap samples for applicable WQPs specified in 41.4(1)*"d"*(5) from annually to every three years. This sampling shall begin no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

A system may reduce the sample collection frequency for tap samples for applicable WQPs specified in 41.4(1)*"d"*(5)"1" to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to 0.005 mg/L, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L, and that it has maintained the range of values for the WQPs reflecting OCCT specified in 567—paragraph 43.7(2)*"f."* Monitoring conducted every three years shall be done no later than every third calendar year.

3. A PWS that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

4. Any PWS subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the WQPs specified in 567—paragraph 43.7(2)*"f"* for more than nine days in any six-month period specified in 567—paragraph 43.7(2)*"g"* shall resume distribution system tap sampling in accordance with 41.4(1)*"d"*(3). Such a system may resume annual monitoring for WQPs at the tap at the reduced number of sites specified in 41.4(1)*"d"*(5)"1" after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria of that paragraph or may resume triennial monitoring for WQPs at the tap at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria in 41.4(1)*"d"*(5)"2."

(6) Additional monitoring. The results of any monitoring conducted in addition to the minimum requirements of this subrule shall be considered in making any determinations under this subrule or 567—subrule 43.7(2).

**Summary of Monitoring Requirements for WQPs[1]**

| Monitoring Period | Location | WQPs[2] | Frequency |
|---|---|---|---|
| Initial Monitoring | Taps and SEP(s) | pH, alkalinity, orthophosphate or silica[3], calcium, conductivity, temperature | Every 6 months |

| **Monitoring Period** | **Location** | **WQPs[2]** | **Frequency** |
|---|---|---|---|
| After Installation of Corrosion Control | Taps | pH, alkalinity, orthophosphate or silica[3], calcium[4] | Every 6 months |
| | SEP(s)[6] | pH, alkalinity, if alkalinity is adjusted as part of corrosion control then include the chemical additive dosage rate and concentration, inhibitor dosage rate and inhibitor residual[5] | At least every 2 weeks |
| After Department Specifies WQP Values for OCC | Taps | pH, alkalinity, orthophosphate or silica[3], calcium[4] | Every 6 months |
| | SEP(s)[6] | pH, alkalinity, if alkalinity is adjusted as part of corrosion control then include the chemical additive dosage rate and concentration, inhibitor dosage rate and inhibitor residual[5] | At least every 2 weeks |
| Reduced Monitoring | Taps | pH, alkalinity, orthophosphate or silica[3], calcium[4] | Every 6 months, annually[7], or every 3 years[8], at a reduced number of sites |
| | SEP(s)[6] | pH, alkalinity, if alkalinity is adjusted as part of corrosion control then include the chemical additive dosage rate and concentration, inhibitor dosage rate and inhibitor residual[5] | At least every 2 weeks |

[1]Table is for illustrative purposes; consult the text of this subrule for precise regulatory requirements.

[2]Small and medium-size systems must monitor for WQPs only during monitoring periods in which the system exceeds the lead or copper AL.

[3]Orthophosphate must be measured only when an inhibitor containing a phosphate compound is used. Silica must be measured only when an inhibitor containing a silicate compound is used.

[4]Calcium must be measured only when calcium carbonate stabilization is used as part of corrosion control.

[5]Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured only when an inhibitor is used.

[6]GW systems may limit monitoring to representative locations throughout the systems.

[7]Systems may reduce monitoring frequency for WQPs at the tap from every six months to annually if they have maintained the range of values for WQPs reflecting OCC during three consecutive years of monitoring.

[8]Systems may further reduce the monitoring frequency for WQPs at the tap from annually to once every three years if they have maintained the range of values for WQPs reflecting OCC during three consecutive years of annual monitoring. Systems may accelerate to triennial monitoring for WQPs at the tap if they have maintained 90th percentile lead levels less than or equal to 0.005 mg/L, 90th percentile copper levels less than or equal to 0.65mg/L, and the range of WQPs designated by the department under 567—paragraph 43.7(2)*"f"* as representing OCC during two consecutive six-month monitoring periods.

*e. Lead and copper source water monitoring requirements.*

(1) Sample location, collection methods, and number of samples.

1. A PWS that fails to meet the lead or copper AL on the basis of tap samples collected in accordance with 41.4(1)*"c"* shall collect lead and copper source water samples in accordance with the following requirements:

- GW systems shall take a minimum of one sample at every entry point to the distribution system (hereafter called source/entry point or SEP) representative of each well after treatment. The system shall take one sample at the same SEP unless conditions make another sampling location more representative of each source or treatment plant.
- SW systems and any system with a combination of SW and GW shall take a minimum of one sample at SEP after any application of treatment or in the distribution system at a point representative of each source after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.
- If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an SEP during periods of normal operating conditions, when water is representative of all sources being used.

2. Where the results of sampling indicate an exceedance of maximum permissible source water levels established under 567—subparagraph 43.7(3)*"b"*(4), the department may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a confirmation sample is taken for lead or copper, then the results of the initial and confirmation samples shall be averaged in determining compliance with the maximum permissible levels. Lead and copper analytical results below the detection limit shall be considered to be zero. Analytical results above the detection limit but below the practical quantification level (PQL) shall either be considered as the measured value or be considered one-half the PQL.

(2) Monitoring after system exceeds tap water AL. Any system that exceeds the lead or copper AL at the tap shall collect one source water sample from each SEP no later than six months after the end of

the monitoring period during which the lead or copper AL was exceeded. For monitoring periods that are annual or less frequent, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs or, if the department has established an alternate monitoring period, the last day of that period.

(3) Monitoring after installation of source water treatment. Any system that installs source water treatment pursuant to 567—subparagraph 43.7(3)*"a"*(3) shall collect an additional source water sample from each SEP during two consecutive six-month monitoring periods by the deadline specified.

(4) Monitoring frequency after the department specifies maximum permissible source water levels or determines that source water treatment is not needed.

1. A PWS shall monitor at the frequency specified below in cases where the department specifies maximum permissible source water levels under 567—subparagraph 43.7(3)*"b"*(4) or determines that the system is not required to install source water treatment under 567—subparagraph 43.7(3)*"b"*(2). A PWS using only GW shall collect samples once during the three-year compliance period in effect when the department makes this determination. Such systems shall collect samples once during each subsequent compliance period. Triennial samples shall be collected every third calendar year. A PWS using SW (or a combination of SW and GW) shall collect samples once during each year, the first annual monitoring period to begin during the year in which the department determination is made under this subparagraph.

2. A PWS using only GW is not required to conduct lead or copper source water sampling if it meets the AL for the specific contaminant in tap water samples during the entire source water sampling.

(5) Reduced monitoring frequency.

1. A system using only GW may reduce the lead and copper monitoring frequency in source water to once during each nine-year compliance cycle provided that the samples are collected no later than every ninth calendar year and the system meets one of the following criteria:

- The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead or copper concentrations specified in 567—subparagraph 43.7(3)*"b"*(4) during at least three consecutive compliance periods under 41.4(1)*"e"*(4)"1"; or
- The department has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive compliance periods in which sampling was conducted under 41.4(1)*"e"*(4)"1," the concentrations in the source water were less than or equal to 0.005 mg/L for lead and less than or equal to 0.65 mg/L for copper.

2. A PWS using SW (or a combination of SW and GW) may reduce the monitoring frequency in 41.4(1)*"e"*(4)"1" to once during each nine-year compliance cycle provided that the samples are collected no later than every ninth calendar year and the system meets one of the following criteria:

- The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified in 567—subparagraph 43.7(3)*"b"*(4) for at least three consecutive years; or
- The department has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive years, the concentrations in source water were less than or equal to 0.005 mg/L for lead and less than or equal to 0.65 mg/L for copper.

3. A PWS that uses a new source of water is not eligible for reduced monitoring for lead or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified.

*f. Corrosivity monitoring protocol—special monitoring for corrosivity characteristics.* Suppliers of water for CWSs shall collect samples from a representative SEP to determine the corrosivity characteristics of the water. This determination shall only include one round of sampling, except in cases where the department concludes additional monitoring is necessary due to variability of the raw water sources. Sampling requirements and approved analytical methods are as follows:

(1) SW systems. Systems utilizing a SW source either in whole or in part shall collect two samples per plant to determine the corrosivity characteristics. One of these samples shall be collected during the midwinter months and the other during midsummer.

(2) GW systems. Systems utilizing GW sources shall collect one sample per plant or source, except systems with multiple plants that do not alter the corrosivity characteristics identified in 41.4(1)*"f"*(3) or systems served by multiple wells drawing raw water from a single aquifer may, with departmental approval, be considered one treatment plant or source when determining the required number of samples.

(3) Corrosivity characteristics analytical parameters. Determination of corrosivity characteristics of water shall include measurements of pH, calcium hardness, alkalinity, temperature, total dissolved solids (TDS or total filterable residue), and calculation of the Langelier Index. In addition, sulfate and chloride monitoring may be required by the department. At the department's discretion, the Aggressiveness Index test may be substituted for the Langelier Index test.

(4) Corrosivity indices methodology. The following methods must be used to calculate the corrosivity indices:

1. Aggressiveness Index—"ANSI/AWWA C401-93: AWWA Standard for the Selection of Asbestos Cement Pressure Pipe, 4″–16″ for Water Distribution Systems."
2. Langelier Index—SM 14th edition, Method 203, pp. 61-63.

(5) Distribution system construction materials. CWS and NTNCs shall identify whether the any of following construction materials are present in their distribution system and report to the department:

1. Lead from piping, solder, caulking, interior lining of distribution mains, alloys, and home plumbing.
2. Copper from piping and alloys, service lines, and home plumbing.
3. Galvanized piping, service lines, and home plumbing.
4. Ferrous piping materials such as cast iron and steel.
5. Asbestos cement pipe.
6. Vinyl lined asbestos cement pipe.
7. Coal tar lined pipes and tanks.
8. Pipe with asbestos cement lining.

*g. Lead, copper, and WQP analytical methods.*

(1) Analytical methods. Analyses for alkalinity, calcium, conductivity, orthophosphate, pH, silica, and temperature may be performed by a Grade I, II, III, or IV certified operator meeting the requirements of 567—Chapter 81, any person under the supervision of such an operator, or a laboratory certified in accordance with 567—Chapter 83. Lead and copper analyses under this subrule shall only be conducted by certified laboratories, pursuant to 567—Chapter 83. The following methods must be used:

**Lead, Copper, and WQP Analytical Methods**

| Contaminant | Methodology[9] | Reference (Method Number) | | | | |
|---|---|---|---|---|---|---|
| | | EPA | ASTM[3] | SM | SM Online[16] | USGS[5] or Other |
| Alkalinity | Titrimetric | | D1067-92B, 02B, 06B, 11B | 2320 B[11, 15, 18] | 2320 B-97 | |
| | Electrometric titration | | | | | I-1030-85 |
| Calcium | EDTA titrimetric | | D511-93A, 03A, 09A, 14A | 3500-Ca D[4] 3500-Ca B[12, 15, 18] | 3500-Ca B-97 | |
| | Atomic absorption; direct aspiration | | D511-93B, 03B, 09B, 14B | 3111 B[4, 15, 18] | 3111 B-99 | |
| | ICP | 200.7[2] | | 3120 B[11, 15, 18] | 3120 B-99 | |
| | Ion chromatography | | D6919-03, 09 | | | |
| | AVICP-AES | 200.5, Rev. 4.2[17] | | | | |
| Chloride | Ion chromatography | 300.0[8], 300.1[13] | D4327-97, 03 | 4110 B[11, 15] | 4550 B-00 | |
| | Potentiometric titration | | | 4500-$Cl^-$ D[11, 15] | 4500-$Cl^-$ D-97 | |
| | Argentometric titration | | D512-89B (reapproved 1999), D512-04B | 4500-$Cl^-$ B[11, 15] | 4500-$Cl^-$ B-97 | |

| Contaminant | Methodology[9] | Reference (Method Number) | | | | |
|---|---|---|---|---|---|---|
| | | EPA | ASTM[3] | SM | SM Online[16] | USGS[5] or Other |
| | Capillary ion electrophoresis | | | | | D6508, Rev. 2[14] |
| Conductivity | Conductance | | D1125-95A (reapproved 1999), 14A | 2510 B[11, 15, 18] | 2510 B-97 | |
| Copper[6] | Atomic absorption; furnace technique | | D1688-95C, 02C, 07C, 12C | 3113 B[4, 15, 18] | 3113 B-99, 04, 10 | |
| | Atomic absorption; direct aspiration | | D1688-95A, 02A, 07A, 12A | 3111 B[4, 15, 18] | 3111 B-99 | |
| | ICP | 200.7[2] | | 3120 B[11, 15, 18] | 3120 B-99 | |
| | ICP-MS | 200.8[2] | | | | |
| | AVICP-AES | 200.5, Rev. 4.2[17] | | | | |
| | Atomic absorption; platform furnace | 200.9[2] | | | | |
| | Colorimetric | | | | | Hach Method 8026[19]; Hach Method 10272[20] |
| Lead[6] | Atomic absorption; furnace technique | | D3559-96D, 03D, 08D | 3113 B[4, 15, 18] | 3113 B-99, 04, 10 | |
| | ICP-MS | 200.8[2] | | | | |
| | AVICP-AES | 200.5, Rev. 4.2[17] | | | | |
| | Atomic absorption; platform furnace technique | 200.9[2] | | | | |
| | Differential pulse anodic stripping voltammetry | | | | | Method 1001[10] |
| pH | Electrometric | 150.1[1], 150.2[1] | D1293-95, 99, 12 | 4500-$H^+$ B[11, 15, 18] | 4500-$H^+$ B-00 | |
| Orthophosphate (Unfiltered, no digestion or hydrolysis) | Colorimetric, automated, ascorbic acid | 365.1[8] | | 4500-P F[11, 15, 18] | 4500-P F-99 | Thermo Fisher Discrete Analyzer[21] |
| | Colorimetric, ascorbic acid, single reagent | | D515-88A | 4500-P E[11, 15, 18] | 4500-P E-99 | |
| | Colorimetric, phosphomolybdate; | | | | | I-1602-85 |
| | Automated-segmented flow | | | | | I-2601-90[8] |
| | Automated discrete | | | | | I-2598-85 |
| | Ion chromatography | 300.0[7], 300.1[13] | D4327-97, 03, 11 | 4110 B[11, 15, 18] | 4110 B-00 | |
| | Capillary ion electrophoresis | | | | | D6508, Rev. 2[14] |
| | Colorimetric, molybdate blue | | | | | I-1700-85 |
| | Automated-segmented flow | | | | | I-2700-85 |
| | Colorimetric | | D859-95, 00, 05, 10 | | | |

| Contaminant | Methodology[9] | Reference (Method Number) | | | | |
|---|---|---|---|---|---|---|
| | | EPA | ASTM[3] | SM | SM Online[16] | USGS[5] or Other |
| Silica | Molybdosilicate | | | 4500-Si D[4] 4500-$SiO_2$ C[12, 15, 18] | 4500-$SiO_2$ C-97 | |
| | Heteropoly blue | | | 4500-Si E[15] 4500-$SiO_2$ D[12, 15, 18] | 4500-$SiO_2$ D-97 | |
| | Automated method for molybdate-reactive silica | | | 4500-Si F 4500-$SiO_2$ E[12, 15, 18] | 4500-$SiO_2$ E-97 | |
| | ICP[6] | 200.7[2] | | 3120 B[11, 15, 18] | 3120 B-99 | |
| | AVICP-AES | 200.5, Rev. 4.2[17] | | | | |
| Sulfate | Ion chromatography | 300.0[7], 300.1[13] | D4327-97, 03 | 4110[11, 15, 18] | 4110 B-00 | |
| | Automated methylthymol blue | 375.2[7] | | 4500-$SO_4$ F[11, 15] | 4500-$SO_4^{-2}$ F-97 | |
| | Gravimetric | | | 4500-$SO_4$ C[11, 15] 4500-$SO_4$ D[11, 15] | 4500-$SO_4^{-2}$ C-97 4500-$SO_4^{-2}$ D-97 | |
| | Turbidimetric | | D516-90, 02, 07 | 4500-$SO_4$ E[11, 15] | 4500-$SO_4^{-2}$ E-97 | |
| | Capillary ion electrophoresis | | | | | D6508, Rev. 2[14] |
| Temperature | Thermometric | | | 2550 B[11, 15, 18] | 2550-00, 10 | |
| Total Filterable Residue (TDS) | Gravimetric | | | 2540 C[11, 15] | 2540 C-97 | |

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the sources listed below. Information regarding the documents can be obtained from the Safe Drinking Water Hotline at 800.426.4791. Documents may be inspected at EPA's Drinking Water Docket or at the Office of Federal Register.

[1]"Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1983. NTIS as PB84-128677.

[2]"Methods for the Determination of Metals in Environmental Samples," EPA-600/4-91-010, June 1991. NTIS as PB91-231498.

[3]ASTM, 1994, 1996, 1999, or 2003, Vols. 11.01 and 11.02; the methods listed are the only versions that may be used. The previous versions of D1688-95A and D1688-95C (copper), D3559-95D (lead), D1293-95 (pH), D1125-91A (conductivity), and D859-94 (silica) are also approved. These previous versions, D1688-90A, C, D3559-90D, D1293-84, D1125-91A and D859-88, respectively, are located in ASTM, 1994.

[4]SM, 18th and 19th editions (1992 and 1995, respectively). Either edition may be used.

[5]Techniques of Water Resources Investigation of the USGS, Book 5, Chapter A-1, 3rd ed., 1989. Information Services, USGS, Federal Center, Box 25286, Denver, CO 80225-0425.

[6]Samples may not be filtered. Samples that contain less than 1 NTU and are properly preserved (concentrated nitric acid to pH < 2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. When digestion is required, the total recoverable technique as defined in the method must be used.

[7]"Methods for the Determination of Inorganic Substances in Environmental Samples," EPA/600/R-93/100, August 1993. NTIS as PB94-120821.

[8]"Methods of Analysis by the USGS National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93-125." Information Services, USGS, Federal Center, Box 25286, Denver, CO 80225-0425.

[9]Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. Preconcentration may be required for direct analysis of lead by Methods 200.9, 3113B, and 3559-90D unless multiple in-furnace depositions are made.

[10]Method 1001; Palintest Water Analysis Technologies, www.palintest.com; or www.hach.com.

[11]SM, 18th, 19th, and 20th editions (1992, 1995, and 1998, respectively). Any edition may be used, except that the versions of 3111B and 3113B in the 20th edition may not be used.

[12]SM, 20th edition (1998).

[13]"Methods for the Determination of Organic and Inorganic Compounds in Drinking Water," Vol. 1, EPA 815-R-00-014, August 2000. NTIS, PB2000-106981.

[14]Method D6508, Rev. 2, "Test Method for Determination of Dissolved Inorganic Anions in Aqueous Matrices Using Capillary Ion Electrophoresis and Chromate Electrolyte," Waters Corp., 34 Maple Street, Milford, MA 01757.

[15]SM, 21st edition (2005).

[16]SM Online. The year in which each method was approved is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[17]EPA Method 200.5, Revision 4.2: "Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry," 2003. EPA/600/R-06/115. www.nemi.gov.

[18]SM, 22nd edition (2012).

[19]Hach Company. "Hach Method 8026 – Spectrophotometric Measurement of Copper in Finished Drinking Water," December 2015, Revision 1.2. www.hach.com.

[20]Hach Company. "Hach Method 10272 – Spectrophotometric Measurement of Copper in Finished Drinking Water," December 2015, Revision 1.2. www.hach.com.

[21]Thermo Fisher. "Thermo Fisher Scientific Drinking Water Orthophosphate Method for Thermo Scientific Gallery Discrete Analyzer," February 2016. Revision 5. Thermo Fisher Scientific, Ratastie 2 01620 Vantaa, Finland.

(2) Lead and copper analyses under this subrule shall only be conducted by certified laboratories in accordance with 567—Chapter 83.

(3) All lead and copper levels measured between the practical quantitation limit (PQL) and MDL must be either reported as measured or reported as one-half the PQL specified for lead and copper in 567—paragraph 83.6(7)*"a"*(5)"2." All levels below the lead and copper MDLs must be reported as zero.

**41.4(2)** *Lead, copper, and corrosivity regulation by the setting of an MCL.*

**567—41.5(455B) Organic chemicals.**

**41.5(1)** *MCLs and other requirements for organic chemicals.* MCLs, analytical methods, and monitoring requirements for two classes of organic chemical contaminants apply to CWSs and NTNCs as specified herein. The two referenced organic chemical classes are volatile organic chemicals (VOCs) and synthetic organic chemicals (SOCs). BAT for control of these organic contaminants is referenced in 567—paragraph 43.3(10)*"a."*

*a. Compliance.* Compliance with the VOC and SOC MCL is calculated pursuant to 41.5(1)*"b"*(2).

*b. MCLs and analytical methodology for organic compounds.* The VOC and SOC MCLs are listed in the following table. VOC and SOC analyses shall be conducted using the methods in the following table and its footnotes or their equivalent as approved by EPA. For analysis of a compliance sample, a certified laboratory must be able to achieve at least the MDL for the specific VOC or SOC shown in the following table.

(1) Table.

**Organic Chemical (VOC and SOC) Contaminants, Codes, MCLs, Analytical Methods, and Detection Limits**

| Contaminant | EPA Contaminant Code | MCL (mg/L) | Methodology[1] | Detection Limit (mg/L) |
|---|---|---|---|---|
| **Volatile Organic Chemicals (VOCs):** | | | | |
| Benzene | 2990 | 0.005 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| Carbon tetrachloride | 2982 | 0.005 | 502.2, 524.2, 524.3, 524.4[7], 551.1 | 0.0005 |
| Chlorobenzene (mono) | 2989 | 0.1 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| 1,2-Dichlorobenzene (ortho) | 2968 | 0.6 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| 1,4-Dichlorobenzene (para) | 2969 | 0.075 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |

| Contaminant | EPA Contaminant Code | MCL (mg/L) | Methodology[1] | Detection Limit (mg/L) |
|---|---|---|---|---|
| 1,2-Dichloroethane | 2980 | 0.005 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| 1,1-Dichloroethylene | 2977 | 0.007 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| cis-1,2-Dichloroethylene | 2380 | 0.07 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| trans-1,2-Dichloroethylene | 2979 | 0.1 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| Dichloromethane | 2964 | 0.005 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| 1,2-Dichloropropane | 2983 | 0.005 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| Ethylbenzene | 2992 | 0.7 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| Styrene | 2996 | 0.1 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| Tetrachloroethylene | 2987 | 0.005 | 502.2, 524.2, 524.3, 524.4[7], 551.1 | 0.0005 |
| Toluene | 2991 | 1 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| 1,1,1-Trichloroethane | 2981 | 0.2 | 502.2, 524.2, 524.3, 524.4[7], 551.1 | 0.0005 |
| Trichloroethylene | 2984 | 0.005 | 502.2, 524.2, 524.3, 524.4[7], 551.1 | 0.0005 |
| 1,2,4-Trichlorobenzene | 2378 | 0.07 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| 1,1,2-Trichloroethane | 2985 | 0.005 | 502.2, 524.2, 524.3, 524.4[7], 551.1 | 0.0005 |
| Vinyl chloride | 2976 | 0.002 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| Xylenes (total) | 2955 | 10 | 502.2, 524.2, 524.3, 524.4[7] | 0.0005 |
| **Synthetic Organic Chemicals (SOCs):** | | | | |
| Alachlor[3] | 2051 | 0.002 | 505, 507, 508.1, 525.2, 525.3, 551.1 | 0.0002 |
| Aldicarb | 2047 | 0.003 | 531.1, 6610 | 0.0005 |
| Aldicarb sulfone | 2044 | 0.002 | 531.1, 6610 | 0.0008 |
| Aldicarb sulfoxide | 2043 | 0.004 | 531.1, 6610 | 0.0005 |
| Atrazine[3] | 2050 | 0.003 | 505, 507, 508.1, 523, 525.2, 525.3, 536, 551.1, Syngenta AG-625[5] | 0.0001 |
| Benzo(a)pyrene | 2306 | 0.0002 | 525.2, 525.3, 550, 550.1 | 0.00002 |
| Carbofuran | 2046 | 0.04 | 531.1, 531.2, 6610, 6610B, 6610 B-04[2] | 0.0009 |
| Chlordane[3] | 2959 | 0.002 | 505, 508, 508.1, 525.2, 525.3 | 0.0002 |
| 2,4-D[6] (as acids, salts, and esters) | 2105 | 0.07 | 515.1, 515.2, 515.3, 515.4, 555, D5317-93, 98 (Reapproved 2003), 6610B, 6640-B, 6640 B-01, 6640 B-06 | 0.0001 |
| Dalapon | 2031 | 0.2 | 515.1, 515.3, 515.4, 552.1, 552.2, 552.3, 557, 6640, 6610B, 6640-B, 6640 B-01, 6640 B-06 | 0.001 |
| 1,2-Dibromo-3-chloropropane (DBCP) | 2931 | 0.0002 | 504.1, 524.3, 551.1 | 0.00002 |
| Di(2-ethylhexyl)adipate | 2035 | 0.4 | 506, 525.2, 525.3 | 0.0006 |
| Di(2-ethylhexyl)phthalate | 2039 | 0.006 | 506, 525.2, 525.3 | 0.0006 |
| Dinoseb[6] | 2041 | 0.007 | 515.1, 515.2, 515.3, 515.4, 555, 6610B, 6640-B, 6640 B-01, 6640 B-06 | 0.0002 |
| Diquat | 2032 | 0.02 | 549.2 | 0.0004 |
| Endothall | 2033 | 0.1 | 548.1 | 0.009 |
| Endrin[3] | 2005 | 0.002 | 505, 508, 508.1, 525.2, 525.3, 551.1 | 0.00001 |
| Ethylene dibromide (EDB) | 2946 | 0.00005 | 504.1, 524.3, 551.1 | 0.00001 |

| Contaminant | EPA Contaminant Code | MCL (mg/L) | Methodology[1] | Detection Limit (mg/L) |
|---|---|---|---|---|
| Glyphosate | 2034 | 0.7 | 547, 6651, 6651B, 6651 B-00, 6640 B-05 | 0.006 |
| Heptachlor[3] | 2065 | 0.0004 | 505, 508, 508.1, 525.2, 525.3, 551.1 | 0.00004 |
| Heptachlor epoxide[3] | 2067 | 0.0002 | 505, 508, 508.1, 525.2, 525.3, 551.1 | 0.00002 |
| Hexachlorobenzene[3] | 2274 | 0.001 | 505, 508, 508.1, 525.2, 525.3, 551.1 | 0.0001 |
| Hexachlorocyclopentadiene[3] | 2042 | 0.05 | 505, 508, 508.1, 525.2, 525.3, 551.1 | 0.0001 |
| Lindane (gamma BHC)[3] | 2010 | 0.0002 | 505, 508, 508.1, 525.2, 525.3, 551.1 | 0.00002 |
| Methoxychlor[3] | 2015 | 0.04 | 505, 508, 508.1, 525.2, 525.3, 551.1 | 0.0001 |
| Oxamyl | 2036 | 0.2 | 531.1, 531.2, 6610, 6610B, 6610 B-04[2] | 0.002 |
| Pentachlorophenol | 2326 | 0.001 | 515.1, 515.2, 515.3, 515.4, 525.2, 525.3, 555, D5317-93, 98 (Reapproved 2003), 6610B, 6640-B, 6640 B-01, 6640 B-06 | 0.00004 |
| Picloram[3, 6] | 2040 | 0.5 | 515.1, 515.2, 515.3, 515.4, 555, D5317-93, 98 (Reapproved 2003), 6610B, 6640-B, 6640 B-01, 6640 B-06 | 0.0001 |
| PCBs[4] (as decachlorobiphenyl) (as Arochlors)[3] | 2383 | 0.0005 | 508A 505, 508, 508.1, 525.2, 525.3 | 0.0001 |
| Simazine[3] | 2037 | 0.004 | 505, 507, 508.1, 523, 525.2, 525.3, 536, 551.1 | 0.00007 |
| 2,3,7,8-TCDD (dioxin) | 2063 | $3x10^{-8}$ | 1613 | $5x10^{-9}$ |
| 2,4,5-TP[6] (Silvex) | 2110 | 0.05 | 515.1, 515.2, 515.3, 515.4, 555, D5317-93, 98 (Reapproved 2003), 6610B, 6640-B, 6640 B-01, 6640 B-06 | 0.0002 |
| Toxaphene[3] | 2020 | 0.003 | 505, 508, 508.1, 525.2, 525.3 | 0.001 |

[1]Analyses for the contaminants in this table shall be conducted using the following EPA methods or their equivalent as approved by EPA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at EPA's Drinking Water Docket or at NARA.

NTIS methods:

Methods for the Determination of Organic Compounds in Drinking Water, EPA-600/4-88-039, December 1988, Revised July 1991 (NTIS PB91-231480): Methods 508A and 515.1.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement I, EPA-600/4-90-020, July 1990 (NTIS PB91-146027): Methods 547, 550, 550.1.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement II, EPA-600/R-92-129, August 1992 (NTIS PB92-207703): Methods 548.1, 552.1, 555.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement III, EPA-600/R-95-131, August 1995 (NTIS PB95-261616): Methods 502.2, 504.1, 505, 506, 507, 508, 508.1, 515.2, 524.2, 525.2, 531.1, 551.1, 552.2.

EPA Method 523, "Determination of Triazine Pesticides and Their Degradates in Drinking Water by Gas Chromatography/Mass Spectrometry (GC/MS)," 2011. EPA-815-R-11-002. www.nepis.epa.gov.

EPA Method 524.3, Version 1.0. "Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry," June 2009. EPA 815-B-09-009. www.nemi.gov.

EPA Method 525.3, "Determination of Semivolatile Organic Chemicals in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatograph/Mass Spectrometry (GC/MS)," 2012. EPA/600/R-12-010. www.nepis.epa.gov.

EPA Method 536, "Determination of Triazine Pesticides and Their Degradates in Drinking Water by Liquid Chromatography Electrospray Ionization Tandem Mass Spectrometry (LC/ESI-MS/MS)," 2007. EPA/815-B-07-002. www.nepis.epa.gov.

EPA Method 557, "Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC-ESI-MS/MS)," September 2009. EPA 815-B-09-012. www.nemi.gov.

Method 1613 "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS," EPA-821-B-94-005, October 1994 (NTIS PB95-104774). APHA documents:

SM, supplement to the 18th edition, 1994, 19th edition, 1995, 20th edition, 1998, 21st edition, 2005, or 22nd edition, 2012 (any of these editions may be used), APHA: Method 6610 and (carbofuran and oxamyl only) 6610B and 6610 B-04; Method 6640B (21st and 22nd editions only) and SM online 6640 B-01 for 2,4-D, 2,4,5-TP Silvex, dalapon, dinoseb, pentachlorophenol, and picloram; Method 6651B (21st and 22nd editions only) and SM online 6670-B-00 for glyphosate.

SM, 18th edition, 1992, 19th edition, 1995, or 20th edition, 1998, (any of these editions may be used), APHA: Method 6651.

ASTM, 1999, Vol. 11.02 (or any edition published after 1993), ASTM: D5317-93, 98 (Reapproved 2003).

Methods 515.3 and 549.2, EPA NERL, 26 W. Martin Luther King Drive, Cincinnati, OH 45268.

Method 515.4, "Determination of Chlorinated Acids in Drinking Water by Liquid-Liquid Microextraction, Derivatization and Fast Gas Chromatography with Electron Capture Detection," Revision 1.0, April 2000, EPA 815/B-00/001 and EPA Method 552.3, "Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-liquid Microextraction, Derivatization, and Gas Chromatography with Electron Capture Detection," Revision 1.0, July 2003, EPA 815-B-03-002, www.epa.gov/safewater/methods/sourcalt.html.

Method 531.2, "Measurement of n-Methylcarbamoyloximes and n-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Postcolumn Derivatization," Revision 1.0, September 2001, EPA 815/B-01/002, www.epa.gov/safewater/methods/sourcalt.html.

Syngenta AG-625 Method, "Atrazine in Drinking Water by Immunoassay," February 2001, Syngenta Crop Protection, Inc., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419.

Other required analytical test procedures germane to the conduct of these analyses are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994 (NTIS PB95-104766).

[2]SM Online. The year that each method was approved is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[3]The detectors specified in Method 505, 507, 508, or 508.1 may be substituted for the purpose of achieving lower MDLs with either an electron capture or nitrogen-phosphorus detector, provided all regulatory requirements and quality control criteria are met.

[4]PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl. Users of Method 505 may have more difficulty in achieving the required detection limits than users of Method 508. 508.1, or 525.2.

[5]This method may not be used for atrazine analysis in any system where chlorine dioxide is used in the drinking water treatment. In samples from all other systems, any atrazine result generated by Method AG-625 that is greater than one-half the MCL must be confirmed using another approved atrazine method and should use additional volume of the original sample collected for compliance monitoring. In instances where a result from Method AG-625 triggers such confirmatory testing, the confirmatory result is to be used to determine compliance.

[6]Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in EPA Methods 515.1, 515.2, 515.3, 515.4, and 555, and ASTM Method D5317-93, 98 (Reapproved 2003).

[7]EPA Method 524.4, Version 1.0. "Measurement of Purgeable Organic Compounds in Water by Gas Chromatography/Mass Spectrometry Using Nitrogen Purge Gas," May 2013, EPA 815-R-13-002.

(2) Organic chemical compliance calculations. Compliance with this paragraph shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL in this paragraph, the system is in violation of the MCL. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used when calculating the running annual average (RAA). If a system is in violation of an MCL, the water supplier is required to give notice to the department in accordance with 567—subrule 40.8(1) and to provide PN as required by 567—40.5(455B).

1. Monitoring more than once per year for VOC or SOC contaminants. For systems that monitor more than once per year, MCL compliance is determined by an RAA of all samples collected at each sampling point.

2. Monitoring annually or less frequently for VOC contaminants. Systems that monitor annually or less frequently and whose VOC sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling. However, if any sample result will cause the RAA to exceed the MCL at any sampling point, a system is immediately out of compliance with the MCL.

3. Monitoring annually or less frequently for SOC contaminants. Systems that monitor annually or less frequently and whose SOC sample result exceeds the regulatory detection limit specified in 41.5(1) *"b"*(1) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling. However, if any sample result will cause the RAA to exceed the MCL at any sampling point, a system is immediately out of compliance with the MCL.

(3) TTs for acrylamide and epichlorohydrin. Each PWS must certify annually in writing to the department (using third-party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the following levels:

Acrylamide = 0.05 percent dosed at 1 ppm (or equivalent)

Epichlorohydrin = 0.01 percent dosed at 20 ppm (or equivalent)

Certifications can rely on information provided by manufacturers or third parties, as approved by the department.

*c. VOC and SOC monitoring requirements.* Each PWS shall monitor at the time designated within each compliance period. All new systems or systems that use a new source of water must demonstrate compliance with the MCLs within the department-specified time period. The system must also comply with the specified initial sampling frequencies to ensure it can demonstrate MCL compliance. A water source that is determined by the department to be a new SEP is considered to be a new source for the purposes of this paragraph. Routine and increased monitoring shall be conducted in accordance with this in this paragraph.

(1) Routine VOC monitoring requirements. CWSs and NTNCs shall monitor the VOCs listed in 41.5(1)*"b"*(1) to determine MCL compliance.

(2) VOC monitoring protocol.

1. GW monitoring. GW systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a source/entry point or SEP). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

2. SW monitoring. SW systems (and combined SW/GW systems) shall take a minimum of one sample at each SEP after treatment. Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

3. Multiple sources. If a system draws water from more than one source and the sources are combined before distribution, it must sample at an SEP during periods of normal operating conditions. If a representative sample of all water sources cannot be obtained, as determined by the department, separate SEPs with the appropriate monitoring requirements will be assigned by the department.

4. Initial VOC monitoring frequency. Each CWS and NTNC shall take four consecutive quarterly samples for each VOC during each compliance period, beginning in the initial compliance period. If the initial VOC monitoring has been completed by December 31, 1992, and a system did not detect any VOC, then each GW and SW system shall take one sample annually beginning with the initial compliance period.

5. Reduced VOC monitoring for GW systems. After a minimum of three years of annual sampling, the department may allow GW systems with no previous detection of any VOC to take one sample during each compliance period.

6. VOC monitoring waivers. Each CWS and NTNC GW system that does not detect a VOC may apply to the department for a waiver from 41.5(1)*"c"*(2)"4" and "5" after completing the initial monitoring. A waiver shall be effective for no more than six years (two compliance periods). The department may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene. Detection is defined as greater than or equal to 0.0005 mg/L.

7. Bases of a VOC monitoring waiver. The department may grant a waiver if it finds that there is no knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or the system's zone of influence. If previous use of the contaminant is unknown or it has been used previously, the following factors shall be used to determine whether a waiver is granted.

- Previous analytical results.
- The system's proximity to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near: a water treatment facility or at manufacturing, distribution, or storage facilities, from hazardous and municipal waste landfills, or from other waste handling or treatment facilities.
- The environmental persistence and transport of the contaminants.
- The number of persons served by the PWS and the proximity of a smaller system to a larger system, and
- How well the water source is protected against contamination. GW systems must consider factors such as depth of the well, the type of soil, and wellhead protection. SW systems must consider watershed protection.

8. VOC waivers for GW systems. As a condition of the monitoring waiver, a GW system must take one sample at each sampling point during the time the waiver is effective and update its vulnerability assessment, considering the factors in 41.5(1)*"c"*(2)"7." Based on this vulnerability assessment, the department must reconfirm that the system is nonvulnerable. If the department does not reconfirm within three years of the initial vulnerability determination, the waiver is invalidated and the system is required to sample annually as specified in 41.5(1)*"c"*(2)"4."

9. VOC waivers for SW systems. Each CWS and NTNC that does not detect a VOC may apply to the department for a waiver from 41.5(1)*"c"*(2)"4" after completing the initial monitoring. Systems meeting this criterion must be determined by the department to be nonvulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the department-specified frequency (if any).

10. Increased VOC monitoring—quarterly. If a VOC is detected at a level exceeding 0.0005 mg/L in any sample, the system must monitor quarterly at each sampling point which resulted in a detection. The department may decrease the quarterly monitoring specified in 41.5(1)*"c"*(2)"4" provided it has determined that the system is reliably and consistently below the MCL. The department shall not make this determination unless a GW system takes a minimum of two quarterly samples and a SW system takes a minimum of four quarterly samples.

11. Increased VOC monitoring—annual. If the department determines that a system is reliably and consistently below the MCL, the system may be allowed to monitor annually. Systems that monitor annually must monitor during the quarter(s) that previously yielded the highest analytical result. Systems that have three consecutive annual samples with no detection of a contaminant may apply for a waiver as specified in 41.5(1)*"c"*(2)"6."

12. Increased VOC monitoring—vinyl chloride. GW systems that have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the department may reduce the quarterly vinyl chloride monitoring frequency to one sample during each compliance period. SW systems are required to monitor for vinyl chloride as specified by the department.

13. VOCs reliably and consistently below the MCL. Systems that violate the MCL requirements of 41.5(1)*"b"*(1) must monitor quarterly. After a minimum of four consecutive quarterly samples that show the system is in compliance, and a department determination that the system is reliably and consistently below the MCL, the system may monitor at the frequency and times specified in 41.5(1)*"c"*(2)"10," third unnumbered paragraph (following department approval).

(3) Routine and repeat SOC monitoring requirements. Analysis of the SOCs contaminants listed in 41.5(1)*"b"*(1) to determine MCL compliance shall be conducted as follows:

1. SOC GW monitoring protocols. GW systems shall take a minimum of one sample at every SEP. Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

2. SOC SW monitoring protocols. SW systems shall take a minimum of one sample at each SEP after treatment. Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. For purposes of this paragraph, SW systems include systems with a combination of surface and ground sources.

3. Multiple sources. If a system draws water from more than one source and the sources are combined before distribution, it must sample at an SEP during periods of normal operating conditions. If a representative sample of all water sources cannot be obtained, as determined by the department, separate SEPs with the appropriate monitoring requirements will be assigned by the department.

4. SOC monitoring frequency. CWSs and NTNCs shall take four consecutive quarterly samples for each SOC during each compliance period. Systems serving more than 3,300 persons that do not detect an SOC in the initial compliance period may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period. Systems serving less than or equal to 3,300

persons that do not detect an SOC in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

5. SOC monitoring waivers. Each CWS and NTNC may apply to the department for a waiver from the requirements of 41.5(1)*"c"*(3)"4." A system must reapply for a waiver for each compliance period.

6. Bases of an SOC monitoring waiver. The department may grant a waiver if it finds that there is no knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If previous use of the contaminant is unknown or it has been used previously, the following factors shall be used to determine whether a waiver is granted.

- Previous analytical results.
- The system proximity to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, from hazardous and municipal waste landfills, or from other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, homes, and gardens, and other land application uses.
- The environmental persistence and transport of a pesticide or PCBs.
- How well the water source is protected against contamination due to such factors as depth of the well, the type of soil, and the well casing integrity.
- Elevated nitrate levels at the water source, and
- Use of PCBs in equipment used in the production, storage, or distribution of water.

7. Increased SOC monitoring. If an SOC is detected in any sample, then:

- Each system must monitor quarterly at each sampling point which resulted in a detection.
- The department may decrease the quarterly SOC monitoring if the system is reliably and consistently below the MCL. The department shall not make this determination unless a GW system takes a minimum of two quarterly samples and a SW system takes a minimum of four quarterly samples.
- After the department determines the system is reliably and consistently below the MCL, the system may monitor annually. Systems that monitor annually must monitor during the quarter that previously yielded the highest analytical result.
- Systems that have three consecutive annual samples with no detection of a contaminant may apply for a waiver as specified in 41.5(1)*"c"*(3)"6."
- If monitoring results in detection of one or more of certain related contaminants (aldicarb, aldicarb sulfone, aldicarb sulfoxide, heptachlor, and heptachlor epoxide), subsequent monitoring shall analyze for all related contaminants.

8. MCL violation and reliably/consistently below the MCL. Systems that violate the requirements of 41.5(1)*"b"* must monitor quarterly. After a minimum of four quarterly samples show the system is in compliance and the department determines the system is reliably and consistently below the MCL, the system shall monitor at the frequency specified in 41.5(1)*"c"*(3)"7."

(4) SOC and VOC confirmation samples. The department may require a confirmation sample for positive or negative results. If a confirmation sample is required, the result must be averaged with the first sampling result and the average must be used for the compliance determination as specified by 41.5(1)*"b"*(2). The department has discretion to disregard results of obvious sampling errors from this calculation.

(5) Grandfathered VOC and SOC data. The department may allow the use of monitoring data collected after January 1, 1988, for VOCs and January 1, 1990, for SOCs required under SDWA Section 1445 for initial monitoring compliance. If the data are generally consistent with the other requirements in this subparagraph, the department may use such data to satisfy the initial monitoring requirement for the initial compliance period beginning January 1, 1993. Systems that use grandfathered samples for VOCs and did not detect any contaminants listed in 41.5(1)*"b"*(1) shall begin monitoring annually in accordance with 41.5(1)*"c"*(2) beginning January 1, 1993.

(6) Increased VOC and SOC monitoring. The department may increase the required monitoring frequency, where necessary, to detect system variations (e.g., fluctuations in concentration due to seasonal use, changes in water source, changes to treatment facilities, or normal operation thereof).

(7) VOC and SOC vulnerability assessment criteria. Vulnerability for each PWS shall be determined by the department based upon an assessment of the following factors.

1. Previous monitoring results. A system will be classified vulnerable if any sample was analyzed to contain one or more VOCs, SOCs, or acrylamide and epichlorohydrin, except for trihalomethanes or other demonstrated DBPs.

2. Proximity of SW supplies to commercial or industrial use, disposal, or storage of VOCs or SOCs. SW supplies that withdraw water directly from reservoirs are considered vulnerable if the drainage basin upgradient and within two miles of the shoreline at the maximum water level contains major transportation facilities or any of the contaminant sources in this subparagraph. SW supplies that withdraw water directly from flowing water courses are considered vulnerable if the drainage basin upgradient and within two miles of the water intake structure contains major transportation facilities or any of the contaminant sources in this subparagraph. Major transportation facilities include but are not limited to primary highways or railroads.

3. Proximity of wells to commercial or industrial use, disposal, or storage of VOCs or SOCs. Wells that are not separated from sources of contamination by at least the following distances will be considered vulnerable.

**VOC and SOC Well Separation Distances**

| Sources of Contamination | Shallow Wells | Deep Wells |
|---|---|---|
| Sanitary and industrial point discharges | 400 ft | 400 ft |
| Mechanical waste treatment plants | 400 ft | 200 ft |
| Lagoons | 1,000 ft | 400 ft |
| Chemical and mineral storage (aboveground) | 200 ft | 100 ft |
| Chemical and mineral storage including underground storage tanks on or below ground | 400 ft | 200 ft |
| Solid waste disposal site | 1,000 ft | 1,000 ft |

4. A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more VOCs or SOCs, except for trihalomethanes or other demonstrated DBPs.

(8) PCB analytical methodology. PCBs analysis shall be conducted using the methods in 41.5(1) *"b"*(1) and as follows:

1. Each system that monitors for PCBs shall analyze each sample using Method 505, 508, 508.1, or 525.2. Users of Method 505 may have more difficulty in achieving the required Aroclor detection limits than users of Method 508, 508.1, or 525.2.

2. If PCBs (as one of seven Aroclors) are detected in any sample analyzed using Method 505 or 508, the system shall reanalyze the sample using Method 508A to quantitate PCBs as decachlorobiphenyl.

**PCB Aroclor Detection Limits**

| Aroclor | Detection Limit (mg/L) |
|---|---|
| 1016 | 0.00008 |
| 1221 | 0.02 |
| 1232 | 0.0005 |
| 1242 | 0.0003 |
| 1248 | 0.0001 |
| 1254 | 0.0001 |
| 1260 | 0.0002 |

3. Compliance with the PCB MCL shall be determined based upon the quantitative results of analyses using Method 508A.

**41.5(2)** *Organic chemicals occurring as (nontrihalomethane) DBPs.*

**567—41.6(455B) Disinfection byproducts (DBPs) MCLs and monitoring requirements.**

**41.6(1)** *Stage 1 DBP requirements.*

*a. Applicability.*

(1) This rule establishes criteria under which CWSs and NTNCs that add a chemical disinfectant to the water in any part of the drinking water treatment process or which provide water that contains a chemical disinfectant must modify their practices to meet the MCLs in this rule and the maximum residual disinfectant levels (MRDL) and TT requirements for DBP precursors in 567—43.6(455B).

(2) Compliance dates for this rule are based upon the source water type and the population served. Systems are required to comply with this rule as follows, unless otherwise noted. The department may assign an earlier monitoring period as part of the operation permit, but MCL compliance is not required until the dates stated below.

1. CWSs and NTNCs which use SW or IGW in whole or in part and which serve 10,000 or more persons must comply with this rule beginning January 1, 2002.

2. All other CWSs and NTNCs covered by 41.6(1)*"a"*(1) must comply with this rule by January 1, 2004.

(3) Consecutive systems that provide water containing a disinfectant or oxidant are required to comply with this rule.

(4) Systems with water sources that are used independently from each other, are not from the same source as determined by the department, or do not go through identical treatment processes are required to monitor for the applicable disinfectants or oxidants and DBP during operation of each source. Systems must comply with this rule during the use of each water source.

*b. DBP MCLs.*

(1) The MCLs for DBPs are as follows:

| DBP | MCL (mg/L) |
|---|---|
| Bromate | 0.010 |
| Chlorite | 1.0 |
| Haloacetic acids (HAA5) | 0.060 |
| Total trihalomethanes (TTHM) | 0.080 |

(2) Beginning on the date in the following table, a system must comply with the TTHM and HAA5 MCL as a locational RAA at each monitoring location.

| System Size (number of people served) | Date system must comply with MCL at each sampling location* |
|---|---|
| **Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system** | |
| System serving at least 100,000 people | April 1, 2012 |
| System serving 50,000-99,999 people | October 1, 2012 |
| System serving 10,000-49,999 people | October 1, 2013 |
| System serving fewer than 10,000 people | October 1, 2013 for all GW systems and for SW/IGW systems that did not collect *Cryptosporidium* source water samples<br>October 1, 2014 for SW/IGW systems that collected *Cryptosporidium* source water samples |
| **Other systems that are part of a combined distribution system** | |
| Consecutive or wholesale system | At the same time as the system with the earliest compliance date in the combined distribution system |

*The department may grant up to an additional 24 months for compliance with the MCLs and OELs if the system requires capital improvements to comply with an MCL.

*c. DBP monitoring requirements.*

(1) General.

1. Systems must take all samples during normal operating conditions.

2. Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with department approval.

3. Failure to monitor in accordance with the monitoring plan required under 41.6(1)*"c"*(1)"6" is a monitoring violation.

4. Failure to monitor is a violation for the entire period covered by the annual average where compliance is based on an RAA of monthly or quarterly samples or averages, and the system's failure to monitor makes it impossible to determine MCL compliance.

5. Systems may use only data collected under the provisions of this rule or 567—43.6(455B) to qualify for reduced monitoring.

6. Each system required to monitor under the provisions of this rule or 567—43.6(455B) must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the department and the general public no later than 30 days following the applicable compliance dates in 41.6(1)*"a"*(3). All systems using SW or IGW and serving more than 3,300 people must submit a copy of the monitoring plan to the department by the applicable date in 41.6(1)*"a"*(3)"1." The department may also require the plan to be submitted by any other system. After review, the department may require changes in any plan elements. The plan must include the following elements:

- Specific locations and schedules for collecting samples for any parameters included in this rule.
- How the system will calculate compliance with MCLs, MRDLs, and TTs.

7. The department may require a monthly monitoring frequency for DBPs, which would be specified in the operation permit.

(2) Bromate. CWSs and NTNCS using ozone for disinfection or oxidation must monitor for bromate.

1. Routine monitoring. Systems must take at least one sample per month for each treatment plant in the system using ozone, collected at each SEP while the ozonation system is operating under normal conditions.

2. Reduced monitoring. A system may reduce monitoring from monthly to quarterly if its RAA bromate concentration is less than or equal to 0.0025 mg/L based on monthly bromate measurements for the most recent four quarters. If a system previously qualified for reduced bromate monitoring and is on quarterly sampling frequency, it may remain on reduced monitoring as long as the RAA of the bromate samples is less than or equal to 0.0025 mg/L. If the RAA of quarterly bromate samples exceeds 0.0025 mg/L, the system must resume routine bromate monitoring. Only three analytical methods may be used for bromate samples under reduced monitoring: EPA Method 317.0 Revision 2.0, Method 326.0, or Method 321.8.

(3) Chlorite. CWS and NTNC using chlorine dioxide, for disinfection or oxidation, must monitor for chlorite. If the system does not use chlorine dioxide on a daily basis, it must conduct the required daily monitoring each day chlorine dioxide is used, and any required monthly monitoring during those months in which chlorine dioxide is used during any portion of the month.

1. Routine daily monitoring. Systems must monitor daily at the SEP. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by 41.6(1)*"c"*(3)"3," which are in addition to the sample required at the SEP. These daily SEP samples may be analyzed by system personnel, in accordance with 41.6(1)*"d."*

2. Routine monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time (MRT) in the distribution system. Any additional routine sampling must be conducted in the same manner as the three-sample sets. The system may use the results of additional monitoring conducted in accordance with 41.6(1)*"c"*(3)"3" to meet the monitoring requirement in this subparagraph. These monthly samples must be analyzed by a certified laboratory using an approved ion chromatography method, in accordance with 41.6(1)*"d."*

3. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the SEP the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting MRT in the distribution system). These additional samples must be analyzed by a certified laboratory using an approved ion chromatography method, in accordance with 41.6(1)*"d."*

4. Reduced monitoring.

- Daily chlorite monitoring at the SEP required by 41.6(1)*"c"*(3)"1" may not be reduced.
- The department may allow the monitoring for systems with monthly chlorite monitoring in the distribution system to be reduce to 1 three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under 41.6(1)*"c"*(3)"2" has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring under 41.6(1)*"c"*(3)"3." The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under 41.6(1)*"c"*(3)"2" exceeds the chlorite MCL, or the system is required to conduct additional monitoring under 41.6(1)*"c"*(3)"3," at which time it must revert to routine monitoring.

(4) Total trihalomethanes (TTHM) and haloacetic acids (HAA5).

1. Routine monitoring. Systems must monitor at the frequency indicated in the following table. Both the TTHM and HAA5 samples must be collected as paired samples during the same time period in order for each parameter to have the same annual average period for result comparison. A paired sample is one that is collected at the same location and time and is analyzed for both TTHM and HAA5 parameters.

**Routine Monitoring Frequency for TTHM and HAA5**

| Type of System (source water type and population served) | Minimum Monitoring Frequency | Sample Location in the Distribution System |
|---|---|---|
| SW/IGW[3] system serving ≥10,000 persons | 4 water samples per quarter per treatment plant | At least 25 percent of all samples collected each quarter at locations representing MRT. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, accounting for number of persons served, different sources of water, and different treatment methods.[1] |
| SW/IGW[3] system serving 500-9,999 persons | 1 water sample per quarter per treatment plant | Locations representing MRT.[1] |
| SW/IGW[3] system serving <500 persons | 1 sample per year per treatment plant during month of warmest water temperature | Locations representing MRT.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the MRT in the distribution system, until system meets reduced monitoring criteria in 41.6(1)*"c"*(4)"2," second bulleted paragraph. |
| System using only non-IGW GW using chemical disinfectant and serving ≥10,000 persons | 1 water sample per quarter per treatment plant[2] | Locations representing MRT.[1] |
| System using only non-IGW GW using chemical disinfectant and serving <10,000 persons | 1 sample per year per treatment plant during month of warmest water temperature | Locations representing MRT.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the MRT time in the distribution system, until system meets reduced monitoring criteria in 41.6(1)*"c"*(4)"2," second bulleted paragraph. |

[1]If a system chooses to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the MRT of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2]Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with department approval.

[3]SW/IGW indicates those systems that use either SW or IGW, in whole or in part.

2. Reduced monitoring. The department may allow systems a reduced monitoring frequency, except as otherwise provided, in accordance with the following table. Source water total organic carbon (TOC) levels must be determined in accordance with 567—subparagraph 43.6(2)*"c"*(1).

**Reduced Monitoring Frequency for TTHM and HAA5**

| If you are a ... | And you have monitored at least one year and you have ... | You may reduce monitoring to this level |
|---|---|---|
| SW/IGW[1] system serving ≥10,000 persons with a source water annual average TOC level, before any treatment, of ≤4.0 mg/L. | TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L | 1 sample per treatment plant per quarter at distribution system location reflecting MRT. |
| SW/IGW[1] system serving 500 - 9,999 persons with a source water annual average TOC level, before any treatment, of ≤4.0 mg/L. | TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L | 1 sample per treatment plant per year at distribution system location reflecting MRT during month of warmest water temperature. |
| SW/IGW[1] system serving <500 persons | SW/IGW[1] systems serving <500 persons may not reduce monitoring to less than 1 sample per treatment plant per year. | |
| System using only non-IGW GW using chemical disinfectant and serving ≥10,000 persons | TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L | 1 sample per treatment plant per year at distribution system location reflecting MRT during month of warmest water temperature. |
| System using only non-IGW GW using chemical disinfectant and serving <10,000 persons | TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L for two consecutive years; Or, TTHM annual average ≤0.020 mg/L and HAA5 annual average ≤0.015 mg/L for one year. | 1 sample per treatment plant per 3-year monitoring cycle at distribution system location reflecting MRT during month of warmest water temperature, with the 3-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring. |

[1]SW/IGW indicates those systems that use either SW or IGW, in whole or in part.

- Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems monitoring quarterly) or the result of the sample (for systems monitoring no more frequently than annually) is less than or equal to 0.060 mg/L for TTHMs and less than or equal to 0.045 mg/L for HAA5. Systems that do not meet these levels must resume monitoring at the frequency identified in 41.6(1)*"c"*(4)"1" in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs and 0.045 mg/L for HAA5. For systems using only GW not under the direct influence of SW and serving fewer than 10,000 persons, if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L, the system must go to increased monitoring identified in 41.6(1)*"c"*(4)"1" in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L for TTHMs or 0.060 mg/L for HAA5.
- The department may allow systems on increased monitoring to return to routine monitoring if, after one year of monitoring, TTHM annual average is less than or equal to 0.060 mg/L and HAA5 annual average is less than or equal to 0.045 mg/L.
- The department may return a system to routine monitoring at its discretion.

*d. DBP Analytical requirements.*

(1) Systems must use only the analytical method(s) specified in this paragraph, or equivalent methods as determined by EPA, to demonstrate compliance with this rule.

(2) Systems must measure DBPs using the methods in the following table, as modified by the footnotes:

**Approved Methods for DBP Compliance Monitoring**

| Contaminant and Methodology | EPA Method[1] | SM[2] | ASTM Method[3] |
|---|---|---|---|
| **TTHM** | | | |
| P&T/GC/EICD & PID | 502.2[4] | | |
| P&T/GC/MS | 524.2, 524.3, 524.4 | | |
| LLE/GC/ECD | 551.1 | | |
| **HAA5** | | | |
| LLE (diazomethane)/GC/ECD | | 6251 B[5], 6251 B-07[12] | |
| SPE (acidic methanol)/GC/ECD | 552.1[5] | | |
| LLE (acidic methanol)/GC/ECD | 552.2, 552.3 | | |

| Contaminant and Methodology | EPA Method[1] | SM[2] | ASTM Method[3] |
|---|---|---|---|
| IC electrospray ionization tandem MS (IC-ESI-MS/MS) | 557[10] | | |
| **Bromate** | | | |
| IC | 300.1 | | D 6581-00 |
| IC & postcolumn reaction[9] | 317.0 Rev. 2.0[6], 326.0[6] | | |
| IC/ICP-MS[9] | 321.8[6, 7] | | |
| Two-dimensional IC | 302.0[11] | | |
| IC electrospray ionization tandem MS (IC-ESI-MS/MS) | 557[10] | | |
| Chemically suppressed IC | | | D 6581-08 A |
| Electrolytically suppressed IC | | | D 6581-08 B |
| **Chlorite[8]** | | | |
| Amperometric titration | | 4500-$ClO_2$ E[8] | |
| Amperometric sensor | | | ChlordioX Plus[8, 13] |
| Spectophotometry | 327.0 Rev. 1.1[8] | | |
| IC | 300.0, 300.1, 317.0 Rev. 2, 326.0 | | |
| Chemically suppressed IC | | | D 6581-08 A |
| Electrolytically suppressed IC | | | D 6581-08 B |

ECD = electron capture detector
EICD = electrolytic conductivity detector
GC = gas chromatography
IC = ion chromatography
LLE = liquid/liquid extraction
MS = mass spectrometer
P&T = purge and trap
PID = photoionization detector
SPE = solid phase extractor

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the sources listed below. Information regarding the documents is available from the Safe Drinking Water Hotline at 800.426.4791. Documents may be inspected at EPA's Drinking Water Docket or at the Office of Federal Register.

[1]EPA: The following methods are available from the NTIS:

Methods 300.0 and 321.8: Methods for the Determination of Organic and Inorganic Compounds in Drinking Water, Volume 1, August 2000, EPA 815-R-00-014. NTIS, PB2000-106981.

Method 300.1: "Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0," EPA-600/R-98/118, 1997. NTIS, PB98-169196.

Method 317.0: "Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography with the Addition of a Postcolumn Reagent for Trace Bromate Analysis, Revision 2.0," July 2001, EPA 815-B-01-001.

Method 326.0: "Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography Incorporating the Addition of a Suppressor Acidified Postcolumn Reagent for Trace Bromate Analysis, Revision 1.0," June 2002, EPA 815-R-03-007.

Method 327.0: "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry, Revision 1.1," May 2005, EPA 815-R-05-008.

Methods 502.2, 524.2, 551.1, and 552.2: Methods for the Determination of Organic Compounds in Drinking Water—Supplement III, EPA-600/R-95-131, August 1995. NTIS PB95-261616.

Method 524.3: "Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry, Version 1.0," June 2009. EPA 815-B-09-009. www.nemi.gov.

Method 524.4: "Measurement of Purgeable Organic Compounds in Water by Gas Chromatography/Mass Spectrometry Using Nitrogen Purge Gas, Version 1.0," May 2013. EPA 815-R-13-002. www.nepis.epa.gov.

Method 552.1: Methods for the Determination of Organic Compounds in Drinking Water—Supplement II, EPA-600/R-92-129, August 1992. NTIS PB92-207703.

Method 552.3: "Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-liquid Microextraction, Derivatization, and Gas Chromatography with Electron Capture Detection, Revision 1.0," July 2003, EPA-815-B-03-002.

[2]4500-$ClO_2$ E and 6251B: SM, 19th (1995), 20th (1998), 21st (2005), and 22nd (2012) editions.

[3]Method D 6581-00: ASTM Volume 11.01, 2001 (or any year containing the cited version).

[4]If TTHMs are the only analytes being measured in the sample, then a PID is not required.

[5]The samples must be extracted within 14 days of sample collection.

[6]IC and postcolumn reaction or IC/ICP-MS must be used for bromate analysis to demonstrate eligibility for reduced monitoring.

[7]Samples must be preserved at sample collection with 50 mg ethylenediamine (EDA)/L of sample and must be analyzed within 28 days.

[8]Amperometric titration or spectrophotometry may be used for routine daily chlorite monitoring at the SEP, as prescribed in 41.6(1)*"c"*(3)"1." IC must be used for routine monthly chlorite monitoring and additional chlorite monitoring in the distribution system, as prescribed in 41.6(1)*"c"*(3)"2" and "3."

[9]These are the only methods approved for reduced bromate monitoring under 41.6(1)*"c"*(2)"2."

[10]EPA Method 557, "Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC-ESI-MS/MS)," August 2009. EPA 815-B-09-012. www.nemi.gov.

[11]EPA Method 302.0, "Determination of Bromate in Drinking Water Using Two-Dimensional Ion Chromatography with Suppressed Conductivity Detection," September 2009. EPA 815-B-014. www.nemi.gov.

[12]SM Online. The year in which each method was approved is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[13]ChlordioX Plus. "Chlorine Dioxide and Chlorite in Drinking Water by Amperometry Using Disposable Sensors," November 2013. Palintest Water Analysis Technologies, www.palintest.com.

(3) DBP analyses under this rule shall only be conducted by laboratories certified in accordance with 567—Chapter 83, except as specified under 41.6(1)*"d"*(4). The performance evaluation sample acceptance limits and minimum reporting levels are in 40 CFR §141.131(b)(2)(iii).

(4) Daily chlorite samples at the SEP must be measured by a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of such an operator, or a laboratory certified in accordance with 567—Chapter 83.

*e. DBP compliance requirements.*

(1) General.

1. When compliance is based on an RAA of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

2. Unless invalidated by the department, all samples taken and analyzed under the provisions of this rule must be included in determining compliance, even if that number is greater than the minimum required.

3. If, during the first year of monitoring under 41.6(1)*"c,"* any individual quarter's average will cause the RAA of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

4. Any system that violates the bromate, chlorite, or TTHM and HAA5 MCLs specified in this paragraph must provide PN pursuant to rule 567—40.5(455B) and report to the department pursuant to 567—paragraph 40.8(3)*"d."*

(2) Bromate. Compliance must be based on an RAA, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as prescribed by 41.6(1)*"c"*(2). If the average of samples covering any consecutive four-quarter period exceeds the MCL, a system is in violation of the MCL. If a PWS fails to complete 12 consecutive months' monitoring, MCL compliance for the last four-quarter compliance period must be based on an average of the available data.

(3) Chlorite. Compliance must be based on an arithmetic average of each three-sample set taken in the distribution system as prescribed by 41.6(1)*"c"*(3)"1" and "2." If the arithmetic average of any three-sample set exceeds the MCL, a system is in violation of the MCL.

(4) TTHM and HAA5.

1. For systems monitoring quarterly, compliance with MCLs in 41.6(1)*"b"* must be based on an RAA, computed quarterly, of quarterly averages of all samples collected by the system as prescribed by 41.6(1)*"c"*(4).

2. For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under 41.6(1)*"c"*(4) does not exceed the MCLs in 41.6(1)*"b."* If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant and is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the RAA to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase to quarterly monitoring must calculate compliance by including the sample that triggered the increased monitoring plus the following three quarters of monitoring.

3. If the RAA of quarterly averages covering any consecutive four-quarter period exceeds the MCL

4. If a PWS fails to complete four consecutive quarters of monitoring, MCL compliance for the last four-quarter compliance period must be based on an average of the available data.

*f. DBP reporting requirements.* Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the PN provisions of rule 567—40.5(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected. The specific reporting requirements for DBPs are in 567—subparagraph 40.8(3)*"d"*(2).

**41.6(2)** *Stage 2 initial distribution system evaluation.* The requirements for the Stage 2 initial distribution system evaluation (IDSE) in 40 CFR 141.600-60,5 as adopted on January 4, 2006, are adopted by reference. This regulation establishes monitoring and requirements for identifying compliance monitoring locations that are used to determine MCL compliance for TTHM and HAA5. All CWS required to comply with 41.6(1) and all NTNC serving at least 10,000 people required to comply with 41.6(1) are required to comply with this subrule. The requirements in this subrule constitute national primary drinking water regulations. Only the analytical methods specified in 41.6(1)*"d"* may be used to demonstrate compliance with this subrule.

**41.6(3)** *Stage 2 DBP requirements.* The requirements of this subrule constitute national primary drinking water regulations. This subrule establishes monitoring and requirements for achieving MCL compliance based on locational running annual averages (LRAA) for TTHM and HAA5.

*a. Applicability.* All CWS and NTNC systems that use a primary or residual disinfectant other than UV light or deliver water that has been treated with a primary or residual disinfectant other than UV light must comply with this subrule.

(1) Schedule. Systems must comply with the dates in the appropriate schedule. For the purposes of this subrule, the combined distribution system (CDS) only includes active connections; emergency connections are excluded. Any CWS or NTNC that purchases or sells water on a routine basis through an active connection to another CWS or NTNC is part of a CDS. All systems included in a CDS must adhere to the schedule of the system that serves the largest population in that CDS. The system must comply with the requirements on the schedule for systems that are not a part of a CDS and for systems that serve the largest population in the CDS. The schedule for the other systems that are a part of a CDS, either wholesale or consecutive, is the same schedule as that of the system with the earliest compliance date in the CDS.

| Schedule | System Population | Date by Which System Must Begin Stage 2 Compliance Monitoring |
|---|---|---|
| 1 | At least 100,000 | April 1, 2012 |
| 2 | 50,000-99,999 | October 1, 2012 |
| 3 | 10,000-49,999 | October 1, 2013 |
| 4 | Fewer than 10,000 | October 1, 2013, for all GW systems and any SW/IGW systems that did not conduct *Cryptosporidium* sampling under 567—paragraph 43.11(3)*"b"*(2)"4" October 1, 2014, for SW/IGW systems that conducted *Cryptosporidium* sampling under 567—paragraph 43.11(3)*"b"*(2)"4" |

(2) Initiation of compliance monitoring under Stage 2. Systems shall switch from Stage 1 compliance monitoring (41.6(1)) to Stage 2 monitoring as follows:

1. Systems required to monitor quarterly must start monitoring in the first full calendar quarter that includes the compliance date in the preceding table.

2. Systems that conducted IDSE monitoring and have an approved report and that are required to monitor at a frequency less than quarterly must start monitoring in the calendar month recommended in the approved IDSE report.

3. Systems that were not required to prepare an IDSE report under 41.6(2) must update their Stage 1 monitoring plan to meet the Stage 2 requirements and submit it for department approval six months prior to the compliance date in the preceding table.

(3) Timing of initial determination of compliance under Stage 2.

1. Systems required to monitor quarterly must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date or earlier if the LRAA calculated based on fewer than four quarters of data would cause an MCL exceedance regardless of the results of subsequent sampling. Compliance determination must continue at the end of each subsequent quarter.

2. Systems required to monitor at a frequency that is less than quarterly must make compliance calculations beginning with the first compliance sample taken after the compliance date.

(4) Monitoring and compliance.

1. Systems required to monitor quarterly must calculate LRAAs for TTHM and HAA5 using the monitoring results collected under this subrule and determine that each LRAA does not exceed the MCL. If the system does not complete the four consecutive quarters of monitoring, it must calculate MCL compliance based on the average of the available data from the most recent four quarters. If the system collects more than one sample per quarter at a monitoring location, all samples taken in the quarter at that location must be averaged to determine a quarterly average to be used for the LRAA calculation. If a system fails to monitor, it is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA.

2. Systems required to monitor yearly or triennially must determine that each sample collected is less than the MCL. If any sample exceeds the MCL, the system must comply with 41.6(3)*"e."* If no sample exceeds the MCL, the sample result for each monitoring location is considered to be the LRAA for that monitoring location. If a system fails to monitor, it is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA.

3. The department may grant up to an additional 24 months for compliance with MCLs and operational evaluation levels if the system is required to make capital improvements in order to comply with an MCL.

(5) Any CWS or NTNC that begins using water to which a disinfectant has been added, other than ultraviolet light, after the initial compliance dates for IDSE or Stage 2 compliance monitoring must comply with this subrule.

*b. Monitoring plan.* All systems must develop and implement a DBP monitoring plan that shall be kept on file at the system for review by the department and the public. The monitoring plan must contain the monitoring locations, monitoring dates, and compliance calculation procedures.

(1) If the system has an approved IDSE-standard monitoring plan (IDSE-SMP), that report contains all of the plan elements and meets this requirement.

(2) If the system does not have an approved IDSE-SMP and does not have sufficient monitoring locations from its initial DBP sampling plan, it must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. The system must provide the rationale for identifying locations as having high levels of TTHM or HAA5.

(3) If the system does not have an approved IDSE-SMP and has more monitoring locations from its initial Stage 1 DBP sampling plan than the number of locations required under the Stage 2 compliance monitoring, it must identify which locations it will use for compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified.

(4) All plans must be reviewed by the system every three years and updated as system conditions change.

1. A system may revise its monitoring plan to reflect changes in treatment, distribution system operations, and layout (including new service areas), to reflect other factors that may affect TTHM or HAA5 formation, or for department-approved reasons.

2. A system must consult with the department regarding the need for plan changes and the appropriateness of changes. A system must replace existing compliance monitoring locations that have the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels.

3. The department may require modifications in a system's monitoring plan.

(5) Systems are also required to maintain the disinfectant and MRDL elements of the Stage 1 monitoring plan pursuant to 41.6(1)*"c"*(1)"6" and 567—paragraph 43.6(1)*"c"*(1)"5."

(6) All systems are required to have a valid DBP monitoring plan prior to the start of compliance monitoring in 41.6(3)*"a"*(1).

*c. Routine monitoring.* Systems are required to start monitoring at the locations specified in the approved DBP monitoring plan and on the schedule specified in 41.6(3)*"a"*(1). Each system must monitor the DBPs at the minimum number of locations identified in the table below.

**Routine Monitoring for DBPs**

| Source water type | Population size category | Monitoring frequency | Total number of distribution system monitoring location sites per monitoring period |
|---|---|---|---|
| SW/IGW | <500 | per year | 2 |
| | 500-3,300 | per quarter | 2 |
| | 3,301-9,999 | per quarter | 2 |
| | 10,000-49,999 | per quarter | 4 |
| | 50,000-249,999 | per quarter | 8 |
| | 250,000-999,999 | per quarter | 12 |
| GW | <500 | per year | 2 |
| | 500-9,999 | per year | 2 |
| | 10,000-99,999 | per quarter | 4 |
| | 100,000-499,999 | per quarter | 6 |

(1) All systems must monitor during the month of highest DBP concentrations.

(2) Systems on a quarterly monitoring frequency must collect samples for TTHM and HAA5 every 90 days at each monitoring location, except that SW/IGW systems serving 500 to 3,300 people may collect at one location as provided in 41.6(3)*"c"*(3). Each sample collected at each location must be analyzed for both TTHM and HAA5 components.

(3) Systems on an annual monitoring frequency and SW/IGW systems serving 500 to 3,300 people are required to collect TTHM and HAA5 samples at the locations with the highest TTHM and HAA5 concentrations, respectively. Each sample must be analyzed for both TTHM and HAA5 components. Sample collection is required from only one location if the highest TTHM concentration and the highest HAA5 concentration occur at the same location.

(4) Analytical methods. Systems must use an approved method in 41.6(1)*"d"*(2) for TTHM and HAA5 analyses pursuant to this subrule. DBP analyses must be conducted by laboratories certified in accordance with 567—Chapter 83.

*d. Reduced monitoring.* A system may reduce monitoring to the level specified in the Reduced Monitoring for DBPs table below anytime the LRAA is less than or equal to half the MCL for TTHM and HAA5 at all monitoring locations (i.e., less than or equal to 0.040 mg/L for TTHM and 0.030 mg/L for HAA5). Only data collected under this rule may be used to qualify for reduced monitoring.

**Reduced Monitoring for DBPs**

| Source water type | Population size category | Monitoring frequency[1] | Distribution system monitoring location sites per monitoring period[2] |
|---|---|---|---|
| SW/IGW | <500 | per year | Monitoring may not be reduced |
| | 500-3,300 | per year | 1 sample per year at same location if the highest TTHM and HAA5 measurements occurred at the same location and in the same quarter, analyzed for both TTHM and HAA5 |
| | 3,301-9,999 | per year | 2 samples: 1 at location and during quarter with the highest TTHM single measurement; 1 at location and during quarter with the highest HAA5 single measurement |
| | 10,000-49,999 | per quarter | 2 samples: 1 at highest TTHM LRAA location; 1 at highest HAA5 LRAA location |
| | 50,000-249,999 | per quarter | 4 samples: 1 sample each at highest two TTHM LRAA locations; 1 sample each at highest two HAA5 LRAA locations |

| Source water type | Population size category | Monitoring frequency[1] | Distribution system monitoring location sites per monitoring period[2] |
|---|---|---|---|
| | 250,000-999,999 | per quarter | 6 samples: 1 sample each at highest 3 TTHM LRAA locations; 1 sample each at highest 3 HAA5 LRAA locations |
| GW | <500 | every third year | 1 sample at same location if the highest TTHM and HAA5 measurements occurred at the same location and in the same quarter, analyzed for both TTHM and HAA5 |
| | 500-9,999 | per year | 1 sample per year at same location if the highest TTHM and HAA5 measurements occurred at the same location and in the same quarter, analyzed for both TTHM and HAA5 |
| | 10,000-99,999 | per year | 2 samples: 1 at location and during quarter with the highest TTHM single measurement; 1 at location and during quarter with the highest HAA5 single measurement |
| | 100,000-499,999 | per quarter | 2 samples: 1 at the highest TTHM LRAA location; 1 at the highest HAA5 LRAA location |

[1]Systems on a quarterly monitoring frequency must collect the sample(s) every 90 days.

[2]Each sample must be analyzed for all TTHM and HAA5 components.

(1) Additional source water TOC requirement for SW/IGW systems. For SW/IGW systems, the source water RAA TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating SW or IGW, based on the monitoring conducted under 567—paragraph 43.6(2) *"b,"* in order to qualify for reduced monitoring.

(2) Continued reduced monitoring frequency. Systems may remain on a reduced monitoring frequency as long as they meet the following criteria. For SW/IGW systems, the source water annual average TOC level requirement in 41.6(3)*"d"*(1) must continue to be met.

1. A system with a quarterly reduced monitoring frequency may remain on reduced monitoring as long as the TTHM LRAA is less than or equal to 0.040 mg/L and the HAA5 LRAA is less than or equal to 0.030 mg/L at each monitoring location.

2. A system with an annual or triennial monitoring frequency may remain on reduced monitoring as long as each TTHM sample is less than or equal to 0.060 mg/L and each HAA5 sample is less than or equal to 0.045 mg/L.

(3) Return to routine monitoring frequency. Systems that cannot meet the requirements for reduced monitoring must resume routine monitoring according to 41.6(3)*"c"* or begin increased monitoring according to 41.6(3)*"e."*

1. A system with a quarterly reduced monitoring frequency must resume routine monitoring if the LRAA from any location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5.

2. A system with an annual or triennial monitoring frequency must resume routine monitoring if the annual sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5.

3. Any SW/IGW system must resume routine monitoring if the RAA source water TOC level, prior to any treatment, is more than 4.0 mg/L.

4. In addition, the department may require any system to resume routine monitoring at the department's discretion.

(4) Remaining on reduced monitoring from Stage 1 to Stage 2 transition. A system may remain on reduced monitoring after the dates in 41.6(3)*"a"*(1) if all of the following three criteria are met. If the three criteria are not met, the system must return to routine monitoring.

1. Under the IDSE, the system qualified for a 40/30 certification or received a very small system waiver;

2. The system meets the reduced monitoring criteria of this paragraph; and

3. The system has not changed or added locations for DBP monitoring from those used under the Stage 1 requirements in 41.6(1).

*e. Increased monitoring.*

(1) Systems that are monitoring annually or triennially must increase their monitoring frequency to quarterly if the following conditions are met.

1. Single result exceeds the TTHM or HAA5 MCL. A system that is monitoring annually or triennially must increase monitoring to quarterly at all locations if a single TTHM sample is greater than

0.080 mg/L or a single HAA5 sample is greater than 0.060 mg/L. Quarterly samples must be analyzed for both TTHM and HAA5 components.

2. Systems with a TTHM or HAA5 MCL violation. A system that is monitoring annually or triennially that is in violation of the TTHM or HAA5 MCL, based upon the LRAA, must increase monitoring to quarterly at all locations. Quarterly samples must be analyzed for both TTHM and HAA5 components. Calculate the LRAA using either four consecutive quarters of monitoring or using fewer quarters of monitoring if the MCL would be exceeded regardless of the monitoring results of subsequent quarters.

(2) Systems on a quarterly monitoring frequency during Stage 1 to Stage 2 transition. A system that was on increased monitoring under Stage 1 must remain on increased monitoring until it qualifies for a return to routine monitoring under 41.6(3)*"e"*(3). The system must conduct the increased monitoring at the monitoring locations in the monitoring plan developed under 41.6(3)*"b,"* beginning on the date identified in 41.6(3)*"a"*(1).

(3) Return to routine monitoring frequency. A system may return to routine monitoring once it has conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5. A system may not have any monitoring violations during the most recent four consecutive quarters.

*f. Operational evaluation level (OEL).*

(1) TTHM OEL. The TTHM OEL is determined by the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by four to determine an average. If that average exceeds 0.080 mg/L, a system has exceeded the TTHM OEL.

(2) HAA5 OEL. The HAA5 OEL is determined by the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by four to determine an average. If that average exceeds 0.060 mg/L, a system has exceeded the HAA5 OEL.

(3) OEL compliance. A system must calculate the OEL at any monitoring location that has a single analytical result in excess of the TTHM or HAA5 MCL in the analytical data used to calculate the current 12-month LRAA. A system must determine compliance with the OEL every quarter.

(4) OEL exceedance requirements. A system must conduct an operational evaluation and submit a written evaluation report to the department within 90 days after the system is notified of the analytical result that caused it to exceed the OEL. The report must be made available to the public upon request. The report must include an evaluation of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in source water or source water quality, and treatment changes or problems that may contribute to DBP formation, and what steps could be considered to minimize future exceedances.

1. A system may request that the department limit the scope of the evaluation if it is able to identify the cause of the OEL exceedance. The 90-day report submission deadline cannot be extended.

2. A system must have written department approval to limit the scope of the evaluation. The approval must be kept with the completed report.

*g. Reporting and recordkeeping.* All systems required to comply with this rule must meet the reporting requirements of 567—paragraph 40.8(3)*"d,"* and retain monitoring plans and analytical results as required by 567—subrule 40.9(8).

**567—41.7(455B) Groundwater (GW) rule: sanitary survey, microbial source water monitoring, TT.**

**41.7(1)** *General requirements.*

*a. Scope.* The requirements of this rule constitute national primary drinking water regulations.

*b. Applicability.* This rule applies to all PWSs that use GW, except for PWSs that combine all of their GW with SW or with IGW prior to treatment under 567—43.5(455B). For the purposes of this rule, "GW system" is defined as any PWS meeting this applicability statement, including consecutive systems receiving finished GW. For the purposes of this rule, "4-log virus treatment" means treatment that

includes inactivation, removal, or a department-approved combination of inactivation and removal before or at the first customer of 4-log (99.99 percent) of viruses.

*c. General.* Systems subject to this rule must comply with the following:

(1) Sanitary survey requirements for all GW systems are described in 41.7(2).

(2) Microbial source water monitoring requirements for GW systems that do not treat all of their GW to at least 99.99 percent (4-log) virus treatment, as described in 41.7(3).

(3) TT requirements that apply to GW systems either with fecally contaminated source waters, as determined by monitoring conducted under 41.7(3), or with significant department-identified deficiencies. A GW system with fecally contaminated source water or with significant deficiencies subject to the TT requirements of this rule must implement one or more of the following corrective action options:

1. Correct all significant deficiencies;
2. Provide an alternate source of water;
3. Eliminate the source of contamination; or
4. Provide treatment that reliably achieves at least 4-log virus treatment before or at the first customer.

(4) GW systems that provide at least 4-log virus treatment must conduct compliance monitoring to demonstrate treatment effectiveness, as described in 41.7(4).

(5) If requested, GW systems must provide information that will enable the department to perform a hydrogeologic sensitivity assessment. For the purposes of this rule, "hydrogeologic sensitivity assessment" is a determination of whether GW systems obtain water from hydrogeologically sensitive settings.

(6) Analyses under this rule shall only be conducted by laboratories certified in accordance with 567—Chapter 83.

**41.7(2)** *Sanitary surveys for GW systems.* For the purposes of this rule, a "sanitary survey" conducted in accordance with 567—subrule 43.1(7), includes, but is not limited to, an on-site review of the water sources (identifying sources of contamination using source water assessments or other relevant information), facilities, equipment, operation, maintenance, and monitoring compliance of a PWS.

**41.7(3)** *GW source microbial monitoring and analytical methods.* A GW system that has a department-approved 4-log virus treatment process and is fulfilling the requirements of 41.7(4)*"b"* is not required to conduct the triggered source water monitoring under 41.7(3)*"a."*

*a. Triggered source water monitoring requirements.*

(1) General. A GW system must conduct triggered source water monitoring if it:

1. Does not provide at least 4-log virus treatment for each GW source; and
2. Is notified that a sample collected under 41.2(1)*"e"* and *"f"* is total coliform-positive, and the sample is not invalidated under 41.2(1)*"d."*

(2) Sampling. A GW system must collect at least one GW source sample from each GW source in use at the time the total coliform-positive sample was collected under 41.2(1)*"e"* and *"f"* that could have reasonably contributed to the positive sample. The source sample must be collected within 24 hours of the system's receipt of the total coliform-positive sample.

1. The department may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the GW source sample within 24 hours due to circumstances beyond its control. The department must specify how much time the system has to collect the sample.
2. A GW system serving 1,000 or fewer people may use a repeat sample collected from a GW source to meet both the requirements of 41.2(1)*"g"* and this paragraph if:

- The department approves the use of *E. coli* as the fecal indicator,
- The system only has one GW source required to be sampled,
- The system has no treatment, and
- Should the source water sample be *E. coli*-positive, the system would incur an acute coliform bacteria MCL violation, and would need to comply with Tier 1 PN requirements and the additional sample monitoring in 41.7(3)*"a"*(3).

(3) Additional sampling. Unless the department requires corrective action for a valid triggered source water sample that tested positive for the fecal indicator, the system must collect five additional source water samples from that same source within 24 hours of receipt of a fecal indicator-positive sample result.

(4) Consecutive and wholesale systems. In addition to the other requirements in this paragraph:

1. A consecutive GW system that has a total coliform-positive sample collected under 41.2(1)*"f"* must notify the wholesale system(s) within 24 hours of receipt of the total coliform-positive sample, and

2. A wholesale GW system that does not provide 4-log virus treatment must comply with the following:

- A wholesale GW system that receives notice from a consecutive system it serves that a sample collected under 41.2(1)*"f"* is total coliform-positive must, within 24 hours of receipt, collect triggered sample(s) from its GW source(s) under 41.7(3)*"a"*(2) and analyze the sample(s) for a fecal indicator.
- If the triggered source sample(s) is fecal indicator-positive, the wholesale GW system must, within 24 hours of receipt of the result, notify all consecutive systems served by that GW source of the fecal indicator-positive result and collect the required additional five source water samples in accordance with 41.7(3)*"a."*

(5) Exceptions. A GW system is not required to comply with the triggered source water monitoring requirements of this paragraph if either of the following conditions exists:

1. The department determines in writing that the total coliform-positive sample collected under 41.2(1)*"e"* and *"f"* was caused by a distribution system deficiency; or

2. The total coliform-positive sample collected under 41.2(1)*"e"* and *"g"* is collected at a location that meets department criteria for distribution system conditions that will cause total coliform-positive samples.

*b. Assessment source water monitoring.* If directed by the department, GW systems must conduct assessment source water monitoring that meets department-determined requirements. GW systems conducting assessment source water monitoring may use a triggered source water sample collected under 41.7(3)*"a"*(2) to meet the requirements of this paragraph. Department-determined assessment source water monitoring requirements may include:

(1) Collection of:

1. A total of 12 GW source samples representing each month the system provides GW to the public;

2. Samples from each well, unless the system obtains written department approval to conduct monitoring at one or more wells within the GW system that are representative of multiple wells used by that system and that draw water from the same hydrogeologic setting;

3. A standard sample volume of at least 100 mL for fecal indicator analysis, regardless of technical indicator or analytical method used;

4. GW source samples at a location before any treatment of the GW source, unless the department approves a sampling location after treatment; and

5. GW source samples at the well itself, unless the system's configuration does not allow for sampling at the well itself and the department approves an alternate sampling location representative of the water quality of that well; or

(2) Analysis of all GW source samples using one of the analytical methods listed in 41.7(3)*"c"* for the presence of *E. coli*, enterococci, or coliphage.

*c. Analytical methods.*

(1) GW systems subject to the source water monitoring requirements of this rule must collect a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used.

(2) GW systems must analyze all GW source samples collected under this rule using one of the analytical methods in the following table for the presence of *E. coli*, enterococci, or coliphage.

**Analytical Methods for Source Water Monitoring**

| Fecal Indicator[1] | Methodology | Method Citation |
|---|---|---|
| *E. coli* | Colilert[3] | 9223B[2, 12, 13], 9223 B-97, B-04[18] |
| | Colisure[3] | 9223B[2, 12, 13], 9223 B-97, B-04[18] |
| | Membrane filter method with MI agar | EPA Method 1604[4] |
| | Colilert-18 | 9223B[2, 12, 13], 9223B-97, B-0418 |
| | m-ColiBlue24 Test[5] | |
| | E*Colite Test[6] | |
| | EC-MUG[7] | 9221F[2, 13], 9221 F-06[18] |
| | NA-MUG[7] | 9222G[2] |
| | Readycult | Readycult[14] |
| | Colitag | Modified Colitag[15] |
| | Chromocult | Chromocult[16] |
| | Tecta EC/TC | Tecta EC/TC[19] |
| Enterococci | Multiple-tube technique | 9230B[2], 9230 B-04[18] |
| | Membrane filter technique | 9230C[2], EPA Method 1600[8] |
| | Enterolert[9] | |
| Coliphage | Two-step enrichment presence-absence procedure | EPA Method 1601[10], FastPhage[17] |
| | Single agar layer procedure | EPA Method 1602[11] |

Analyses must be conducted in accordance with the documents listed below. The Director of the Federal Register approves the incorporation by reference of the documents listed in footnotes 2 through 11 in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the sources listed below or inspected at EPA's Drinking Water Docket or at NARA.

[1]The time from sample collection to initiation of analysis may not exceed 30 hours. GW systems are encouraged but not required to hold samples below 10 degrees Celsius during transit.

[2]Methods are described in SM, 20th edition (1998).

[3]Medium is available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, ME 04092.

[4]EPA Method 1604: Total Coliforms and Escherichia coli in Water by Membrane Filtration Using a Simultaneous Detection Technique (MI Medium); September 2002, EPA 821-R-02-024, www.nemi.gov.

[5]A description of the m-ColiBlue24 Test, "Total Coliforms and *E. coli* Membrane Filtration Method with m-ColiBlue24 Broth," Method No. 10029, Revision 2, August 17, 1999, Hach Company, 100 Dayton Avenue, Ames, IA 50010.

[6]A description of the E*Colite Test, "Charm E*Colite Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Drinking Water," January 9, 1998, Charm Sciences, Inc., 659 Andover Street, Lawrence, MA 01843-1032.

[7]EC-MUG (Method 9221F) or NA-MUG (Method 9222G) can be used for *E. coli* testing step as described in 41.2(1)"f"(6) or (7) after use of SM 9221B, 9221D, 9222B, or 9222C.

[8]EPA Method 1600: Enterococci in Water by Membrane Filtration Using Membrane-Enterococcus Indoxyl-β-D-Glucoside Agar (MEI), EPA 821-R-02-022 (September 2002), is an approved variation of SM 9230C, www.nemi.gov. The holding time and temperature for GW samples is specified in footnote 1 above, rather than as specified in Section 8 of EPA Method 1600.

[9]Medium is available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, ME 04092. Preparation and use of the medium is set forth in the article "Evaluation of Enterolert for Enumeration of Enterococci in Recreational Waters" by Budnick, G.E., Howard, R.T., and Mayo, D.R., 1996, Applied and Environmental Microbiology, 62:3881-3884.

[10]EPA Method 1601: Male-Specific (F+) and Somatic Coliphage in Water by Two-Step Enrichment Procedure; April 2001, EPA 821-R-01-030, www.nemi.gov.

[11]EPA Method 1602: Male-Specific (F+) and Somatic Coliphage in Water by Single Agar Layer (SAL) Procedure; April 2001, EPA 821-R-01-029, www.nemi.gov.

[12]SM, 21st edition (2005).

[13]SM, 22nd edition (2012).

[14]Readycult Method, "Readycult Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," January 2007, Version 1.1. EMD Millipore, 290 Concord Road, Billerica, MA 01821.

[15]Modified Colitag Method, "Modified Colitag Test Method for the Simultaneous Detection of *E. coli* and Other Total Coliforms in Water (ATP D05-0035)," August 28, 2009, www.nemi.gov or CPI International, 5580 Skylane Blvd., Santa Rosa, CA 95403.

[16]Chromocult Method, "Chromocult Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," November 2000, Version 1.0. EMD Millipore, 290 Concord Road, Billerica, MA 01821.

[17]Charm Sciences, Inc., "FastPhage Test Procedure. Presence/Absence for Coliphage in Ground Water with Same Day Positive Prediction," Version 009, November 2012, www.charmsciences.com.

[18]SM Online. The year in which each method was approved is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[19]Tecta EC/TC. "Presence/Absence Method for Simultaneous Detection of Total Coliforms and *Escherichia coli* in Drinking Water," April 2014. Veolia Water Solutions and Technologies, Suite 4697, Biosciences Complex, 116 Barrie Street, Kingston, Ontario, Canada K7L 3N6.

*d. Invalidation of a fecal indicator-positive GW source sample.*

(1) GW systems may obtain invalidation from the department of a fecal indicator-positive GW source sample collected under 41.7(3)*"a"* only under these conditions:

1. The system provides the department with written notice from the laboratory that improper sample analysis occurred; or

2. The department determines in writing that there is substantial evidence that a fecal indicator-positive GW source sample is not related to source water quality.

(2) If the department invalidates a fecal indicator-positive GW source sample, the system must collect another source water sample under 41.7(3)*"a"* within 24 hours of department notification of the invalidation decision. The sample must be analyzed for the same fecal indicator using the analytical methods in 41.7(3)*"c."* The department may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the source water sample within 24 hours due to circumstances beyond its control. For an extension, the department must specify how much time the system has to collect the sample.

*e. Sampling location.*

(1) Any GW source sample required under 41.7(3)*"a"* must be collected at a location prior to any treatment of the GW source, unless the department approves a sampling location after treatment.

(2) If the system's configuration does not allow for sampling at the well itself, the system may collect a sample at a department-approved location to meet the requirements of 41.7(3)*"a"* if the sample is representative of the water quality of that well.

*f. New sources.* As directed by the department, a GW system that places a new GW source into service must conduct assessment source water monitoring, including the sampling and analysis in 41.7(3)*"b"*(3) to 41.7(3)*"b"*(6). If directed, the system must begin monitoring before the GW source is used to provide water to the public.

*g. PN.* A system with a GW source sample collected under 41.7(3)*"a"* or *"b"* that is fecal indicator-positive and that is not invalidated under 41.7(3)*"d,"* including consecutive systems served by the GW source, must conduct Tier 1 PN under 567—subrule 40.5(2).

*h. Monitoring violations.* Failure to meet the requirements of 41.7(3)*"a"* through *"f"* is a monitoring violation that requires the system to provide Tier 3 PN under 567—subrule 40.5(4).

**41.7(4)** *GW system TT requirements.*

*a. GW systems with significant deficiencies or source water fecal contamination.*

(1) The TT requirements of this subrule must be met by GW systems when a significant deficiency is identified or when a GW source sample collected under 41.7(3)*"a"*(3) is fecal indicator-positive.

(2) If directed by the department, a GW system with a GW source sample collected under 41.7(3)*"a"*(2), 41.7(3)*"a"*(4), or 41.7(3)*"b"* that is fecal indicator-positive must comply with the TT requirements of this subrule.

(3) When a significant deficiency is identified at a SW or IGW system that also uses a GW source not under the influence of SW, the system must comply with provisions of this paragraph, except in cases where the department determines that the significant deficiency is in a portion of the distribution system that is served solely by the SW or IGW source.

(4) Unless the department directs the GW system to implement a specific corrective action, the system must consult with the department regarding the appropriate corrective action within 30 days of either receiving a written department notice of a significant deficiency, written notice from a laboratory that a GW source sample collected under 41.7(3)*"a"*(3) is fecal indicator-positive, or direction from the department that a fecal indicator-positive sample collected under 41.7(3)*"a"*(2), 41.7(3)*"a"*(4), or 41.7(3)*"b"* requires corrective action. For the purposes of this subrule, significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the department determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(5) Within 120 days, or earlier if directed by the department, of either receiving written department notification of a significant deficiency, written notice from a laboratory that a GW source sample

collected under 41.7(3)*"a"*(3) is fecal indicator-positive, or direction from the department that a fecal indicator-positive sample collected under 41.7(3)*"a"*(2), 41.7(3)*"a"*(4), or 41.7(3)*"b"* requires corrective action, the GW system must either:

1. Have completed corrective action in accordance with applicable department plan review processes or other department guidance or direction, if any, including department-specified interim measures; or

2. Be in compliance with a department-approved corrective action plan and schedule, subject to the following conditions:

- Any subsequent modifications to a department-approved corrective action plan and schedule must also be approved by the department; and
- If the department specifies interim measures for public health protection, pending department approval of the corrective action plan and schedule, or pending completion of the corrective action plan, the system must comply with these interim measures in addition to any department-specified schedule.

(6) Corrective action alternatives. GW systems meeting the conditions of 41.7(4)*"a"*(1) or (2) must implement one or more of the following corrective action alternatives:

1. Correct all significant deficiencies;
2. Provide an alternate source of water;
3. Eliminate the source of contamination; or
4. Provide treatment that reliably achieves at least 4-log virus treatment for the GW source.

(7) Special PN of significant deficiencies or source water fecal contamination.

1. In addition to the Tier 1 PN requirements of 567—subrule 40.5(2), a community GW system that receives department notice of a significant deficiency or notification of a fecal indicator-positive GW source sample that is not invalidated under this rule must inform the public served by the water system of the fecal indicator-positive source sample or of any uncorrected significant deficiency, in accordance with 567—paragraph 40.7(9)*"e."* The system must continue to inform the public annually until the significant deficiency is corrected or until the department determines that the fecal contamination in the GW source is corrected, in accordance with 41.7(3)*"a"*(5).

2. In addition to the Tier 1 PN requirements of 567—subrule 40.5(2), a noncommunity GW system that receives department notice of a significant deficiency must inform the public served by the system, in a department-approved manner, of any significant deficiency that is not corrected within 12 months of department notification or earlier if directed by the department. The system must continue to inform the public annually until the significant deficiency is corrected. The information must include:

- The nature of the significant deficiency and the date it was identified by the department;
- The department-approved plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed; and
- For systems with a large proportion of non-English speaking consumers, as determined by the department, information in the applicable language(s) regarding the importance of the notice, or a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

3. If directed by the department, an NCWS with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how the deficiencies were corrected, and the dates of correction under 41.7(4)*"a"*(7)"2."

*b. Compliance monitoring.*

(1) Existing GW sources. A GW system that provides at least 4-log virus treatment must submit a request to the department to avoid the source water monitoring requirements of 41.7(3). The request must include engineering, operational, or other information that the department may need to evaluate the submission. The department must approve the request in writing before the system can avoid the GW source monitoring requirements. The system's operation permit will include the mandatory operational requirements for the approved 4-log virus treatment. If the system subsequently discontinues 4-log virus treatment or no longer wishes to be exempt, the system must conduct GW source monitoring as required under 41.7(3).

(2) New GW sources. A GW system that places a GW source in service that is not required to meet the source water monitoring requirements of this subrule because it provides at least 4-log virus treatment for the GW source must comply with the following requirements:

1. The system must notify the department in writing that it provides at least 4-log virus treatment for the GW source. The department notification must include engineering, operational, or other information that the department requests to evaluate the submission. The contact time values for virus inactivation using free chlorine, chlorine dioxide, and ozone are in 567—Chapter 43, Appendix C. No CT table is provided for chloramines and total chlorine as the CT values would be prohibitively high for GW systems.

2. The system must conduct compliance monitoring under 41.7(4)*"b"*(3) within 30 days of placing the source in service.

3. The system must conduct GW source monitoring under 41.7(3) if it subsequently discontinues 4-log virus treatment for the GW source.

(3) Monitoring requirements. A GW system subject to 41.7(4)*"a,"*41.7(4)*"b"*(1), and 41.7(4) *"b"*(2) must monitor the effectiveness and reliability of treatment for that GW source before or at the first customer as follows:

1. Chemical disinfection. A GW system must monitor the residual disinfectant concentration, using analytical methods specified in 567—subparagraph 43.5(4)*"a"*(5), at a department-approved location and must record the lowest residual disinfectant concentration each day that water from the GW source is served to the public. A GW system must maintain the department-determined minimum residual disinfectant concentration every day the GW system serves water from the GW source to the public.

- A GW system serving more than 3,300 people must monitor continuously. If there is a failure in the continuous monitoring equipment, the system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must resume continuous residual disinfectant monitoring within 14 days.
- A GW system serving 3,300 or fewer people must take a daily grab sample during the hour of peak flow or at another department-specified time. If any daily grab sample measurement falls below the department-determined minimum residual disinfectant concentration, the system must take follow-up samples every four hours until the residual disinfectant concentration is restored to the department-determined minimum level. Alternatively, a GW system that serves 3,300 or fewer people may monitor continuously and meet the requirements of 41.7(4)*"b"*(3)"1," first bulleted paragraph.

2. Membrane filtration. A GW system using membrane filtration to meet the requirements of this paragraph to provide at least 4-log virus treatment must monitor and operate the membrane filtration process in accordance with all department-specified monitoring and compliance requirements. A GW system that uses membrane filtration is in compliance with the requirement to achieve at least 4-log virus removal when:

- The membrane has an absolute molecular weight cut-off (MWCO), or an alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve at least 4-log virus removal;
- The membrane process is operated in accordance with department-specified compliance requirements; and
- The integrity of the membrane is intact.

3. Alternative treatment. A GW system using a department-approved alternative treatment to meet the requirements of 41.7(4)*"b"* by providing at least 4-log virus treatment must:

- Monitor the alternative treatment in accordance with all department-specified monitoring requirements; and
- Operate the alternative treatment in accordance with all compliance requirements that the department determines to be necessary to achieve at least 4-log virus treatment.

*c. Discontinuing treatment.* A GW system may discontinue 4-log virus treatment for a GW source if the department determines in writing that 4-log virus treatment is no longer necessary for that GW source. A system that discontinues 4-log virus treatment is subject to 41.7(3).

*d. Monitoring violation.* Failure to meet the monitoring requirements of 41.7(4)*"b"* is a monitoring violation and requires the GW system to provide Tier 3 PN under 567—subrule 40.5(4).

**41.7(5)** *GW system TT violations.* A GW system must give Tier 2 PN under 567—subrule 40.5(3) for the TT violations specified in this subrule.

*a. Significant deficiency.* A GW system with a significant deficiency is in violation of the TT requirement if, within 120 days (or earlier if directed by the department) of receiving written department notice of the significant deficiency, the system:

(1) Does not complete corrective action in accordance with any applicable department plan review processes or other department direction, including department-specified interim measures; or

(2) Is not in compliance with a department-approved corrective action plan and schedule.

*b. Fecal indicator-positive source sample.* Unless the department invalidates a fecal indicator-positive GW source sample under 41.7(3)*"d"*(1), a GW system is in violation of the TT requirement if, within 120 days (or earlier if directed by the department) of meeting the conditions of 41.7(4)*"a"*(1) or 41.7(4)*"a"*(2), the system:

(1) Does not complete corrective action in accordance with any applicable department plan review processes or other department direction, including department-specified interim measures; or

(2) Is not in compliance with a department-approved corrective action plan and schedule.

*c. Failure to maintain 4-log treatment.* A GW system subject to 41.7(4)*"b"*(3) that fails to maintain at least 4-log virus treatment for a GW source is in violation of the TT requirement if the failure is not corrected within four hours of the determination that the system is not maintaining at least 4-log virus treatment before or at the first customer.

**41.7(6)** *GW system reporting and recordkeeping.*

*a. Reporting.* In addition to meeting the requirements of 567—subrule 40.8(1), GW systems must provide the following information to the department:

(1) A GW system conducting compliance monitoring under 41.7(4)*"b"* must provide notification any time it fails to meet any of the requirements for 4-log virus treatment including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or membrane integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours. Notification must be provided as soon as possible but in no case later than the end of the next business day.

(2) Notification of action completion, within 30 days of completing any corrective action under 41.7(4)*"a."*

(3) If a GW system subject to 41.7(3)*"a"* does not conduct source water monitoring under 41.7(3)*"a"*(5)"2," the system must provide documentation within 30 days of the total coliform-positive sample that it met the department's criteria.

*b. Recordkeeping.* In addition to the requirements in 567—40.9(455B), GW systems must maintain the following information for the specified time period:

(1) Documentation of corrective actions must be kept for not less than ten years.

(2) Documentation of PN required under 41.7(4)*"a"*(7) must be kept for not less than three years.

(3) Records of decisions under 41.7(3)*"a"*(5)"2" and records of fecal indicator-positive GW source sample invalidation under 41.7(3)*"d"*(1) must be kept for not less than five years.

(4) For consecutive systems, documentation of notification to the wholesale system(s) of total coliform-positive samples that are not invalidated under 41.2(1)*"d"* must be kept for not less than five years.

(5) Systems, including wholesale systems, required to perform compliance monitoring under 41.7(4)*"b"*(1), must maintain the following records:

1. The department-specified minimum disinfectant residual must be kept for not less than ten years.

2. Both the lowest daily residual disinfectant concentration and the date and duration of any failure to maintain the department-prescribed minimum residual disinfectant concentration for more than four hours must be kept for not less than five years.

3. Department-specified compliance requirements for membrane filtration, department-specified parameters for department-approved alternative treatment, and the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours must be kept for not less than five years.

**567—41.8(455B) Radionuclides.**

**41.8(1)** *Radionuclides.*

*a. Applicability.*

(1) This rule applies to all CWSs and specifies radionuclide MCLs, analytical methodology requirements, and monitoring requirements. Radionuclide reporting requirements are listed in 567—subrule 40.8(1), PN requirements are in 567—40.5(455B), and BAT is in 567—subparagraph 43.3(10)*"b"*(3). All CWSs must comply with the requirements and MCLs for gross alpha particle activity, radium-226, radium-228, uranium, beta particle activity, and photon emitter radioactivity. Only those CWSs designated by the department to be vulnerable to man-made radioactivity contamination are required to monitor for beta particle activity and photon emitter radioactivity. To determine whether a system is vulnerable to man-made nuclear radioactivity, the department will evaluate proximity to a nuclear facility, source water, historical analytical data, ongoing surveillance data from the nuclear facility, and any other factor considered to be relevant.

(2) Compliance dates. CWS must comply with the MCLs in 41.8(1)*"b"*(1). Compliance shall be determined in accordance with 41.8(1)*"c"* through *"f."* Compliance with the radionuclides reporting requirements is required. All CWSs must conduct initial monitoring to determine compliance with 41.8(1)*"b"*(1) by December 31, 2007.

*b. MCLs for radionuclides.*

(1) Gross alpha particle activity, radium-226, radium-228, and uranium MCLs are specified in the following table:

| Contaminant | MCL |
|---|---|
| Gross alpha particle activity, including Radium-226 but excluding radon and uranium | 15 pCi/L |
| Combined Radium-226 and Radium-228 | 5 pCi/L[1] |
| Uranium | 30 μg/L |

[1]Determine the combined radium-226 and radium-228 by the adding the results of analysis for radium-226 and radium-228.

(2) Beta particle activity and photon radioactivity MCLs.

1. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than 4 mrem/year.

2. Except for the radionuclides listed below, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents must be calculated on the basis of 2 liter per day drinking water intake, using the 168-hour data lists in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," National Bureau of Standards Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 mrem/year.

**Average Annual Concentrations Assumed to Produce a Total Body or Organ Dose of 4 mrem/year**

| Radionuclide | Critical Organ | Concentration |
|---|---|---|
| Strontium-90 | Bone marrow | 8 pCi/L |
| Tritium | Total body | 20,000 pCi/L |

*c. Detection limits and compliance determinations.* Compliance with the radionuclide MCLs will be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL. If a system is in violation of an MCL, the

supplier of the water is required to give notice to the department in accordance with 567—subrule 40.8(1) and to provide PN as required by rule 567—40.5(455B).

(1) Detection limits. When monitoring gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity concentration in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration which can be counted with a precision of plus or minus 100 percent at the confidence level (1.960 sigma, where sigma is the standard deviation of the net counting rate of the sample).

1. To determine compliance with the specified radionuclide MCLs, the detection limit shall not exceed the following concentrations:

**Detection Limits for Gross Alpha Particle Activity, Radium-226, Radium-228, and Uranium**

| Contaminant | Detection Limit |
|---|---|
| Gross alpha particle activity | 3 pCi/L |
| Radium-226 | 1 pCi/L |
| Radium-228 | 1 pCi/L |
| Uranium | 1 µg/L |

2. To determine compliance with the specified radionuclide MCLs, the detection limits shall not exceed the following concentrations:

**Detection Limits for Man-Made Beta Particle and Photon Emitters**

| Contaminant | Detection Limit |
|---|---|
| Gross beta | 4 pCi/L |
| Cesium-134 | 10 pCi/L |
| Iodine-131 | 1 pCi/L |
| Strontium-89 | 10 pCi/L |
| Strontium-90 | 2 pCi/L |
| Tritium | 1,000 pCi/L |
| Other radionuclides | 1/10 of the applicable limit |

(2) Compliance determination.

1. For systems monitoring more than once per year, MCL compliance is determined by a running annual average (RAA) at each sampling point. If the average of any sampling point is greater than the MCL, the system is immediately in violation of the MCL. If any sample result causes the RAA to exceed the MCL at any sample point, the system is immediately in violation of the MCL.

2. Systems monitoring annually or less frequently whose sample result exceeds the MCL must revert to quarterly sampling for that contaminant during the next quarter. Systems are required to conduct quarterly monitoring only at the SEP at which the sample was collected and for the specific contaminant that triggered the increased monitoring frequency. Systems triggered into increased monitoring will not be considered in violation of the MCL until they have completed one year of quarterly sampling. If any sample result causes the RAA to exceed the MCL at any sample point, the system is immediately in violation of the MCL.

3. Systems must include all samples taken and analyzed under the provisions of this rule in determining compliance, even if that number is greater than the minimum required by the department.

4. If a system does not collect all required samples when compliance is based on an RAA of quarterly samples, compliance will be based on the running average of the samples collected.

5. If a sample result is less than the detection limit, use a value of zero to calculate the annual average.

6. The department may invalidate results of obvious sampling or analytical errors.

7. To judge compliance with the radionuclide MCLs, averages of data shall be used and shall be rounded to the same number of significant figures as the MCL for the contaminant in question.

(3) The department will determine compliance or initiate enforcement action based upon analytical results or other information compiled by department staff or the department's designee.

(4) The department may assign additional requirements deemed necessary to protect public health, including PN requirements.

*d. Radionuclide analytical methodology.* Analysis for radionuclides shall be conducted to determine compliance with the radionuclide MCLs in accordance with the methods in the following table, or equivalent methods determined in accordance with rule 567—41.10(455B).

(1) Radionuclide Analytical Methodology Table.

**Radionuclide Analytical Methodology**

| Contaminant | Methodology | Reference (method or page number) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | EPA[1] | EPA[2] | EPA[3] | EPA[4] | SM[5] | ASTM[6] | USGS[7] | DOE[8] | Other |
| **Naturally occurring:** | | | | | | | | | | |
| Gross alpha[11] & beta | Evaporation | 900.0 | p. 1 | 00-01 | p. 1 | 302, 7110B, 7110 B-00 | | R-1120-76 | | |
| Gross alpha[11] | Co-precipitation | | | 00-02 | | 7110C, 7110 C-00 | | | | |
| Radium-226 | Radon emanation | 903.1 | p. 16 | Ra-04 | p. 19 | 305, 7500-Ra C, 7500Ra C-01 | D 3454-97, 05 | R-1141-76 | Ra-04 | NY[9] |
| | Radiochemical | 903.0 | p. 13 | Ra-03 | | 304, 7500-Ra B, 7500-Ra B-01 | D 2460-97, 07 | R-1140-76 | | GA[14] |
| Radium-228 | Radiochemical | 904.0 | p. 24 | Ra-05 | p. 19 | 7500-Ra D, 7500-Ra D-01 | | R-1142-76 | | NY[9] NJ[10] GA[14] |
| Uranium[12] | Radiochemical | 908.0 | | | | 7500-U B, 7500-U B-00 | | | | |
| | Fluorometric | 908.1 | | | | 7500-U C (17th edition) | D 2907-97 | R-1180-76 R-1181-76 | U-04 | |
| | ICP-MS | 200.8[13] | | | | 3125 | D 5673-03, 05, 10 | | | |
| | Alpha spectrometry | | | 00-07 | p. 33 | 7500-U C, 7500-U C-00 | D 3972-97, 02, 09 | R-1182-76 | U-02 | |
| | Laser phosphorimetry | | | | | | D 5174-97, 02, 07 | | | |
| | Alpha liquid scintillation spectrometry | | | | | | D 6239-09 | | | |
| **Man-made:** | | | | | | | | | | |
| Radioactive Cesium | Radiochemical | 901.0 | p. 4 | | | 7500-Cs B, 7500-Cs B-00 | D 2459-72 | R-1111-76 | | |
| | Gamma ray spectrometry | 901.1 | | | p. 92 | 7120, 7120-97 | D 3649-91, 98a, 06 | R-1110-76 | 4.5.2.3 | |
| Radioactive Iodine | Radiochemical | 902.0 | p. 6 p. 9 | | | 7500-I B, 7500-I B-00 7500-I C, 7500-I C-00 7500-I D, 7500-I D-00 | D 3649-91, 98a, 06 | | | |
| | Gamma ray spectrometry | 901.1 | | | p. 92 | 7120, 7120-97 | D 4785-93, 00a, 08 | | 4.5.2.3 | |
| Radioactive Strontium 89, 90 | Radiochemical | 905.0 | p. 29 | Sr-04 | p. 65 | 303, 7500-Sr B, 7500-Sr B-01 | | R-1160-76 | Sr-01 Sr-02 | |
| Tritium | Liquid scintillation | 906.0 | p. 34 | H-02 | p. 87 | 306, 7500-$^3$H B, 7500-$^3$H B-00 | D 4107-91, 98 (Reapproved 2002), 08 | R-1171-76 | | |

| Contaminant | Methodology | Reference (method or page number) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | EPA[1] | EPA[2] | EPA[3] | EPA[4] | SM[5] | ASTM[6] | USGS[7] | DOE[8] | Other |
| Gamma emitters | Gamma ray spectrometry | 901.1<br>902.0<br>901.0 | | | p. 92 | 7120<br>7500-Cs B,<br>7500-Cs B-00 | D 3649-91, 98a, 06 | R-1110-76 | Ga-01-R | |

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the sources listed below. Information regarding the documents can be obtained from the Safe Drinking Water Hotline at 800.426.4791. Documents may be inspected at EPA's Drinking Water Docket or at the Office of Federal Register.

[1]"Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA 600/4-80-032, August 1980. NTIS, PB 80-224744.

[2]"Interim Radiochemical Methodology for Drinking Water," EPA 600/4-75-008(revised), March 1976. NTIS, ibid. PB 253258.

[3]"Radiochemistry Procedures Manual," EPA 520/5-84-006, December 1987. NTIS, ibid. PB 84-215581.

[4]"Radiochemical Analytical Procedures for Analysis of Environmental Samples," March 1979. NTIS, ibid. EMSL LV 053917.

[5]SM, 13th, 17th, 18th, 19th, 20th, 21st, and 22nd editions, 1971, 1989, 1992, 1995, 1998, 2005, and 2012. Methods 302, 303, 304, 305, and 306 are in the 13th edition. Methods 7110B, 7500-Ra B, 7500-Ra C, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 7500-I C, 7500-I D, 7500-Sr B, 7500-3H B are in the 17th, 18th, 19th, 20th, 21st, and 22nd editions. Method 7110C and Method 7500-U C Alpha spectrometry are in the 18th, 19th, 20th, 21st, and 22nd editions. Method 7500-U C Fluorimetric Uranium is in the 17th and 21st editions. Method 7120 is in the 19th, 20th, 21st, and 22nd editions. Method 3125 is in the 20th edition. Methods 7110 B-00, 7110 C-00, 7500-Ra B-01, 7500-Ra C-01, 7500-Ra D-01, 7500-U B-00, 7500-U C-00, 7500-I B-00, 7500-I C-00, 7500-I D-00, 7120-97, 7500-Sr B-01, and 7500-3H B-00. The year that each method was approved is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[6]ASTM, Volumes 11.01 and 11.02, 2002. Any year containing the cited version of the method may be used.

[7]"Methods for Determination of Radioactive Substances in Water and Fluvial Sediments," Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the USGS, 1977. USGS Information Services, Box 25286, Federal Center, Denver, CO 80225-0425.

[8]"EML Procedures Manual," 28th (1997) or 27th (1990) edition, Volumes 1 and 2; either edition may be used. In the 27th edition, Method Ra-04 is listed as Ra-05, and Method Ga-01-R is listed as Sect. 4.5.2.3. Environmental Measurements Laboratory, U.S. Department of Energy, 376 Hudson Street, New York, NY 10014-3621.

[9]"Determination of Ra-226 and Ra-228 (Ra-02)," January 1980, revised June 1982. Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10]"Determination of Radium-228 in Drinking Water," August 1980. State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11]Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12]If uranium (U) is determined by mass, a 0.67 pCi/μg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U-234 to U-238 that is characteristic of naturally occurring uranium.

[13]"Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Revision 5.4, published in "Methods for the Determination of Metals in Environmental Samples – Supplement 1," EPA 600-R-94-111, May 1994. NTIS, PB 95-125472.

[14]"The Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-Ray Spectrometry Using HPGW or Ge(Li) Detectors," Revision 1.2, December 2004. Environmental Resources Center, Georgia Institute of Technology, 620 Cherry Street, Atlanta, GA 30332-0335.

(2) Method references for other radionuclides. When the identification and measurement of radionuclides other than those listed in 41.8(1)*"b"* are required, the following references shall be used, except in cases where alternative methods have been approved in accordance with 567—41.12(455B).

1. "Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions," H. L. Krieger and S. Gold, EPA-R4-73-014, EPA, Cincinnati, Ohio 45268 (May 1973).

2. "HASL Procedure Manual," edited by John H. Harley. HASL 300, ERDA Health and Safety Laboratory, New York, NY (1973).

*e. Monitoring requirements for gross alpha, radium-226, radium-228, and uranium.*

(1) General.

1. Monitoring frequency and confirmation samples. The department may require more frequent monitoring than specified in this paragraph and may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

2. Monitoring period. Each PWS shall monitor during the time period specified in the operation permit.

(2) Applicability and sampling locations.

1. Existing systems and sources. All existing CWSs must sample at every SEP representative of all sources being used under normal operating conditions. Systems must take each sample at the same SEP sampling point, unless conditions make another alternate sampling point more representative of each source, or the department has designated a distribution system location, in accordance with this paragraph. The department must approve any alternate sampling point for radionuclides.

2. New systems and sources. All new CWSs or CWSs that use a new source of water must begin initial monitoring for the new system or source within the first calendar quarter after initiating use of the system or source. More frequent monitoring must be conducted by a CWS when required by the department, in the event of possible contamination, or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

(3) Initial monitoring. Systems must conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows. If the average of the initial monitoring results for an SEP is above the MCL, a system must collect and analyze quarterly samples at that SEP until it has results from four consecutive quarters that are at or below the MCL unless it enters into another schedule as part of a formal compliance agreement with the department.

1. Systems without historical monitoring data. Systems without historical monitoring data must collect four consecutive quarterly samples at all SEP sampling points before December 31, 2007. The department may waive the final two quarters of initial monitoring from an SEP if the results of the samples from the previous two quarters are below the detection limit.

2. Systems with historical monitoring data and one SEP. Systems with only one SEP may use historical monitoring data collected between January 1, 2000, and December 31, 2003, from either the representative point in the distribution system or the SEP to satisfy the initial monitoring requirement.

3. Systems with historical SEP monitoring data and multiple SEPs. Systems with multiple SEPs that also have appropriate historical monitoring data for each SEP may use the monitoring data collected between January 1, 2000, and December 31, 2003, to satisfy the initial monitoring requirement.

4. Systems with historical distribution system monitoring data and multiple SEPs. Systems with appropriate historical data for a representative point in the distribution system and multiple SEPs may use the monitoring data collected between January 1, 2000, and December 31, 2003, provided that the department determines that the historical data satisfactorily demonstrates that each SEP is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between SEPs. The department must make a written finding indicating how the data conforms to these requirements in order for the data to satisfy the initial monitoring requirements.

(4) Reduced monitoring. The department may allow a CWS to reduce the future monitoring frequency from once every three years to once every six or nine years at each SEP, based on the following criteria. The samples collected during the reduced monitoring period must be used to determine the monitoring frequency for subsequent monitoring periods. If a system has a monitoring result that exceeds an MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that SEP until it has results from four consecutive quarters that are below the MCL unless it enters into another schedule as part of a formal compliance agreement with the department.

1. Nine-year frequency. If the average of the initial monitoring results for each contaminant is below the radionuclide detection limits specified in this subrule, a system must collect and analyze for that contaminant using at least one sample at that SEP every nine years.

2. Six-year frequency. If the average of the initial monitoring results for gross alpha particle activity, uranium, and combined radium-226 and radium-228 is at or above the detection limit and at or below half the MCL for a contaminant, a system must collect and analyze for that contaminant using at least one sample at that SEP every six years. The analytical results for radium-226 and radium-228 must be added together to yield the combined result.

3. Three-year frequency. If the average of the initial monitoring results for gross alpha particle activity, uranium, and combined radium-226 and radium-228 is above half of the MCL and at or below the MCL for a contaminant, a system must collect and analyze for that contaminant using at least one sample at that SEP every three years. The analytical results for radium-226 and radium-228 must be added together to yield the combined result.

(5) Composite samples. To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four consecutive quarterly samples from a single entry point if analysis is done within one year of the first sample. The analytical results from the composited samples will be considered by the department as the average analytical result to determine MCL compliance and to determine the future monitoring frequency. If the analytical result from the composited sample is greater than half of the MCL, the department may require additional quarterly samples from the system before the system will be allowed to sample under a reduced monitoring schedule.

(6) Data substitution using gross alpha particle activity results.

1. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/L.

2. The gross alpha particle activity measurement shall have a confidence interval of 95 percent (1.65 sigma, where sigma is the standard deviation of the net counting rate of the sample) for uranium. When a system uses a gross alpha particle activity measurement in lieu of a uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for uranium. If the gross alpha particle activity result is less than the detection limit, half the detection limit will be used to determine compliance and the future monitoring frequency.

*f. Monitoring requirements for beta particle and photon emitters.* To determine compliance with the radionuclide MCLs for beta particle and photon radioactivity, a system must monitor at a frequency specified in this paragraph.

(1) General.

1. Monitoring frequency and confirmation samples. The department may require more frequent monitoring than specified in this paragraph" and may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

2. Monitoring period. Each PWS shall monitor during the time period designated by the department in the operation permit.

(2) Systems designated by the department as vulnerable to man-made radioactivity.

1. Initial monitoring. Systems that have been determined by the department to be vulnerable to man-made radioactivity must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each SEP, beginning within one quarter after being notified by the department of this requirement. Systems already required to conduct beta particle and photon radioactivity monitoring must continue to sample until the department removes the monitoring requirement.

2. Reduced monitoring. The department may reduce the monitoring frequency at that sampling point to once every three years, if the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at an SEP has an RAA (computed quarterly) of less than or equal to 50 pCi/L (screening level). Systems must collect all of the samples required in "1" of this subparagraph during the reduced monitoring period.

3. Data substitution. For a system in the vicinity of a nuclear facility, the department may allow the system to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at its SEP(s), where the department determines such data is applicable. In the event that there is a release from a nuclear facility, systems using surveillance data must begin monitoring at its SEP(s) in accordance with this subparagraph.

(3) Systems determined to utilize waters contaminated by effluents from nuclear facilities.

1. Initial monitoring. Systems designated by the department as utilizing water contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each SEP, beginning within one quarter after department notification. Systems already designated by the department as systems using waters contaminated by effluents from nuclear facilities must continue to sample until the department removes the sampling requirement.

- Gross beta particle activity. Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

● Iodine-131. A composite of five consecutive daily samples shall be analyzed once each quarter for iodine-131. The department may require more frequent monitoring when iodine-131 is identified in the finished water.

● Strontium-90 and tritium. Annual monitoring for strontium-90 and tritium shall be conducted either by analyzing a composite of four consecutive quarterly samples or by analyzing four quarterly samples. The latter is recommended.

2. Reduced monitoring. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has an RAA (computed quarterly) less than or equal to 15 pCi/L (screening level), the department may reduce the monitoring frequency at that sampling point to every three years. Systems must collect all samples required in this subparagraph during the reduced monitoring period.

3. Data substitution. For systems in the vicinity of a nuclear facility, the department may allow a CWS to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the department determines such data is applicable. In the event that there is a release from a nuclear facility, systems that are using surveillance data must begin monitoring at the CWS SEP in accordance with 41.8(1)*"f"*(2)"1."

(4) Monitoring frequency waiver. A CWS designated by the department to monitor for beta particle and photon radioactivity cannot apply to the department for a waiver from the monitoring frequencies in 41.8(1)*"f"*(2) or (3).

(5) CWSs may analyze for naturally occurring potassium-40 beta particle activity from the same or an equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82.

(6) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, a sample analysis must be performed to identify the major radioactive constituents present in the sample, and the appropriate doses must be calculated and summed to determine compliance with 41.8(1)*"b"*(2)"1," using the formula in 41.8(1)*"b"*(2)"2." Doses must also be calculated and summed for measured levels of tritium and strontium to determine compliance.

(7) Monitoring after an MCL violation. Systems must monitor monthly at the sampling point(s) that exceed the MCL in 41.8(1)*"b"*(2) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until a system has established, by a rolling average of three monthly samples, that the MCL is being met. Systems that establish that the MCL is being met must return to quarterly monitoring until they meet the requirements of 41.8(1)*"f"*(2) or 41.8(1)*"f"*(3)"2."

**41.8(2)** Reserved.

**567—41.9(455B) Special monitoring.**

**41.9(1)** *Sodium special monitoring.* Suppliers of water for CWSs shall collect and have analyzed one sample per source or plant to determine the sodium concentration in the distribution system. Systems utilizing multiple wells that draw raw water from a single aquifer may, with departmental approval, be considered as one source for determining the minimum number of samples to be collected. Sampling frequency and approved analytical methods are as follows:

*a. SW systems.* Systems utilizing a SW source, in whole or in part, shall monitor for sodium at least once annually at the SEP.

*b. GW systems.* Systems utilizing GW sources shall monitor at least once every three years at the SEP.

*c. Increased monitoring.* Suppliers may be required to monitor more frequently where sodium levels are variable or if certain types of treatment are used, such as cation exchange softening.

*d. Analytical methodology.* Sodium analyses shall be performed in accordance with 41.3(1)*"e"*(1).

*e. Reporting.* The sodium level shall be reported to the public by at least one of the following methods:

(1) The CWS shall notify the appropriate local public health officials of the sodium levels by written notice by direct mail within three months of receipt of the analytical results. A copy of each notice required by this subrule shall be sent to the department within ten days of its issuance.

(2) In lieu of the reporting requirement in this paragraph, the CWS shall include the sodium level in its annual consumer confidence report, pursuant to 567—subparagraph 40.7(4)*"a"*(11).

*f. CWSs using cation exchange treatment.* CWS utilizing cation exchange treatment shall to collect one sodium sample of the finished water per year after all treatment. Analysis and reporting must be done in accordance with this subrule.

**41.9(2)** *Ammonia special monitoring.* Ammonia in GW is a precursor to the development of nitrite and nitrate in a drinking water system, which are both contaminants with acute health effects. This subrule lists the ammonia analytical methodology, sample preservation requirements, and holding times to be used for drinking water samples.

*a. Analytical methodology.* Analyses for ammonia shall be performed in accordance with the following methodology, with a detection limit of 0.1 mg/L ammonia as N:

**Analytical Methodology for Ammonia**

| Methodology | EPA[1] | SM (20th edition) | ASTM | USGS[2] | Other |
|---|---|---|---|---|---|
| Manual distillation at pH 9.5[4], followed by: | 350.2 | 4500-NH3 B | | | 973.49[3] |
| Titration | 350.2 | | | | |
| Manual electrode | 350.3 | 4500-NH3 D or E | D1426-93(B) | | |
| Automated phenate | 350.1 | 4500-NH3 G | | I-4523-85 | |
| Automated electrode | | | | | See note 5 |

[1]"Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, Revised March 1983 and 1979 where applicable.

[2]Fishman, M.J., et al., "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the USGS, Denver, CO, Revised 1989, unless otherwise stated.

[3]"Official Methods of Analysis of the Association of Official Analytical Chemists," 15th edition, 1990.

[4]Manual distillation is not required if the samples are very low in turbidity; however, manual distillation should be used whenever matrix interferences could be present in the sample, and will be required to resolve any controversies.

[5]Ammonia, Automated Electrode Method, Industrial Method Number 379-75 WE, February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

*b. Sample preservation and holding time.* Systems must collect a 500 mL grab sample into a plastic or glass bottle. The sample must be acidified at the time of collection to a pH of less than 2 by the addition of sulfuric acid ($H_2SO_4$) and refrigerated at 4 degrees Celsius. The sample must be analyzed within 28 days. If the sample is analyzed within 24 hours of collection, the sample acidification is not required.

**567—41.10(455B) Department analytical results used to determine compliance.** Analytical results or other information compiled by departmental staff may be used to determine compliance with the MCLs, TTs, or ALs in this chapter or 567—Chapter 43 or for initiating remedial action with respect to these violations.

**567—41.11(455B) Other monitoring.**

**41.11(1)** *Monitoring of interconnected PWS.* When a PWS system supplies water to one or more other PWSs, the department may modify the monitoring requirements imposed by this chapter to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the department and concurred with by the EPA administrator.

**41.11(2)** *Monitoring of other contaminants.* If the department determines that other contaminants are present in a PWS, and the contaminants are known to pose, or scientific evidence strongly suggests that they pose, a threat to human health, a water supply may be required to monitor for such contaminants. The water supply will monitor at a frequency and in a manner which will adequately identify the magnitude and extent of the contamination. The monitoring frequency and sampling location

will be determined by the department. All analytical results will be obtained using EPA-approved methods and submitted to the department for review and evaluation. Any monitoring required under this paragraph will be incorporated into an operation permit or an order.

These rules are intended to implement Iowa Code sections 455B.171 through 455B.188 and 455B.190 through 455B.192.

## ARC 8617C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to water supplies—design and operation and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 43, "Water Supplies—Design and Operation," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3), 455B.173(3) and 455B.173(5) through 455B.173(10).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.171 through 455B.188 and 455B.190 through 455B.192 and the federal Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.).

*Purpose and Summary*

Proposed Chapter 43 implements federal health-based drinking water standards and minimum drinking water treatment requirements in Iowa. The chapter establishes the following for water supply systems: emergency procedures, engineering and construction standards and associated permitting, procedures for periodic sanitary surveys to ensure compliance with the SDWA, operation permitting program and procedures, and certain drinking water treatment requirements for compliance with the SDWA. This chapter is necessary for the State of Iowa to maintain primacy for enforcing the federal SDWA since Iowa's rules must be at least as stringent as the requirements established in the SDWA. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Carmily Stone
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: carmily.stone@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at carmily.stone@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al carmily.stone@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 30, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |
| January 31, 2025 | Virtual meeting |
| 9 to 10 a.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at carmily.stone@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.681.3548 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al carmily.stone@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.681.3548 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 43 and adopt the following **new** chapter in lieu thereof:

# CHAPTER 43
# WATER SUPPLIES—DESIGN AND OPERATION

**567—43.1(455B) General information.**

**43.1(1)** *Emergency actions regarding water supplies.* When, in the opinion of the director, an actual or imminent hazard exists, a water supplier shall comply with the directives or orders of the director necessary to eliminate or minimize that hazard.

*a.* Water hauling on an emergency basis. A system that is providing finished drinking water hauled from another PWS must ensure the safety of the water in an emergency situation.

(1) Hauled water must come from a PWS currently regulated by the department and in compliance with 567—Chapters 40 through 43. Written department approval is required prior to the use of water from any PWS with a chronic health-based standard violation.

(2) The receiving PWS must have written department approval prior to the use of water from any PWS located in another state. The providing PWS must be in compliance with SDWA requirements.

(3) The hauled water must be disinfected with chlorine to ensure bacterial safety in the tanker, storage vessel, and distribution system. If the PWS providing the water does not disinfect, chlorine disinfectant must be added to the hauled water before use or storage at the receiving PWS. A minimum disinfectant residual of 2.0 mg/L as total chlorine or chloramines or 0.5 mg/L as free chlorine must be maintained in the tanker, storage vessel, and distribution system. If no disinfectant is used, the transported water must be boiled before any human consumptive use, which includes drinking, bathing, handwashing, oral hygiene, food preparation, dishwashing, ice making, or food processing.

(4) The tanker or water bladder must be approved for hauling or storing food grade materials and be sanitized in accordance with AWWA C652 prior to first use.

(5) Both filling and dispensing devices must include backflow protection to protect the source water, such as an air gap, double-check-valve assembly, or reduced pressure zone device.

(6) Total coliform bacteria samples must be collected from the tanker, storage tank or bladder, and distribution system as follows:

1. Tanker: one sample after cleaning and one before first potable water use.
2. Storage tank or bladder: one sample after cleaning and one before first use.
3. Distribution system: one sample initially before first use and with each new load of water or once per month, whichever is more frequent.

(7) Records must be maintained and available for inspection for five years.

*b.* Water hauling on a nonemergency basis. A system that is providing finished drinking water hauled from another PWS must comply with the conditions in its operation permit.

**43.1(2)** *Prohibition on the use of lead.* Any pipe, pipe fitting, plumbing fitting, plumbing fixture, solder, or flux that is used in the installation or repair of any public water supply system (PWS) or any plumbing in a facility providing water for human consumption that is connected to a PWS shall be lead free as defined in 567—40.2(455B). This shall not apply to leaded joints necessary for the repair of cast iron pipe.

*a.* The following items are exempted from the prohibition, depending upon their use in the system: pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption.

*b.* Additional products that could be used exclusively for nonpotable services include:

(1) Products that are clearly labeled on the product, package, or tags with a phrase such as “not for use with water for human consumption” or another phrase that conveys the same meaning in plain language;

(2) Products that are incapable of use in potable services with other products that would be needed to convey water for potable uses; or

(3) Products that are plainly identifiable and marketed as being solely for a use other than the conveyance of water. These other uses include conveyance of air, chemicals other than water, hydraulic fluids, refrigerants, gases, or other nonwater fluids.

*c.* The following items are exempted from the prohibition: toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, fire hydrants, service saddles, water distribution main gate valves two inches in diameter or larger, clothes washing machines, emergency drench showers, emergency face wash equipment, eyewash devices, fire suppression sprinklers, steam capable clothes dryers, and sump pumps.

**43.1(3)** *Use of noncentralized treatment devices.*

*a. Community PWS.* CWSs shall not use bottled water, point-of-use (POU) or point-of-entry (POE) devices to achieve permanent compliance with a maximum contaminant level (MCL), treatment technique (TT), or action level (AL) requirement in 567—Chapters 41 and 43.

*b. Noncommunity PWS.* The department may allow NCWSs to use POU devices to achieve MCL compliance, provided the contaminant does not pose an imminent threat to health (such as bacteria) nor place a sensitive population at risk (such as infants for nitrate or nitrite).

*c. Reduced monitoring requirements.* Bottled water, POU, or POE devices cannot be used to avoid the monitoring requirements of 567—Chapters 41 and 43, but the department may allow reduced monitoring requirements in specific instances.

*d. Bottled water requirements.* The department may require a PWS exceeding an MCL, TT, or AL requirement in 567—Chapters 41 and 43 to use bottled water as a condition of an interim compliance schedule or as a temporary measure to avoid an unreasonable health risk. Any bottled water must meet the federal Food and Drug Administration (FDA) bottled water standards in 21 CFR §165.110. The system must meet the following requirements:

(1) Monitoring program. Submit a monitoring program for bottled water to the department. The monitoring program must provide reasonable assurances that the bottled water complies with all MCLs, TT, or AL requirements in 567—Chapters 41 and 43. The PWS must monitor a representative sample of bottled water for all contaminants regulated under 567—Chapters 41 and 43 the first quarter that it supplies the bottled water to the public, and annually thereafter. Monitoring program results shall be provided to the department annually. If the bottled water is from a CWS that currently meets all of the federal SDWA requirements, the monitoring requirements of this subparagraph shall be waived by the department. The specific supplier of the bottled water must be identified in order for the department to waive the monitoring requirements.

(2) Certification. The PWS must receive a certification from the bottled water company that the bottled water supplied has been taken from an approved source; the bottled water company has conducted monitoring in accordance with 43.1(3)*"b"*(1); and the bottled water meets MCL, TT, or AL requirements in 567—Chapters 41 and 43. The PWS shall provide the certification to the department the first quarter after it supplies bottled water and annually thereafter.

(3) Provision of bottled water. The PWS is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the PWS via door-to-door bottled water delivery.

**43.1(4)** *Cross-connection control.* To prevent backflow or backsiphonage of contaminants into a PWS, connection shall not be permitted between a PWS and any other system that does not meet the monitoring and drinking water standards of this chapter, except as provided in 43.1(4)*"a," "b,"* or *"c."*

*a. Piping and plumbing systems.* Piping systems or plumbing equipment carrying nonpotable water, contaminated water, stagnant water, liquids, mixtures, or waste mixtures shall not be connected to a PWS unless properly equipped with an antisiphon device or backflow preventer acceptable to the department.

*b. Water loading stations.* The Ten States Standards contain the construction standards regarding water loading stations.

*c. Contamination as a result of cross-connection.* When, in the department's opinion, evidence clearly indicates the source of contamination within a system is the result of a cross-connection, the department may require a PWS to provide public notice (PN), identify and eliminate the connection, and implement a systemwide cross-connection program.

**43.1(5)** *Requirement for certified operator.* The department maintains a list of certified operators in accordance with 567—Chapter 81. The list includes the operator's name, certification classification (Water Treatment, Water Distribution, or Grade A Water System), and grade (A, I, II, III, or IV), and is periodically updated during the year.

*a. CWS and NTNC systems.* All CWSs and NTNCs must have a certified operator in direct responsible charge (DRC) of the treatment and distribution systems, pursuant to 567—Chapters 40 through 44 and 81.

*b. TNC systems.*

(1) Any TNCs owned by the state or federal government or using a surface water (SW) or IGW source must have a certified operator in DRC of the treatment and distribution systems, pursuant to 567—Chapters 40 through 44 and 81.

(2) Any TNC that uses chlorine dioxide as a disinfectant or oxidant must have a certified operator in DRC of the system, pursuant to 567—Chapter 81.

(3) The department may require any TNC to have a certified operator in DRC.

**43.1(6)** *Return water in PWSs.* Steam condensate, cooling water from engine jackets, water used in conjunction with heat exchange devices, or treated wastewater shall not be returned to a PWS.

**43.1(7)** *Sanitary surveys.* Each PWS must have a periodic sanitary survey conducted by the department or its designee. Systems must provide, upon request, any information that will enable the department to conduct the sanitary survey.

*a.* A sanitary survey is a records review and on-site inspection that evaluates a system's ability to produce and distribute safe drinking water and identifies improvements necessary to maintain or improve drinking water quality. A survey includes review and inspection of the following areas: water source; treatment facilities; distribution systems; finished water storage; pumps, pump facilities, controls and other equipment; monitoring, reporting, and data verification, including self-monitoring; system operation and management; maintenance; operator certification; and records.

*b.* A sanitary survey report is issued by the department or its designee, and may include both enforceable required actions for remedying significant deficiencies and nonenforceable recommended actions.

*c.* Sanitary surveys shall be conducted at least once every five years for TNCs and NTNCs and once every three years for CWSs.

*d.* The department or its designee shall provide the PWS with a written notice describing any significant deficiencies identified during the survey no later than 30 days after identification of the deficiency. The notice may be included in the sanitary survey report and may specify corrective actions and deadlines for completion of corrective actions. Systems must respond in writing to significant deficiencies outlined in the sanitary survey report or written notice and indicate how and on what schedule the system will address the noted deficiencies, either within 30 days of receiving the survey report or notice or within the time period specified in the report or notice. All systems must take the steps necessary to address significant deficiencies identified in a sanitary survey report or written notice that are within the control of the system and its governing body.

**567—43.2(455B) PWS operation permit.**

**43.2(1)** *Fees.*

*a. Annual fee.* A fee for the operation of a PWS shall be paid annually. The fee will not be prorated and is nonrefundable. The fee shall be based on the population served. The fee shall be the greater of $25 per year or $0.14 multiplied by the total population served by the PWS for all CWSs and NTNCs. The fee shall be $25 per year for all TNCs. Where a system provides water to another PWS (consecutive PWS) that is required to have an operation permit, the population of the recipient system shall not be counted as a part of the PWS providing the water.

*b. Fee notices.* The department will send annual notices to PWSs at least 60 days prior to the operation fee due date.

*c. Fee payments.* The annual operation fee must be paid to the department by September 1 each year.

*d. Fee adjustment.* The department may adjust the per capita fee payment by up to +/– $0.02 per person served so as to achieve the targeted revenue of $350,000 during each fiscal year. The commission must approve any per capita fee rate above $0.14 per person. Any fee adjustment shall comply with Iowa Code section 455B.183A.

*e. Exempted PWSs.* PWSs located on Indian lands are exempt from the fee requirements.

*f. Late fees.* When the owner of a PWS fails to remit payment of fees by September 1, the department will notify the system by a single notice of violation and assess a late fee of $100. The department may thereafter issue an administrative order pursuant to Iowa Code section 455B.175(1) or request a referral to the attorney general under Iowa Code section 455B.175(3).

**43.2(2)** *Operation permit requirement.* Except as provided in 43.2(3), no person shall operate any PWS or part thereof without, or contrary to any condition of, an operation permit issued by the director.

**43.2(3)** *Operation permit applications.* The owner of any PWS or part thereof must submit an application for an operation permit. Upon submission of a completed application form, the time requirement for having a valid operation permit is automatically extended until the application has either been approved or disapproved by the director.

*a. Application forms and timeline.*

(1) Applications for operation permits shall be made on forms provided by the department.

(2) An application shall be filed at least 90 days prior to the date operation is scheduled to begin unless a shorter time is approved by the director.

(3) The director shall issue or deny operation permits within 60 days of receipt of a completed application, unless a longer period is required and the applicant is so notified.

(4) The director may require the submission of additional information deemed necessary to evaluate an application.

(5) An application that is incomplete or otherwise deficient shall not be processed until the applicant has supplied the missing information or otherwise corrected the deficiency.

*b. Identity of signatories.* The person who signs the application for an operation permit shall be:

(1) Corporation. In the case of a corporation, a principal executive officer of at least the level of vice president. The corporation has the option of appointing a designated signatory to satisfy this requirement.

(2) Partnership. In the case of a partnership, a general partner.

(3) Sole proprietorship. In the case of a sole proprietorship, the proprietor.

(4) Public facility. In the case of a municipal, state or other public facility, by either the principal executive officer or the ranking elected official.

*c. Late applications.* When the owner of a PWS fails to make timely application, the department will notify the system by a single notice of violation and may thereafter issue an administrative order pursuant to Iowa Code section 455B.175(1) or request a referral to the attorney general under Iowa Code section 455B.175(3).

**43.2(4)** *Operation permit conditions.*

*a. Conditions.* Operation permits may contain conditions deemed necessary by the director to ensure compliance with all applicable department rules, to ensure that a PWS is properly operated and maintained, to ensure that potential hazards to the water consumer are eliminated promptly, and to ensure compliance with the SDWA.

*b. Compliance schedule.* Where one or more MCLs, TTs, ALs, or designated HAs cannot be met immediately, a compliance schedule for achieving compliance with standards may be included in a permit. A compliance schedule requiring alterations in accordance with the standards for construction in 43.3(1) and 43.3(2) may also be included for any supply that, in the opinion of the director, contains a potential hazard.

*c. Treatment.* If the department determines that a treatment method identified in 43.3(10) is technically feasible, the department may require a system to install or use that treatment method in connection with a compliance schedule, pursuant to 43.2(4)*"b."* The department's determination shall be based upon studies by the system and other relevant information.

**43.2(5)** *Notification of change.* The owner of a PWS shall notify the director within 30 days of any change in conditions identified in the permit application. This notice does not relieve the owner of the responsibility to obtain a construction permit as required by 567—43.3(455B).

**43.2(6)** *Renewal.* The department may issue operation permits for durations of up to five years. Operation permits must be renewed prior to expiration in order to remain valid. The renewal date shall be specified in the permit or in any renewal. Application for renewal must be submitted in accordance with 43.2(3).

**43.2(7)** *Denial, modification, or suspension.* The director may deny a new or renewal of, modify, or suspend, in whole or in part, any operation permit for good cause. Denial of a new permit, renewal of an existing permit, or modification of a permit may be appealed to the commission pursuant to 567—Chapter 7. Suspension or revocation may occur after hearing, pursuant to 567—Chapter 7. Good cause includes:

*a.* Violation of any term or condition of the permit.

*b.* Failure to pay the fee in accordance with 43.2(1).

*c.* Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

*d.* A change in any condition that requires either a permanent or temporary modification of a permit condition.

*e.* Failure to submit records and information the director may require both generally and as a condition of the operation permit in order to ensure compliance with permit conditions.

*f.* Violation of any requirements in, or significant noncompliance with, 567—Chapters 40 through 43, including noncompliance with applicable MCLs, TTs, or ALs.

*g.* Inability of a system to either achieve or maintain technical, managerial, or financial viability, as determined in 567—43.8(455B).

**567—43.3(455B) PWS construction.**

**43.3(1)** *PWS standards.*

*a.* Any PWS that does not meet the drinking water standards in 567—Chapters 41 and 43 shall make alterations necessary to comply with the drinking water standards in accordance with the construction standards contained in this rule unless the PWS has been granted a waiver from an MCL or TT as a provision of its operation permit pursuant to this chapter, provided that the PWS meets the schedule established pursuant to this chapter.

*b.* Any PWS that, in the opinion of the director, contains a potential hazard shall make alterations necessary to eliminate or minimize the hazard in accordance with the construction standards in this rule.

*c.* A PWS that is not operating within the construction standards may be required by the department via a compliance schedule to upgrade the deficient areas of the system before a construction permit will be issued for any work that does not address the current deficiencies.

**43.3(2)** *Construction standards.*

*a.* The construction standards for a drinking water project are the Ten States Standards, the AWWA Standards as adopted through 2023, and 43.3(7) through 43.3(9). In any conflict between the Ten States Standards, and the AWWA Standards, and 43.3(7) through 43.3(9), the Ten States Standards, 43.3(2), and 43.3(7) to 43.3(9) shall prevail. Additional standards include the following:

(1) Polyvinyl chloride (PVC) pipe manufactured in accordance with ASTM D2241, AWWA C900, AWWA C905, ASTM F1483, or AWWA C909 may be used for water main construction. The maximum allowable pressure for PVC or polyethylene pipe shall be determined based on a safety factor of 2.0 and a surge allowance of no less than two feet per second.

(2) For CWS groundwater (GW) systems, a minimum of two wells shall be provided, unless the system demonstrates to the department's satisfaction that a single well will provide a reliable and adequate source. For NTNC and TNC GW systems, a single well is acceptable.

(3) Separation of water mains from sanitary and combined sewers.

1. Horizontal separation of water mains from gravity sanitary and combined sewers. Water mains shall be separated from gravity sanitary and combined sewer mains by a horizontal distance of at least

ten feet measured edge to edge unless the bottom of the water main is at least 18 inches above the top of the sewer, and either:

- The water main is placed in a separate trench, or
- The water main is located on a bench of undisturbed earth at a minimum horizontal separation of three feet from the sewer.

If it is not possible to obtain a horizontal separation of three feet and a vertical separation of 18 inches between the bottom of the water main and the top of the sewer, a linear separation of at least three feet shall be provided, and one of the following shall be utilized:

- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight end seals, or
- The sewer shall be constructed of water main materials.

The separation distance (SD) between the water main and the sewer shall be the maximum feasible in all cases.

2. Horizontal separation of water mains from sanitary sewer force mains. Water mains shall be separated from sanitary sewer force mains by a horizontal distance of at least ten feet measured edge to edge unless the sanitary sewer force main is constructed of water main materials and the water main is laid at least four feet horizontally from the sanitary sewer force main. The SD between the water main and the sanitary sewer force main shall be the maximum feasible in all cases.

3. Vertical separation of water mains from sanitary and combined sewer crossovers. Vertical separation of water mains crossing over any sanitary or combined sewers shall be at least 18 inches when measured from the bottom of the water main to the top of the sewer. If it is not possible to maintain the required vertical separation, one of the following shall be utilized:

- The bottom of the water main shall not be placed closer than six inches above the top of a sewer, or
- The top of the water main shall not be placed closer than 18 inches below the bottom of a sewer.

When a water main crosses below or less than 18 inches above a sanitary or combined sewer, one of the following shall be utilized within approximately ten feet measured edge to edge horizontally, centered on the crossing, with joints located as far as possible from the point of crossing:

- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight ends, or
- Sewer pipe of water main material shall be installed.

The SD shall be the maximum feasible in all cases. Wherever a water main crosses a sanitary or combined sewer, the water main and sanitary or combined sewer pipes must be adequately supported. A low permeability soil shall be used for backfill material within ten feet of the point of crossing along the water main.

4. Horizontal separation of water mains from sanitary and combined sewer manholes. No water pipe shall pass through or come in contact with any part of a sanitary or combined sewer manhole. A minimum horizontal separation of three feet shall be maintained.

(4) Separation of water mains from storm sewers.

1. Horizontal separation of water mains from gravity storm sewers. Water mains shall be separated horizontally from gravity storm sewers by at least ten feet measured edge to edge. If it is not possible to maintain the required horizontal separation of ten feet, a minimum of three feet of separation shall be maintained and one of the following shall be utilized within ten feet measured edge to edge:

- The water main shall be constructed of ductile iron pipe with gaskets impermeable to hydrocarbons, or
- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight end seals, or
- Storm sewer pipe of water main material shall be installed, or
- Reinforced concrete pipe storm sewers shall be constructed with gaskets manufactured in accordance with ASTM C443.

2. Vertical separation of water mains from storm sewer crossovers. Water mains shall be vertically separated from storm sewers by at least 18 inches between the outside edges of the water main and the

storm sewer. The SD shall be the maximum feasible in all cases. In all cases where a water main crosses a storm sewer, the water main and storm sewer pipes must be adequately supported. A low permeability soil shall be used for backfill material within ten feet of the point of crossing along the water main. If it is not possible to obtain 18 inches of vertical separation where the water main crosses above a storm sewer, a minimum of 6 inches vertical separation shall be maintained and one of the following shall be utilized within ten feet measured edge to edge horizontally, centered on the crossing:

- The water main shall be constructed of ductile iron pipe with gaskets impermeable to hydrocarbons, or
- The water main shall be enclosed in watertight casing pipe with an evenly spaced annular gap and watertight end seals, or
- Storm sewer pipe of water main material shall be installed, or
- Reinforced concrete pipe storm sewers shall be constructed with gaskets manufactured in accordance with ASTM C443.

(5) All water mains, including those not designed to provide fire protection, shall be sized based on flow demands and pressure requirements. For regional water systems and for major distribution system upgrades, a hydraulic analysis may be required as part of the project submittal. Systems shall be designed to maintain a minimum pressure of 20 psi at ground level at all points in the distribution system under all conditions of flow. The normal working pressure in the distribution system should be approximately 60 to 80 psi and should not be less than 35 psi.

*b.* When engineering justification satisfactory to the director is provided substantially demonstrating that a waiver from the construction standards will result in equivalent or improved effectiveness, a waiver may be granted by the director. A waiver denial may be appealed to the commission pursuant to 567—Chapter 7. Waiver requests for projects qualifying for a waiver from the engineering requirement of 43.3(4) may be made without the retained services of a professional engineer.

**43.3(3)** *Construction permits.* No person shall construct, install or modify any project without first obtaining, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue permits under 567—Chapter 9, except as provided in this chapter. Construction permits are not required for POU treatment devices installed by a noncommunity water system (NCWS), except for those devices required by the department to meet a drinking water standard pursuant to 567—Chapters 41 and 43. No construction permit will be issued for a new PWS without a completed, department-approved viability assessment, which demonstrates that the system is viable pursuant to 567—43.8(455B).

*a. Issuance conditions.* A construction permit shall be issued by the director if the director concludes that the project will comply with department rules. Project construction must begin within one year from the permit issuance date; if it does not, the permit is no longer valid. If construction is ongoing and continuous (aside from weather delays) and the permitted project cannot be completed within one year, the permit shall remain valid until the project is completed. The department may extend a permit for a multiphase project, for a maximum two additional years.

*b. Applications.* A construction permit application for any project shall be submitted to the department at least 30 days prior to the proposed date for commencing construction or awarding contracts. This requirement may be waived when the department determines that an imminent health hazard exists to a PWS's consumers. Under this waiver, construction, installation, or modification may be allowed by the department prior to review and issuance of a permit if all the following conditions are met:

(1) The construction, installation, or modification will alleviate the health hazard;

(2) The construction is done in accordance with the construction standards, pursuant to 43.3(2);

(3) Plans and specifications are submitted within 30 days after construction;

(4) A professional engineer, licensed in the state of Iowa, supervises the construction; and

(5) The supplier of water receives approval of this waiver prior to any construction, installation, or modification.

*c. Fees.* A nonrefundable fee, as noted in this paragraph, shall be submitted with a construction permit application.

(1) Construction permit fees. The fee shall be determined based upon the total length of water main plus the non-water-main-related construction costs, calculated as follows:

1. Water mains (minimum $100; maximum $5,000):

| Length of permitted water main | Rate |
|---|---|
| First 1,000 ft. | $100 |
| Next 19,000 ft. | $0.10/ft. |
| Next 300,000 ft. | $0.01/ft. |
| Over 320,000 ft. | No additional charge |

2. Non-water-main-related construction costs, including source, treatment, pumping, storage and waste handling (minimum $100; maximum $16,000):

| Estimated construction cost | Rate |
|---|---|
| First $50,000 | $100 |
| Next $950,000 | 0.2% of estimated construction cost |
| Next $14,000,000 | 0.1% of estimated construction cost |
| Over $15,000,000 | No additional charge |

(2) "As-built" construction fees. "As-built" construction is defined as construction that occurred before a construction permit is issued. The fee shall be calculated according to 43.3(3)*"c"*(1), plus an additional fee of $200. The fee for water main projects permitted in accordance with 43.3(3)*"e"* shall be calculated in accordance with 43.3(3)*"c"*(1); however, the additional "as-built" fee of $200 shall not be assessed for these projects.

(3) Other fees. A fee for change orders, addenda, permit supplements will only be charged if the aggregate of the changes approved for the project to date causes the total project construction cost to exceed the original project construction cost by at least 5 percent. For water main extensions, the fee will be charged if the total length of water main exceeds the original approved length by 5 percent. The request for a time extension is a flat fee.

| Other Categories | Rate |
|---|---|
| Change orders, addenda, and permit supplements for water mains | $0.10/ft. of additional water main, minimum: $50 |
| Change orders, addenda, and permit supplements for non-water-main-related construction costs | 0.2% of additional non-water-main-related construction costs, minimum: $50 |
| Request for time extension | $50 |

(4) Calendar year fee cap. The total amount of construction permit fees for a PWS owner during any calendar year shall not exceed $5,000 for water mains and $16,000 for non-water-main-related construction projects.

*d. Water well construction.* All water well construction must be performed by a certified well contractor in accordance with 567—Chapter 82. It is the responsibility of the PWS and certified well contractor to ensure that a public well construction permit has been issued by the department prior to initiation of well construction and to ensure that all well construction is performed in accordance with this chapter.

*e. Minor water main construction permit.* A PWS may obtain a minor water main construction permit from the department for construction or replacement of minor water mains that serve additional users. By obtaining this permit, the system is able to construct, extend, or replace new or existing minor water mains without obtaining an individual construction permit for each specific water main. The permit shall allow construction or replacement of minor water mains that do not exceed six inches in diameter and, in aggregation, do not increase the average daily demand (in gallons per day) of the PWS by more than 5 percent over the duration of the permit.

The additional users must have been included in the system's approved hydraulic analysis. The water demands of the additional users must be consistent with the water demands in the approved hydraulic analysis.

(1) A minor water main construction permit shall be issued subject to the following conditions:

1. The system has approved standard specifications for water main construction filed with the department;

2. The system has adequate source capacity and, where treatment is provided, adequate treatment plant capacity to meet the peak day demand of all existing users and the proposed additional users covered under the permit;

3. The system has adequate storage capacity to meet the average day demand of all existing users and the proposed additional users covered under the permit; and

4. The system submits an application for a minor water main construction permit to the department 90 days before the anticipated first use of the permit. Construction shall not commence prior to the issuance of a permit.

(2) An application for minor water main construction permit shall include:

1. An up-to-date hydraulic analysis of the system, prepared by a licensed professional engineer (unless one is already on file with the department). The hydraulic basis of flow (gallons per minute per connection) used in the analysis must be acceptable to the department. A hydraulic analysis shall include:

- All existing water mains within the system;
- All proposed water mains intended to be covered by the permit;
- A demonstration that the system has adequate hydraulic capacity to serve the existing and new users under peak flow conditions without causing the pressure to fall below 20 psi anywhere within the system;
- The location of all potential users of the system;
- The diameter of all existing and proposed pipes;
- The projected system flows; and
- The static and dynamic pressures anticipated throughout the system with the addition of the new users incorporated in the analysis.

2. A completed Schedule 1b, Form 542-3151.

(3) The PWS must submit completed Schedule 2c, Form 542-3152, prior to the construction or replacement of each minor water main covered by a permit. Each water main covered by a permit must have either been included in the previously submitted hydraulic analysis or must be included in an update to the hydraulic analysis, submitted with Schedule 2c. If an update to the hydraulic analysis is submitted, it must include all portions of the distribution system potentially affected by the new construction.

(4) By January 31 of the year following permit issuance, the PWS shall submit the following to the department:

1. A complete set of plans for all water main extensions constructed under the permit, prepared and submitted by a licensed professional engineer.

2. Completed Schedules 1a, 1c, and 2a.

3. The construction permit fee calculated in accordance with 43.3(3)*"c"*(1). The fee calculation shall be based upon the total length of water main constructed under a permit. For the purpose of calculating the total fee amount in accordance with 43.3(3)*"c"*(4), the fee shall be credited to the calendar year in which it was received by the department.

(5) A permit shall contain conditions deemed necessary by the director to ensure compliance with all applicable department rules.

(6) The director may modify a permit, in whole or in part, at any time. The director may suspend or revoke a permit, in whole or in part, at any time by providing written notice to the permit holder, and is not obligated to renew the permit. Cause for modification, suspension, or revocation of a permit includes but is not limited to:

1. Violation of any term or condition of a permit;

2. Misrepresentation of fact or failure to disclose fully all material facts in order to obtain a permit;

3. Failure to submit department-required records and information, both generally and as condition of a permit;

4. Failure to submit timely reports from previous permits; or

5. Failure to construct in accordance with either approved construction standards, in accordance with 43.3(2), or with the system's approved standard specifications.

(7) A minor water main construction permit expires on December 31 of the year in which it is issued.

(8) No waiver to the construction standards is allowed under a minor water main construction permit, except for AWWA C651 Section 5.1, Sampling Frequency. If a waiver to the construction standards is needed, the system must apply for an individual construction permit following the procedures in 567—subrule 40.4(1).

**43.3(4)** *Waiver from engineering requirements.* The requirement for preparation of plans and specifications by a licensed professional engineer may be waived for the following types of projects, provided the proposed improvement complies with the construction standards. This waiver does not relieve the supplier of water from meeting the application and permit requirements of 43.3(3), except that the applicant need not obtain a written permit prior to installing the equipment.

*a.* Simple chemical feed, if all the following conditions are met:

(1) The improvement consists only of a simple chemical solution application or installation, which in no way affects the performance of a larger treatment process, or is included as part of a larger treatment project;

(2) The chemical application is by a positive displacement pump, the acceptability of said pump to be determined by the department;

(3) The supplier of water provides the department with a schematic of the installation and manufacturer's specifications sufficient to determine if the simple chemical feed installation meets the applicable construction standards, pursuant to 43.3(2);

(4) The final installation is approved based on an on-site inspection by department staff; and

(5) The installation includes only the prepackaged delivery of chemicals (from sacks, containers, or carboys) and does not include the bulk storage or transfer of chemicals (from a delivery vehicle).

*b.* Self-contained treatment unit, if all the following conditions are met:

(1) The equipment can be purchased "off the shelf"; is self-contained, requiring only a piping hookup for installation; and operates throughout a range of 35 to 80 psi;

(2) The plant is designed to serve no more than an average of 250 individuals per day;

(3) The supplier of water provides the department with a schematic of the installation, manufacturer's specifications, or other necessary information, sufficient to determine if the installation of the self-contained treatment unit will alleviate an MCL violation; and

(4) The final installation is approved based on an on-site inspection by department staff.

**43.3(5)** *Project planning and design basis.* An engineering report describing the project design basis must be submitted to the department either with the project or in advance of construction.

*a.* The report must contain information and data necessary to determine:

(1) Project conformance with the construction and operation standards in 43.3(2), and

(2) The adequacy of the project to supply water in sufficient quantity, at sufficient pressure, and of a quality that complies with drinking water standards in 567—Chapters 41 and 43.

*b.* The report must supply pertinent information as set forth in part one of the Ten States Standards.

*c.* The department may reject receipt or delay review of the plans and specifications until an adequate design basis is received.

**43.3(6)** *Standard specifications for water main construction.* Standard specifications for water main construction by an entity may be submitted to the department or an authorized local public works department for approval.

*a.* An approval shall apply to all future water main construction by or for that entity for which plans are submitted with a statement requiring construction in accordance with all applicable approved

standard specifications unless the standards for PWSs specified in 43.3(2) are modified subsequent to an approval and the standard specifications would not be approvable under the modified standards.

*b.* Where approved specifications are on file, construction may commence 30 days following plan receipt by the department or an authorized local public works department, if no response has been received indicating construction shall not commence until a permit is issued.

**43.3(7)** *Site and monitoring requirements for new raw water source(s) and underground finished water storage facilities, and water supply separation distances (SDs).*

*a. Site approval.* The site for each proposed raw source or finished water below-ground level storage facility must be approved by the department prior to the submission of plans and specifications.

*b. Site approval criteria.* A site may be approved if the director concludes that the criteria in this paragraph are met.

(1) Groundwater (GW) source. GW wells shall be planned and constructed to adapt to the geologic and GW conditions of the proposed site to ensure production of water that is both microbially safe and free of substances that could cause harmful human health effects. GW wells must meet the following requirements:

1. Drainage must be directed away from a well in all directions for a minimum radius of 15 feet.

2. A well site must meet the minimum SDs from contamination sources specified in Table A in 43.3(7)*"d."*

3. After a well site has received preliminary department approval, the owner of the proposed well must submit, as part of the construction permit application, proof of legal control of the land for a 200-foot radius around the well, through purchase, lease, easement, ordinance, or other similar means. Legal control must be maintained by the PWS for the life of the well. The SDs specified in Table A in 43.3(7) *"d"* must be maintained for the life of the well as legal control allows. However, if the proposed well is for an existing NCWS and is replacing an existing well that either does not meet the current standards or is in poor condition, the 200-foot legal control requirement may be waived by the department, provided that:

- The proposed well is located on the best available site;
- The existing facility does not have adequate land to provide the 200-foot control zone;
- The owner has attempted to obtain legal control without success; and
- There is no other PWS available to which the supply could connect.

4. No GW well shall be constructed within the projected plume of any known anthropogenic GW contamination without the department's written approval. The department may allow well construction within a contamination plume if an applicant can provide treatment that ensures all drinking water standards are met and ensures that the pumpage of the proposed well will not cause plume migration that impacts the water quality of other nearby wells. An applicant must demonstrate, using a hydrogeologic model acceptable to the department, that the time of transport is greater than two years for any viral, bacterial, or other microorganism contaminant and greater than ten years for all chemical contaminants. The projected plume modeling must account for the proposed well pumpage rate. The department may require additional construction standards for these situations to ensure protection of the GW from contamination.

5. The department may require that an identification tag be applied to each GW well and may supply the numbered tag. The responsibility for ensuring that the tag is properly attached to the well is with the certified water well contractor for new wells and with the department for existing wells.

(2) Surface water (SW) source.

1. An applicant must submit proof that a proposed SW source can, through readily available treatment methodology, comply with 567—Chapters 41 and 43, and that the SW source is adequately protected against potential health hazards including, but not limited to, point source discharges, hazardous chemical spills, and the potential sources of contamination listed in Table A in 43.3(7)*"d."*

2. After a SW impoundment has received preliminary department approval for use as a raw water source, the owner of the PWS shall submit proof of legal control through ownership, lease, easement, or other similar means, of contiguous land for a distance of 400 feet from the shoreline at the maximum water level. Legal control shall be for the life of the impoundment and shall control location of sources

of contamination specified in Table A in 43.3(7)*"d"* within the 400-foot distance. Proof of legal control should be submitted with the construction permit application and shall be submitted prior to issuance of a construction permit.

*c. New source water monitoring requirements.* Water quality monitoring shall be conducted on all new water sources and results submitted to the department prior to placing the new water source into service.

(1) All sources. Water samples shall be collected from each new water source and analyzed for all appropriate contaminants, as specified in 567—Chapter 41, consistent with the particular system classification. If multiple new sources are being added, sample compositing (within a single system) shall be allowed in accordance with the composite sampling requirements in 567—Chapter 41. A single sample may be allowed to meet this requirement, if approved by the department. Subsequent water testing shall be conducted consistent with the system's operation permit monitoring schedule.

(2) GW sources. Water samples from GW sources shall be collected at the conclusion of the drawdown/yield test pumping procedure, with the exception of bacteriological monitoring. Bacteriological monitoring must be conducted after disinfection of each new well and subsequent pumping of the chlorinated water to waste. Water samples must be analyzed for ammonia and should be analyzed for alkalinity, pH, calcium, chloride, copper, hardness, iron, magnesium, manganese, potassium, silica, specific conductance, sodium, sulfate, filterable and nonfilterable solids, and zinc.

(3) SW sources. Water samples from SW sources should be collected prior to the design of the SW treatment facility and shall be collected and analyzed prior to utilization of the source. Samples shall be collected during June, July, and August. In addition, quarterly monitoring shall be conducted in March, June, September, and December at a location representative of the raw water at its point of withdrawal. Samples shall be analyzed for turbidity, alkalinity, pH, calcium, chloride, color, copper, hardness, iron, magnesium, manganese, potassium, silica, specific conductance, sodium, sulfate, filterable and nonfilterable solids, carbonate, bicarbonate, algae (qualitative and quantitative), total organic carbon (TOC), five-day biochemical oxygen demand, dissolved oxygen, surfactants, nitrogen series (organic, ammonia, nitrite, and nitrate), and phosphate.

*d. Separation distances (SDs).* The minimum lateral SDs between wells and belowground finished water storage facilities and structures or sources of contamination are specified below in Table A. Additional legal and conveyance-specific SD requirements are specified for public wells in 43.3(7)*"b"* and for water mains in 43.3(2)*"a"*(3) and 43.3(2)*"a"*(4).

(1) There shall be no physical connection between a public or private potable water supply system and a sewer, or appurtenance thereto, that would permit the passage of any sewage into a potable water supply.

(2) When a proposed well is located in an existing well field and will withdraw water from the same aquifer as the existing well(s), the individual SDs listed in Table A may be waived if substantial historical data are available indicating that no contamination has resulted.

(3) Greater SDs than those listed in Table A may be required where necessary to ensure that no adverse effects to systems or the existing environment will result. Lesser SDs may be considered if detailed justification is provided by the applicant's engineer showing that no adverse effects will result from the lesser distance and the regional department field office staff recommend approval of the lesser distance. Such exceptions must be based on special construction techniques or localized geologic or hydrologic conditions.

**TABLE A: PUBLIC WELL AND BELOWGROUND LEVEL FINISHED WATER STORAGE FACILITY SEPARATION DISTANCES**

| Structure or Source of Contamination | Required Minimum Lateral Distance, as Measured Horizontally on the Ground Surface, in feet | | |
|---|---|---|---|
| | Public Wells | | Belowground level finished water storage facility |
| | Deep Well[1] | Shallow Well[1] | |
| **PRIVATE WELLS:** | | | |
| Private wells (new or existing, deep or shallow) | 200 | 400 | 50 |

| Structure or Source of Contamination | Required Minimum Lateral Distance, as Measured Horizontally on the Ground Surface, in feet | | |
|---|---|---|---|
| | Public Wells | | Belowground level finished water storage facility |
| | Deep Well[1] | Shallow Well[1] | |
| GHEX loop boreholes[2] | 200 | | 50 |
| **WASTEWATER STRUCTURES:** | | | |
| Land Disposal of Treated Wastes: | | | |
| Irrigation of wastewater | 200 | 400 | 50 |
| Land application of solid wastes[3] | 200 | 400 | 50 |
| Land application of septage[4] | 500 | | 50 |
| Water treatment plant waste discharged to the ground surface | 50 | | 50 |
| Other sanitary and industrial discharges to the ground surface | 400 | | 50 |
| Wastewater Disposal Systems: | | | |
| Water treatment plant waste treatment structures[5] | 50 | | 50 |
| PSDSs and onsite treatment systems – closed portion[6] | 100 | 200 | 50 |
| PSDSs and onsite treatment systems – open portion[6] | 200 | 400 | 50 |
| Lagoons[7] | 400 | 1000 | 50 |
| Mechanical wastewater treatment plants[8] | 200 | 400 | 50 |
| **CHEMICALS:** | | | |
| Transmission pipelines (including, but not limited to, fertilizer, liquid petroleum, or anhydrous ammonia) | 200 | 400 | 50 |
| Chemical applications to ground surface | 100 | 200 | 50 |
| Chemical and mineral storage, except for liquid propane gas (LPG) | | | |
| Above ground storage[9] | 100 | 200 | 50 |
| On or under ground storage | 200 | 400 | 50 |
| Liquid propane gas (LPG) storage tanks | 15 | | 15 |
| **ANIMALS:** | | | |
| Animal pasturage | 50 | | 50 |
| Animal enclosures (such as confinement buildings or open feedlots) | 200 | 400 | 50 |
| Earthen silage storage trenches or pits | 100 | 200 | 50 |
| Animal Wastes: | | | |
| Storage basins or lagoons or runoff control basins | 400 | 1000 | 50 |
| Solids stockpiles, solids settling facilities, or storage tanks | 200 | 400 | 50 |
| Land application of liquid, slurry, or solids | 200 | 400 | 50 |
| **WATERBODIES:** | | | |
| Flowing streams, ponds, lakes, reservoirs, wetlands, or drainage channels[10] | 50 | | 50 |
| **MISCELLANEOUS STRUCTURES:** | | | |
| Basements, pits, or sumps[11] | 10 | | 10 |
| Cemeteries | 200 | | 50 |
| Cisterns | 50 | 100 | 50 |
| Railroads | 100 | 200 | 50 |
| Solid waste landfills and disposal sites[12] | 1000 | | 50 |
| **GRAVITY SANITARY SEWER MAINS AND STORM SEWERS[13]** Includes sewers carrying water treatment plant wastes, building sewer service lines, and laterals[14] | | | |
| General gravity sanitary and storm sewer minimums | 0-25: prohibited | | 0-25: prohibited |
| Water main materials[15] | 25-75 | | 25 |
| Standard sanitary sewer materials[15] | 75-200 | | 50 |
| **SANITARY SEWER FORCE MAINS:[13]** | | | |

| Structure or Source of Contamination | Required Minimum Lateral Distance, as Measured Horizontally on the Ground Surface, in feet | | |
|---|---|---|---|
| | Public Wells | | Belowground level finished water storage facility |
| | Deep Well[1] | Shallow Well[1] | |
| General sanitary sewer force main minimums | 0-75: prohibited | | 0-50: prohibited |
| Water main materials[15] | 75-400 | | 50 |
| Standard sanitary sewer materials[15] | 400-1000 | | 50 |
| **DRAINS:[13]** | | | |
| General drains, including well house floor drains to sewers: | | | |
| General drain minimums | 0-25: prohibited | | 0-25: prohibited |
| General drains - water main materials[15] | 25-75 | | 25-50 |
| General drains - sanitary sewer materials[15] | 75-200 | | 50 |
| Well house floor drains to surface: | | | |
| General well house floor drains to surface minimums | 0-5: prohibited | | 0-5: prohibited |
| Standard sanitary sewer material[15] | 5-50 | | 5-50 |
| **MISCELLANEOUS CONVEYANCES:[13]** | | | |
| Internal conveyance piping for water plant treatment process wastes treated onsite: | | | |
| Internal conveyance piping minimums | 0-5: prohibited | | 0-5: prohibited |
| Standard sanitary sewer materials[15] | 5-50 | | 5-50 |

[1]Deep and shallow wells are defined in 567—40.2(455B).

[2]GHEX loop boreholes are defined in 567—49.2(455B).

[3]Solid wastes, for the purpose of land application, are those derived from the treatment of water or wastewater, including sewage sludge, as defined in 567—Chapter 67. Certain types of solid wastes from water treatment processes may be land-applied within the SD on an individual, case-by-case basis.

[4]Septage shall be land applied in accordance with 567—Chapter 68.

[5]The term "water treatment plant waste treatment structures" includes lagoons that are used solely to store wastes or wastewater from drinking water treatment plants, such as lime sludge storage lagoons.

[6]PSDS (private sewage disposal system) is defined in 567—subrule 69.1(2). "Onsite treatment system" includes any wastewater treatment system not included in the definition of a private sewage disposal system (i.e., provides treatment or disposal of domestic sewage from more than four dwelling units or 16 or more individuals on a continuing basis) that is utilizing onsite wastewater treatment technologies described in 567—Chapter 69 to treat domestic waste. Closed portion refers to the part of a treatment system that is fully contained and does not allow effluent or pretreated effluent to enter soil or groundwater (e.g., septic tank or impervious vault toilet). Open portion refers to the part of a treatment system that allows effluent or pretreated effluent to discharge into soil or groundwater for treatment or disposal (e.g., soil absorption system or unlined ISSF system). These SDs also apply to septic systems that are not considered privately owned.

[7]The term "lagoons" includes aerated lagoon systems, advanced aerated lagoon systems, and waste stabilization lagoons as defined in 567—subrule 81.1(1) and holding ponds, equalization basins, and sludge digestion or holding tanks as described in the IWFDS. The term does not include lagoons used to dispose of water treatment plant wastes and anaerobic lagoons used for animal wastes. The SD from lagoons shall be measured from the water surface.

[8]The term "mechanical treatment plants" include activated sludge systems and fixed film biological treatment systems, as defined in 567—subrule 81.1(1), and any other wastewater disposal system that is not a PSDS, an onsite treatment system, or a lagoon.

[9]The minimum SD for liquid fuel storage associated with standby power generators shall be 50 feet if secondary containment is provided. Secondary containment shall provide for a minimum of 110 percent of the liquid fuel storage capacity. Double-walled storage tanks shall not be considered as secondary containment. Electrical power transformers mounted on a single utility pole are exempt from the SD requirements.

[10]Includes drainage channels that may have a direct connection to the groundwater table or a surface water.

[11]The SDs from basements, pits, and sumps must be met in order for a well to be considered a protected source for the purposes of the coliform sampling frequency determination in 567—subparagraph 41.2(1)*"e"*(4).

[12]Solid waste, when referring to landfills and disposal sites, means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.

[13]The SDs are dependent upon the two following factors: the type of piping that is in the existing sewer or drain, as noted in the table, and whether the piping was properly installed in accordance with the standards.

[14]The distances for building sewer service lines and laterals shall be considered the minimum distances when constructing sewer lines and shall be increased where possible to provide better protection.

[15]These are the type of materials or pipe used to construct the type of sewer, main, or drain as specified in accordance with 43.3(2) and Section 2.4 of the IWFDS.

**43.3(8)** *Drinking water system components.* Drinking water system components that come into contact with raw, partially treated, or finished water must be suitable for the intended use in a potable water system. Components must be certified by an American National Standards Institute (ANSI) accredited third party for conformance with ANSI/NSF Standard 61 and ANSI/NSF lead-free (through annex G of 372) specifications, if such specification exists for the particular product, unless approved components are not reasonably available for use. Component materials generally excluded from ANSI/NSF 61 requirements include concrete, stainless steel, and aluminum. If the component does not meet the ANSI/NSF Standard 61 and lead-free specifications or no specification is available, the person seeking to supply or use the component must prove to the department's satisfaction that the component is not toxic or otherwise a potential hazard in a potable PWS.

**43.3(9)** *Water treatment filter media material.* For single media filters, grain sizes up to 0.8 mm effective size may be approved for filters designed to remove constituents other than those contained in the primary drinking water standards. Pilot or full-scale studies demonstrating satisfactory treatment efficiency and operation with the proposed media will be required prior to issuing any construction permits that allow filter media sizes greater than 0.55 mm.

**43.3(10)** *Best available treatment (BAT) technology.*

*a. BATs for organic compounds.* The table in 40 CFR §141.61(b) identifies either granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OXID) as the BAT, TT, or other means available for achieving compliance with the MCL for organic contaminants identified in 567—paragraph 41.5(1)*"b."* When setting MCLs for synthetic organic chemicals (SOCs), any BAT must be at least as effective as GAC.

*b. BATs for inorganic chemicals (IOCs) and radionuclides.*

(1) IOCs. The BAT for Inorganic Compounds table in 40 CFR §141.62(c) identifies the BAT technology, TT, or other means available for achieving compliance with the MCLs for the IOC contaminants listed in 567—paragraph 41.3(1)*"b,"* except fluoride.

(2) Arsenic. The Small System Compliance Technologies for Arsenic table in 40 CFR §141.62(c) identifies the affordable technology, TT, or other means available to systems serving 10,000 or fewer persons for achieving compliance with the arsenic MCL.

(3) Radionuclides.

1. Table B in 40 CFR §141.66(g) identifies the BAT for achieving compliance with the radionuclide MCL.

2. Table D in 40 CFR §141.66(h) identifies the radionuclides BATs for systems serving 10,000 or fewer people.

*c. BATs for disinfection byproducts (DBPs) and disinfectants.* The BATs for achieving compliance with the MCLs for the DPBs listed in 567—paragraph 41.5(2)*"b"* and the MRDLs listed in 567—paragraph 41.5(2)*"c"* are identified in 40 CFR §141.64.

*d. Requirement to install the BAT.* The department shall require CWSs and NTNCs to install and use any treatment method identified in 43.3(10) as a condition for granting an interim contaminant level, except as provided in 43.3(10)*"e."* If, after installation of the treatment method, a system cannot meet the MCL, it shall be eligible for a compliance schedule with an interim contaminant level granted under 567—subrule 40.5(9) and 567—43.2(455B).

*e. Engineering assessment option.* If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies at the department's discretion, that the treatment methods identified in 43.3(10) would only achieve a de minimis reduction in contaminants, the department may establish a compliance schedule that requires the system being granted the waiver to examine other treatment methods as a condition of obtaining the interim contaminant level.

*f. Compliance schedule.* If the department determines that a treatment method identified in 43.3(10)*"a,""b,"* and *"c"* is technically feasible, the department may require a system to install or use a treatment method in connection with a compliance schedule established under 567—40.5(9) and 567—43.2(455B). The determination shall be based upon studies by the system and other relevant information.

*g. Avoidance of unacceptable risk to health (URTH).* To avoid an URTH, the department may require a PWS to use bottled water, POU devices, POE devices, or other means as a condition of granting a waiver or an exemption from the requirements of 43.3(10) or as a condition of a compliance schedule.

**567—43.4(455B) Certification of completion.** Within 30 days after completion of construction, installation or modification of any project, the construction permit holder shall submit a certification by a licensed professional engineer that the project was completed in accordance with the approved plans and specifications, except if the project received a waiver pursuant to 43.3(4).

**567—43.5(455B) Filtration and disinfection for surface water (SW) and influenced groundwater (IGW) PWSs.**

**43.5(1)** *Applicability/general requirements.* These rules apply to all PWSs using SW or IGW, in whole or in part, and establish criteria under which filtration is required as a treatment technique (TT). In addition, these rules establish TT requirements in lieu of MCLs for *Giardia lamblia*, heterotrophic plate count (HPC) bacteria, *Legionella*, viruses and turbidity. Each PWS with a SW or IGW must provide source water treatment that complies with these TT requirements. Systems that serve at least 10,000 persons must also comply with 567—43.9(455B). Systems that serve fewer than 10,000 persons must also comply with 567—43.10(455B).

*a. TT requirements.* The TT requirements consist of installing and properly operating water treatment processes which reliably achieve:

(1) At least 99.9 percent (3-log) removal or inactivation of *Giardia lamblia* cysts between a point where the raw water is not subject to recontamination by SW runoff and a point downstream before or at the first customer; and

(2) At least 99.99 percent (4-log) virus removal or inactivation between a point where the raw water is not subject to recontamination by SW runoff and a point downstream before or at the first customer.

*b. Criteria for identification of IGW.* Direct GW influence must be determined for individual sources in accordance with department criteria. The department determination of direct influence may be based on site-specific measurements of water quality or documentation of well construction characteristics and geology with field evaluation.

*c. Sources subject to this rule.* Only SW and IGW that are at risk to the contamination from *Giardia* cysts are subject to this rule. GW sources shall not be subject to this rule.

*d. Source evaluation criteria.* The identification of a source as SW or IGW shall be determined for an individual source, by the department, in accordance with the criteria in this rule. These criteria shall be used to delineate between SW, IGW, and GW. The PWS shall provide to the department that information necessary to make the determination.

*e. Preliminary evaluation.* For all sources, the department shall conduct a preliminary evaluation of information provided by the PWS to determine if the source is an obvious SW or is an IGW. The source shall be evaluated during that period of highest susceptibility to influence from SW. A preliminary evaluation may include a review of surveys, reports, geological information of the area, physical properties of the source, and departmental and PWS records.

(1) If the source is identified as a SW, no additional evaluation is needed.

(2) If the source is GW and identified as a deep well, no additional evaluation is needed unless through direct knowledge or documentation the source does not meet the well source evaluation requirements in 43.5(1)*"f."* The deep well shall then be evaluated using a formal evaluation in accordance with 43.5(1)*"g."*

(3) If the source is a shallow well, a well source evaluation shall be conducted in accordance with 43.5(1)*"f."*

(4) If the source is a spring, infiltration gallery, radial collector well, or any other subsurface source, a formal evaluation shall be conducted in accordance with 43.5(1)*"g."*

*f. Well source evaluation.* Shallow wells greater than 50 feet in lateral distance from a SW source shall be evaluated for direct influence of SW through a review of departmental or PWS files in

accordance with this paragraph. Sources that meet these criteria shall be considered to be not under the direct influence of SW, and no additional evaluation will be required. Shallow wells 50 feet or less in lateral distance from a SW shall be evaluated in accordance with 43.5(1)*"g"* and *"h."*

(1) Well construction criteria. The well shall be constructed so as to prevent SW from entering the well or traversing the casing.

(2) Water quality criteria. Water quality records shall indicate:

1. No record of total coliform or fecal coliform contamination in untreated samples collected over the past three years.

2. No history of turbidity problems associated with the well, other than turbidity as a result of inorganic chemical precipitates.

3. No history of known or suspected outbreak of *Giardia* or other pathogenic organisms associated with SW (e.g., *Cryptosporidium*) that has been attributed to the well.

(3) Other available data. If data on particulate matter analysis of the well are available, there shall be no evidence of particulate matter present that is associated with SW. If information on turbidity or temperature monitoring of the well and nearby SW is available, there shall be no data on the source which correlates with that of a nearby SW.

(4) Further evaluation. Wells that do not meet all the requirements of this paragraph shall require a formal evaluation in accordance with 43.5(1)*"g"* and may require a particulate analysis and physical properties evaluation in accordance with 43.5(1)*"h."*

*g. Formal evaluation.* A formal evaluation shall be conducted by the department or a licensed professional engineer at the direction of the PWS.

(1) A formal evaluation shall include a complete file review and may include a field survey, as noted below.

1. Complete file review. In addition to the information gathered in a preliminary evaluation in 43.5(1)*"e,"* a complete file review for a well source shall consider, but not be limited to, design and construction details; evidence of direct SW contamination; water quality analysis; indications of waterborne disease outbreaks; operational procedures; and customer complaints regarding water quality or water-related infectious illness.

2. Field survey. An evaluation of a source other than a well source shall include a complete file review and a field survey. A field survey shall substantiate findings of the complete file review and determine if the source is at risk to pathogens from direct SW influence. A survey shall examine the source for evidence that SW enters the source through defects, which may include but is not limited to a lack of a surface seal on wells, infiltration gallery laterals exposed to SW, springs open to the atmosphere, or surface runoff entering a spring or other collector. A field survey shall note the distances to obvious SW sources.

(2) A report summarizing the findings of the complete file review and the field survey, when conducted, shall be submitted to the department for final review and classification of the source. Either method or both may be used to demonstrate that the source is an SW or an IGW.

1. If the complete file review or field survey demonstrates conclusively that the source is subject to the direct SW influence, the source shall be classified as an IGW.

2. If the findings do not demonstrate conclusive evidence of direct influence of SW, the analysis and evaluation in 43.5(1)*"h"* should be conducted.

*h. Particulate analysis and physical properties evaluation.*

(1) SW indicators. Particulate analysis shall be conducted to identify organisms that only occur in SWs as opposed to GWs, and whose presence in GW would indicate the direct influence of SW.

1. Identification of a *Giardia* cyst, live diatoms, and blue-green, green, or other chloroplast containing algae in any source water shall be considered evidence of direct SW influence.

2. Rotifers and insect parts are indicators of SW. Without knowledge of which species is present, the finding of rotifers indicates that the source is either directly influenced by SW, or the water contains organic matter sufficient to support the growth of rotifers. Insects or insect parts shall be considered strong evidence of SW influence, if not direct evidence.

3. The presence of coccidia (e.g., *Cryptosporidium*) in the source water is considered a good indicator of direct influence of SW. Other macroorganisms (greater than 7 um) that are parasitic to animals and fish, such as, but not limited to, helminths (e.g., tapeworm cysts), ascaris, and Diphyllobothrium, shall be considered as indicators of direct influence of SW.

(2) Physical properties. Turbidity, temperature, pH and conductivity provide supportive, but less direct, evidence of direct influence of SW. Temperature fluctuations or turbidity fluctuations of greater than 0.5-1.0 NTU over the course of a year may indicate direct influence of SW. Changes in other chemical parameters such as pH, conductivity, or hardness may indirectly indicate influence by nearby SW.

*i. Compliance.* A PWS using a SW source or an IGW is considered to be in compliance with this subrule if it meets the filtration requirements in 43.5(3) and the disinfection requirements in 43.5(2).

*j. Certified operator requirement.* Each PWS using a SW source or an IGW must be operated by a certified operator who meets the requirements of 567—Chapter 81.

**43.5(2)** *Disinfection requirements.* All CWS, NTNC, and TNC using SW or IGW in whole or in part shall be required to provide disinfection in compliance with this subrule and filtration in compliance with 43.5(3). If the department has determined that filtration is required, the system must comply with any interim disinfection requirements the department deems necessary before filtration is installed. A system providing filtration on or before December 30, 1991, must comply with this subrule beginning June 29, 1993. A system providing filtration after December 30, 1991, must comply with this subrule when filtration is installed. Failure to meet any requirement of this subrule after the applicable date is a TT violation.

*a. Disinfection treatment criteria.*

(1) Disinfection treatment must be sufficient to ensure that the total treatment processes of a system achieve at least 99.9 percent (3-log) inactivation or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) virus inactivation or removal, acceptable to the department.

(2) At least 0.5 log inactivation of *Giardia lamblia* cysts must be achieved through disinfection treatment using a chemical disinfectant even if the required inactivation or removal is met or exceeded through physical treatment processes.

(3) Each system must calculate the total inactivation ratio ($CT_{calculated}/CT_{required}$) each day the treatment plant is in operation. A system's total inactivation ratio must be equal to or greater than 1.0 to ensure that the minimum inactivation and removal requirements have been achieved. If a system's total inactivation ratio for the day is below 1.0, it must notify the department within 24 hours.

*b. Disinfection system.* The disinfection system must include either:

(1) Redundant components, including an auxiliary power supply with automatic start-up and alarm, to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system, or

(2) Automatic shutoff of delivery of water to the distribution system when there is less than 0.3 mg/L of residual disinfectant concentration (RDC) in the water. If the department determines that automatic shutoff would cause unreasonable risk to health or interfere with fire protection, the system must comply with 43.5(2)*"b"*(1).

*c. Residual disinfectant entering system.* The RDC in the water entering the distribution system, measured as specified in 43.5(4)*"a"*(5) and 43.5(4)*"b"*(2)(1), cannot be less than 0.3 mg/L free residual or 1.5 mg/L total residual chlorine for more than four hours.

*d. Residual disinfectant in the system.* The RDC in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in 43.5(4)*"a"*(5) and 43.5(4)*"b"*(2)(2), cannot be undetectable in more than five percent of the samples each month for any two consecutive months that the system serves water to the public. Water within the distribution system with an HPC bacteria concentration less than or equal to 500/mL, measured as HPC as specified in 567—paragraph 41.2(3)*"e,"* is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Therefore, the value "V" in the following formula cannot exceed five percent in one month for any two consecutive months.

$V = [(c + d + e) / (a + b)] \times 100$

where the letters indicate the number of instances in which:

a = RDC is measured

b = RDC is not measured but HPC bacteria is measured

c = RDC is measured but not detected and no HPC is measured

d = no RDC is detected and where the HPC is greater than 500/mL

e = RDC is not measured and HPC is greater than 500/mL

**43.5(3)** *Filtration requirements.* Turbidity measurements required by this subrule shall be made in accordance with 43.5(4)*"a"*(1) and 43.5(4)*"b"*(1).

*a. Applicability.* A PWS that uses a SW source or an IGW source must provide treatment consisting of both disinfection, as specified in 43.5(2), and filtration treatment that complies with the turbidity requirements of 43.5(3), 43.5(4), and 43.5(5). A system shall install filtration within 18 months after the department determines, in writing, that filtration is required. The department may require, and a system shall comply, with any interim turbidity requirements the department deems necessary. Failure to meet any requirements of the subrules referenced below after the dates specified is a TT violation.

(1) A system providing or required to provide filtration:

1. On or before December 30, 1991, must comply with this subrule by June 29, 1993; and

2. After December 30, 1991, must comply with this subrule when filtration is installed.

(2) Beginning:

1. January 1, 2002, systems serving at least 10,000 people must meet the turbidity requirements in 567—43.9(455B); and

2. January 1, 2005, systems serving fewer than 10,000 people must meet the turbidity requirements in 567—43.10(455B).

*b. Conventional filtration treatment or direct filtration.*

(1) Systems using conventional filtration serving at least 10,000 people must meet the turbidity level requirements in 43.9(3)*"a."*

(2) Systems using conventional filtration or direct filtration serving fewer than 10,000 people must meet the turbidity level requirements in 43.10(4)*"a."*

*c. Slow sand filtration.*

(1) For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month.

(2) The turbidity level of representative samples of a system's filtered water must not exceed 1 NTU in two consecutive 15-minute recordings.

*d. Diatomaceous earth filtration.*

(1) For systems using diatomaceous earth filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month.

(2) The turbidity level of representative samples of a system's filtered water must not exceed 1 NTU in two consecutive 15-minute recordings.

*e. Other filtration technologies.* A PWS may use either a filtration technology not listed in 43.5(3)*"b"* to *"d"* or a filtration technology listed in 43.5(3)*"b"* or *"c"* at a higher turbidity level if it demonstrates to the department, through a preliminary report submitted by a licensed professional engineer using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of 43.5(2), consistently achieves 99.9 percent removal or inactivation of *Giardia lamblia* and 99.99 percent virus removal or inactivation. For a system that uses alternative filtration technology and makes this demonstration, the turbidity TT requirements are as follows:

(1) The turbidity level of representative samples of a system's filtered water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month.

(2) The turbidity level of representative samples of a system's filtered water must not exceed 1 NTU. Beginning January 1, 2002, systems serving at least 10,000 people must meet the requirements for other filtration technologies in 43.9(3)*"b."* Beginning January 1, 2005, systems serving fewer than 10,000 people must meet the requirements for other filtration technologies in 567—43.10(455B).

**43.5(4)** *Analytical and monitoring requirements.*

*a. Analytical methods.* Only the analytical method(s) specified in this paragraph, or otherwise approved by the department, may be used to demonstrate compliance with 43.5(2) and 43.5(3). Measurements for pH, temperature, turbidity, and RDCs must be conducted by a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of such an operator, or a laboratory certified in accordance with 567—Chapter 83. For consecutive PWSs from a SW or IGW system, the disinfectant concentration analyses must be conducted by a certified operator who meets the requirements of 567—Chapter 81. Heterotrophic plate count (HPC) bacteria measurements must be conducted by a laboratory certified by the department to do such analysis.

(1) Turbidity shall be analyzed using the methodology in the following table. Calibrate each turbidimeter at least once every 90 days with a primary standard. The calibration of each turbidimeter used for compliance must be verified at least once per week with a primary standard, secondary standard, the manufacturer's proprietary calibration confirmation device, or by a department-approved method. If the verification is not within plus or minus 0.05 NTU for measurements of less than or equal to 0.5 NTU, or within plus or minus 10 percent of measurements greater than 0.5 NTU, the turbidimeter must be recalibrated.

**Turbidity Methodology**

| Methodology | Analytical Method | | | | |
|---|---|---|---|---|---|
| | **EPA** | **SM** | **GLI** | **HACH** | **Other** |
| Nephelometric[5] | 180.1[1] | 2130B[2] | Method 2[3] | FilterTrak 10133[4]; Hach Method 8195, Rev. 3.015 | |
| Laser Nephelometry (online) | | | | | Mitchell M5271[6]; Mitchell M5331 Rev. 1.2[10]; Lovibond PTV 600013 |
| LED Nephelometry (online) | | | | | Mitchell M5331[7]; Mitchell M5331 Rev. 1.2[10]; AMI Turbiwell[9]; Lovibond PTV 200012; Lovibond PTV 100014 |
| LED Nephelometry (portable) | | | | | Orion AQ4500[8] |
| 360-degree Nephelometry | | | | | Hach Method 10258[11] |

[1]"Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600/R-93-100, August 1993. NTIS, PB94-121811.

[2]SM, 18th (1992), 19th (1995), 20th (1998), 21st (2005), 22nd (2012), and 23rd (2017) editions (any of these editions may be used).

[3]GLI Method 2, "Turbidity," November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, WI 53223.

[4]Hach FilterTrak Method 10133, "Determination of Turbidity by Laser Nephelometry," January 2000, Revision 2.0, www.hach.com.

[5]Styrene divinyl benzene beads (e.g., AMCO-AEPA-1 or equivalent) and stabilized formazin (e.g., Hach StablCalTM or equivalent) are acceptable substitutes for formazin.

[6]Mitchell Method M5271, Revision 1.1. "Determination of Turbidity by Laser Nephelometry," March 5, 2009. www.nemi.gov.

[7]Mitchell Method M5331, Revision 1.1. "Determination of Turbidity by LED Nephelometry," March 5, 2009. www.nemi.gov.

[8]Orion Method AQ4500, Revision 1.0. "Determination of Turbidity by LED Nephelometry," May 8, 2009. www.nemi.gov or Thermo Scientific, www.thermo.com.

[9]AMI Turbiwell, "Continuous Measurement of Turbidity Using a SWAN AMI Turbiwell Turbidimeter," August 2009. www.nemi.gov.

[10]Mitchell Method M5331, Revision 1.2. "Determination of Turbidity by LED or Laser Nephelometry," February 2016. www.nemi.gov.

[11]Hach Company. "Hach Method 10258 – Determination of Turbidity by 360-Degree Nephelometry," January 2016 and March 2018, revision 2.0, www.hach.com.

[12]Lovibond PTV 2000. "Continuous Measurement of Drinking Water Turbidity Using a Lovibond PTV 2000 660-nm LED Turbidimeter," December 2016, Revision 1.0,Tintometer, Inc., 6456 Parkland Drive, Sarasota, FL 34243.

[13]Lovibond PTV 6000. "Continuous Measurement of Drinking Water Turbidity Using a Lovibond PTV 6000 Laser Turbidimeter," December 2016, Revision 1.0, Tintometer, Inc., 6456 Parkland Drive, Sarasota, FL 34243.

[14]Lovibond PTV 1000. "Continuous Measurement of Drinking Water Turbidity Using a Lovibond PTV 1000 White Light LED Turbidimeter," December 2016, Revision 1.0, Tintometer, Inc., 6456 Parkland Drive, Sarasota, FL 34243.

[15]Hach Company. "Hach Method 8195-Determination of Turbidity by Nephelometry," March 2018, Revision 3.0, www.hach.com.

(2) The temperature and pH (hydrogen ion concentration) shall be determined in compliance with the methodology in 567—subparagraph 41.4(1)*"g"*(1).

(3) The HPC bacteria sampling and analysis shall be conducted in compliance with 567—subrule 41.2(3) and 43.5(2)*"d."* The time from sample collection to initiation of analysis shall not exceed eight hours, and the samples must be held below 10 degrees Celsius during transit.

(4) The residual disinfectant concentrations (RDCs) shall be determined using one of the analytical methods in the following table. RDCs for free chlorine and total chlorine may also be measured by using DPD colorimetric test kits. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be verified with a grab sample measurement at least every seven days. The analyzer concentration must be within plus or minus 0.1 mg/L or plus or minus 15 percent (whichever is larger) of the grab sample measurement. If the verification is not within this range, immediate actions must be taken to resolve the issue and another verification must be conducted.

**Disinfectant Analytical Methodology**

| Residual | Methodology | SM[1,2] | SM Online[6] | Other |
|---|---|---|---|---|
| Free chlorine | Amperometric Titration | 4500-Cl D | 4500-Cl D-00 | D1253-03[4], 08, 14 |
| | DPD Ferrous Titrimetric | 4500-Cl F | 4500-Cl F-00 | |
| | DPD Colorimetric | 4500-Cl G | 4500-Cl G-00 | Hach Method 10260[10] |
| | Syringaldazine (FACTS) | 4500-Cl H | 4500-Cl H-00 | |
| | Online Chlorine Analyzer | | | EPA 334.0[7] |
| | Amperometric Sensor | | | ChloroSense[8] |
| | Indophenol Colorimetric | | | Hach Method 10241[11] |
| Total chlorine | Amperometric Titration | 4500-Cl D | 4500-Cl D-00 | D1253-03[4], 08, 14 |
| | Amperometric Titration (low-level measurement) | 4500-Cl E | 4500-Cl E-00 | |
| | DPD Ferrous Titrimetric | 4500-Cl F | 4500-Cl F-00 | |
| | DPD Colorimetric | 4500-Cl G | 4500-Cl G-00 | Hach Method 10260[10] |
| | Iodometric Electrode | 4500-Cl I | 4500-Cl I-00 | |
| | Online Chlorine Analyzer | | | EPA 334.0[7] |
| | Amperometric Sensor | | | ChloroSense[8] |
| Chlorine dioxide | Amperometric Titration | 4500-$ClO_2$ C | 4500-$C10_2$ C-00 | |
| | DPD Method | 4500-$ClO_2$ D | | |
| | Amperometric Titration | 4500-$ClO_2$ E | 4500-$C10_2$ E-00 | |
| | Amperometric Sensor | | | ChlordioX Plus[9] |
| | Spectrophotometric | | | 327.0, Revision 1.1[5] |
| Ozone | Indigo method | 4500-$O_3$ B[3] | 4500-$O_3$ B-97 | |

[1]SM, 18th (1992), 19th (1995), 20th (1998), 21st (2005), 22nd (2012), and 23rd (2017) editions (any of these editions may be used). Only the 18th, 19th, and 20th editions may be used for chlorine dioxide Method 4500-$ClO_2$ D.

[2]Other analytical test procedures are contained within Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, NTIS PB95-104766.

[3]SM, 18th (1992), 19th (1995), 21st (2005), and 22nd (2012) editions (any edition may be used).

[4]ASTM, Vol. 11.01, 2004; any year containing the cited version of the method may be used.

[5]EPA Method 327.0, Revision 1.1, "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry," May 2005, EPA 815-R-05-008, www.nemi.gov.

[6]SM Online, www.standardmethods.org. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[7]EPA Method 334.0, "Determination of Residual Chlorine in Drinking Water Using an On-Line Chlorine Analyzer," September 2009. EPA 815-B-09-013, www.nemi.gov.

[8]ChloroSense, "Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense," September 2009, www.nemi.gov or Palintest Water Analysis Technologies, www.palintest.com.

[9]ChlordioX Plus. "Chlorine Dioxide and Chlorite in Drinking Water by Amperometry Using Disposable Sensors," November 2013, Palintest Water Analysis Technologies, www.palintest.com.

[10]Hach Company. "Hach Method 10260 – Determination of Chlorinated Oxidants (Free and Total) in Water Using Disposable Planar Reagent-Filled Cuvettes and Mesofluidic Channel Colorimetry," April 2013, www.hach.com.

[11]Hach Company. "Hach Method 10241 – Spectophotometric Measurement of Free Chlorine in Finished Drinking Water," November 2015, Revision 1.2, www.hach.com.

*b. Monitoring.* A PWS that uses a SW or IGW source must monitor in accordance with this paragraph.

(1) Turbidity.

1. Routine monitoring. Turbidity measurements required by 43.5(3) must be performed on representative samples of the system's filtered water utilizing continuous turbidity monitoring equipment. Turbidity monitoring results must be recorded at least every 15 minutes. Turbidity must be monitored according to a written turbidity protocol approved by the department and audited for compliance during sanitary surveys.

2. Monitoring protocol. The turbidity monitoring protocol shall include, but is not limited to: sample measurement location; calibration method, frequency, and standards; verification method frequency, and documentation; and data collection, recording frequency, and reporting.

3. Failure of continuous monitoring equipment. If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back online. A system has a maximum of five working days after failure to repair the equipment or else the system is in violation. The system must notify the department within 24 hours of both when the turbidimeter was taken offline and when it was returned online. It is a TT violation if the turbidity exceeds 1 NTU at any time during grab sampling. The system must inform the department as soon as possible, but no later than 24 hours after the exceedance is known, in accordance with 567—subparagraph 40.5(3)*"b"*(3).

(2) Residual disinfectant.

1. Residual entering the system. The RDC of the water entering the distribution system shall be monitored continuously, and the lowest value recorded each day. If there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but shall not exceed five working days following the equipment failure. If acceptable to the department, systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed below:

**Residual Disinfectant Samples Required of SW or IGW PWS**

| System size (persons served) | Samples per day* |
|---|---|
| 500 or fewer | 1 |
| 501 to 1,000 | 2 |
| 1,001 to 2,500 | 3 |
| 2,501 to 3,300 | 4 |

*When more than one grab sample is required per day, the day's samples cannot be taken at the same time. The sampling intervals must be a minimum of four-hour intervals.

If at any time the disinfectant concentration falls below 0.3 mg/L free residual or 1.5 mg/L total residual chlorine (TRC) in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four hours until the RDC is equal to or greater than 0.3 mg/L free residual or 1.5 mg/L TRC.

2. Residual in the system. The RDC must be measured at least daily in the distribution system. Residual disinfectant measurements that are required as part of the total coliform bacteria sample collection under 567—subparagraph 41.2(1)*"c"*(7) shall be used to satisfy this requirement on the day(s)

when a bacteria sample(s) is collected. The department may allow a PWS that uses both a GW source and a SW source or uses an IGW to take residual disinfectant samples at points other than the total coliform sampling points, if these points are included as a part of the coliform sample site plan meeting the requirements of 567—paragraph 41.2(1)*"c"*(1)"1" and if the department determines that such points are representative of treated (disinfected) water quality within the distribution system. HPC may be measured in lieu of RDC, using the analytical methods in 567—subparagraph 41.2(3)*"e"*(1). The time from sample collection to initiation of analysis shall not exceed eight hours. All HPC samples must be kept below 10 degrees Celsius during laboratory transit, and must be analyzed by a laboratory certified in accordance with 567—Chapter 83.

**43.5(5)** *Reporting.* PWSs shall report the results of routine monitoring required to demonstrate compliance with rule 567—43.5(455B) and TT violations as follows:

*a. Waterborne disease outbreak.* Each system, upon discovering that a waterborne disease outbreak potentially attributable to that system has occurred, must report that occurrence to the department as soon as possible, but no later than by the end of the next business day.

*b. Turbidity exceeds 5 NTU.* If at any time the turbidity exceeds 5 NTU, the system must inform the department as soon as possible, but no later than 24 hours after the exceedance is known, in accordance with the PN requirements in 567—subparagraph 40.5(3)*"b"*(3).

*c. Residual disinfectant entering distribution system below 0.3 mg/L free residual chlorine or 1.5 mg/L total residual chlorine (TRC).* If at any time the residual falls below 0.3 mg/L free residual chlorine or 1.5 mg/L TRC in the water entering the distribution system, the system must notify the department as soon as possible, but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/L free residual chlorine or 1.5 mg/L TRC within four hours.

*d. Routine monitoring.* Routine monitoring results shall be provided as part of the MORs in accordance with rule 567—40.3(455B) and 567—subrule 40.8(3).

*e. Total inactivation ratio below 1.0.* If the system's total inactivation ratio for the day is below 1.0, the system must notify the department within 24 hours.

**43.5(6)** *Filter backwash recycle provisions.* All SW or IGW systems that employ conventional filtration or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must comply with this subrule.

*a. Reporting.* A system must notify the department in writing by December 8, 2003, if it recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include the following information.

(1) A plan schematic showing the origin of all recycled flows (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant.

(2) In gallons per minute (GPM), the typical recycle flow, highest observed plant flow experience in the previous year, design flow for the treatment plant, minimum plant rate during which the filter backwash will be recycled, and the department-approved operating capacity for the plant where the department has made such determinations.

*b. Treatment technique (TT) requirement.* Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of its existing conventional or direct filtration system or at an alternate location approved by the department by June 8, 2004. However, if capital improvements are necessary to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

*c. Recordkeeping.* The system must collect and retain on file the recycle flow information specified below for department review and evaluation.

(1) A copy of the recycle notification and information submitted to the department under 43.5(6)*"a"*;

(2) A list of all recycle flows and their return frequency;

(3) The average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;

(4) The typical filter run length and a written summary of how filter run length is determined;

(5) The type of treatment provided for the recycle flow; and

(6) Data on the physical dimensions of the equalization and treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used including average dose and frequency of use, and frequency of solids removal, if applicable.

**567—43.6(455B) Residual disinfectant and disinfection byproduct (DBP) precursors.**

**43.6(1)** *Residual disinfectant.*

*a. Applicability.*

(1) CWSs and NTNCs. This rule establishes criteria under which CWSs and NTNCs that add a chemical disinfectant to the water in any part of the drinking water treatment process or that provide water that contains a chemical disinfectant must modify their practices to meet the MCLs in 567—41.6(455B), the MRDLs in this subrule, and the TT requirements for DBP precursors in 43.6(3).

(2) TNC systems with chlorine dioxide disinfection. This rule establishes criteria under which TNCs that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the chlorine dioxide MRDL in 43.6(1)*"b."*

(3) Compliance dates. Compliance dates for this rule are based upon the source water type and the population served. Systems must comply with this rule as follows, unless otherwise noted:

1. SW and IGW CWSs and NTNCs. CWSs and NTNCs using SW or IGW in whole or in part and that serve 10,000 or more persons must comply with this rule. CWSs and NTNCs using SW or IGW that serve fewer than 10,000 persons must comply with this rule.

2. GW CWSs and NTNCs. CWSs and NTNCs using only GW not under the direct influence of SW must comply with this rule.

3. TNC systems using chlorine dioxide. TNC systems serving over 10,000 persons and using SW or IGW and using chlorine dioxide as a disinfectant or oxidant must comply with THE chlorine dioxide requirements in this rule. TNC systems serving 10,000 persons or less, regardless of source water type, and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide requirements in this rule.

4. Extension of compliance period for GAC or membrane technology installation. A system that is installing GAC or membrane technology to comply with this rule may apply to the department for an extension of up to 24 months past the dates in 43.6(1)*"a"*(3). In granting the extension, the department will set a compliance schedule and may specify any interim measures the system must take. Failure to meet a compliance schedule or interim treatment requirements constitutes a violation of the public drinking water supply rules, requires PN per 567—subrule 40.5(1), and may result in an administrative order.

(4) Residual disinfectant control. Notwithstanding the MRDLs in this rule, systems may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health or to address specific microbiological contamination problems caused by circumstances including, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross-connection events.

(5) Consecutive systems. Consecutive systems that provide water containing a disinfectant or oxidant must comply with this rule.

(6) Systems with multiple water sources. Systems with water sources that are used independently from each other, are not from the same source as determined by the department, or do not go through identical treatment processes must monitor for the applicable disinfectants or oxidants and DBPs during operation of each source. Systems must comply with this rule during the use of each water source.

*b. MRDLs.* The MRDLs are as follows:

| Residual Disinfectant | MRDL (mg/L) |
|---|---|
| Chloramines | 4.0 as $Cl_2$ |

| Residual Disinfectant | MRDL (mg/L) |
|---|---|
| Chlorine | 4.0 as $Cl_2$ |
| Chlorine dioxide | 0.8 as $ClO_2$ |

*c. Residual disinfectant monitoring requirements.*

(1) General requirements.

1. Systems must take all samples during normal operating conditions. If a system does not use the disinfectant or oxidant on a daily basis, it must conduct the required daily monitoring each day the disinfectant or oxidant is used, and any required monthly monitoring during those months in which the disinfectant or oxidant is used during any portion of the month.

2. Failure to monitor in accordance with the monitoring plan required under 43.6(1)*"c"*(1)"5" is a monitoring violation.

3. Failure to monitor is a violation for the entire period covered by the annual average where compliance is based on an RAA of monthly or quarterly samples or averages. The system's failure to monitor makes it impossible to determine MRDL compliance.

4. Systems may use only data collected under this rule or of 567—41.6(455B) to qualify for reduced monitoring.

5. Systems required to monitor under this rule or 567—41.6(455B) must develop and implement a monitoring plan, in accordance with 567—paragraph 41.6(1)*"c"*(1)"6."

(2) Chlorine and chloramines.

1. Routine monitoring. CWSs and NTNCs using chlorine or chloramines must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 567—subrule 41.2(1). SW and IGW systems may use the results of RDC sampling conducted under 43.5(4)*"b"*(2)"2," in lieu of taking separate samples.

2. Reduced monitoring. Chlorine and chloramine monitoring may not be reduced.

(3) Chlorine dioxide.

1. Routine monitoring. Any PWSs using chlorine dioxide for disinfection or oxidation must take daily samples at the SEP.

2. Additional monitoring. On each day following a routine daily sample monitoring result that exceeds the MRDL, a system is required to take three chlorine dioxide distribution system samples at the locations required below, in addition to the routine daily sample required at the SEP.

- If chlorine dioxide or chloramines are used to maintain a residual disinfectant in the distribution system, or if chlorine is used to maintain a residual disinfectant in the distribution system and there are no disinfection addition points after the SEP (i.e., no booster chlorination), a system must take three samples as close to the first customer as possible, at intervals of at least six hours.
- If chlorine is used to maintain a residual disinfectant in the distribution system and there are one or more disinfection addition points after the SEP (i.e., booster chlorination), a system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

3. Reduced monitoring. Chlorine dioxide monitoring may not be reduced.

*d. Residual disinfectant analytical requirements.*

(1) Analytical methods. Systems must measure RDCs for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in the following table:

**Approved Methods for Residual Disinfectant Compliance Monitoring**

| Methodology | SM[1] | Other Method | Residual measured[2] | | | |
|---|---|---|---|---|---|---|
| | | | Free Chlorine | Combined Chlorine | Total Chlorine | Chlorine Dioxide |
| Amperometric Titration | 4500-Cl D | ASTM: D 1253-86[3] (96), 03, 08, 14 | X | X | X | |
| Low Level Amperometric Titration | 4500-Cl E | | | | X | |

| Methodology | SM[1] | Other Method | Residual measured[2] | | | |
|---|---|---|---|---|---|---|
| | | | Free Chlorine | Combined Chlorine | Total Chlorine | Chlorine Dioxide |
| DPD Ferrous Titrimetric | 4500-Cl F | | X | X | X | |
| DPD Colorimetric | 4500-Cl G | Hach Method 10260[6] | X | X | X | |
| Syringaldazine (FACTS) | 4500-Cl H | | X | | | |
| Amperometric Sensor | | ChloroSense[5] | X | | X | |
| Online Chlorine Analyzer | | EPA 334.04 | X | | X | |
| Indophenol Colorimetric | | Hach Method 10241[8] | X | X | X | |
| Iodometric Electrode | 4500-Cl I | | | | X | |
| DPD | 4500-$ClO_2$ D | | | | | X |
| Amperometric Method II | 4500-$ClO_2$ E | | | | | X |
| Lissamine Green Spectrophotometric | | EPA: 327.0 Rev. 1.1 | | | | X |
| Amperometric Sensor | | ChlordioX Plus[7] | | | | X |

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The document sources are listed below, and further document information is available from the Safe Drinking Water Hotline, 800.426.4791. Documents may be inspected at EPA's Drinking Water Docket; or at the Office of Federal Register.

The following method is available from the NTIS: "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry, Revision 1.1," EPA, May 2005, EPA 815-R-05-008.

[1]SM, 19th (1995), 20th (1998), 21st (2005), 22nd (2012), and 23rd (2017) editions. Methods: 4500-Cl D, 4500-Cl E, 4500-Cl F, 4500-Cl G, 4500-Cl H, 4500-Cl I, 4500-$ClO_2$ E. Only the 19th and 20th editions may be used for the chlorine dioxide Method 4500-$ClO_2$ D.

[2]X indicates method is approved for measuring the specified residual disinfectant. Free chlorine or total chlorine may be measured for demonstrating compliance with the chlorine MRDL, and combined chlorine or total chlorine may be measured for demonstrating compliance with the chloramine MRDL.

[3]ASTM, Volume 11.01, 1996, Method D 1253-86.

[4]EPA Method 334.0, "Determination of Residual Chlorine in Drinking Water Using an On-Line Chlorine Analyzer," September 2009. EPA 815-B-09-013. www.epa/gov/safewater/methods/analyticalmethods_ogwdw.html.

[5]ChloroSense, "Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense," September 2009. Available at www.nemi.gov or from Palintest Water Analysis Technologies, www.palintest.com.

[6]Hach Method 10260, "Determination of Chlorinated Oxidants (Free and Total) in Water Using Disposable Planar Reagent-Filled Cuvettes and Mesofluidic Channel Colorimetry," April 2013, www.hach.com.

[7]ChlordioX Plus. "Chlorine Dioxide and Chlorite in Drinking Water by Amperometry Using Disposable Sensors," November 2013. Palintest Water Analysis Technologies, www.palintest.com.

[8]Hach Company. "Hach Method 10241 – Spectrophotometric Measurement of Free Chlorine in Finished Drinking Water," November 2015, Revision 1.2. Available at www.hach.com.

(2) Test kit use. Systems may also measure RDCs for chlorine, chloramines, and chlorine dioxide by using DPD colorimetric test kits acceptable to the department. Free and total chlorine RDCs may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Continuous monitoring instruments must be calibrated with a grab sample measurement at least every five days.

(3) Operator requirement. RDC measurements shall be conducted by a Grade A through IV operator meeting the requirements of 567—Chapter 81, any person under the direct supervision of such an operator, or a laboratory certified in accordance with 567—Chapter 83.

*e. Residual disinfectant compliance requirements.*

(1) General requirements.

1. When compliance is based on an RAA of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine MRDL compliance for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

2. All samples taken and analyzed under this rule must be included in determining compliance, even if that number is greater than the minimum required.

(2) Chlorine and chloramines.

1. Compliance must be based on an RAA, computed quarterly, of monthly averages of all samples collected by the system under 43.6(1)*"c"*(2). If the average covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and must provide PN pursuant to 567—40.5(455B) and report to the department pursuant to 567—paragraph 40.8(3)*"d."*

2. In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines. Reports submitted pursuant to 567—paragraph 40.8(3)*"d"* must clearly indicate which residual disinfectant was analyzed for each sample.

(3) Chlorine dioxide.

1. Acute violations. Compliance must be based on consecutive daily samples collected under 43.6(1)*"c"*(3). If any daily sample taken at the SEP exceeds the MRDL, and on the following day one or more of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the SEP is also an MRDL violation. For either violation, the system must provide notice pursuant to the Tier 1 PN requirements in 567—subrule 42.1(2), and report to the department pursuant to 567—paragraph 40.8(3)*"d."*

2. Nonacute violations. Compliance must be based on consecutive daily samples collected under 43.6(1)*"c"*(3). If any two consecutive daily samples taken at the SEP exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling. Failure to monitor at the SEP the day following an exceedance of the chlorine dioxide MRDL at the SEP is also an MRDL violation. For either violation, the system must provide notice pursuant to the Tier 2 PN requirements in 567—subrule 40.5(3), and report to the department pursuant to 567—paragraph 40.8(3)*"d."*

*f. Reporting requirements for disinfectants.* Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the PN provisions of rule 567—40.5(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected. Other disinfectant reporting requirements are in 567—subparagraph 42.4(3)*"d"*(3).

**43.6(2)** *DBP precursors.*

*a. Applicability.*

(1) SW or IGW CWS and NTNC systems with conventional filtration. This rule establishes criteria under which SW or IGW CWSs and NTNCs using conventional filtration treatment that either add a chemical disinfectant to the water in any part of the drinking water treatment process, or that provide water that contains a chemical disinfectant, must modify their practices to meet the MCLs in 567—41.6(455B) and the MRDL and TT requirements for DBP precursors in this rule.

(2) CWSs and NTNCs that use ozone in their treatment process must comply with the bromide requirements of this subrule.

(3) Compliance dates for this rule are based upon the population served. CWS and NTNC systems using SW or IGW in whole or in part and that serve 10,000 or more persons must comply with this rule beginning January 1, 2002; while those systems serving fewer than 10,000 persons must comply with this rule beginning January 1, 2004.

(4) The department may require GW systems to monitor DBP precursors as a part of an operation permit.

*b. DBP precursor monitoring requirements.*

(1) Routine total organic carbon (TOC) monitoring.

1. SW and IGW systems using conventional filtration treatment must monitor each treatment plant for TOC no later than at the point of CFE turbidity monitoring and representative of the treated water. The systems must also monitor for TOC in the source water prior to any treatment, at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired set of samples and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

2. SW and IGW systems that do not use conventional filtration treatment must conduct the TOC monitoring under 43.6(2)*"b"*(1)"1" in order to qualify for reduced DBP monitoring for TTHM and HAA5 under 567—paragraph 41.6(1)*"c"*(4)"2." The source water TOC RAA must be less than or equal to 4.0 mg/L based on the most recent four quarters of monitoring on a continuing basis at each treatment plant to reduce or remain on reduced TTHM and HAA5 monitoring. Once qualified for reduced TTHM and HAA5 monitoring, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

(2) Reduced monitoring. The department may allow SW and IGW systems with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, to reduce monitoring for both TOC and alkalinity to one set of paired samples and one source water alkalinity sample per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC is greater than or equal to 2.0 mg/L.

(3) Bromide. The department may allow systems required to analyze for bromate to reduce bromate monitoring from monthly to once per quarter, if a system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. A system must continue bromide monitoring to remain on reduced bromate monitoring.

(4) The department may assign DBP precursor monitoring prior to the compliance dates in 43.6(2)*"a"*(3) as part of an operation permit.

*c. DBP analytical requirements.*

(1) Analytical methods. DBP precursors must be analyzed using the following methods by a laboratory certified in accordance with 567—Chapter 83, unless otherwise specified.

**Approved Methods for DBP Precursor Monitoring[1]**

| Analyte | Methodology | EPA | SM | ASTM | Other |
|---|---|---|---|---|---|
| Alkalinity[6] | Titrimetric | | 2320B | D 1067-92B | |
| | Electrometric titration | | | | I-1030-85 |
| Bromide | Ion chromatography | 300.0, 300.1, 317.0 Rev. 2.0, 326.0 | | D 6581-00 | |
| Dissolved Organic Carbon[2] (DOC) | High temperature combustion | 415.3 Rev. 1.2 | 5310B or 5310B-00 | | |
| | Persulfate-UV or heated-persulfate oxidation | 415.3 Rev. 1.2 | 5310C or 5310C-00 | | |
| | Wet oxidation | 415.3 Rev. 1.1, 415.3 Rev. 1.2 | 5310D or 5310D-00 | | |
| pH[3] | Electrometric | 150.1, 150.2 | 4500-$H^+$-B | D 1293-84 | |
| SUVA | Calculation using DOC and $UV_{254}$ data | 415.3 Rev. 1.2 | | | |
| TOC[4] | High temperature combustion | 415.3 Rev. 1.2 | 5310B or 5310B-00 | | |

| Analyte | Methodology | EPA | SM | ASTM | Other |
|---|---|---|---|---|---|
| | Persulfate-UV or heated-persulfate oxidation | 415.3 Rev. 1.2 | 5310C or 5310C-00 | | Hach Method 10267[7] |
| | Wet oxidation | 415.3 Rev. 1.1, 415.3 Rev. 1.2 | 5310D or 5310D-00 | | |
| | Ozone oxidation | | | | Hach Method 10261[8] |
| UV Absorption at 254 nm[5] | Spectrophotometry | 415.3 Rev. 1.1, 415.3 Rev. 1.2 | 5910B or 5910B-00, 11 | | |

[1]The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The document sources are listed below, and further document information is available from the Safe Drinking Water Hotline, 800.426.4791. Documents may be inspected at EPA's Drinking Water Docket or at the Office of Federal Register.

ASTM Methods: ASTM, Volume 11.01, 1996: Method D 1067-92B and Method D 1293-84. ASTM Volume 11.01, 2001 (or any year containing the cited version): Method D 6581-00.

The following methods are available from the NTIS:

"Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0," EPA-600/R-98/118, 1997 (NTIS, PB98-169196): Method 300.1.

Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, March 1983, (NTIS PB84-128677): Methods 150.1 and 150.2.

Methods for the Determination of Inorganic Substances in Environmental Samples, EPA-600/R-93/100, August 1993, (NTIS PB94-121811): Method 300.0.

"Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography with the Addition of a Postcolumn Reagent for Trace Bromate Analysis, Revision 2.0," July 2001, EPA 815-B-01-001: Method 317.0.

"Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography Incorporating the Addition of a Suppressor Acidified Postcolumn Reagent for Trace Bromate Analysis, Revision 1.0,", June 2002, EPA 815-R-03-007: Method 326.0.

"Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source Water and Drinking Water, Revision 1.1," February 2005, EPA/600/R-05/055: Method 415.3 Revision 1.1.

"Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source Water and Drinking Water, Revision 1.2," September 2009, EPA/600/R-09/122: Method 415.3 Revision 1.2.

SM 19th (1995), 21st (2005), 22nd (2012), and 23rd (2017) editions, Methods: 2320B (20th edition, 1998, is also accepted for this method), 4500-H+-B, and 5910B (22nd edition, 2012, is also accepted for this method). Supplement to the 19th (1996), 21st (2005), and 22nd (2012) editions, Methods: 5310B, 5310C, and 5310D. 23rd edition, Methods 5310B and 5310C.

For method numbers ending "-00", the year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that are IBR-approved. Method I-1030-85,Books and Open-File Reports Section, USGS, Federal Center, Box 25425, Denver, CO 80225-0425.

[2]DOC and $UV_{254}$ samples used to determine a SUVA value must be taken at the same time and at the same location, prior to the addition of any disinfectant or oxidant by the system. Prior to analysis, filter DOC samples through a 0.45 µ pore-diameter filter, as soon as practical after sampling, not to exceed 48 hours. After filtration, DOC samples must be acidified to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified DOC samples must be analyzed within 28 days. Remove inorganic carbon from the samples prior to analysis. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. Analyze the filtered blank using procedures identical to those used for analysis of the samples and must meet a DOC concentration of <0.5 mg/L.

[3]pH must be measured by a laboratory certified in accordance with 567—Chapter 83; a Grade II, III or IV operator meeting the requirements of 567—Chapter 81; or any person under the supervision of any such operator.

[4]Remove inorganic carbon from the TOC samples prior to analysis. TOC samples may not be filtered prior to analysis. TOC samples must be acidified at the time of sample collection to achieve a pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified TOC samples must be analyzed within 28 days.

[5]DOC and $UV_{254}$ samples used to determine a SUVA value must be taken at the same time and at the same location, prior to the addition of any disinfectant or oxidant by the system. Measure UV absorption at 253.7 nm (may be rounded off to 254 nm). Prior to analysis, filter $UV_{254}$ samples through a 0.45 µ pore-diameter filter. The pH of $UV_{254}$ samples may not be adjusted. Samples must be analyzed as soon as practical after sampling, not to exceed 48 hours.

[6]Alkalinity must be measured by a laboratory certified in accordance with 567—Chapter 83; a Grade II, III or IV operator meeting the requirements of 567—Chapter 81; or any person under the supervision of any such operator. Only the listed titrimetric methods are acceptable.

[7]Hach Company. "Hach Method 10267 – Spectrophotometric Measurement of TOC in Finished Drinking Water," December 2015, Revision 1.2, www.hach.com.

[8]Hach Company. "Hach Method 10261 – Total Organic Carbon in Finished Drinking Water by Catalyzed Ozone Hydroxyl Radical Oxidation Infrared Analysis," December 2015, Revision 1.2, www.hach.com.

(2) SUVA. SUVA is equal to the UV absorption at 254 nm ($UV_{254}$) (measured in $m^{-1}$) divided by the DOC concentration (in mg/L). To determine SUVA, systems must separately measure $UV_{254}$ and DOC using the methods above in 43.6(2)*"c"*(1). SUVA must be determined prior to the addition of disinfectants/oxidants. DOC and $UV_{254}$ samples used to determine a SUVA value must be taken at the same time and at the same location.

(3) Magnesium. All methods approved for magnesium in 567—subparagraph 41.3(1)*"e"*(1) are approved for use in measuring magnesium under this rule.

*d. DBP precursor compliance requirements.*

(1) General requirements. All samples taken and analyzed under this rule must be included in determining compliance, even if that number is greater than the minimum required.

(2) Compliance determination. Compliance must be determined as specified in 43.6(3)*"c."* The department may assign monitoring in an operation permit, or systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in 43.6(3)*"b"*(2), and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed in 43.6(3)*"b"*(3) and is in violation. Systems may apply for alternate minimum TOC removal (Step 2) requirements anytime after the compliance date. For systems required to meet Step 1 TOC removals, if the value calculated under 43.6(3)*"c"*(1)"4" is less than 1.00, the system is in violation of the TT requirements and must provide PN pursuant to 567—40.5(455B), in addition to reporting to the department pursuant to 567—paragraph 40.8(3)*"d."*

*e. Reporting requirements for DBP precursors.* Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the PN provisions of 567—40.5(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected. The specific reporting requirements for DBP precursors are in 567—subparagraph 40.8(3)*"d"*(4).

**43.6(3)** *TT for DBP precursor control.*

*a. Applicability.*

(1) Systems using SW or IGW and conventional filtration treatment must operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels in 43.6(3)*"b"* unless the system meets at least one of the alternative compliance criteria in 43.6(3)*"a"*(2) or 43.6(3)*"a"*(3).

(2) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Systems using SW or IGW and conventional filtration treatment may use the alternative compliance criteria in this subparagraph to comply with this subrule in lieu of complying with 43.6(3)*"b."* Systems must still comply with monitoring requirements in 43.6(2)*"b."* TOC levels and source water alkalinity must be measured according to 43.6(2)*"c"*(1) and the SUVA must be measured monthly according to 43.6(2)*"c."*

1. The source water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average (RAA).

2. The treated water TOC level is less than 2.0 mg/L, calculated quarterly as an RAA.

3. The source water TOC level is less than 4.0 mg/L, calculated quarterly as an RAA; the source water alkalinity is greater than 60 mg/L as $CaCO_3$, calculated quarterly as an RAA; and either the TTHM and HAA5 RAAs are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in 567—subparagraphs 41.6(1)*"a"*(3) and 43.6(2)*"a"*(3), the system has made a clear and irrevocable financial commitment to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems must submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the department for approval not later than the effective date for compliance in 567—subparagraphs 41.6(1)

*"a"*(3) and 43.6(2)*"a"*(3). These technologies must be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a TT violation.

4. The TTHM and HAA5 RAAs are less than or equal to 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

5. The source water SUVA, prior to any treatment, is less than or equal to 2.0 L/mg-m, calculated quarterly as an RAA.

6. The finished water SUVA is less than or equal to 2.0 L/mg-m, calculated quarterly as an RAA.

(3) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by 43.6(3)*"b"*(2) may use the alternative compliance criteria in this subparagraph in lieu of complying with 43.6(3)*"b."* Systems must still comply with monitoring requirements in 43.6(2)*"b."*

1. Softening that lowers the treated water alkalinity to less than 60 mg/L as $CaCO_3$, measured monthly according to 43.6(2)*"c"* and calculated quarterly as an RAA.

2. Softening that removes at least 10 mg/L of magnesium hardness as $CaCO_3$, measured monthly and calculated quarterly as an RAA.

*b. Enhanced coagulation and enhanced softening performance requirements.*

(1) Systems must achieve the TOC percent reduction in 43.6(3)*"b"*(2) between the source water and the CFE, unless the department approves a system's request for alternate minimum TOC removal (Step 2 requirements under 43.6(3)*"b"*(3)).

(2) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with 43.6(2)*"c."* Systems using softening must meet the Step 1 TOC reductions in the right-hand column (> 120 mg/L) for the specified source water TOC:

**Step 1 Required TOC Removal by Enhanced Coagulation and Enhanced Softening for SW or IGW Systems Using Conventional Treatment[1,2]**

| Source water TOC, mg/L | Source water Alkalinity, mg/L as $CaCO_3$ | | |
|---|---|---|---|
| | 0-60 | >60-120 | >120[3] |
| >2.0 - 4.0 | 35.0% | 25.0% | 15.0% |
| >4.0 - 8.0 | 45.0% | 35.0% | 25.0% |
| >8.0 | 50.0% | 40.0% | 30.0% |

[1]Systems meeting at least one of the conditions in 43.6(3)*"a"*(2)"1" through "6" are not required to operate with enhanced coagulation.

[2]Softening systems meeting one of the alternative compliance criteria in 43.6(3)*"a"*(3) are not required to operate with enhanced softening.

[3]Systems practicing softening must meet the TOC removal requirements in this column.

(3) SW and IGW systems using conventional treatment that cannot achieve the Step 1 TOC removals required by 43.6(3)*"b"*(2) due to water quality parameters (WQPs) or operational constraints must apply to the department for approval of alternative minimum Step 2 TOC removal requirements submitted by the system within three months of failure to achieve the TOC removals. If the department approves the alternative minimum Step 2 TOC removal requirements, it may make those requirements retroactive for the purposes of determining compliance. The system must meet the Step 1 TOC removals in 43.6(3)*"b"*(2) until the department approves the alternate minimum Step 2 TOC removal requirements.

(4) Alternate minimum Step 2 TOC removal requirements. Applications made to the department by enhanced coagulation systems for approval of alternate minimum Step 2 TOC removal requirements under 43.6(3)*"b"*(3) must include, as a minimum, results of bench-scale or pilot-scale testing conducted under 43.6(3)*"b"*(4)"1" below and used to determine the alternate enhanced coagulation level.

1. Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described in this subparagraph such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L.

The TOC percent removal at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the department, this minimum requirement supersedes the minimum TOC removal required by the table in 43.6(3)*"b"*(2). This requirement will be effective until such time as the department approves a new value based on the results of a new bench-scale or pilot-scale test. Failure to achieve department-set alternative minimum TOC removal levels is a TT violation.

2. Conduct bench-scale or pilot-scale testing of enhanced coagulation using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

**Enhanced Coagulation Step 2 Target pH**

| Alkalinity (mg/L as $CaCO_3$) | Target pH |
|---|---|
| 0 - 60 | 5.5 |
| >60 - 120 | 6.3 |
| >120 - 240 | 7.0 |
| >240 | 7.5 |

3. For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, a system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

4. A system may operate at any coagulant dose or pH necessary (consistent with department rules) to achieve the minimum TOC percent removal approved under 43.6(3)*"b"*(3).

5. If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the department for a waiver of enhanced coagulation requirements.

*c. Compliance calculations.*

(1) SW or IGW systems other than those identified in 43.6(3)*"a"*(2) or 43.6(3)*"a"*(3) must comply with requirements in 43.6(3)*"b"*(2) or 43.6(3)*"b"*(3). Systems must calculate compliance quarterly, beginning after the collection of 12 months of data, by determining an annual average using the following method:

1. Step 1: Determine actual monthly TOC percent removal using the following equation, to two decimal places:

$$\text{Actual monthly TOC percent removal} = 1 - \left( \frac{\text{treated water TOC}}{\text{source water TOC}} \right) \times 100$$

2. Step 2: Determine the required monthly TOC percent removal from either 43.6(3)*"b"*(2) or 43.6(3)*"b"*(3).

3. Step 3: Divide the "actual monthly TOC percent removal" value (from Step 1) by the "required monthly TOC percent removal" value (from Step 2). Determine this value for each of the last 12 months.

$$\text{Monthly percent removal ratio} = \frac{\text{actual monthly TOC percent removal}}{\text{required monthly TOC percent removal}}$$

4. Step 4: Add together the "monthly percent removal ratio" values from Step 3 for each of the last 12 months and divide by 12 to determine the annual average value.

$$\text{Annual average} = \frac{\Sigma \text{ monthly percent removal ratio}}{12}$$

5. Step 5: If the "annual average" value calculated in Step 4 is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(2) Systems may use the provisions in this subparagraph in lieu of the calculations in the previous subparagraph (43.6(3)*"c"*(1)) to determine compliance with TOC percent removal requirements. Systems may assign a monthly value of 1.0 (in lieu of the value calculated in 43.6(3)*"c"*(1)"3") when calculating compliance under 43.6(3)*"c"*(1), in any month that:

1. The system's treated or source water TOC level, measured according to 43.6(2)*"c"*(1), is less than 2.0 mg/L;

2. A system practicing softening removes at least 10 mg/L of magnesium hardness as $CaCO_3$;

3. The system's source water SUVA, prior to any treatment and measured according to 43.6(2)*"c"*(2), is less than or equal to 2.0 L/mg-m;

4. The system's finished water SUVA, measured according to 43.6(2)*"c"*(2), is less than or equal to 2.0 L/mg-m; or

5. A system using enhanced softening lowers alkalinity below 60 mg/L as $CaCO_3$.

(3) SW or IGW systems using conventional treatment may also comply with this subrule by meeting the criteria in 43.6(3)*"a"*(2) or 43.6(3)*"a"*(3).

*d. TT requirements for DBP precursors.* The TTs to control the level of DBP precursors in drinking water treatment and distribution systems for SW or IGW systems using conventional filtration treatment are enhanced coagulation or enhanced softening.

**567—43.7(455B) Lead and copper treatment techniques (TTs).**

**43.7(1)** *Corrosion control treatment (CCT) for lead and copper control.*

*a. Applicability.* Systems shall complete the applicable CCT requirements by the deadlines specified in the following rules:

(1) Large systems serving more than 50,000 persons. A large system (serving greater than 50,000 persons) shall complete the CCT steps in 43.7(1)*"d,"* unless the system is deemed to have OCC under 43.7(1)*"b"*(2) or 43.7(1)*"b"*(3).

(2) Small and medium-size systems serving 50,000 or fewer persons. A small system (serving less than or equal to 3,300 persons) or a medium-size system (serving greater than 3,300 and less than or equal to 50,000 persons) shall complete the CCT steps in 43.7(1)*"e,"* unless the system has OCC under 43.7(1)*"b"*(1), 43.7(1)*"b"*(2), or 43.7(1)*"b"*(3).

*b. Determination that a system has optimized corrosion control (OCC).* A PWS has OCC and is not required to complete the applicable CCT steps in this subrule if the system satisfies one of the criteria in 43.7(1)*"b"*(1) through 43.7(1)*"b"*(3). Any system deemed to have OCC under this paragraph and that has treatment in place shall continue to operate and maintain optimal corrosion control treatment (OCCT) and meet any requirements that the department determines appropriate to ensure OCCT is maintained.

(1) A small or medium-size PWS has optimized CCT if the system meets the lead and copper ALs during each of two consecutive six-month monitoring periods, conducted in accordance with 567—paragraph 41.4(1)*"c."*

(2) Any PWS may be deemed to have optimized CCT if it demonstrates to the department's satisfaction that it has conducted activities equivalent to the corrosion control steps applicable to such system under this subrule. If the department makes this determination, it shall provide the PWS with written notice explaining the basis for its decision and shall specify the WQPs representing OCC in accordance with 43.7(2)*"f."* Systems deemed to have OCCT under this paragraph shall operate in compliance with the department-designated OWQPs in accordance with 43.7(1)*"g"* and continue to conduct lead and copper tap and WQP sampling in accordance with 567—paragraph 41.4(1)*"c"*(4)"3" and (4), respectively. A system shall provide the department with the following information to support a determination under this paragraph:

1. The results of all samples collected for each of the WQPs in 43.7(2)*"c"*(3);

2. A report explaining the test methods used by the system to evaluate the CCTs in 43.7(2)*"c"*(1), the results of all testing, and the basis for the system's selection of OCCT;

3. A report explaining how CCT was installed and how it is being maintained to ensure minimal lead and copper concentrations at consumers' taps; and

4. The results of tap water samples collected in accordance with 567—paragraph 41.4(1)*"c"* at least once every six months for one year after CCT has been installed.

(3) Any system has OCCT if it submits results of tap water monitoring conducted in accordance with 567—paragraph 41.4(1)*"c"* and source water monitoring conducted in accordance with 567—paragraph 41.4(1)*"e"* that demonstrate, for two consecutive six-month monitoring periods, that the difference between the 90th percentile tap water lead level computed under 567—subparagraph 41.4(1)*"b"*(3) and the highest source water lead concentration is less than the practical quantitation level for lead in 567—paragraph 41.4(1)*"g."* Pursuant to this paragraph:

1. Those systems whose highest source water lead level is below the method detection limit may also be deemed to have OCCT if the 90th percentile tap water lead level is less than or equal to the lead PQL for two consecutive six-month monitoring periods.

2. Any system deemed to have OCC shall continue lead and copper monitoring at the tap no less frequently than once every three calendar years using the reduced number of sites specified in 567—subparagraph 41.4(1)*"c"*(3) and collecting the samples at times and locations specified in 567—paragraph 41.4(1)*"c"*(4)"4," fourth bulleted paragraph.

3. Any system deemed to have OCC shall notify the department in writing of any upcoming long-term change in treatment or the addition of a new source, pursuant to 567—subparagraph 40.8(2)*"a"*(3). The department must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system.

4. Unless a system meets the copper AL, it is not deemed to have OCCT and shall implement CCT pursuant to 43.7(1)*"b"*(3)"5."

5. Any system triggered into corrosion control because it is no longer deemed to have OCCT shall implement CCT in accordance with 43.7(1)*"e."* Any such large system shall adhere to the schedule specified in that paragraph for medium-size systems, with the time periods for completing each step being triggered by the date the system is no longer deemed to have OCC.

*c. Requirements to recommence corrosion control steps.* Any small or medium-size system required to complete the corrosion control steps due to its exceedance of the lead or copper AL may cease completing the treatment steps when it meets both ALs during each of two consecutive monitoring periods conducted pursuant to 567—paragraph 41.4(1)*"c"* and submits the results to the department. If any such system thereafter exceeds the lead or copper AL during any monitoring period, it shall recommence completion of the applicable treatment steps, beginning with the first treatment step that was not previously completed in its entirety. The department may require a system to repeat previously completed steps when it determines the steps are necessary to properly implement the treatment requirements of this rule. The department will notify the system of such a determination in writing and explain the basis for its decision. The requirement for any small or medium-size system to implement CCT steps in accordance with 43.7(1)*"e"* (including systems deemed to have OCC under 43.7(1)*"b"*(1)) is triggered when any such system exceeds the lead or copper AL.

*d. Treatment steps and deadlines for large systems.* Except as provided in 43.7(1)*"b"*(2) or 43.7(1)*"b"*(3), large systems shall complete the following CCT steps (described in the rules referenced below) by the indicated dates:

(1) Step 1. The system shall conduct initial monitoring pursuant to 567—paragraph 41.4(1)*"c"*(4)"1" and 567—subparagraph 41.4(1)*"d"*(2) during two consecutive six-month monitoring periods by January 1, 1993.

(2) Step 2. The system shall complete corrosion control studies pursuant to 43.7(2)*"c"* by July 1, 1994.

(3) Step 3. The department will designate OCCT within six months of receiving the corrosion control study results.

(4) Step 4. The system shall install OCCT by January 1, 1997.

(5) Step 5. The system shall complete follow-up sampling pursuant to 567—paragraph 41.4(1)*"c"*(4)"2" and 567—subparagraph 41.4(1)*"d"*(3) by January 1, 1998.

(6) Step 6. The department will review installation of treatment and designate OWQPs pursuant to 43.7(2)*"f"* by July 1, 1998.

(7) Step 7. The system shall operate in compliance with OWQPs delineated by the department and continue to conduct tap sampling.

*e. Treatment steps and deadlines for small and medium-size systems.* Except as provided in 43.7(2), small and medium-size systems shall complete the following CCT steps (described in the rules referenced below) by the indicated time periods:

(1) Step 1. A system shall conduct initial tap sampling pursuant to 567—paragraph 41.4(1)*"c"*(4) "1" and 567—subparagraph 41.4(1)*"d"*(2) until it either exceeds the lead or copper AL or becomes eligible for reduced monitoring under 567—paragraph 41.4(1)*"c"*(4)"4." A system exceeding the lead or copper AL shall recommend OCCT under 43.7(2)*"a"* within six months after the end of the monitoring period during which it exceeds one of the ALs.

(2) Step 2. Within 12 months after the end of the monitoring period during which a system exceeds the lead or copper AL, the department may require the system to perform corrosion control studies under 43.7(2)*"b."* If the system is not required to perform such studies, the department will specify OCCT under 43.7(2)*"d"* as follows: for medium-size systems, within 18 months after the end of the monitoring period during which such system exceeds the lead or copper AL, and, for small systems, within 24 months after the end of the monitoring period during which such system exceeds the lead or copper AL.

(3) Step 3. If a system is required to perform corrosion control studies under Step 2, it shall complete the studies (under 43.7(2)*"c"*) within 18 months after such studies are required to commence.

(4) Step 4. If the system has performed corrosion control studies under Step 2, the department will designate OCCT under 43.7(2)*"d"* within six months after completion of Step 3.

(5) Step 5. Systems shall install OCCT under 43.7(2)*"e"* within 24 months after such treatment is designated.

(6) Step 6. Systems shall complete follow-up sampling pursuant to 567—paragraph 41.4(1)*"c"*(4) "2" and 567—subparagraph 41.4(1)*"d"*(3) within 36 months after OCCT is designated.

(7) Step 7. The department will review a system's installation of treatment and designate OWQPs pursuant to 43.7(2)*"f"* within six months after completion of Step 6.

(8) Step 8. Systems shall operate in compliance with the department-designated OWQPs under 43.7(2)*"f"* (and continue to conduct tap sampling per 567—paragraphs 41.4(1)*"c"*(4)"3" and 41.4(1)*"d"*(4)).

**43.7(2)** *CCT requirements.* Each PWS shall complete the CCT requirements described below that are applicable to such systems under 43.7(1).

*a. PWS recommendation.* Based on the results of lead and copper tap monitoring and WQP monitoring, small and medium-size systems exceeding the lead or copper AL shall recommend installation of one or more of the CCTs in 43.7(2)*"c"* that the system believes constitute OCC. The department may require a system to conduct additional WQP monitoring in accordance with 567—subparagraph 41.4(1)*"d"*(2) to assist in reviewing the system's recommendation.

*b. Department decision to require CCT studies (small and medium-size systems).* The department may require any small or medium-size system that exceeds the lead or copper AL to perform corrosion control studies under 43.7(2)*"c"* to identify OCCT.

*c. Performance of corrosion control studies.*

(1) Any PWS performing corrosion control studies shall evaluate the effectiveness of each of the following treatments and, if appropriate, combinations of the following treatments to identify the OCCT: alkalinity and pH adjustment; calcium hardness adjustment; and phosphate or silicate-based corrosion inhibitor addition at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(2) PWSs shall evaluate each of the CCTs using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry, and distribution system configuration.

(3) PWSs shall measure the following WQPs in any tests conducted under this paragraph before and after evaluating the CCTs listed above:

1. Lead;
2. Copper;

3. pH;
4. Alkalinity;
5. Calcium;
6. Conductivity;
7. Orthophosphate (when an inhibitor containing a phosphate compound is used);
8. Silicate (when an inhibitor containing a silicate compound is used); and
9. Water temperature.

(4) PWSs shall identify all chemical or physical constraints that limit or prohibit the use of a particular CCT and outline such constraints with data and documentation either showing that a particular CCT has adversely affected other water treatment processes when used by another system with comparable water quality characteristics; or demonstrating that the system has previously attempted to evaluate a particular CCT and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(5) Systems shall evaluate the effect of the chemicals used for CCT on other water quality treatment processes.

(6) Based on analysis of the data generated during each evaluation, a system shall recommend in writing to the department the treatment option that the corrosion control studies indicate constitutes OCCT for that system. The system shall provide a rationale for its recommendation along with all supporting documentation required by this paragraph.

*d. Department designation of OCCT.*

(1) Based on consideration of available information including, where applicable, studies performed under 43.7(2)*"c"* and a system's recommended treatment alternative, the department will either approve the CCT option recommended by the PWS, or designate alternative treatment(s) from among those listed in 43.7(2)*"c."* The department will consider the effects that additional treatment will have on WQPs and on other water treatment processes.

(2) The department will notify a PWS of its decision on OCCT in writing and explain the basis for this determination. If the department requests additional information to aid its review, a PWS shall provide the information.

*e. Installation of OCC.* Each PWS shall properly install and operate throughout its distribution system the OCCT designated under 43.7(2)*"d."*

*f. Department review of treatment and specification of optimal water quality control parameters (OWQPs).*

(1) The department will evaluate the results of all lead and copper tap samples and WQP samples submitted by a PWS and determine whether the system has properly installed and operated the OCCT designated in 43.7(2)*"d."* After reviewing the sampling results , both before and after a system installs optimal treatment, the department will designate the following:

1. A minimum value or a range of values for pH measured at each SEP;
2. A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0 unless meeting a pH level of 7.0 is not technologically feasible or is not necessary for the PWS to optimize corrosion control;
3. If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each SEP and in all tap samples, necessary to form a passivating film on the interior walls of the pipes of the distribution system;
4. If alkalinity is adjusted as part of OCCT, a minimum concentration or a range of concentrations for alkalinity, measured at each SEP and in all tap samples; or
5. If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

(2) The values for the applicable WQPs listed above shall be those reflecting OCCT for a PWS. The department may designate values for additional WQPs determined to reflect OCC for the system. The department will notify the system in writing of these determinations and explain the basis for its decisions.

*g. Continued operation with OCC and WQP monitoring compliance determination.* In accordance with this paragraph, all systems optimizing corrosion control shall continue to operate and maintain OCCT, including maintaining WQPs at or above minimum values or within ranges designated by the department under 43.7(2)*"f,"* for all samples collected under 567—subparagraphs 41.4(1)*"d"*(4) through 41.4(1)*"d"*(6). Compliance with this paragraph shall be determined every six months, as specified in 567—subparagraph 41.4(1)*"d"*(4). A system is out of compliance with this paragraph for a six-month period if it has excursions for any department-specified parameter on more than nine days during the period. An excursion occurs when the daily value for one or more of the WQPs measured at a sampling location is below the minimum value or outside the department-designated range. The department has the discretion to invalidate results of obvious sampling errors from this calculation. Daily values for WQPs collected at a single sampling location are calculated as follows.

(1) On days when more than one measurement for the WQP is collected, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or a combination of both.

(2) On days when only one measurement for the WQP is collected, the daily value shall be the result of that measurement.

(3) On days when no measurement is collected for the WQP, the daily value shall be the daily value calculated on the most recent day that the WQP was measured at the sample site.

*h. Modification of department treatment decisions.* A determination of the OCCT under 43.7(2) *"d"* or OWQPs under 43.7(2)*"f"* may be modified. A modification request from a PWS or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The department may modify its determination when it concludes that such change is necessary to ensure that a PWS continues to optimize CCT. A revised determination will be made in writing, set forth the new treatment requirements, explain the basis for the decision, and provide an implementation schedule for completing treatment modifications.

**43.7(3)** *Source water treatment requirements.* PWSs shall complete the applicable source water monitoring and treatment requirements, as described in the referenced portions of 43.7(3)*"b,"* and in 567—paragraphs 41.4(1)*"c"* and *"e,"* by the following deadlines.

*a. Deadlines for completing source water treatment steps.*

(1) Step 1. A PWS exceeding the lead or copper AL shall complete lead and copper source water monitoring under 567—subparagraph 41.4(1)*"e"*(2) and make a written treatment recommendation to the department no later than 180 days after the end of the monitoring period during which the lead or copper AL was exceeded.

(2) Step 2. The department will make a determination regarding source water treatment pursuant to 43.7(3)*"b"*(2) within six months after submission of monitoring results under Step 1.

(3) Step 3. If installation of source water treatment is required, the system shall install treatment pursuant to 43.7(3)*"b"*(3) within 24 months after completion of Step 2.

(4) Step 4. A PWS shall complete follow-up tap water monitoring under 567—paragraph 41.4(1) *"c"*(4)"2" and source water monitoring under 567—subparagraph 41.4(1)*"e"*(3) within 36 months after completion of Step 2.

(5) Step 5. The department will review the system's installation and operation of source water treatment and specify maximum permissible source water levels under 43.7(3)*"b"*(4) within six months after completion of Step 4.

(6) Step 6. A PWS shall operate in compliance with the maximum permissible lead and copper source water levels in 43.7(3)*"b"*(4) and continue source water monitoring pursuant to 567—subparagraph 41.4(1)*"e"*(4).

*b. Description of treatment requirements.*

(1) System treatment recommendation. Any system that exceeds the lead or copper AL shall recommend in writing to the department the installation and operation of one of the source water treatments in 43.7(3)*"b"*(2). A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(2) Source water treatment determinations. The department will evaluate the results of all source water samples submitted by a PWS to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the department determines that treatment is needed, it will require installation and operation of the source water treatment recommended by the PWS or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening, or coagulation/filtration. If the department requests additional information to aid in its review, the PWS shall provide the information by the specified date. The department will notify the system in writing of its determination and set forth the basis for its decision.

(3) Source water treatment installation. PWSs shall properly install and operate the source water treatment designated by the department under 43.7(3)*"b"*(2).

(4) Department review and specification. The department will review a system's source water samples both before and after the installation of source water treatment and determine whether the system has properly installed and operated the designated treatment. After the review, the department will designate maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment (properly operated and maintained). The department will notify the PWS in writing and explain the basis for its decision.

(5) Continued operation and maintenance. Each PWS shall maintain lead and copper levels below the maximum permissible concentrations designated by the department at each sampling point monitored in accordance with 567—paragraph 41.4(1)*"e."* A system is out of compliance with this paragraph if the lead or copper level at any sampling point is greater than the maximum permissible designated concentration.

(6) Modification of decisions. The department may modify its determinations of the source water treatment or maximum permissible lead and copper concentrations made under subparagraphs (2) and (4) of this paragraph. A modification request from a PWS or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The department may modify its determination where it concludes that such change is necessary to ensure that a system continues to minimize lead and copper concentrations in source water. A revised determination will be made in writing, set forth the new treatment requirements, explain the basis for the decision, and provide an implementation schedule for completing treatment modifications.

**43.7(4)** *Lead service line replacement (LSLR) requirements.*

*a. Applicability.* PWSs that fail to meet the lead AL in tap samples taken pursuant to 567—paragraph 41.4(1)*"c"*(4)"2" after installing corrosion control or source water treatment (whichever sampling occurs later), shall replace lead service lines (LSLs) in accordance with this subrule. If a system is in violation of 43.7(1) and 43.7(3) for failure to install source water or CCT, the department may require the system to commence LSLR under this subrule after the date by which the system was required to conduct monitoring under 567—paragraph 41.4(1)*"c"*(4)"2" has passed.

*b. LSLR schedule.* A PWS shall replace annually at least seven percent of the initial number of LSLs in its distribution system. The initial number of LSLs is the number of lead lines in place at the time the replacement program begins. A system shall identify the initial number of LSLs in its distribution system, including an identification of the portion(s) owned by the system, based upon a materials evaluation, including the evaluation required under 567—subparagraph 41.4(1)*"c"*(1), and relevant legal authorities regarding the portion owned by the system.

(1) The first year of LSLR shall begin on the first day following the end of the monitoring period in which the AL was exceeded in tap sampling referenced in 43.7(4)*"a."* If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs. If the department has established an alternate monitoring period, then the end of the monitoring period will be the last day of that period.

(2) Any system resuming an LSLR program after the cessation of its program as allowed by 43.7(4)*"g"* shall update its inventory of LSLs to include those sites that were previously determined not to require replacement through the sampling provision of 43.7(4)*"c."* The system will then divide the

updated number of remaining LSLs by the number of remaining years in the program to determine the number of lines that must be replaced per year. Seven percent LSLR is based on a 15-year replacement program. For example, systems resuming LSLR after previously conducting two years of replacement would divide the updated inventory by 13.

(3) For those systems that have completed a 15-year LSLR program, the department will determine a schedule for replacing or retesting lines that were previously exempted through testing under 43.7(4) *"c"* from the replacement program when the system re-exceeds the AL.

*c. Exemption to LSLR requirement.* A PWS is not required to replace an individual LSL if the lead concentration in all service line samples from that line, taken pursuant to 567—paragraph 41.4(1)*"c"*(2) "3," is less than or equal to 0.015 mg/L.

*d. LSLR requirements.* A PWS shall replace that portion of the LSL that it owns. In cases where a system does not own the entire LSL, it shall notify the owner of the line, or the owner's authorized agent, that it will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately owned portion of the line, nor is it required to replace the privately owned portion of the line where the line owner chooses not to pay the cost of replacement, or where replacing the privately owned portion would be precluded by state, local, or common law. A system that does not replace the entire length of the service line shall complete the following tasks.

(1) Resident notification. At least 45 days prior to commencing with the partial replacement of a LSL, a PWS shall provide to the resident(s) of all buildings served by the line notice explaining that the resident(s) may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers may take to minimize their lead exposure. The department may allow a system to provide this notice less than 45 days prior to commencing partial LSLR where such replacement is in conjunction with emergency repairs. In addition, a system shall inform the resident(s) served by the line that the system will, at its expense, collect a lead sample from each service line that is representative of the water in the line, as prescribed by 567—paragraph 41.4(1)*"c"*(2)"3," within 72 hours after the completion of the partial service line replacement. The system shall collect the sample and report the analysis results to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices postmarked within three business days of receiving the results shall be considered "on time."

(2) Notification methods. The PWS shall provide the information required by 43.7(4)*"d"*(1) to the residents of individual dwellings by mail or by other department-approved methods. In instances where multifamily dwellings are served by the line, a system shall have the option to post the information at a conspicuous location.

*e. LSLR schedule.* The department may require a PWS to replace LSLs on a shorter schedule than that required by this subrule, taking into account the number of LSLs in the system, where such a shorter replacement schedule is feasible. The department will make this determination in writing and notify the system of its finding within six months after the system is triggered into LSLR based on monitoring referenced in 43.7(4)*"a."*

*f. Cessation of LSLR.* Any PWS may cease replacing LSLs when first draw samples collected pursuant to 567—paragraph 41.4(1)*"c"*(2)"2" meet the lead AL during each of two consecutive monitoring periods and the system submits the results. If the first draw tap samples collected in any such system thereafter exceed the lead AL, the system shall recommence replacing LSLs, as detailed in 43.7(4)*"b."*

*g. LSLR reporting requirements.* To demonstrate compliance with 43.7(4)*"a"* through *"d,"* a system shall report the information in 567—paragraph 42.4(2)*"e."*

**567—43.8(455B) Viability assessment.**

**43.8(1)** *Definitions specific to viability assessment.*

*a.* For viability assessment purposes:

*"New system"* includes newly constructed PWSs and systems that do not meet the definition of a PWS, but which expand their infrastructure and thereby grow to become a PWS. Systems not currently

meeting the definition of a PWS and that add additional users and thereby become a PWS without constructing any additional infrastructure are not "new systems" for the purposes of this subrule.

*"Nonviable system"* means a system lacking the technical, financial, and managerial ability to comply with 567—Chapters 40 through 43 and 81.

*"Viable system"* means a system with the technical, financial, and managerial ability to comply with applicable drinking water standards adopted by the state of Iowa.

*b.* "Significant noncompliance" or "SNC" and "viability" are defined in 567—Chapter 40.

**43.8(2)** *Applicability and purpose.* These rules apply to all new and existing PWS, including the following: new systems; systems deemed to be in SNC with the primary drinking water standards; DWSRF applicants; and existing systems. The purpose of the viability assessment program is to ensure the safety of the PWS and ensure the viability of new PWS upon commencement of operation. The department may require PN and assess administrative penalties to any PWS that fails to fulfill the requirements of this rule.

**43.8(3)** *Contents of a viability assessment.* A viability assessment must address the areas of technical, financial, and managerial viability for a PWS. An assessment must include evaluation of the following areas, and the PWS may be required to include additional information as directed by the department.

*a. Technical viability.* Supply sources and facilities, treatment, and infrastructure.

*b. Managerial viability.* Operation, maintenance, management, and administration.

*c. Financial viability.* Capital and operating costs, revenue sources, and contingency plans.

**43.8(4)** *New systems.*

*a. Viability assessment submission.*

(1) New PWSs (including CWSs, NTNCs and TNCs) must submit a completed system viability assessment for department review prior to obtaining a construction permit. A viability assessment may be submitted with a construction permit application.

(2) Viability assessment worksheets are available on the department's website at www.iowadnr.gov.

(3) The department may reject receipt or delay review of the construction plans and specifications until an adequate viability assessment is provided.

(4) If the department finds, upon review and approval of the viability assessment, that the PWS will be viable, a construction permit will be issued in accordance with 567—Chapters 40 and 43. Prior to beginning operation, a PWS operation permit must be obtained in accordance with rule 567—43.2(455B) and rule 567—40.5(455B).

*b. Viability assessment review.* If the department declines to approve a viability assessment, or if the department finds that a PWS is nonviable, the construction and operation permit applications will be denied. If the viability assessment is conditionally approved, construction and operation permits will be issued, with conditions and a compliance schedule specified in the operation permit.

**43.8(5)** *Existing systems.*

*a. Definition of existing system.* Any CWS, NTNC, or TNC in operation prior to October 1, 1999 that was regulated as a PWS by the department shall be considered an existing system. Any system that does not currently meet the definition of a PWS, but which expands their infrastructure and thereby grows to become a PWS, is considered a new system. Systems not currently meeting the definition of a PWS and that add additional users and thereby become a PWS without constructing any additional infrastructure are considered existing systems for the purposes of this subrule.

*b. Viability assessment submission.* All PWSs should complete a viability assessment. However, only existing PWSs meeting one or more of the following criteria are required to complete a viability assessment.

(1) Systems applying for DWSRF loan funds.

(2) Systems categorized as being in SNC by the department, due to their history of failure to comply with drinking water standards.

(3) Systems identified by the department via a sanitary survey as having technical, managerial, or financial problems as evidenced by such conditions as poor operational control, a poor state of repair or

maintenance, vulnerability to contamination, or inability to maintain adequate distribution system operating pressures.

(4) Systems that have been unable to retain a certified operator in accordance with 567—Chapter 81.

*c. Forms.* Viability assessment worksheets are available on the department's website at www.iowadnr.gov.

*d. Review of required viability assessments.*

(1) If the assessment is incomplete and does not include all of the required elements, the system will be notified in writing by the department and will be given an opportunity to modify and resubmit the assessment within the specified time period. If the system fails to resubmit a completed viability assessment as specified, the department may find that the system is nonviable.

(2) If the assessment is complete, the department will either indicate that the system is viable or nonviable after the assessment review process. The system will be notified of the results of the department's evaluation.

*e. Review of voluntarily submitted viability assessments.* All existing systems should complete a viability assessment and submit it to the department. Voluntarily submitted assessments may be reviewed upon request and will be exempt from any requirements to modify the assessment if it is not approved, or from a determination that the system is not viable, providing the system does not meet any of the criteria for mandatory completion of a viability assessment set forth in 43.8(4)*"b"* above.

**43.8(6)** *Nonviable systems.* The following applies to CWSs, NTNC, and TNCs:

*a.* Systems applying for DWSRF loan funds must be viable, or the loan funds must be used to assist the system in attaining viable status. If a system applying for a loan is found to be nonviable, and loan funds will not be sufficient or available to ensure viability, then the situation must be corrected to the department's satisfaction prior to qualification to apply for loan funds.

*b.* Systems that meet the department's SNC criteria are considered nonviable. The system's viability assessment and the most recent sanitary survey results will be evaluated by the department to assist the system in returning to and remaining in compliance, which would achieve viability. Required corrective actions will be specified in the system's operation permit and will include a compliance schedule. Inspections will be conducted on an as-needed basis to assist the system in implementing the required improvements.

*c.* Systems experiencing technical, managerial, or financial problems as noted by the department in the sanitary survey will be considered nonviable. The system's viability assessment will be evaluated by the department to assist the system in attaining viability, and any required corrective actions will be specified in the system's operation permit.

*d.* Systems unable to retain a certified operator will be considered nonviable. All CWSs and NTNCs, and TNCs denoted by the department, must have a certified operator who meets the requirements of 567—Chapter 81. The system's viability assessment will be used to determine the source of the problem, and required corrective actions will be specified in the system's operation permit.

**43.8(7)** *Revocation or denial of operation or construction permit.*

*a. Operation permit revocation or denial.* Failure to correct the deficiencies regarding viability, as identified in a compliance schedule set by the department, may result in revocation or denial of a system's operation permit. If the department revokes or denies the operation permit, the system's owner must negotiate an alternative arrangement with the department for providing treatment or water supply services within 30 days of receipt of the notification unless the system's owner appeals the decision. The PWS is required to provide water that continually meets all health-based standards during the appeal process.

*b. Denial of new construction permits for an existing system.* In addition to the criteria provided in 567—Chapters 40 through 44, new construction permits for system improvements may be denied until a system makes the required corrections and attains viable status, unless the proposed project is necessary to attain viability.

*c. Failure to conform or comply.* Failure of a project to conform to approved construction plans and specifications, or failure to comply with 567—Chapters 40 through 44, constitutes grounds for the

director to withhold the applicable construction and operation permits. The system is then responsible for ensuring that the identified problem with the project is rectified so that permits may be issued. Once an agreement for correcting the problem is reached between the department and the system, the department will issue the appropriate permits according to the provisions of the agreement. If an agreement cannot be reached within a reasonable time period, the permits shall be denied.

*d. Contents of denial notification.* The notification of denial or withholding approval of the operation or construction permit will state the department's reasons for withholding or denying permit approval.

**43.8(8)** *Appeals.*

*a. Request for formal review of viability determination.* A person or entity who disagrees with the decision regarding the viability of a PWS may request a formal review of the action. A request for review must be submitted in writing to the director by the owner or their designee within 30 days of the viability decision.

*b. Appeal of denial of operation or construction permit.* A decision to deny an operation or construction permit may be appealed by the applicant to the commission pursuant to 567—Chapter 7. The appeal must be made in writing to the director within 30 days of receiving the notice of denial by the owner of the PWS.

**567—43.9(455B) Enhanced filtration and disinfection requirements for SW and IGW systems serving at least 10,000 people.**

**43.9(1)** *General requirements.*

*a. Applicability.* The requirements of this rule constitute national primary drinking water regulations. This rule establishes the filtration and disinfection requirements in addition to the filtration and disinfection requirements in 567—43.5(455B). This rule is applicable to all PWSs using SW or IGW, in whole or in part, and that serve at least 10,000 people. This rule establishes or extends TT requirements in lieu of MCLs for the following contaminants: *Giardia lamblia*, viruses, HPC bacteria, *Legionella*, *Cryptosporidium*, and turbidity. Each SW or IGW system serving at least 10,000 people must provide treatment of its source water that complies with these TT requirements. The TT requirements consist of installing and properly operating water treatment processes that reliably achieve:

(1) At least 99 percent (2-log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by SW runoff and a point downstream before or at the first customer for filtered systems.

(2) Compliance with the profiling and benchmark requirements under 43.9(2).

(3) The department may require other SW or IGW systems to comply with this rule, through an operation permit.

*b. Compliance determination.* A PWS subject to this rule is considered in compliance with 43.9(1)*"a"* if it meets the applicable filtration requirements in either 43.5(3) or 43.9(3) and the disinfection requirements in 43.5(2) and 43.6(2).

*c. Prohibition of new construction of uncovered intermediate or finished water storage facilities.* Systems required to comply with this rule may construct only covered intermediate or finished water storage facilities. For the purposes of this rule, an intermediate storage facility is defined as a storage facility or reservoir after the clarification treatment process.

*d. Systems with populations that increased after January 1, 2002, to more than 10,000 people served.* Systems using SW or IGW sources that did not conduct optional monitoring under 43.9(2) because they served fewer than 10,000 persons when such monitoring was required, but serve more than 10,000 persons prior to January 1, 2005, must comply with 43.9(1), 43.9(3), 43.9(4), and 43.9(5). These systems must also consult with the department to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice as described in 43.9(2)*"c"*(1)"1" through "4" must consult with the department prior to making such a change.

**43.9(2)** *Disinfection profiling and benchmarking.*

*a. Determination of systems required to profile.* A PWS subject to this rule must determine its total trihalomethane (TTHM) and haloacetic acid (HAA5) annual averages using the procedures listed below.

The annual average is the arithmetic average of the quarterly averages of four consecutive quarters of monitoring. Both TTHM and HAA5 samples must be collected as paired samples during the same time period in order for each parameter to have the same annual average period for result comparison. A paired sample is one that is collected at the same location and time and is analyzed for both TTHM and HAA5 parameters.

(1) Allowance of information collection rule data. Those systems that collected data under the federal Information Collection Rule in 40 CFR Part 141, Subpart M, must use the results of the TTHM and HAA5 samples collected during the last four quarters of monitoring required under 40 CFR §141.142. The system must have submitted the results of the samples collected during the last 12 months of required monitoring.

(2) Systems that have not collected TTHM and HAA5 data. Those systems that have not collected four consecutive quarters of paired TTHM and HAA5 samples as described above in 43.9(2)*"a"*(1) must comply with all other provisions of this subrule as if the HAA5 monitoring had been conducted and the results of that monitoring required compliance with 43.9(2)*"b."* The system that elects this option must notify the department in writing of its decision.

(3) The department may require that a system use a more representative annual data set than the data set determined under 43.9(2)*"a"*(1) to determine the applicability of this subrule.

(4) Profiling determination criteria. Any system having either a TTHM annual average greater than 0.064 mg/L or an HAA5 annual average greater than 0.048 mg/L during the period identified in 43.9(2) *"a"*(1) through 43.9(2)*"a"*(3) must comply with 43.9(2)*"b."*

*b. Disinfection profiling.*

(1) Applicability. Any system that meet the criteria in 43.9(2)*"a"*(4) must develop a disinfection profile of its disinfection practice for a period of up to three years.

(2) Monitoring requirements. A system must monitor daily for a period of 12 consecutive calendar months to determine the total log inactivation for each day of operation, based on the $CT_{99.9}$ values in Tables 1 through 8 in Appendix A, as appropriate, through the entire treatment plant. A system must begin this monitoring as directed by the department. As a minimum, a system with a single point of disinfectant application prior to entrance to the distribution system must conduct the monitoring in "1" through "4" below. A system with more than one point of disinfectant application must conduct the monitoring in "1" through "4" below for each disinfection segment. A system must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in 43.5(4)*"a,"* as follows:

1. The temperature of the disinfected water must be measured once per day at each RDC sampling point during peak hourly flow.

2. If the system uses chlorine, the pH of the disinfected water must be measured once per day at each chlorine RDC sampling point during peak hourly flow.

3. The disinfectant contact time(s) ("T") must be determined for each day during peak hourly flow.

4. The RDC(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection must be measured each day during peak hourly flow.

(3) Use of existing data. A system that has existing operational data may use that data to develop a disinfection profile for additional years, in addition to the disinfection profile generated under 43.9(2) *"b"*(2). Such systems may use these additional yearly disinfection profiles to develop a benchmark under 43.9(2)*"c."* The department must determine whether these operational data are substantially equivalent to data collected under 43.9(2)*"b"*(2). These data must be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(4) Calculation of the total inactivation ratio. The system must calculate the total inactivation ratio as follows, using the $CT_{99.9}$ values from Tables 1 through 8 listed in Appendix A:

1. If the system uses only one point of disinfectant application, it may determine the total inactivation ratio for the disinfection segment using either of the following methods:

- Determine one inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow; or

● Determine successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine $\Sigma(CT_{calc}/CT_{99.9})$.

2. If the system uses more than one point of disinfectant application before the first customer, the system must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The $CT_{calc}/CT_{99.9}$ value of each segment and $\Sigma(CT_{calc}/CT_{99.9})$ must be calculated using a method above in 43.9(2)*"b"*(4)"1."

3. The system must determine the total log inactivation by multiplying the value calculated above in 43.9(2)*"b"*(4)"1" or "2" by 3.0.

(5) Systems using chloramines or ozone. A system that uses either chloramines or ozone for primary disinfection must also calculate the log inactivation for viruses using a department-approved method.

(6) Profile retention. The system must retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the department for review as part of sanitary surveys conducted by the department. The department may require the system to submit the data directly or as part of a MOR.

*c. Disinfection benchmarking.*

(1) Significant change to disinfection practice. Any system required to develop a disinfection profile under 43.9(2)*"a"* or *"b"* that decides to make a significant change to its disinfection practice must obtain department approval prior to making such change. Significant changes to disinfection practice are:

1. Changes to the point of disinfection;
2. Changes to the disinfectant(s) used in the treatment plant;
3. Changes to the disinfection process; and
4. Any other modification identified by the department.

(2) Calculation of the disinfection benchmark. Any system that is modifying its disinfection practice must calculate its disinfection benchmark using the procedure specified below:

1. For each year of profiling data collected and calculated under 43.9(2)*"b,"* the system must determine the lowest average monthly *Giardia lamblia* inactivation in each year of profiling data. The system must determine the average *Giardia lamblia* inactivation for each calendar month for each year of profiling data by dividing the sum of daily *Giardia lamblia* inactivation by the number of values calculated for that month.

2. The disinfection benchmark is the lowest monthly average value (for systems with one year of profiling data) or average of lowest monthly average values (for systems with more than one year of profiling data) of the monthly log inactivation of *Giardia lamblia* in each year of profiling data.

(3) A system that uses either chloramines or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a department-approved method.

(4) The system must submit the following information to the department as part of its consultation process:

1. A description of the proposed change;
2. The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) under 43.9(2)*"b"* and the disinfection benchmark as required by 43.9(2)*"c"*(2); and
3. An analysis of how the proposed change will affect the current levels of disinfection.

**43.9(3)** *Filtration.*

*a. Conventional filtration treatment or direct filtration.* Turbidity measurements required by this paragraph shall be made in accordance with 43.5(4)*"a"*(1) and 43.5(4)*"b"*(1).

(1) Turbidity requirement in 95 percent of samples. For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water (CFE) must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month.

(2) Maximum turbidity level. The turbidity level of representative samples of a system's filtered water (CFE) must at no time exceed 1 NTU in two consecutive 15 minute recordings. If at any time the CFE turbidity exceeds 1 NTU in two consecutive 15 minute recordings, the system must inform the department as soon as possible, but no later than 24 hours after the exceedance is known, in accordance with the PN requirements in 567—subparagraph 42.1(3)*"b"*(3).

*b. Filtration technologies other than conventional, direct, slow sand, or diatomaceous earth.* The department may allow a PWS to use a filtration technology not listed in 43.9(3)*"a"* or 43.5(3)*"c"* or *"d"* if it demonstrates to the department, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of 43.5(2), consistently achieves 99.9 percent removal or inactivation of *Giardia lamblia* cysts, 99.99 percent removal or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts, and the department approves the use of the filtration technology. For each approval, the department will set turbidity performance requirements that the system must meet at least 95 percent of the time and will require that the system not exceed at any time a level that consistently achieves 99.9 percent removal or inactivation of *Giardia lamblia* cysts, 99.99 percent removal or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

**43.9(4)** *Filtration sampling.*

*a. Monitoring requirements for systems using filtration treatment.* In addition to monitoring required by 43.5(4), a PWS subject to this rule that provides conventional filtration treatment or direct filtration must conduct continuous turbidity monitoring for each individual filter using an approved method in 43.5(4)*"a"*(1). Turbidity must be monitored according to a written turbidity protocol approved by the department and audited for compliance during sanitary surveys. Major elements of the protocol shall include, but are not limited to: sample measurement location; calibration method, frequency, standards, method of verification, and verification frequency; and data collection, recording frequency, and reporting. PWSs must calibrate turbidimeters at least every 90 days with a primary standard. The calibration of each turbidimeter used for compliance must be verified at least once per week with a primary standard, secondary standard, the manufacturer's proprietary calibration confirmation device, or by a department-approved method. If the verification is not within plus or minus 0.05 NTU for measurements of less than or equal to 0.5 NTU, or within plus or minus 10 percent of measurements greater than 0.5 NTU, then the turbidimeter must be recalibrated. Systems must record the results of individual filter monitoring every 15 minutes.

*b. Failure of the continuous turbidity monitoring equipment.* If there is a failure in the continuous turbidity monitoring equipment, a system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back online. A system has a maximum of five working days after failure to repair the equipment, or else it is in violation.

**43.9(5)** *Reporting and recordkeeping.*

*a. Additional requirements.* In addition to the reporting and recordkeeping requirements in 567—paragraph 40.8(3)*"c"*:

(1) A system subject to this rule that provides conventional filtration treatment or direct filtration must report monthly to the department the information in 43.9(5)*"b"* and *"c"*; and

(2) A system subject to this rule that provides filtration approved under 43.9(3)*"b"* must report monthly to the department the information in 43.9(5)*"b."*

*b. Turbidity.* Turbidity measurements required by 43.9(3) must be reported in a format acceptable to the department and within ten days after the end of each month that the system serves water to the public. This reporting is in lieu of the reporting specified in 567—subparagraph 40.8(3)*"c"*(1). Information that must be reported includes:

(1) The total number of filtered water (CFE) turbidity measurements taken during the month;

(2) The number and percentage of filtered water (CFE) turbidity measurements taken during the month that are less than or equal to the turbidity limits in 43.9(3)*"a"* or *"b"*; and

(3) The date and value of any CFE turbidity measurements taken during the month that exceed 1 NTU in two consecutive recordings taken 15 minutes apart for systems using conventional filtration treatment or direct filtration or that exceed the maximum level set in 43.9(3)*"b."*

(4) The dates and summary of calibration and verification of all compliance turbidimeters.

*c. Individual filter turbidity monitoring.*

(1) Systems must maintain the results of individual filter turbidity per monitoring taken under 43.9(4) for at least three years.

(2) Systems must report to the department that they have conducted individual filter turbidity monitoring under 43.9(4) within ten days after the end of each month that the system serves water to the public.

(3) Systems must report to the department individual filter turbidity measurement results taken under 43.9(4) within ten days after the end of each month that the system serves water to the public only if measurements demonstrate one or more of the conditions in 43.9(5)*"c"*(5).

(4) Systems that use lime softening may apply to the department for alternative exceedance levels for the levels specified in 43.9(5)*"c"*(5) if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(5) In all of the following instances, the system must report the filter number, the turbidity measurement, and the date(s) when the exceedance occurred:

1. For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced, or report the obvious reason for the exceedance.

2. For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart anytime following the first four hours of continuous filter operation, after the filter has been backwashed or otherwise taken offline. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced, or report the obvious reason for the exceedance.

3. For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each month of three consecutive months. In addition, the system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self-assessment must consist of an assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

4. For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each month of two consecutive months. In addition, the system must arrange for a comprehensive performance evaluation to be conducted by the department or a department-approved third party no later than 30 days following the exceedance and have the evaluation completed and submitted to the department no later than 90 days following the exceedance.

*d. Additional reporting requirement for turbidity combined filter effluent (CFE).* In the following situations, the system must consult with the department as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the PN requirements under 567—subparagraph 42.1(3)*"b"*(3).

(1) In a system using conventional filtration treatment or direct filtration, if the turbidity exceeds 1 NTU in the CFE in two consecutive recordings taken 15 minutes apart.

(2) If at any time the turbidity in representative samples of filtered water (CFE) exceeds the maximum level in 43.9(3)*"b"* for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration.

**567—43.10(455B) Enhanced filtration and disinfection requirements for SW and IGW systems serving fewer than 10,000 people.**

**43.10(1)** *General requirements.*

*a. Applicability.* This rule constitutes national primary drinking water regulations, and it establishes requirements for filtration and disinfection in addition to the filtration and disinfection requirements in 567—43.5(455B). This rule is applicable beginning January 1, 2005, unless otherwise noted, to all PWSs using SW or IGW, in whole or in part, and that serve less than 10,000 people. This rule establishes or extends TT requirements in lieu of MCLs for the following contaminants: *Giardia lamblia*, viruses, HPC bacteria, *Legionella*, *Cryptosporidium*, and turbidity. The TT requirements consist of installing and properly operating water treatment processes that reliably achieve:

(1) At least 99 percent (2 log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by SW runoff and a point downstream before or at the first customer for filtered systems; and

(2) Compliance with the profiling and benchmark requirements in 43.10(2) and 43.10(3).

*b. Prohibition of new construction of uncovered intermediate or finished water storage facilities.* Systems required to comply with this rule may construct only covered intermediate or finished water storage facilities. For the purposes of this rule, an intermediate storage facility is defined as a storage facility or reservoir after the clarification treatment process.

**43.10(2)** *Disinfection profile.*

*a. Applicability.* A disinfection profile is a graphical representation of a system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. All systems required to comply with this rule must develop a disinfection profile unless the department determines that such a profile is unnecessary. Records must be maintained according to 43.10(7).

(1) The department may approve the use of a more representative data set for disinfection profiling than the data set required in 43.10(2)*"b."*

(2) The department may determine that a disinfection profile is unnecessary only if a system's TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively. To determine these levels, TTHM and HAA5 samples must be collected during the month with the warmest water temperature and at the point of maximum residence time in the distribution system. The department may approve the use of a more representative annual data set to determine the applicability of this subrule. The annual data set must be calculated on an annual average using the arithmetic average of the quarterly averages of four consecutive quarters of monitoring. At least 25 percent of the samples collected in each quarter must be collected at the maximum residence time location in the distribution system.

(3) If a producing system that provides water to other PWSs meets the byproduct level requirements of less than 0.064 mg/L for TTHM and less than 0.048 mg/L for HAA5, it will not be required to develop a disinfection profile and benchmark unless:

1. The consecutive system cannot meet the byproduct level requirements of less than 0.064 mg/L for TTHM and less than 0.048 mg/L for HAA5 in its distribution system, and

2. The producing system wants to make a significant change to its disinfection practices.

*b. Required elements of a disinfection profile.*

(1) A system must monitor the following parameters to determine the total log inactivation using the analytical methods in 43.5(4)*"a,"* once per week on the same calendar day, over 12 consecutive months.

1. Temperature of the disinfected water at each RDC sampling point during peak hourly flow, measured in degrees Celsius;

2. For systems using chlorine, the pH of the disinfected water at each RDC sampling point during peak hourly flow, measured in standard pH units;

3. The disinfectant contact time ("T") during peak hourly flow, measured in minutes; and

4. The RDC(s) ("C") of the water following each point of disinfection at a point(s) prior to each subsequent point of disinfection and at the entry point to the distribution system or at a location just prior to the first customer during peak hourly flows, measured in mg/L.

(2) The data collected in 43.10(2)*"b"*(1) must be used to calculate the weekly log inactivation, along with the $CT_{99.9}$ tables in Appendix A. The system must calculate the total inactivation ratio as follows and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*.

1. If a system uses more than one point of disinfectant application before the first customer, the system must determine the ($CT_{calc}/CT_{99.9}$) value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The system must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine $\Sigma(CT_{calc}/CT_{99.9})$.

2. If the system uses only one point of disinfectant application, it must determine:

- One inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow, or
- Successive ($CT_{calc}/CT_{99.9}$) values, representing sequential inactivation ratios, between the point of disinfection application and a point before or at the first customer during peak hourly flow. The total inactivation ratio must be calculated from the successive values by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine $\Sigma(CT_{calc}/CT_{99.9})$.

3. If a system uses chloramines, ozone, or chlorine dioxide for primary disinfection, the system must also calculate the inactivation logs for viruses and develop an additional disinfection profile for viruses using department-approved methods.

(3) The weekly log inactivations are used to develop a disinfection profile by graphing each log inactivation data point versus time. Each log inactivation serves as a data point in the disinfection profile. The system will have obtained 52 measurements at a minimum, one for each week of the year.

(4) A disinfection profile depicts the variation of microbial inactivation over the course of the year. The system must retain the disinfection profile data both in a graphic form and in a spreadsheet, which must be available for review by the department. This profile is used to calculate a disinfection benchmark if the system is considering changes to its disinfection practices.

**43.10(3)** *Disinfection benchmark.*

*a. Applicability.* Any system required to develop a disinfection profile under 43.10(2) must develop a disinfection benchmark prior to making any significant change in disinfection practice. The system must receive department approval before any significant change in disinfection practice is implemented. Records must be maintained according to 43.10(7).

*b. Significant changes.* Significant changes to disinfection practice include:

(1) Changes to the point of disinfection;

(2) Changes to the disinfectant(s) used in the treatment plant;

(3) Changes to the disinfection process; or

(4) Any other modification identified by the department.

*c. Disinfection benchmark calculation.* Systems must calculate the disinfection benchmark in the following manner:

(1) Step 1. Using the data collected to develop the disinfection profile, determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.

(2) Step 2. Determine the lowest monthly average value out of the 12 values. This value becomes the disinfection benchmark.

*d. Information required for department approval of a change in disinfection practice.* Systems must submit the following information to the department as part of the consultation and approval process.

(1) A description of the proposed change;

(2) The disinfection profile for *Giardia lamblia* and, if necessary, viruses;

(3) The disinfection benchmark;

(4) An analysis of how the proposed change will affect the current levels of disinfection; and

(5) Any additional information requested by the department.

*e. Additional benchmarks if chloramines, ozone, or chlorine dioxide is used for primary disinfection.* If a system uses chloramines, ozone, or chlorine dioxide for primary disinfection, the system must calculate the disinfection benchmark from the data collected for viruses to develop a disinfection profile. This viral benchmark must be calculated in addition to, and in the same manner as, the *Giardia lamblia* disinfection benchmark in 43.10(3)*"c."*

**43.10(4)** *Combined filter effluent (CFE) turbidity requirements.* All systems using SW or IGW that serve less than 10,000 people must use filtration, and the turbidity limits that must be met depend upon the type of filtration used.

*a. Turbidity measurements.* Turbidity must be measured in the CFE as described in 43.5(4)*"a"* and *"b."*

*b. Turbidity monthly reporting.* The monthly reporting requirements are in 43.10(6).

*c. Conventional filtration treatment or direct filtration.*

(1) The turbidity in the CFE must be less than or equal to 0.3 NTU in 95 percent of the turbidity measurements taken each month.

(2) The turbidity in the CFE must never exceed 1 NTU in two consecutive recordings taken 15 minutes apart during the month. If the CFE turbidity exceeds 1 NTU in two consecutive 15 minute recordings, the system must inform the department as soon as possible, but no later than 24 hours after the exceedance is known, in accordance with the PN requirements under 567—subparagraphs 40.5(3) *"b"*(3) and 40.5(2)*"a"*(8).

*d. Slow sand filtration or diatomaceous earth filtration.* The CFE turbidity limits of 43.5(3) must be met.

*e. Other alternative filtration technologies.* By using pilot studies or other means, a system using alternative filtration must demonstrate to the department's satisfaction that the system's filtration, in combination with disinfection treatment, consistently achieves 99 percent removal of *Cryptosporidium* oocysts; 99.9 percent removal, inactivation, or a combination of both, of *Giardia lamblia* cysts; and 99.99 percent removal, inactivation, or a combination of both, of viruses. The department will then use the pilot study data to determine system-specific turbidity limits.

(1) The turbidity must be less than or equal to a value set by the department in 95 percent of the CFE turbidity measurements taken each month, based on the pilot study.

(2) The CFE turbidity must never exceed a value set by the department, based on the pilot study. The value may not exceed 1 NTU in two consecutive recordings taken 15 minutes apart.

**43.10(5)** *Individual filter turbidity requirements.* All systems utilizing conventional filtration or direct filtration must conduct continuous turbidity monitoring for each individual filter. Turbidity must be monitored according to a written turbidity protocol approved by the department and audited for compliance during sanitary surveys. Major elements of the protocol shall include, but are not limited to: sample measurement location; calibration method, frequency, standards, method of verification, and verification frequency; and data collection, recording frequency, and reporting. Records must be maintained according to 43.10(7).

*a. Continuous turbidity monitoring requirements.*

(1) Conduct monitoring using an approved method listed in 43.5(4)*"a"*;

(2) Calibrate turbidimeters at least every 90 days with a primary standard. The calibration of each turbidimeter used for compliance must be verified at least once per week with a primary standard, secondary standard, the manufacturer's proprietary calibration confirmation device, or by a department-approved method. If the verification is not within plus or minus 0.05 NTU for measurements of less than or equal to 0.5 NTU, or within plus or minus 10 percent of measurements greater than 0.5 NTU, the turbidimeter must be recalibrated;

(3) Record turbidity monitoring results at least every 15 minutes; and

(4) Complete monthly reporting in accordance with 43.10(6).

*b. Equipment failure.* If there is a failure in the continuous turbidity monitoring equipment, a system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. A system has a maximum of 14 days after failure to repair the equipment, or else the system is in violation. The system must notify the department within 24 hours, both when a turbidimeter is taken off-line and when it is returned on-line.

*c. Special provision for one-filter or two-filter systems.* If a system has only one or two filters, it may conduct continuous monitoring of the CFE turbidity instead of individual effluent turbidity monitoring. The continuous monitoring must meet the requirements in 43.10(5)*"a"* and *"b."*

*d. Alternative turbidity levels for systems using lime softening.* Systems using lime softening may apply to the department for alternative turbidity exceedance levels for the levels specified in 43.10(5)*"e."* The system must be able to demonstrate to the department's satisfaction that higher turbidity levels are due to lime carryover only, and not due to degraded filter performance.

*e. Requirements triggered by individual filter turbidity monitoring data.* Systems must conduct additional activities based upon their individual filter turbidity monitoring data, as listed in this paragraph.

(1) If the turbidity of an individual filter (or the CFE turbidity for a system with one or two filters, pursuant to 43.10(5)*"c"*) exceeds 1.0 NTU in two consecutive recordings taken 15 minutes apart, a system must report the following information in the MOR to the department by the tenth day of the following month:

1. The filter number(s);
2. Corresponding date(s);
3. Turbidity value(s) which exceeded 1.0 NTU; and
4. The cause of the exceedance(s), if known.

(2) If the turbidity of an individual filter (or the CFE turbidity for a system with one or two filters, pursuant to 43.10(5)*"c"*) exceeds 1.0 NTU in two consecutive recordings 15 minutes apart in three consecutive months, a system must conduct a self-assessment of the filter(s) within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month, unless a comprehensive performance evaluation (CPE) as specified in the following subparagraph is required. Two-filter systems that monitor the CFE turbidity instead of the individual filters must conduct a self-assessment of both filters. The self-assessment must consist of the following:

1. Assessment of filter performance;
2. Development of a filter profile;
3. Identification and prioritization of factors limiting filter performance;
4. Assessment of the applicability of corrections;
5. Preparation of a filter self-assessment report;
6. Date the self-assessment requirement was triggered; and
7. Date the self-assessment was completed.

(3) If the turbidity of an individual filter (or the CFE turbidity for a system with one or two filters, pursuant to 43.10(5)*"c"*) exceeds 2.0 NTU in two consecutive recordings 15 minutes apart in two consecutive months, a system must arrange to have a CPE conducted by the department or a department-approved third party no later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

1. The CPE report must be completed and submitted to the department within 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.
2. A new CPE is not required if a CPE has been completed by the department or a department-approved third party within the prior 12 months, or if the system and department are jointly participating in an ongoing comprehensive technical assistance project at the system.

(4) The department may conduct a CPE at a system regardless of individual filter turbidity levels.

**43.10(6)** *Reporting requirements.* Systems must report as follows:

*a. CFE turbidity monitoring.*

(1) The following information must be reported in the MOR to the department by the tenth day of the following month:

1. Total number of filtered water turbidity measurements taken during the month;
2. The number and percentage of filtered water turbidity measurements taken during the month that are less than or equal to the system's required 95th percentile limit;
3. The date and analytical result of any turbidity measurements taken during the month that exceeded the maximum turbidity limit for the system, in addition to the requirements of 43.10(6)*"a"*(2); and
4. The dates and summary of calibration and verification of all compliance turbidimeters.

(2) For an exceedance of the CFE maximum turbidity limit, as described below, the system must consult with the department as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the PN requirements under 567—subparagraph 40.5(3)*"b"*(3). Consultation is required if at any time the turbidity in representative samples of filtered water exceeds:

1. 1 NTU in the CFE in two consecutive recordings taken 15 minutes apart for systems using conventional filtration treatment or direct filtration;
2. The maximum level under 43.5(3) for slow sand filtration or diatomaceous earth filtration; or
3. The maximum level in 43.10(4)*"c"* for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration.

*b. Individual filter effluent (IFE) turbidity monitoring.* The following information must be reported in the MOR to the department by the tenth day of the following month, unless otherwise noted.

(1) That the system conducted individual filter turbidity monitoring during the month.

(2) For any filter that had two consecutive measurements taken 15 minutes apart that exceeded 1.0 NTU:

1. The filter number(s);
2. The corresponding dates;
3. The turbidity values that exceeded 1.0 NTU; and
4. The cause, if known, of the exceedance.

(3) If a self-assessment was required, the date it was triggered, and the date the assessment was completed. If the self-assessment requirement was triggered in the last four days of the month, the information must be reported to the department by the 14th day of the following month.

(4) If a CPE was required, the date it was triggered. A copy of the CPE report must be submitted to the department within 120 days of when the CPE requirement was triggered.

(5) The dates and summary of calibration and verification of all compliance turbidimeters.

*c. Disinfection profiling.* The following information must be reported to the department by January 1, 2004, for systems serving fewer than 500 people.

(1) Results of DBP monitoring that indicate TTHM levels less than 0.064 mg/L and HAA5 levels less than 0.048 mg/L; or

(2) That the system has begun to collect the profiling data.

*d. Disinfection benchmarking.* Before a system that was required to develop a disinfection profile makes a significant change to its disinfection practice, it must report the following information to the department, and the system must receive department approval before any significant change in disinfection practice is implemented.

(1) Description of the proposed change in disinfection practice;

(2) The disinfection profile for *Giardia lamblia* and, if applicable, for viruses;

(3) The disinfection benchmark; and

(4) An analysis of how the proposed change will affect the current disinfection levels.

**43.10(7)** *Recordkeeping requirements.* Systems must meet the following recordkeeping requirements, in addition to the recordkeeping requirements in 567—paragraph 40.8(3)*"c"* and rule 567—40.9(455B).

*a. IFE turbidity.* The results of the IFE turbidity monitoring must be kept for at least three years.

*b. Disinfection profiling and benchmarking.* The results of the disinfection profile and disinfection benchmark, including raw data and analysis, must be kept indefinitely.

**567—43.11(455B) Enhanced treatment for *Cryptosporidium*.**

**43.11(1)** *Applicability.* The requirements of this rule are national primary drinking water regulations and establish or extend TT requirements in lieu of MCLs for *Cryptosporidium*. These requirements are in addition to the filtration and disinfection requirements of rules 567—43.5(455B), 567—43.9(455B) and 567—43.10(455B) and apply to all Iowa PWSs supplied by SW or IGW sources.

*a. Wholesale systems.* Wholesale systems must comply with these requirements based on the population of the largest system in the combined distribution system.

*b. Filtered systems.* This rule applies to those filtered systems that must provide filtration treatment pursuant to rule 567—43.5(455B), whether or not the system is currently operating a filtration system.

**43.11(2)** *General.* Systems subject to this rule must comply with the following:

*a. Source water monitoring.* Systems must conduct two rounds of source water monitoring for each plant that treats a SW or IGW source. This monitoring may include sampling for *Cryptosporidium*, *E. coli*, and turbidity, as described in 43.11(3), to determine what level, if any, of additional *Cryptosporidium* treatment the systems must provide.

*b. Disinfection profiles and benchmarks.* Systems planning to make a significant change to their disinfection practice must develop disinfection profiles and calculate disinfection benchmarks, as described in 43.11(4).

*c. Treatment bin determination.* Systems must determine their *Cryptosporidium* treatment bin classification and provide additional *Cryptosporidium* treatment, if required, according to the prescribed schedule.

*d. Additional treatment.* Systems required to provide additional *Cryptosporidium* treatment must implement microbial toolbox options as described in 43.11(8) through 43.11(13).

*e. Recordkeeping and reporting.* Systems must comply with the applicable recordkeeping and reporting requirements in 43.11(14) and 43.11(15).

*f. Significant deficiencies.* Systems must address significant deficiencies identified during sanitary surveys as described in 43.1(7).

**43.11(3)** *Source water monitoring.*

*a. Schedule.* Systems must conduct the source water monitoring no later than the month and year listed in Table 1. A system may avoid the source water monitoring if it provides a total of at least 5.5-log treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in 43.11(6). The system must install and operate technologies to provide this level of treatment by the applicable treatment compliance date specified in 43.11(7).

**Table 1: Source Water Monitoring Schedule**

| System | First round of monitoring | Second round of monitoring |
|---|---|---|
| Serves at least 100,000 people | October 2006 | April 2015 |
| Serves 50,000-99,999 people | April 2007 | October 2015 |
| Serves 10,000-49,999 people | April 2008 | October 2016 |
| Serves fewer than 10,000 people and only monitors *E. coli* | October 2008 | October 2017 |
| Serves fewer than 10,000 people and monitors *Cryptosporidium* | April 2010 | April 2019 |

*b. Monitoring requirements.* The minimum monitoring requirements are listed below. Systems may sample more frequently, provided the sampling frequency is evenly spaced throughout the monitoring period.

(1) Serving at least 10,000 people. Systems serving at least 10,000 people must sample their source water for *Cryptosporidium*, *E. coli*, and turbidity at least monthly for 24 months.

(2) Serving fewer than 10,000 people. Systems serving fewer than 10,000 people are allowed to first conduct *E. coli* monitoring to determine if further *Cryptosporidium* monitoring is required.

1. Systems must sample their source water for *E. coli* at least once every two weeks for 12 months. If the annual mean *E. coli* concentration is at or below 100 *E. coli* per 100 mL, the system can avoid further *Cryptosporidium* monitoring in that sampling round.

2. A system may avoid *E. coli* monitoring if it notifies the department no later than three months prior to the *E. coli* monitoring start date that the system will conduct *Cryptosporidium* monitoring.

3. Systems that fail to conduct the required *E. coli* monitoring or that cannot meet the *E. coli* annual mean limit must conduct *Cryptosporidium* monitoring. The system must sample its source water for *Cryptosporidium* either at least twice per month for 12 months or at least monthly for 24 months.

4. A system that begins monitoring for *E. coli* and determines during the sampling period that the system mathematically cannot meet the applicable *E. coli* annual mean limit may discontinue the *E. coli*

monitoring. The system is then required to start *Cryptosporidium* monitoring according to the schedule in Table 1.

(3) Plants operating only part of the year. Systems with SW or IGW treatment plants that operate for only part of the year must conduct source water monitoring in accordance with this rule, but with the following modifications.

1. Systems must sample their source water only during the months that the plant operates unless the department specifies another monitoring period based on plant operating practices.

2. Systems with plants that operate less than six months per year must collect at least six samples per year for two years. The samples must be evenly spaced throughout the period the plant operates.

(4) New sources. A system that begins using a new SW or IGW source after the dates in Table 1 must monitor according to a department-approved schedule and comply with this subrule. The system must also meet the requirements of the bin classification and *Cryptosporidium* treatment for the new source on a department-approved schedule. The system must conduct the second round of source water monitoring no later than six years following the initial bin classification or determination of the mean *Cryptosporidium* level, as applicable.

(5) Monitoring violation determination. Failure to collect any source water sample required under this subrule in accordance with the sampling plan, location, analytical method, approved laboratory, or reporting requirements of 43.11(3)*"c"* through *"e"* is a monitoring violation.

*c. Sampling plan.* Systems must submit a sampling plan that specifies the sampling locations in relation to the sources and treatment processes and the calendar dates of sample collection. The specific treatment process locations that must be included in the plan are pretreatment, points of chemical treatment, and filter backwash recycle.

(1) The sampling plan must be submitted in a form acceptable to the department no later than three months prior to the applicable monitoring date in Table 1. If the department does not respond to a system regarding the submitted sampling plan prior to the start of the monitoring period, the system must sample according to the submitted plan.

(2) The system must monitor within two days of the date specified in the plan, unless one of the following conditions occurs.

1. If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided, and causes the system to be unable to sample in the scheduled five-day period, the system must sample as close to the scheduled date as is feasible unless the department approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the department within one week of the missed sampling period. A replacement sample must be collected.

2. If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method or quality control requirements, or failure of the laboratory to analyze the sample, the system must notify the department of the cause of the delay and collect a replacement sample.

3. A replacement sample must be collected within 21 days of the scheduled sampling period or on the department-approved resampling date.

(3) Missed sampling dates. Systems that fail to collect source water samples on the dates specified in their sampling plan must revise their sampling plan to add collection dates all missed samples. The revised plan must be submitted to the department for approval prior to the collection of the missed samples.

*d. Sampling locations.* Systems must collect samples for each treatment plant that treats a SW or IGW source. If multiple plants draw water from the same influent (same pipe or intake), the department may approve one set of monitoring results to be used to satisfy the requirements for those plants.

(1) Chemical treatment location. Systems must collect source water samples prior to chemical treatment. If the system cannot feasibly collect a sample prior to chemical treatment, the department may grant approval in writing for sample collection after chemical treatment. This approval would only be granted if the department determines that sample collection prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the sample analysis.

(2) Filter backwash recycle return location. Systems that recycle filter backwash water must collect source water samples prior to the point of filter backwash water addition.

(3) Bank filtration credit sampling location.

1. Systems that receive *Cryptosporidium* treatment credit for bank filtration under 43.9(3)*"b"* or 43.10(4)*"c"* must collect source water samples in the SW source prior to bank filtration.

2. Systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well, which is after bank filtration has occurred. Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under 43.11(10)*"c."*

(4) Multiple sources. Systems with plants that use multiple water sources, including multiple SW sources and blended SW and GW sources, must collect samples as follows:

1. The use of multiple sources during monitoring must be consistent with routine operational practice.

2. If a sampling tap is available where the sources are combined prior to treatment, the system must collect samples from that tap.

3. If a sampling tap where the sources are combined prior to treatment is not available, the system must collect samples at each source near the intake on the same day and must use either of the following options for sample analysis.

- Physically composite the source samples into a single sample for analysis. Systems may composite the sample from each source into one sample prior to analysis. The volume of the sample from each source must be weighted according to the proportion of the source in the total plant flow at the time of sample collection, or
- Analyze the samples from each source separately and mathematically composite the results by calculating a weighted average of the analytical results for each sampling date. Calculate the weighted average by multiplying the analytical result for each source by the fraction that source contributed to the total plant flow at the time of sample collection and summing the weighted analytical results.

*e. Analytical methodology, laboratory certification, and data reporting requirements.* Systems must have samples analyzed pursuant to this paragraph. The system must report, in a format acceptable to the department, the analytical results from the source water monitoring no later than ten days after the end of the first month following the month when the sample is collected.

(1) *Cryptosporidium* samples must be analyzed by a laboratory that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* in Water.

1. Approved analytical methods for *Cryptosporidium*:

- "Method 1623: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA," 2005, EPA-815-R-05-002, www.nemi.gov;
- "Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA," 2005, EPA-815-R-05-001, www.nemi.gov; and
- "Method 1623.1: *Cryptosporidium* and *Giardia* in Water by Filtration/Immunomagnetic Separation/Immunofluorescence Assay Microscopy," 2012, EPA-816-R-12-001, www.nepis.epa.gov.

2. Using one of the approved methods, the laboratory must analyze at least a 10 L sample or a packed pellet volume of at least 2 mL. Systems unable to process a 10 L sample must analyze as much sample volume as can be filtered by two filters specified in the method, up to a packed pellet volume of at least 2 mL.

3. A matrix spike (MS) sample must be spiked and filtered by the laboratory according to the approved method. If the volume of the MS sample is greater than 10 L, the system may filter all but 10 L of the MS sample in the field and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

4. Flow cytometer-counted spiking suspensions must be used for the MS samples and the ongoing precision and recovery samples.

5. The following data must be reported for each *Cryptosporidium* analysis:

- PWS ID.

- Facility ID.
- Sample collection date.
- Sample type (i.e., field or MS).
- Sample volume filtered (L), to the nearest 0.25 L.
- Whether 100 percent of the filtered volume was examined by the laboratory.
- Number of oocysts counted.
- For MS samples: sample volume spiked and estimated number of oocysts spiked.
- For samples in which less than 10 L is filtered or less than 100 percent of the sample volume is examined: the number of filters used and the packed pellet volume.
- For samples in which less than 100 percent of sample volume is examined: the volume of resuspended concentrate and the volume of this resuspension processed through immunomagnetic separation.

(2) *E. coli* samples must be analyzed by a laboratory certified by EPA, the National Environmental Laboratory Accreditation Conference, or the department for total coliform or fecal coliform analysis in drinking water samples using the same approved *E. coli* method for the source water analysis.

1. Approved analytical methods for the enumeration of *E. coli* in source water are shown in Table 2.

**Table 2: *E. coli* Analytical Methods**

| Method | EPA | SM | Other |
|---|---|---|---|
| Most probable number (MPN) with multiple tube or multiple well[1, 2] | | 9223 B[11] | 991.15[4],<br>Colilert[3, 5]<br>Colilert-18[3, 5, 6] |
| Membrane filtration, single step[1, 7, 8] | 1603[9] | | m-ColiBlue24[10] |
| Membrane filtration, two step | | 9222D/9222G[12] | |

[1]Tests must be conducted to provide organism enumeration (i.e., density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, consistency, and anticipated organism density in the water sample.

[2]Enumerate samples using the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the MPN. Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray®, Quanti-Tray® 2000, and the MPN calculated from the table provided by the manufacturer.

[3]These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme beta-glucouronidase produced by *E. coli*.

[4]Association of Official Analytical Chemists, International. "Official Methods of Analysis of AOAC International, 16th Ed., Volume 1, Chapter 17, 1995. AOAC, 481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877-2417.

[5]Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray® 2000 may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

[6]Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 hours of incubation at 35 degrees Celsius rather than the 24 hours required for the Colilert® test.

[7]The filter must be a 0.45 micron membrane filter or a membrane filter with another pore size certified by the manufacturer to fully retain cultivated organisms and to be free of extractables that could interfere with organism growth.

[8]When the membrane filter method has been used previously to test waters with high turbidity or large numbers of noncoliform bacteria, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[9]Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified Membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC), July 2006, EPA 821-R-06-011, www.nepis.epa.gov.

[10]A description of the m-ColiBlue24® test, Total Coliforms and *E. coli*, Hach Company, 100 Dayton Ave., Ames, IA 50010.

[11]SM 18th (1992), 19th (1995), and 20th (1998) editions.

[12]SM, 20th edition (1998).

2. The holding time (the time period from sample collection to initiation of analysis) shall not exceed 30 hours. The department may approve a 48-hour holding time on a case-by-case basis, if the 30-hour holding time is not feasible. If an extension is allowed, the laboratory must use the Colilert® reagent version of the SM 9223B to conduct the analysis.

3. The samples must be maintained between 0 and 10 degrees Celsius during storage and transit to the laboratory.

4. The following data must be reported for each *E. coli* analysis:

- PWS ID.
- Facility ID.
- Sample collection date.
- Analytical method number.
- Method type.
- Source type (flowing stream or river; lake or reservoir; or IGW).
- Number of *E. coli* per 100 mL.
- Turbidity in NTU.

(3) Turbidity. The approved analytical methods for turbidity are in 43.5(4)*"a"*(1). Turbidity measurements must be made by a party approved by the department, and reported on the laboratory data sheet with the corresponding *E. coli* sample.

**43.11(4)** *Disinfection profiling and benchmarking.*

*a. General requirements.* Following completion of the first round of source water monitoring, a system that plans to make a significant change to its disinfection practice must develop disinfection profiles and calculate disinfection benchmarks for *Giardia lamblia* and viruses.

(1) A system must notify the department prior to changing its disinfection practice and must include in the notice the completed disinfection profile and disinfection benchmark for *Giardia lamblia* and viruses, a description of the proposed change in disinfection practice, and an analysis of how the proposed change will affect the current level of disinfection.

(2) A significant change to the disinfection practice is defined as:

1. Any change to the point of disinfection;
2. Any change to the disinfectant(s) used in the treatment plant;
3. Any change to the disinfection process; or
4. Any other modification identified by the department as a significant change to disinfection practice.

*b. Developing a disinfection profile.* To develop a disinfection profile, a system must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for *Giardia lamblia* and viruses. If a system monitors more frequently, the frequency must be evenly spaced. A system that operates for fewer than 12 months per year must monitor weekly during the operation period. Systems must determine log inactivation for *Giardia lamblia* through the entire plant, based on $CT_{99.9}$ values in Appendix A, Tables 1 through 6, as applicable. Systems must determine log inactivation for viruses through the entire treatment plant based on a department-approved protocol.

(1) Monitoring requirements. Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring in this subparagraph. Systems with multiple points of disinfectant application must conduct the same monitoring for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio. The analytical methods for the parameters are n 43.5(4)*"a."* All measurements must be taken during peak hourly flow.

1. For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured in degrees Celsius at each RDC sampling point or at an alternative department-approved location.
2. For systems using chlorine, the pH of the disinfected water must be measured at each chlorine RDC sampling point or at an alternative department-approved location.
3. The disinfectant contact time must be determined in minutes.
4. The RDCs of the water must be determined in mg/L before or at the first customer and prior to each additional point of disinfectant application.
5. A system may use existing data to meet the monitoring requirements if: the data are substantially equivalent to the required data, it has not made any significant change to its treatment practice, and it has the same source water as it had when the data were collected. Systems may develop disinfection profiles using up to three years of existing data.
6. A system may use disinfection profiles developed under 43.9(2) or 43.10(2) if it has not made a significant change to its treatment practice and has the same source water as it had when the profile was

developed. The virus profile must be developed using the same data on which the *Giardia lamblia* profile is based.

(2) Total inactivation ratio calculation for *Giardia lamblia*.

1. Systems using only one point of disinfectant application may determine the total inactivation ratio ($CT_{calc}/CT_{99.9}$) for the disinfection segment using either of the following methods.

- Determine one inactivation ratio before or at the first customer during peak hourly flow; or
- Determine successive sequential inactivation ratios between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Calculate the total inactivation ratio by determining the inactivation ratio for each sequence ($CT_{calc}/CT_{99.9}$) and adding the values together.

2. Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. Calculate the ($CT_{calc}/CT_{99.9}$) value of each segment and add the values together to determine the total inactivation ratio.

3. Systems must then determine the total logs of inactivation by multiplying the total inactivation ratio by 3.0.

(3) Total inactivation ratio calculation for viruses. The system must calculate the log of inactivation for viruses using a department-approved protocol.

*c. Disinfection benchmark calculation.*

(1) For each year of profiling data collected and calculated under this subrule, systems must determine the lowest mean monthly level of both *Giardia lamblia* and virus inactivation. Systems must determine the mean *Giardia lamblia* and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly *Giardia lamblia* and virus log inactivation by the number of values calculated for that month.

(2) For a system with one year of profiling data, the disinfection benchmark is the lowest monthly mean value. For a system with more than one year of profiling data, the disinfection benchmark is the mean of the lowest monthly mean values of *Giardia lamblia* and virus log inactivation in each year of profiling data.

**43.11(5)** *Bin classification.* Upon completion of the first round of source water monitoring, systems must calculate an initial *Cryptosporidium* bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the *Cryptosporidium* results reported under 43.11(3)*"a."*

*a. Calculation of mean Cryptosporidium or bin concentration value.*

(1) For systems that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(2) For systems that collect at least 24 samples but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which *Cryptosporidium* samples were collected.

(3) For systems that serve fewer than 10,000 people and monitor *Cryptosporidium* for only one year (i.e., 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(4) For systems with plants operating only part of the year that monitor fewer than 12 months per year, the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of *Cryptosporidium* monitoring.

(5) If the monthly *Cryptosporidium* sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification.

*b. Determination of bin classification.*

(1) First monitoring round. A system must determine the bin classification from Table 3, using its calculated bin concentration from 43.11(5)*"a."*

**Table 3: Bin Classification Table**

| System Type | *Cryptosporidium* Concentration, in oocysts/L | Bin Classification |
|---|---|---|
| Systems required to monitor for *Cryptosporidium* under 43.11(3)*"b"*(1) or 43.11(3)*"b"*(2)"3" | Fewer than 0.075 oocysts/L | Bin 1 |
| | Between 0.075 and fewer than 1.0 oocysts/L | Bin 2 |
| | Between 1.0 and fewer than 3.0 oocysts/L | Bin 3 |
| | 3.0 oocysts/L or greater | Bin 4 |
| Systems serving fewer than 10,000 and not required to monitor for *Cryptosporidium*, pursuant to 43.11(3)*"b"*(2)"1" | Not applicable | Bin 1 |

(2) Second monitoring round. Following completion of the second round of source water monitoring, a system must recalculate its bin concentration and determine its new bin classification, using the protocols in 43.11(5)*"a"* and *"b."*

*c. Reporting bin classification to the department.* Within six months of the end of the sampling period, the system must report its bin classification to the department for approval. The report must include a summary of the source water monitoring data and the calculation procedure used to determine the bin classification.

*d. TT violation.* Failure to comply with 43.11(5)*"b"* and *"c"* is a violation of the TT requirement.

**43.11(6)** *Additional Cryptosporidium treatment requirements.* A system must provide the level of additional *Cryptosporidium* treatment specified in Table 4 based on its bin classification determined in 43.11(5) and according to the schedule in 43.11(7).

*a. Determination of additional requirements.* Using Table 4, a system must determine any additional *Cryptosporidium* treatment requirements based upon its bin classification. The Bin 1 classification does not require any additional treatment. Bins 2 through 4 require additional treatment.

**Table 4: Additional *Cryptosporidium* Treatment Requirements**

| Bin Classification | Treatment Used by the System for Compliance with 43.5, 43.9, and 43.10 | | | |
|---|---|---|---|---|
| | Conventional filtration (including softening) | Direct filtration | Slow sand or diatomaceous earth filtration | Alternative filtration technologies |
| Bin 1 | No additional treatment | No additional treatment | No additional treatment | No additional treatment |
| Bin 2 | 1-log treatment | 1.5-log treatment | 1-log treatment | At least 4.0-log[1] |
| Bin 3 | 2-log treatment | 2.5-log treatment | 2-log treatment | At least 5.0-log[1] |
| Bin 4 | 2.5-log treatment | 3-log treatment | 2.5-log treatment | At least 5.5-log[1] |

[1]The total *Cryptosporidium* removal and inactivation must be at least this value, as determined by the department.

*b. Treatment requirements for Bins 2 through 4.* A system that is classified as Bin 2, 3, or 4 must use one or more of the treatment and management options in 43.11(8) to comply with the additional *Cryptosporidium* treatment requirements. Systems classified as Bins 3 and 4 must achieve at least 1-log of additional *Cryptosporidium* treatment by using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as listed in 43.11(9) through 43.11(13).

*c. TT violation.* Failure by a system in any month to achieve treatment credit by meeting criteria in 43.11(9) through 43.11(13) that is at least equal to the level of treatment required in 43.11(6)*"a"* is a violation of the TT requirement.

*d. Significant changes to the watershed.* If, after the system's completion of source water monitoring (either round), the department determines during a sanitary survey or an equivalent source water assessment that significant changes occurred in the system's watershed that could lead to increased contamination of the source water by *Cryptosporidium*, the system must take department-specified actions to address the contamination. These actions may include additional source water monitoring or implementation of the microbial toolbox options in 43.11(8).

**43.11(7)** *Schedule for compliance with Cryptosporidium treatment.* Following the initial bin classification under 43.11(5), systems must provide the level of *Cryptosporidium* treatment required in 43.11(6), according to the schedule in Table 5. If a system's bin classification changes following the

second round of source water monitoring, the system must provide the level of *Cryptosporidium* treatment required in 43.11(6), on a department-approved schedule.

**Table 5: *Cryptosporidium* Treatment Compliance Dates**

| Schedule | Population Served by System | Compliance Date for *Cryptosporidium* treatment requirements[1] |
|---|---|---|
| 1 | At least 100,000 people | April 1, 2012 |
| 2 | From 50,000 to 99,999 people | October 1, 2012 |
| 3 | From 10,000 to 49,999 people | October 1, 2013 |
| 4 | Fewer than 10,000 people | October 1, 2014 |

[1]The department may allow up to an additional two years for compliance with the treatment requirement if the system must make capital improvements.

**43.11(8)** *Microbial toolbox options for meeting Cryptosporidium treatment requirements.* Systems receive the treatment credits listed in Table 6 by meeting the conditions for microbial toolbox options described in 43.11(9) through 43.11(13). Systems apply these treatment credits to meet the treatment requirements in 43.11(6). Table 6 summarizes options in the microbial toolbox.

**Table 6: Microbial Toolbox Summary Table: Options, Treatment Credits, and Criteria**

| Toolbox Option | Specific Criteria Rule | *Cryptosporidium* treatment credit with design and implementation criteria |
|---|---|---|
| **Source Protection and Management Toolbox Options** | | |
| Watershed control program (WCP) | 43.11(9) | 0.5-log credit for department-approved program comprising required elements, annual program status report to department, and regular watershed survey. |
| Alternative source/intake management | 43.11(9)*"b"* | No prescribed credit. Systems may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies. |
| **Prefiltration Toolbox Options** | | |
| Presedimentation basin with coagulation | 43.11(10)*"a"* | 0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative department-approved performance criteria. To be eligible, basins must be operated continuously with coagulant addition and all plant flow must pass through the basins. |
| Two-stage lime softening | 43.11(10)*"b"* | 0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow must pass through both stages. Single-stage softening is credited as equivalent to conventional treatment. |
| Bank filtration | 43.11(10)*"c"* | 0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer must be unconsolidated sand containing at least 10 percent fines; average turbidity in wells must be less than 1 NTU. A system using a well followed by filtration when conducting source water monitoring must sample the well to determine bin classification and is not eligible for additional credit. |
| **Treatment Performance Toolbox Options** | | |
| Combined filter performance | 43.11(11)*"a"* | 0.5-log credit for CFE turbidity less than or equal to 0.15 NTU in at least 95 percent of measurements each month. |
| Individual filter performance | 43.11(11)*"b"* | 0.5-log credit (in addition to the 0.5-log combined filter performance credit) if IFE turbidity is less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter. |

| Toolbox Option | Specific Criteria Rule | *Cryptosporidium* treatment credit with design and implementation criteria |
|---|---|---|
| Demonstration of performance | 43.11(11)*"c"* | Credit awarded to unit process or treatment train based on a demonstration to the department with a department-approved protocol. |
| **Additional Filtration Toolbox Options** | | |
| Bag or cartridge filters (individual filters) | 43.11(12)*"a"* | Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety. |
| Bag or cartridge filters (in series) | 43.11(12)*"a"* | Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety. |
| Membrane filtration | 43.11(12)*"b"* | Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing. |
| Second-stage filtration | 43.11(12)*"c"* | 0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter. |
| Slow sand filtration | 43.11(12)*"d"* | 2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination for either option. |
| **Inactivation Toolbox Options** | | |
| Chlorine dioxide | 43.11(13) | Log credit based on measured CT in relation to CT table. |
| Ozone | 43.11(13) | Log credit based on measured CT in relation to CT table. |
| UV | 43.11(13) | Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions. |

**43.11(9)** *Source toolbox components.*

*a. Watershed control program (WCP).* Systems receive 0.5-log *Cryptosporidium* treatment credit for implementing a WCP that meets the requirements of this paragraph.

(1) Notification. Systems that intend to apply for the WCP credit must notify the department of this intent no later than two years prior to the applicable treatment compliance date in 43.11(7).

(2) Proposed watershed control plan. Systems must submit a proposed watershed control plan to the department no later than one year before the applicable treatment compliance date in 43.11(7). The department must approve the plan for the system to receive WCP treatment credit. The plan must include the following:

1. Identification of an "area of influence" outside of which the likelihood of *Cryptosporidium* or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under 43.11(9)*"a"*(5)"2."

2. Identification of both potential and actual sources of *Cryptosporidium* contamination and an assessment of the relative impact of these sources on the system's source water quality.

3. An analysis of the effectiveness and feasibility of control measures that could reduce *Cryptosporidium* loading from sources of contamination to the system's source water.

4. A statement of goals and specific actions the system will undertake to reduce source water *Cryptosporidium* levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions.

(3) Existing WCPs. Systems with WCPs that were in place on January 5, 2006, are eligible to seek this credit. The systems' watershed control plans must meet the criteria in 43.11(9)*"a"*(2) and must specify ongoing and future actions that will reduce source water *Cryptosporidium* levels.

(4) Department response to plan. If the department does not respond to a system regarding approval of a watershed control plan submitted under this subrule and the system meets the other requirements of

this subrule, the WCP will be considered approved and 0.5-log *Cryptosporidium* treatment credit will be awarded unless and until the department subsequently withdraws such approval.

(5) System requirements to maintain 0.5-log credit. Systems must complete the following actions to maintain the 0.5-log credit.

1. Submit an annual WCP status report to the department. The WPC status report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. The report must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the department or as a result of the watershed survey conducted under 43.11(9)*"a"*(5)"2." It must also describe any significant watershed changes that have occurred since the last watershed sanitary survey. If a system determines during implementation that significant changes to its approved WCP are necessary, it must notify the department prior to making the changes. If a program change is likely to reduce the level of source water protection, the system must list in its notification the actions the system will take to mitigate this effect.

2. Undergo a watershed sanitary survey every three years for CWSs and every five years for NTNCs or TNCs and submit the survey report to the department. Surveys must be conducted according to department guidelines and by persons acceptable to the department.

- A watershed sanitary survey must encompass the region identified in the department-approved watershed control plan as the area of influence; assess the implementation of actions to reduce source water *Cryptosporidium* levels; and identify any significant new sources of *Cryptosporidium*.
- If the department determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, systems must undergo another watershed sanitary survey by the department-specified date, which may be earlier than the regular three- or five-year frequency.

3. Systems must make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in plain language and include criteria to evaluate the success of the WCP in achieving plan goals. The department may approve systems to withhold portions of the plan or the reports from the public, based on security considerations.

(6) Withdrawal of WCP treatment credit. If the department determines that a system is not carrying out the approved watershed control plan, it may withdraw the WCP treatment credit.

*b. Alternative source.* Systems may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source (alternative source monitoring). If the department approves, a system may determine its bin classification under 43.11(5) based on alternative source monitoring results.

(1) Systems conducting alternative source monitoring must also monitor their current plan intake concurrently, as described in 43.11(3).

(2) Alternative source monitoring must meet the requirements for source monitoring to determine bin classification, as described in 43.11(3). Systems must report the alternative source monitoring results to the department and provide supporting information documenting the operating conditions during sample collection.

(3) If a system determines its bin classification under 43.11(5) using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, it must relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in 43.11(7).

**43.11(10)** *Prefiltration treatment toolbox components.*

*a. Presedimentation.* Systems receive 0.5-log *Cryptosporidium* treatment credit for a presedimentation basin during any month the process meets the criteria in this paragraph.

(1) The presedimentation basin must be in continuous operation and must treat the entire plant flow taken from a SW or IGW source.

(2) The system must continuously add a coagulant to the presedimentation basin.

(3) The presedimentation basin must achieve either of the following performance criteria:

1. Demonstrates at least 0.5-log mean reduction of influent turbidity, determined by using daily turbidity measurements in the presedimentation process influent and effluent, and calculated as follows: $LOG_{10}$(monthly mean of daily influent turbidity) – $LOG_{10}$(monthly mean of daily effluent turbidity); or

2. Complies with department-approved performance criteria that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

*b. Two-stage lime softening.* Systems receive an additional 0.5-log *Cryptosporidium* treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a SW or IGW source.

*c. Bank filtration.* Systems receive *Cryptosporidium* treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this paragraph. Systems using bank filtration when beginning source water monitoring under 43.11(3)*"a"* must collect samples as described in 43.11(3)*"d"*(3) and are not eligible for this credit.

(1) Treatment credit. Wells with a GW flow path of at least 25 feet receive 0.5-log treatment credit; wells with a GW flow path of at least 50 feet receive 1.0-log treatment credit. The GW flow path must be determined as specified in 43.11(10)*"c"*(4).

(2) Credit eligibility. Only horizontal and vertical wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A system must characterize the aquifer at the well site to determine aquifer properties. Systems must extract a core from the aquifer and demonstrate that in at least 90 percent of the core length, grains less than 1.0 mm in diameter constitute at least 10 percent of the core material.

(3) GW flow path measurement. For vertical wells, the GW flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100-year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the GW flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(4) Turbidity monitoring at the wellhead. Systems must monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system must report this result to the department and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the department determines that microbial removal has been compromised, it may revoke treatment credit until the system implements department-approved corrective actions to remediate the problem.

(5) Springs and infiltration galleries. This treatment credit is not eligible for springs and infiltration galleries. Springs and infiltration galleries are eligible for credit through demonstration of performance study under 43.11(11)*"c."*

(6) Bank filtration demonstration of performance. The department may approve *Cryptosporidium* treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this subparagraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in 43.11(10)*"c"*(1) to (5). The study must:

1. Follow a department-approved protocol;

2. Involve the collection of data on the removal of *Cryptosporidium* or a surrogate for *Cryptosporidium* and related hydrogeologic and WQPs during the full range of operating conditions; and

3. Include sampling both from the production well(s) and from monitoring wells that are screened and located along the shortest flow path between the SW source and the production well(s).

**43.11(11)** *Treatment performance toolbox components.* This option pertains to physical treatment processes.

*a. Combined filter performance.* Systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log *Cryptosporidium* treatment credit during any month the system meets the criteria in this paragraph. CFE turbidity must be less than or equal to 0.15 NTU in at least 95

percent of the measurements. Turbidity must be measured as described in 43.5(4) and, if applicable, 43.10(4).

*b. Individual filter performance.* Systems using conventional filtration treatment or direct filtration treatment receive 0.5-log *Cryptosporidium* treatment credit during any month the system meets the criteria in this paragraph, which can be in addition to the CFE 0.5-log credit from 43.11(11)*"a."* Compliance with these criteria must be based on individual filter turbidity monitoring as described in 43.9(4) or 43.10(5), as appropriate.

(1) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95 percent of the measurements recorded each month.

(2) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(3) Any system that has received treatment credit for individual filter performance and fails to meet the requirements of 43.11(11)*"b"*(2) and 43.11(11)*"b"*(3) during any month shall not receive a TT violation under 43.11(6) if the department determines the following:

1. The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing the treatment plant design, operation, and maintenance.

2. The system has experienced no more than two such failures in any calendar year.

*c. Demonstration of performance.* The department may approve *Cryptosporidium* treatment credit for drinking water treatment processes based on a demonstration of performance study meeting the criteria in this paragraph. This treatment credit may be greater than or less than the prescribed treatment credits in 43.11(6) or 43.11(10) through 43.11(13) and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(1) Systems cannot receive the prescribed treatment credit for any toolbox option in 43.11(10) through 43.11(13) if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this paragraph.

(2) The demonstration of performance study must follow a department-approved protocol and must demonstrate the level of *Cryptosporidium* reduction the treatment process will achieve under the full range of expected operating conditions for the system.

(3) Department approval must be in writing and may include monitoring and treatment performance criteria that the system must demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The department may designate such criteria where necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

**43.11(12)** *Additional filtration toolbox components.*

*a. Bag and cartridge filters.* By meeting the criteria in this paragraph, systems receive *Cryptosporidium* treatment credit of up to 2.0-log for the use of individual bag or cartridge filters and up to 2.5-log for the use of bag or cartridge filters operated in series. To be eligible for this credit, systems must report the results of challenge testing that meets the requirements of 43.11(12)*"a"*(2) through 43.11(12)*"a"*(9) to the department. The filters must treat the entire plant flow taken from a SW or IGW source.

(1) The *Cryptosporidium* treatment credit awarded for use of bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing conducted in accordance with the criteria in 43.11(12)*"a"*(2) through 43.11(12)*"a"*(9). A safety factor equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit.

(2) Perform challenge testing on full-scale bag or cartridge filters and associated filter housing or pressure vessels that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium*. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(3) Conduct challenge testing using *Cryptosporidium* or a surrogate that is removed no more efficiently than *Cryptosporidium*. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The challenge particulate concentration must be determined

using a method capable of discretely quantifying the specific microorganisms or surrogate used in the test; gross measurements such as turbidity shall not be used.

(4) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using this equation:

Maximum Feed Water Concentration = 10,000 × Filtrate Detection Limit

(5) Conduct challenge testing at the maximum design flow rate for the filter specified by the manufacturer.

(6) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which thereby establishes the maximum pressure drop under which the filter may be used to comply with this paragraph.

(7) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values (LRV) using the following equation:

$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$

Where:

LRV = log removal value demonstrated during challenge test;

$C_f$ = feed concentration measured during challenge test; and

$C_p$ = filtrate concentration measured during challenge test.

Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term $C_p$ must be set equal to the detection limit.

(8) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter ($LRV_{filter}$) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(9) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest $LRV_{filter}$ among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the tenth percentile of the set of $LRV_{filter}$ values for the various filters tested. The percentile is defined by [i/(n+1)] where "i" is the rank of "n" individual data points ordered lowest to highest. If necessary, the tenth percentile may be calculated using linear interpolation.

(10) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, conduct challenge testing to demonstrate the removal efficiency of the modified filter and submit the results to the department.

*b. Membrane filtration.*

(1) Systems receive *Cryptosporidium* treatment credit for using membrane filtration that meets the criteria of this paragraph. Systems using membrane cartridge filters that meet the definition of membrane filtration in 567—40.2(455B) are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under the following two paragraphs:

1. The removal efficiency demonstrated during challenge testing conducted under the criteria in 43.11(12)*"b"*(2).

2. The maximum removal efficiency that can be verified through DIT used with the membrane filtration process under the conditions in 43.11(12)*"b"*(3).

(2) Challenge testing. The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must report the challenge testing results to the department. Conduct challenge testing according to the criteria in this subparagraph.

1. Conduct challenge testing on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is

defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

2. Conduct challenge testing using *Cryptosporidium* oocysts or a surrogate that is removed no more efficiently than *Cryptosporidium* oocysts. The organisms or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity shall not be used.

3. The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation:

Maximum Feed Water Concentration = 3,160,000 × Filtrate Detection Limit

4. Conduct challenge testing under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure-driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

5. Calculate removal efficiency of a membrane module using the challenge test results expressed as a log removal value (LRV), according to the following equation:

$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$

Where:

LRV = log removal value demonstrated during challenge test;

$C_f$ = feed concentration measured during challenge test; and

$C_p$ = filtrate concentration measured during challenge test.

Use equivalent units for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term $C_p$ must be set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

6. The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ($LRV_{C\text{-}Test}$). If fewer than 20 modules are tested, then $LRV_{C\text{-}Test}$ is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then $LRV_{C\text{-}Test}$ is equal to the tenth percentile of the representative LRVs among the modules tested. The percentile is defined by [i/(n+1)] where "i" is the rank of "n" individual data points ordered lowest to highest. If necessary, the tenth percentile may be calculated using linear interpolation.

7. The challenge test must establish a quality control release value (QCRV) for a nondestructive performance test that demonstrates the *Cryptosporidium* removal capability of the membrane filtration module. In order to verify *Cryptosporidium* removal capability, this performance test must be applied to each production membrane module that was not directly challenge tested but was used by the system. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

8. If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the nondestructive performance test and associated QCRV, conduct additional challenge testing to demonstrate the removal efficiency of the modified membrane and submit the results to the department, along with determination of a new QCRV.

(3) Direct integrity testing (DIT). Systems must conduct DITs in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded for the membrane filtration process and meets the requirements of this subparagraph. A DIT is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

1. A DIT must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

2. The DIT method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the DIT.

3. The DIT must have a sensitivity sufficient to verify the log treatment credit awarded by the department for the membrane filtration process, where sensitivity is defined as the maximum LRV that can be reliably verified by a DIT. Sensitivity must be determined using the approach applicable to the type of DIT the system uses, as follows:

- For DITs using applied pressure or vacuum, calculate test sensitivity using the following equation:

$LRV_{DIT} = LOG_{10} [Q_p/(VCF \times Q_{breach})]$

Where:

$LRV_{DIT}$ = the sensitivity of the DIT;

$Q_p$ = total design filtrate flow from the membrane unit;

$Q_{breach}$ = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured; and

VCF = volumetric concentration factor, which is the ratio of the suspended solids concentration on the high-pressure side of the membrane relative to that in the feed water.

- For DITs using a particulate or molecular marker, calculate test sensitivity using the following equation:

$LRV_{DIT} = LOG_{10} (C_f) – LOG_{10} (C_p)$

Where:

$LRV_{DIT}$ = the sensitivity of the DIT;

$C_f$ = typical feed concentration of the marker used in the test; and

$C_p$ = filtrate concentration of the marker from an integral membrane unit.

4. Establish a control limit within the sensitivity limits of the DIT that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the department.

5. If the result of a DIT exceeds the control limit established under 43.11(12)*"b"*(3)"4," the system must remove the membrane unit from service. Systems must conduct a DIT to verify any repairs and may return the membrane unit to service only if the DIT is within the established control limit.

6. Conduct a DIT on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The department may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for *Cryptosporidium*, or reliable process safeguards.

(4) Indirect integrity monitoring. Systems must conduct continuous indirect integrity monitoring on each membrane unit according to the following criteria. Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. A system that implements continuous DITs of membrane units in accordance with 43.11(12)*"b"*(3) is not subject to the continuous indirect integrity monitoring requirements. Systems must submit a monthly report to the department summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

1. Continuous indirect integrity monitoring must:

- Include continuous filtrate turbidity monitoring, unless the department approves an alternative parameter;
- Be conducted at a frequency of no less than once every 15 minutes; and
- Be separately conducted on each membrane unit.

2. If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), DIT must immediately be performed on the associated membrane unit as specified in 43.11(12) *"b"*(3)"1" through "5."

3. If indirect integrity monitoring includes a department-approved alternative parameter and if the alternative parameter exceeds a department-approved control limit for a period greater than 15 minutes,

DIT must immediately be performed on the associated membrane units as specified in 43.11(12)*"b"*(3) "1" through"5."

*c. Second-stage filtration.* Systems receive 0.5-log *Cryptosporidium* treatment credit for using a separate second stage of filtration that consists of sand, dual media, GAC, or other fine-grain media following granular media filtration, if the department approves. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat the entire plant flow taken from a SW or IGW source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The department must approve the treatment credit based on an assessment of the design characteristics of the filtration process.

*d. Slow sand filtration (as secondary filter).* Systems are eligible to receive 2.5-log *Cryptosporidium* treatment credit for using a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat the entire plant flow taken from a SW or IGW source and no disinfectant residual is present in the influent water to the slow sand filtration process. The department must approve the treatment credit based on an assessment of the design characteristics of the filtration process. This does not apply to treatment credit awarded for slow sand filtration used as a primary filtration process.

**43.11(13)** *Inactivation toolbox components.*

*a. Calculation of CT values.*

(1) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Systems with treatment credit for chlorine dioxide or ozone under 43.11(13) *"b"* or *"c"* must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in 43.5(4).

(2) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume. Under this approach, systems must add the *Cryptosporidium* CT values in each segment to determine the total CT for the treatment plant.

*b. CT values for chlorine dioxide and ozone.* As described in 43.11(13)*"a"*:

(1) Systems receive the *Cryptosporidium* treatment credit in Table 1 of Appendix B by meeting the corresponding chlorine dioxide CT value for the applicable water temperature.

(2) Systems receive the *Cryptosporidium* treatment credit in Table 2 of Appendix B by meeting the corresponding ozone CT value for the applicable water temperature.

*c. Site-specific study.* The department may approve alternative chlorine dioxide or ozone CT values to those in 43.11(13)*"b"* on a site-specific basis. The department must base its approval on a site-specific study conducted by the system. The study must follow a department-approved protocol.

*d. Ultraviolet light (UV).* Systems receive *Cryptosporidium*, *Giardia lamblia*, and virus treatment credits for UV light reactors by achieving the corresponding UV dose values in Table 3 of Appendix B. Systems must use the following procedures to validate and monitor UV reactors in order to demonstrate that the reactors are achieving a particular UV dose value for treatment credit.

(1) Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the required UV dose (i.e., validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

1. When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and UV reactor inlet and outlet piping or channel configurations.

2. Validation testing must include full-scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low-pressure mercury vapor lamp.

3. The department may approve an alternative approach to validation testing.

(2) Reactor monitoring.

1. Systems must monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under 43.11(13)*"d"*(1). This monitoring must include UV sensor, flow rate, lamp status, and other parameters the department designates based on UV reactor operation. Systems must verify the calibration of UV sensors and recalibrate sensors in accordance with a department-approved protocol.

2. To receive UV light treatment credit, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose. Systems must demonstrate compliance with this condition by completing the monitoring required in this subparagraph.

**43.11(14)** *Reporting requirements.* Systems must report the following to the department:

*a.* Source water sampling schedules and monitoring results under 43.11(3)*"c"* and *"e,"* unless the systems notify the department that they will not conduct source water monitoring due to meeting the criteria of 5.5-log treatment for *Cryptosporidium* under 43.11(3)*"a."*

*b.* *Cryptosporidium* bin classification determined under 43.11(5).

*c.* Disinfection profiles and benchmarks as described in 43.11(4)*"a"* and *"b"* prior to making a significant change in disinfection practice.

*d.* In accordance with Table 7 for any microbial toolbox options used to comply with treatment requirements under 43.11(6).

**Table 7: Microbial Toolbox Reporting Requirements**

| Toolbox Option | Systems must submit this information | Submit information in accordance with the applicable treatment compliance dates in subrule 43.11(7), as noted |
|---|---|---|
| 1. Watershed control program (WCP) | Notice of intention to develop a new or continue an existing WCP | No later than two years before applicable date |
| | Watershed control plan | No later than one year before applicable date |
| | Annual WCP status report | Every 12 months, beginning one year after applicable date |
| | Watershed sanitary survey report | - For CWS, every 3 years, beginning 3 years after applicable date<br>- For NTNC or TNC, every 5 years, beginning 5 years after applicable date |
| 2. Alternative source/intake management | Verification that system has relocated the intake or adopted the intake withdrawal procedure reflected in monitoring results | No later than the applicable date |
| 3. Presedimentation | Monthly verification:<br>- Continuous basin operation;<br>- Treatment of 100 percent of the flow;<br>- Continuous coagulant addition; and<br>- At least 0.5-log mean reduction of influent turbidity or compliance with alternative department-approved performance criteria | Monthly reporting within 10 days following the month monitoring was conducted, beginning on applicable date |
| 4. Two-stage lime softening | Monthly verification:<br>- Chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration; and<br>- Both stages treated 100 percent of plant flow | Monthly reporting within 10 days following the month monitoring was conducted, beginning on applicable date |
| 5. Bank filtration | Initial demonstration of:<br>- Unconsolidated, predominantly sandy aquifer; and<br>- Setback distance of at least 25 feet for 0.5-log credit or 50 feet for 1.0-log credit | No later than applicable date |
| | If monthly average of daily maximum turbidity is greater than 1 NTU, report | Report within 30 days following the month monitoring was conducted, beginning on applicable date |

| Toolbox Option | Systems must submit this information | Submit information in accordance with the applicable treatment compliance dates in subrule 43.11(7), as noted |
|---|---|---|
| | result and submit an assessment of the cause. | |
| 6. Combined filter performance | Monthly verification of CFE turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the 4-hour CFE measurements taken each month | Monthly reporting within 10 days following the month monitoring was conducted, beginning on applicable date |
| 7. Individual filter performance | Monthly verification of:<br>- IFE turbidity levels less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter; and<br>- No IFE turbidity levels greater than 0.3 NTU in two consecutive readings 15 minutes apart | Monthly reporting within 10 days following the month monitoring was conducted, beginning on applicable date |
| 8. Demonstration of performance | Results from testing following a department-approved protocol | No later than applicable date |
| | As required by the department, monthly verification of operation within conditions of department approval for demonstration of performance credit | Within 10 days following the month monitoring was conducted, beginning on applicable date |
| 9. Bag filters and cartridge filters | Demonstration that the:<br>- Process meets the definition of bag or cartridge filtration, and<br>- Removal efficiency established through challenge testing is meeting criteria | No later than applicable date |
| | Monthly verification that 100 percent of plant flow was filtered | Within 10 days following the month monitoring was conducted, beginning on applicable date |
| 10. Membrane filtration | Results of verification testing demonstrating:<br>- Removal efficiency established through challenge testing meets criteria; and<br>- Integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline | No later than applicable date |
| | Monthly report summarizing:<br>- All DITs above the control limit, and<br>- If applicable, any turbidity or alternative department-approved indirect integrity monitoring results triggering DITs and corrective action that was taken | Within 10 days following the month monitoring was conducted, beginning on applicable date |
| 11. Second-stage filtration | Monthly verification that 100 percent of flow was filtered through both stages and that first stage was preceded by coagulation step | Within 10 days following the month monitoring was conducted, beginning on applicable date |
| 12. Slow sand filtration as a secondary filter | Monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100 percent of the flow from surface or IGW sources | Within 10 days following the month monitoring was conducted, beginning on applicable date |
| 13. Chlorine dioxide | Summary of CT values for each day as described in 43.11(13) | Within 10 days following the month monitoring was conducted, beginning on applicable date |
| 14. Ozone | Summary of CT values for each day as described in 43.11(13) | Within 10 days following the month monitoring was conducted, beginning on applicable date |
| 15. UV | Validation test results demonstrating operating conditions that achieve required UV dose | No later than the applicable date |

| Toolbox Option | Systems must submit this information | Submit information in accordance with the applicable treatment compliance dates in subrule 43.11(7), as noted |
|---|---|---|
| | Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose as specified in 43.11(13)*"d"* | Within 10 days following the month monitoring was conducted, beginning on applicable date |

**567—43.12(455B) Turbidity optimization goals.** SW and IGW systems must meet the requirements in this chapter. To encourage operational optimization, the department has adopted the following goals for systems using SW or IGW that wish to pursue the optimization of their existing treatment processes. These goals are voluntary. Data collected for optimization purposes will not be used to determine compliance with this chapter unless the optimization data are identical to the compliance data.

**43.12(1)** *Sedimentation performance goals.* The sedimentation performance goals are based upon the average annual raw water turbidity levels. When the annual average raw water turbidity is:

*a.* Less than or equal to 10 NTU over the course of the calendar year, the turbidity should be less than or equal to 1 NTU in at least 95 percent of measurements based on the maximum daily value of readings taken at least once every four hours from each sedimentation basin while the plant is operating.

*b.* More than 10 NTU over the course of the calendar year, the turbidity should be less than or equal to 2 NTU in at least 95 percent of measurements based on the maximum daily value of readings taken at least once every four hours from each sedimentation basin while the plant is operating.

**43.12(2)** *Individual filter performance goals.* Individual filter performance goals depend upon a system's capability of filtering to waste.

*a.* For systems that have the capability of filtering to waste, the individual filter turbidity should be less than or equal to 0.10 NTU in at least 95 percent of measurements over the course of the calendar year, based on the daily maximum value of readings recorded at least once per minute while the plant is in operation. The maximum individual filter turbidity must not exceed 0.30 NTU at any time. The filter must return to service with a turbidity of 0.10 NTU or less.

*b.* For systems that do not have the capability of filtering to waste, the individual filter turbidity should be less than or equal to 0.10 NTU in at least 95 percent of measurements over the course of the calendar year, excepting the 15 minutes following the completion of the backwash process, based on the daily maximum value of readings recorded at least once per minute while the plant is in operation. The maximum individual filter turbidity must not exceed 0.30 NTU following backwash and must return to a level at or below 0.10 NTU within 15 minutes of returning the filter to service.

**43.12(3)** *Combined filter performance goal.* The combined filter performance goal has two components:

*a.* CFE turbidity should be less than or equal to 0.10 NTU in at least 95 percent of measurements over the course of the calendar year, based on daily maximum value of readings recorded at least once per minute while the plant is operating.

*b.* The maximum individual filter turbidity must not exceed 0.30 NTU at any time.

These rules are intended to implement Iowa Code sections 455B.171 through 455B.188 and 455B.190 through 455B.192.

## APPENDIX A: Disinfection Profiling - CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of *Giardia lamblia* Cysts

These tables provide the $CT_{99.9}$ values for 99.9 percent inactivation of *Giardia lamblia* cysts using the indicated disinfectant at the indicated temperature in degrees Celsius (C). The CT values in the tables achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated pH values in each table, and any CT values between the indicated temperatures of different tables, may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

**TABLE 1: Inactivation by Free Chlorine at 0.5°C or Lower**

| Free Residual Chlorine, mg/L | pH | | | | | | |
|---|---|---|---|---|---|---|---|
| | >6.0 | 6.5 | 7.0 | 7.5 | 8.0 | 8.5 | >9.0 |
| >0.4 | 137 | 163 | 195 | 237 | 277 | 329 | 390 |
| 0.6 | 141 | 168 | 200 | 239 | 286 | 342 | 407 |
| 0.8 | 145 | 172 | 205 | 246 | 295 | 354 | 422 |
| 1.0 | 148 | 176 | 210 | 253 | 304 | 365 | 437 |
| 1.2 | 152 | 180 | 215 | 259 | 313 | 376 | 451 |
| 1.4 | 155 | 184 | 221 | 266 | 321 | 387 | 464 |
| 1.6 | 157 | 189 | 226 | 273 | 329 | 397 | 477 |
| 1.8 | 162 | 193 | 231 | 279 | 338 | 407 | 489 |
| 2.0 | 165 | 197 | 236 | 286 | 346 | 417 | 500 |
| 2.2 | 169 | 201 | 242 | 297 | 353 | 426 | 511 |
| 2.4 | 172 | 205 | 247 | 298 | 361 | 435 | 522 |
| 2.6 | 175 | 209 | 252 | 304 | 368 | 444 | 533 |
| 2.8 | 178 | 213 | 257 | 310 | 375 | 452 | 543 |
| 3.0 | 181 | 217 | 261 | 316 | 382 | 460 | 552 |

**TABLE 2: Inactivation by Free Chlorine at 5.0°C**

| Free Residual Chlorine, mg/L | pH | | | | | | |
|---|---|---|---|---|---|---|---|
| | >6.0 | 6.5 | 7.0 | 7.5 | 8.0 | 8.5 | >9.0 |
| >0.4 | 97 | 117 | 139 | 166 | 198 | 236 | 279 |
| 0.6 | 100 | 120 | 143 | 171 | 204 | 244 | 291 |
| 0.8 | 103 | 122 | 146 | 175 | 210 | 252 | 301 |
| 1.0 | 105 | 125 | 149 | 179 | 216 | 260 | 312 |
| 1.2 | 107 | 127 | 152 | 183 | 221 | 267 | 320 |
| 1.4 | 109 | 130 | 155 | 187 | 227 | 274 | 329 |
| 1.6 | 111 | 132 | 158 | 192 | 232 | 281 | 337 |
| 1.8 | 114 | 135 | 162 | 196 | 238 | 287 | 345 |
| 2.0 | 116 | 138 | 165 | 200 | 243 | 294 | 353 |
| 2.2 | 118 | 140 | 169 | 204 | 248 | 300 | 361 |
| 2.4 | 120 | 143 | 172 | 209 | 253 | 306 | 368 |
| 2.6 | 122 | 146 | 175 | 213 | 258 | 312 | 375 |
| 2.8 | 124 | 148 | 178 | 217 | 263 | 318 | 382 |
| 3.0 | 126 | 151 | 182 | 221 | 268 | 324 | 389 |

**TABLE 3: Inactivation by Free Chlorine at 10.0°C**

| Free Residual Chlorine, mg/L | pH | | | | | | |
|---|---|---|---|---|---|---|---|
| | >6.0 | 6.5 | 7.0 | 7.5 | 8.0 | 8.5 | >9.0 |
| >0.4 | 73 | 88 | 104 | 125 | 149 | 177 | 209 |
| 0.6 | 75 | 90 | 107 | 128 | 153 | 183 | 218 |
| 0.8 | 78 | 92 | 110 | 131 | 158 | 189 | 226 |
| 1.0 | 79 | 94 | 112 | 134 | 162 | 195 | 234 |
| 1.2 | 80 | 95 | 114 | 137 | 166 | 200 | 240 |
| 1.4 | 82 | 98 | 116 | 140 | 170 | 206 | 247 |
| 1.6 | 83 | 99 | 119 | 144 | 174 | 211 | 253 |
| 1.8 | 86 | 101 | 122 | 147 | 179 | 215 | 259 |
| 2.0 | 87 | 104 | 124 | 150 | 182 | 221 | 265 |
| 2.2 | 89 | 105 | 127 | 153 | 186 | 225 | 271 |
| 2.4 | 90 | 107 | 129 | 157 | 190 | 230 | 276 |
| 2.6 | 92 | 110 | 131 | 160 | 194 | 234 | 281 |
| 2.8 | 93 | 111 | 134 | 163 | 197 | 239 | 287 |
| 3.0 | 95 | 113 | 137 | 166 | 201 | 243 | 292 |

**TABLE 4: Inactivation by Free Chlorine at 15.0°C**

| Free Residual Chlorine, mg/L | pH | | | | | | |
|---|---|---|---|---|---|---|---|
| | >6.0 | 6.5 | 7.0 | 7.5 | 8.0 | 8.5 | >9.0 |
| >0.4 | 49 | 59 | 70 | 83 | 99 | 118 | 140 |
| 0.6 | 50 | 60 | 72 | 86 | 102 | 122 | 146 |
| 0.8 | 52 | 61 | 73 | 88 | 105 | 126 | 151 |
| 1.0 | 53 | 63 | 75 | 90 | 108 | 130 | 156 |
| 1.2 | 54 | 64 | 76 | 92 | 111 | 134 | 160 |
| 1.4 | 55 | 65 | 78 | 94 | 114 | 137 | 165 |
| 1.6 | 56 | 66 | 79 | 96 | 116 | 141 | 169 |
| 1.8 | 57 | 68 | 81 | 98 | 119 | 144 | 173 |
| 2.0 | 58 | 69 | 83 | 100 | 122 | 147 | 177 |
| 2.2 | 59 | 70 | 85 | 102 | 124 | 150 | 181 |
| 2.4 | 60 | 72 | 86 | 105 | 127 | 153 | 184 |
| 2.6 | 61 | 73 | 88 | 107 | 129 | 156 | 188 |
| 2.8 | 62 | 74 | 89 | 109 | 132 | 159 | 191 |
| 3.0 | 63 | 76 | 91 | 111 | 134 | 162 | 195 |

**TABLE 5: Inactivation by Free Chlorine at 20.0°C**

| Free Residual Chlorine, mg/L | pH | | | | | | |
|---|---|---|---|---|---|---|---|
| | >6.0 | 6.5 | 7.0 | 7.5 | 8.0 | 8.5 | >9.0 |
| >0.4 | 36 | 44 | 52 | 62 | 74 | 89 | 105 |
| 0.6 | 38 | 45 | 54 | 64 | 77 | 92 | 109 |
| 0.8 | 39 | 46 | 55 | 66 | 79 | 95 | 113 |
| 1.0 | 39 | 47 | 56 | 67 | 81 | 98 | 117 |
| 1.2 | 40 | 48 | 57 | 69 | 83 | 100 | 120 |
| 1.4 | 41 | 49 | 58 | 70 | 85 | 103 | 123 |
| 1.6 | 42 | 50 | 59 | 72 | 87 | 105 | 126 |
| 1.8 | 43 | 51 | 61 | 74 | 89 | 108 | 129 |
| 2.0 | 44 | 52 | 62 | 75 | 91 | 110 | 132 |
| 2.2 | 44 | 53 | 63 | 77 | 93 | 113 | 135 |
| 2.4 | 45 | 54 | 65 | 78 | 95 | 115 | 138 |
| 2.6 | 46 | 55 | 66 | 80 | 97 | 117 | 141 |
| 2.8 | 47 | 56 | 67 | 81 | 99 | 119 | 143 |
| 3.0 | 47 | 57 | 68 | 83 | 101 | 122 | 146 |

**TABLE 6: Inactivation by Free Chlorine at 25.0°C and Higher**

| Free Residual Chlorine, mg/L | pH | | | | | | |
|---|---|---|---|---|---|---|---|
| | >6.0 | 6.5 | 7.0 | 7.5 | 8.0 | 8.5 | >9.0 |
| 0.4 | 24 | 29 | 35 | 42 | 50 | 59 | 70 |
| 0.6 | 25 | 30 | 36 | 43 | 51 | 61 | 73 |
| 0.8 | 26 | 31 | 37 | 44 | 53 | 63 | 75 |
| 1.0 | 26 | 31 | 37 | 45 | 54 | 65 | 78 |
| 1.2 | 27 | 32 | 38 | 46 | 55 | 67 | 80 |
| 1.4 | 27 | 33 | 39 | 47 | 57 | 69 | 82 |
| 1.6 | 28 | 33 | 40 | 48 | 58 | 70 | 84 |
| 1.8 | 29 | 34 | 41 | 49 | 60 | 72 | 86 |
| 2.0 | 29 | 35 | 41 | 50 | 61 | 74 | 88 |
| 2.2 | 30 | 35 | 42 | 51 | 62 | 75 | 90 |
| 2.4 | 30 | 36 | 43 | 52 | 63 | 77 | 92 |
| 2.6 | 31 | 37 | 44 | 53 | 65 | 78 | 94 |
| 2.8 | 31 | 37 | 45 | 54 | 66 | 80 | 96 |
| 3.0 | 32 | 38 | 46 | 55 | 67 | 81 | 97 |

**TABLE 7: Inactivation by Chlorine Dioxide and Ozone**

| Disinfectant | Temperature, °C | | | | | |
|---|---|---|---|---|---|---|
| | <1 | 5 | 10 | 15 | 20 | >25 |
| Chlorine Dioxide | 63 | 26 | 23 | 19 | 15 | 11 |
| Ozone | 2.9 | 1.9 | 1.4 | 0.95 | 0.72 | 0.48 |

**TABLE 8: Inactivation by Chloramines[1]**

| Disinfectant | Temperature, °C | | | | | |
|---|---|---|---|---|---|---|
| | <1 | 5 | 10 | 15 | 20 | 25 |
| Chloramines | 3800 | 2200 | 1850 | 1500 | 1100 | 750 |

[1]These values are for pH values of 6 to 9. These CT values may be assumed to achieve greater than 99.99 percent inactivation of viruses only if chlorine is added and mixed in the water prior to the addition of ammonia. If this condition is not met, the system must demonstrate, based on on-site studies or other department-approved information, that the system is achieving at least 99.99 percent inactivation of viruses.

## APPENDIX B: CT TABLES FOR *CRYPTOSPORIDIUM* INACTIVATION

### TABLE 1: CT Values (mg-min/L) for *Cryptosporidium* Inactivation by Chlorine Dioxide[1]

| Log Credit | Water Temperature, °C | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | >0.5 | 1 | 2 | 3 | 5 | 7 | 10 | 15 | 20 | 25 | 30 |
| 0.25 | 159 | 153 | 140 | 128 | 107 | 90 | 69 | 45 | 29 | 19 | 12 |
| 0.5 | 319 | 305 | 279 | 256 | 214 | 180 | 138 | 89 | 58 | 38 | 24 |
| 1.0 | 637 | 610 | 558 | 511 | 429 | 360 | 277 | 179 | 116 | 75 | 49 |
| 1.5 | 956 | 915 | 838 | 767 | 643 | 539 | 415 | 268 | 174 | 113 | 73 |
| 2.0 | 1275 | 1220 | 1117 | 1023 | 858 | 719 | 553 | 357 | 232 | 150 | 98 |
| 2.5 | 1594 | 1525 | 1396 | 1278 | 1072 | 899 | 691 | 447 | 289 | 188 | 122 |
| 3.0 | 1912 | 1830 | 1675 | 1534 | 1286 | 1079 | 830 | 536 | 347 | 226 | 147 |

[1]Systems may use this equation to determine log credit between the indicated values:

Log credit = $[0.001506 \times (1.09116)^{Temp}] \times CT$

### TABLE 2: CT Values (mg-min/L) for *Cryptosporidium* Inactivation by Ozone[1]

| Log Credit | Water Temperature, °C | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | >0.5 | 1 | 2 | 3 | 5 | 7 | 10 | 15 | 20 | 25 | 30 |
| 0.25 | 6.0 | 5.8 | 5.2 | 4.8 | 4.0 | 3.3 | 2.5 | 1.6 | 1.0 | 0.6 | 0.39 |
| 0.5 | 12 | 12 | 10 | 9.5 | 7.9 | 6.5 | 4.9 | 3.1 | 2.0 | 1.2 | 0.78 |
| 1.0 | 24 | 23 | 21 | 19 | 16 | 13 | 9.9 | 6.2 | 3.9 | 2.5 | 1.6 |
| 1.5 | 36 | 35 | 31 | 29 | 24 | 20 | 15 | 9.3 | 5.9 | 3.7 | 2.4 |
| 2.0 | 48 | 46 | 42 | 38 | 32 | 26 | 20 | 12 | 7.8 | 4.9 | 3.1 |
| 2.5 | 60 | 58 | 52 | 48 | 40 | 33 | 25 | 16 | 9.8 | 6.2 | 3.9 |
| 3.0 | 72 | 69 | 63 | 57 | 47 | 39 | 30 | 19 | 12 | 7.4 | 4.7 |

[1]Systems may use this equation to determine log credit between the indicated values:

Log credit = $[0.0397 \times (1.09757)^{Temp}] \times CT$

**TABLE 3: UV Dose for *Cryptosporidium*, *Giardia lamblia*, and Virus Inactivation Credit[1]**

| Log Credit | *Cryptosporidium* UV dose ($mJ/cm^2$) | *Giardia lamblia* UV dose ($mJ/cm^2$) | Virus UV dose ($mJ/cm^2$) |
|---|---|---|---|
| 0.5 | 1.6 | 1.5 | 39 |
| 1.0 | 2.5 | 2.1 | 58 |
| 1.5 | 3.9 | 3.0 | 79 |
| 2.0 | 5.8 | 5.2 | 100 |
| 2.5 | 8.5 | 7.7 | 121 |
| 3.0 | 12 | 11 | 143 |
| 3.5 | 15 | 15 | 163 |
| 4.0 | 22 | 22 | 186 |

[1]The treatment credits listed in Table 3 are for UV light at a wavelength of 254 nm as produced by a low-pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing. The UV dose values in this table are applicable only to post-filter applications of UV in filtered systems.

## APPENDIX C: CT TABLES FOR VIRUS INACTIVATION UNDER THE GROUNDWATER RULE, 567—41.7(455B)

### TABLE 1: CT Values (mg-min/L) for Inactivation of Viruses by Free Chlorine, pH 6.0-9.0

**(CT values provided are modified by linear interpolation between 0.5° Celsius (C) increments)**

| Inactivation Log Credit | Water Temperature, °C | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 2 | 5.8 | 5.3 | 4.9 | 4.4 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 | 2.4 |
| 3 | 8.7 | 8.0 | 7.3 | 6.7 | 6.0 | 5.6 | 5.2 | 4.8 | 4.4 | 4.0 | 3.8 | 3.6 | 3.4 |
| 4 | 11.6 | 10.7 | 9.8 | 8.9 | 8.0 | 7.6 | 7.2 | 6.8 | 6.4 | 6.0 | 5.6 | 5.2 | 4.8 |

| Inactivation Log Credit | Water Temperature, °C | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 2 | 2.2 | 2.0 | 1.8 | 1.6 | 1.4 | 1.2 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 3 | 3.2 | 3.0 | 2.8 | 2.6 | 2.4 | 2.2 | 2.0 | 1.8 | 1.6 | 1.4 | 1.2 | 1.0 |
| 4 | 4.4 | 4.0 | 3.8 | 3.6 | 3.4 | 3.2 | 3.0 | 2.8 | 2.6 | 2.4 | 2.2 | 2.0 |

### TABLE 2: CT Values (mg-min/L) for Inactivation of Viruses by Free Chlorine, pH 9.1-10.0

| Inactivation Log Credit | Water Temperature, °C | | | | | |
|---|---|---|---|---|---|---|
| | 0.5 | 5 | 10 | 15 | 20 | 25 |
| 2 | 45 | 30 | 22 | 15 | 11 | 7 |
| 3 | 66 | 44 | 33 | 22 | 16 | 11 |
| 4 | 90 | 60 | 45 | 30 | 22 | 15 |

### TABLE 3: CT Values (mg-min/L) for Inactivation of Viruses by Chlorine Dioxide, pH 6.0-9.0

**(CT values provided are modified by linear interpolation between 0.5°C increments)**

| Inactivation Log Credit | Water Temperature, °C | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 2 | 8.4 | 7.7 | 7.0 | 6.3 | 5.6 | 5.3 | 5.0 | 4.8 | 4.5 | 4.2 | 3.9 | 3.6 | 3.4 |
| 3 | 25.6 | 23.5 | 21.4 | 19.2 | 17.1 | 16.2 | 15.4 | 14.5 | 13.7 | 12.8 | 12.0 | 11.1 | 10.3 |
| 4 | 50.1 | 45.9 | 41.8 | 37.6 | 33.4 | 31.7 | 30.1 | 28.4 | 26.8 | 25.1 | 23.4 | 21.7 | 20.1 |

| Inactivation Log Credit | Water Temperature, °C | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 2 | 3.1 | 2.8 | 2.7 | 2.5 | 2.4 | 2.2 | 2.1 | 2.0 | 1.8 | 1.7 | 1.5 | 1.4 |
| 3 | 9.4 | 8.6 | 8.2 | 7.7 | 7.3 | 6.8 | 6.4 | 6.0 | 5.6 | 5.1 | 4.7 | 4.3 |
| 4 | 18.4 | 16.7 | 15.9 | 15.0 | 14.2 | 13.3 | 12.5 | 11.7 | 10.9 | 10.0 | 9.2 | 8.4 |

**TABLE 4: CT Values (mg-min/L) for Inactivation of Viruses by Ozone**

**(CT values provided are modified by linear interpolation between 0.5°C increments)**

| Inactivation Log Credit | Water Temperature, °C | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 2 | 0.90 | 0.83 | 0.75 | 0.68 | 0.60 | 0.58 | 0.56 | 0.54 | 0.52 | 0.50 | 0.46 | 0.42 | 0.38 |
| 3 | 1.40 | 1.28 | 1.15 | 1.03 | 0.90 | 0.88 | 0.86 | 0.84 | 0.82 | 0.80 | 0.74 | 0.68 | 0.62 |
| 4 | 1.80 | 1.65 | 1.50 | 1.35 | 1.20 | 1.16 | 1.12 | 1.08 | 1.04 | 1.00 | 0.92 | 0.84 | 0.76 |

| Inactivation Log Credit | Water Temperature, °C | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 2 | 0.34 | 0.30 | 0.29 | 0.28 | 0.27 | 0.26 | 0.25 | 0.23 | 0.21 | 0.19 | 0.17 | 0.15 |
| 3 | 0.56 | 0.50 | 0.48 | 0.46 | 0.44 | 0.42 | 0.40 | 0.37 | 0.34 | 0.31 | 0.28 | 0.25 |
| 4 | 0.68 | 0.60 | 0.58 | 0.56 | 0.54 | 0.52 | 0.50 | 0.46 | 0.42 | 0.38 | 0.34 | 0.30 |

No CT table is provided for chloramines or total chlorine because the CT values would be prohibitively high for GW systems. Tables are from the EPA Groundwater Rule Implementation Guidance, EPA 816-R-09-004, January 2009, pages 97-98.

# ARC 8625C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

## Notice of Intended Action

### Proposing rulemaking related to drinking water state revolving fund and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 44, "Drinking Water State Revolving Fund," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.299.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.291 through 455B.299 and the Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.).

*Purpose and Summary*

Proposed new Chapter 44 establishes a program for the joint administration of Iowa's Drinking Water State Revolving Fund (DWSRF). The DWSRF provides financial assistance through below market rate loans to eligible public water supply systems for the design and construction of drinking water facilities to ensure public health and for the provision of safe and adequate drinking water pursuant to the SDWA. Iowa has implemented a DWSRF program since 1998. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Tara Naber
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: tara.naber@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at tara.naber@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al tara.naber@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 5, 2025<br>9 to 10 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| February 6, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44
DRINKING WATER STATE REVOLVING FUND

**567—44.1(455B) Statutory authority.** The authority for the Iowa department of natural resources (department) to administer the drinking water state revolving fund (DWSRF) is provided by Iowa Code sections 455B.291 through 455B.299.

**567—44.2(455B) Scope of title.** The department and the Iowa Finance Authority (authority) are jointly designated to administer the DWSRF loan program to assist in the financing of infrastructure projects pursuant to the Safe Drinking Water Act (SDWA). The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

**567—44.3(455B) Purpose.**

**44.3(1)** The DWSRF provides financial assistance to eligible public water supply systems (PWS) for the design and construction of facilities to ensure public health and the provision of safe and adequate drinking water.

**44.3(2)** The EPA provides capitalization grants for this program to the department. Financial assistance projects must be in conformance with the requirements of the Public Health Service Act (42 U.S.C. 300f et seq.), United States Code, Title XIV, Section 1452, Part E, and must comply with this chapter to be eligible for a DWSRF loan.

**44.3(3)** The department establishes priorities for the use of the DWSRF and publishes them in its intended use plan (IUP). The IUP will identify all proposed uses of set-asides and available loan funds. All potentially funded projects must be approved by the department and the environmental protection commission (EPC).

**567—44.4(455B) Definitions.** Definitions and abbreviations provided in 567—Chapter 40 apply to this chapter.

**567—44.5(455B) Set-asides.** The DWSRF may use a portion of the capitalization grant funds for set-asides, in accordance with 40 CFR §35.3535. The SDWA authorizes set-aside funds to enable states to implement specific SDWA requirements. The amount and use of set-aside money is set each year in the IUP pursuant to rule 567—44.9(455B) and may be adjusted from year to year based on available funds and priorities as outlined in the IUP.

**567—44.6(455B) Eligibility.**

**44.6(1)** *Eligible systems.* The following systems are eligible to receive funds from the DWSRF for improvements as listed and defined in the SDWA amendments of 1996 (P.L. 104-182, August 6, 1996).

*a.* Community drinking water systems (CWSs).
*b.* Nonprofit nontransient noncommunity drinking water systems (NTNCs).
*c.* Cities and counties that are PWSs or can become viable new PWSs as a result of this project.
*d.* Any other governmental subdivision of the state responsible for a PWS.

**44.6(2)** *Ineligible systems and activities.* The following systems and activities are ineligible to receive funds from the DWSRF.

*a.* Any applicant that has not adopted and implemented satisfactory department-approved water conservation plans and practices, or demonstrated to the department an ongoing effort to adopt and implement such plans and practices within one calendar year from the date of the loan agreement.

*b.* Any applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the applicant to compliance.

*c.* Any applicant lacking viability (an applicant whose system lacks technical, financial, and managerial viability to comply with the SDWA and is nonviable or lacks capacity according to the definition in the SDWA), unless the applicant commits to undertake appropriate changes in operations, including ownership, management accounting, rates, maintenance, consolidation, alternative sources of water supply, or other procedures if the director determines that such changes are necessary to demonstrate viability.

*d.* Projects and activities deemed ineligible for participation in the DWSRF by the EPA's DWSRF regulations (40 CFR Part 35, Subpart L) or program guidance, or by the department.

**44.6(3)** *Certified operator requirement.* An eligible system must submit to the department the name, certification number, and certification expiration date of the certified operator, pursuant to 567—Chapter 81, in direct responsible charge for the facility operation before receiving a loan. A system without a certified operator shall not receive loan assistance.

**567—44.7(455B) Application.**

**44.7(1)** *Application.* Applications for placement on the project priority list shall be accepted by the department on a continuous basis and will be presented to the EPC for approval according to the schedule described in the IUP. Application shall be made on the form provided by the department; the applicant may include additional information in the application. Forms may be obtained from www.iowasrf.com.

**44.7(2)** *Construction project application requirements.* An applicant seeking financial assistance for construction must include with the application:

*a.* A description of the entity's current drinking water supply system, including a discussion of existing and potential problems or failures in the current system and compliance with state and federal criteria;

*b.* A description of the type of project for which financial assistance is being requested;

*c.* An estimate of the population and the number of households to be served;

*d.* A completed Self-Assessment Manual for Iowa Water System Viability;

*e.* A description of the basis for project design;

*f.* A map showing the geographical area that the project is expected to serve;

*g.* A cost estimate for the selected project;

*h.* The amount of financial assistance being requested;

*i.* A proposed project construction schedule; and

*j.* A preliminary engineering report.

**44.7(3)** *Preliminary engineering report requirements.* To be eligible for placement on the project priority list for a construction loan, a system must have a preliminary engineering report of potential system needs (also known as a "planning" study) approved by the department, and must submit to the director a written application for placement on the list.

**567—44.8(455B) Project point ranking system (project priority list).**

**44.8(1)** *Project priority list.* The director shall develop and maintain a project priority list of PWSs that have requested financial assistance through the DWSRF program to address either a new or an upgraded drinking water system, including individual subcomponents. The term "public water system projects" may also include separate segments or phases of a segmented or phased project. Projects will continue to be eligible for loan funding when funded for the first year of a multiyear project effort.

**44.8(2)** *Project priority list ranking criteria.*

*a.* A construction project's priority points shall be the total number of points assigned by the department pursuant to the scoring system delineated in 44.8(3). All projects shall be listed in descending order on the published project priority list according to the number of total priority points assigned each project.

*b.* When two or more projects have the same priority point total, the project sponsored by a system in the process of consolidation shall receive the higher priority. A private system in the process of forming and becoming a PWS shall have the next highest priority, and the entity with the smallest served population shall receive the next highest priority.

*c.* The most current official census population shall be used for all municipalities that serve only the population within their incorporated boundaries and that apply for these loan funds. For all other municipalities and other CWSs, and for NTNCs, population will be counted based on either the actual population, verifiable by the department, or population as calculated by multiplying by an occupancy factor of 2.5 persons per service connection. New systems will be counted based on census data, an occupancy factor of 2.5 persons per service connection, an occupancy factor of 2.5 persons per identifiable occupied building, or other means acceptable to the department.

*d.* Funding shall be offered to the projects with highest rank on the project priority list, subject to the project's readiness to proceed, and shall proceed from the highest project downward, subject to availability of funds.

*e.* The published project priority list shall be included in the department's IUP pursuant to 567—44.9(455B).

*f.* Projects involving a multiyear, phased effort may carry over their original priority point total from the previous year's application, provided that the project owner reapplies at each stage.

**44.8(3)** *Project priority list scoring criteria.* Eligible public drinking water supply projects shall be scored pursuant to the following priority point scoring system.

**IOWA DWSRF PROJECT SCORING SYSTEM**

(Multiple attributes within a lettered subcategory are not additive, but points are additive from other subcategories; consolidation/restructuring is an approved option to correct violations or "improve" treatment.)

| Scoring Criterion | Points |
|---|---|
| **A. Human Health Risk-related Criteria (maximum of 60 points)** | |
| 1. Correction of acute MCL or Tier I TT violation as defined in 567—paragraph 42.1(2)*"a"* (fecal coliform, nitrate, nitrite, chlorine dioxide, turbidity, CT corrective measures, and Giardia), or resolution of a health-based related BCA | 60 |
| 2. Correction of nonacute MCL violation (IOCs excluding acute contaminants, radionuclides, SOCs, VOCs) | 50 |
| 3. Correction of an expected MCL or TT violation (acute or nonacute) | 45 |
| 4. Correction of Tier II TT violation as defined in 567—paragraph 42.1(3)*"a"* (Pb/Cu corrective measures, disinfection byproduct precursor removal) | 40 |
| 5. Mitigation of an imminent threat from groundwater contamination (from a UST site, CERCLA site, or uncontrolled site) | 35 |
| 6. Connection of individual residences to PWS to eliminate use of contaminated individual private wells (bacterial, nitrate, radionuclide, or IOC/VOC/SOC well contamination all eligible) | 35 |
| 7. Replacement of asbestos cement pipe (replace at least 200 feet of pipe) | 15 |
| **B. Infrastructure and Engineering-related Improvement Criteria (maximum of 35 points)** | |
| 1. Development of system redundancy and additional source to meet peak day demand with largest well or intake out of service; plant process rehabilitation (to ensure redundancy of treatment units to protect against acute or chronic MCL with system's largest treatment unit out of service); water storage improvements (reliability enhancement to increase effective storage to Average Daily Demand, including either at-ground or elevated storage); pumping improvements (meeting hydraulic and Ten-State Standard requirements for Average Daily Demand); or resolution of an infrastructure-related BCA | 35 |
| 2. Water systems over capacity expansion. Points are allowable only when the system is operating at 85% or more of system design capacity. Source, plant, or distribution system improvements for system expansion are all eligible under this category. | 30 |
| 3. Pressure and other distribution system improvements, including pump upgrades, pipe looping, valves, fittings, line replacement, hydrants, pumping stations, and water meters | 25 |

| Scoring Criterion | Points |
|---|---|
| 4. Construction of resiliency projects to mitigate expected reduction or degradation of source and/or finished water quality or quantity caused by disaster events including but not limited to floods, droughts, ice storms, tornadoes, and cyberattacks | 20 |
| 5. Treatment plant improvements, excluding operation and maintenance costs | 15 |
| 6. Provision of emergency power/emergency pumping capacity including purchase of diesel generators or installation of automatic switching systems | 15 |
| 7. Security improvements (fencing, lighting, video surveillance, locks, access control) | 10 |
| **C. Affordability Criteria (maximum of 15 points)** | |
| 1. System meets the state DWSRF program's Disadvantaged Community (DAC) criteria as defined in the IUP | 15 |
| **D. Special Category Improvements (maximum of 15 points)** | |
| 1. Wellhead or source water protection plan development or implementation meeting department standards, including loans for land or easement acquisition | 15 |
| 2. Water conservation measures/conservation plan preparation, adoption, and enforcement | 5 |
| **E. Department Adjustment Factor for Population** | |
| 1. (Project Serves) Population less than 10,000 | 10 |
| TOTAL MAXIMUM POINTS | 135 |

**567—44.9(455B) Intended use plan (IUP).**

**44.9(1)** *Development.* The director shall prepare an IUP at least annually and on a quarterly basis as needed. The IUP will be subject to a public hearing and approved by the commission and EPA.

**44.9(2)** *Contents.* The IUP will identify the anticipated uses of loan funds and will include:

*a.* The state project priority list (defined in rule 567—44.8(455B)) that includes all projects that are eligible for DWSRF loans. The list will comply with 40 CFR §35.3555;

*b.* Discussion of the long-term and short-term DWSRF goals;

*c.* Information on the types of activities to be supported by the DWSRF, including requests for planning and design loans and any proposed activities eligible for assistance under set-aside authority of the SDWA;

*d.* The method by which the IUP may be amended; and

*e.* Assurances on how the state intends to meet environmental review requirements of the SDWA.

**44.9(3)** *Eligibility.* The department will consider the following in developing the list of eligible recipients for inclusion in the IUP:

*a.* Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds; and

*b.* Whether the project addresses the need upon which the system's priority is based.

**567—44.10(455B) Department review and approval of projects.**

**44.10(1)** *Project initiation conference.* The department may require a project initiation meeting with an applicant or the applicants' representative.

**44.10(2)** *Required project information.*

*a.* An applicant seeking financial assistance from the DWSRF for a construction project must provide the following information to the director for review and approval:

(1) A complete construction permit application pursuant to 567—Chapters 41 and 43, including plans and specifications, consistent with the IUP and the approved preliminary engineering report submitted pursuant to 44.7(3);

(2) A complete description of the planned project, including the construction requirements necessary to complete the project as proposed;

(3) The latest engineering cost estimate for the project; and

(4) A demonstration of the applicant's ability to provide the necessary legal, institutional, managerial, and financial capability to complete the project.

*b.* Those portions of projects not meeting eligibility requirements may be excluded from the funded project, but included in the submitted plans and specifications if the applicant chooses to keep the loan-ineligible part of the project as part of the overall system improvement. Ineligible portions of

projects include but are not limited to dams, water rights, monitoring costs, operation and maintenance expenses, projects designed primarily in anticipation of speculative growth, and projects needed primarily for fire protection.

**44.10(3)** *Department review.* Departmental review requirements shall consist of the following:

*a.* Upon review and approval of construction projects submitted as required under 567—44.7(455B) and the plans and specifications as required under 44.10(2), and following a determination that the project meets the applicable requirements of the SDWA, federal regulations, Iowa statutes, and relevant portions of this chapter, the director shall approve the project in writing.

*b.* If there is an alteration (change order) to a project after the director approves the project, the eligible applicant must request, in writing, an amended department approval. The director shall review the request and proposed project alteration (change order) and, upon a determination that the project meets the applicable SDWA requirements, federal regulations, the August 7, 2000, DWSRF: Interim Final Rule (40 CFR Part 35, Subpart L), program guidance, Iowa statutes, and relevant portions of this chapter, the director shall approve the project as amended.

*c.* If the project is not approved, the director shall notify the applicant in writing of the reason for disapproval.

**567—44.11(455B) General administrative requirements.**

**44.11(1)** *Allowable costs.* Allowable costs shall be limited to those costs deemed necessary, reasonable, and directly related to the efficient completion of the project. The director will determine project costs eligible for state assistance in accordance with rule 567—44.6(455B). Land purchase, easement, or rights-of-way costs are ineligible, with the exception of land that is integral to a project needed to meet or maintain public health protection and that is needed to locate eligible treatment or distribution works. Source water protection easements are considered to be integral to a project. The acquisition of land or easements has to be from a willing seller. In addition to costs identified in this chapter, unallowable costs include the following:

*a.* Costs of service lines, except lead-containing service lines and connectors;

*b.* Costs of in-house plumbing;

*c.* Administrative costs of the loan recipient; and

*d.* Costs of vehicles and tools.

**44.11(2)** *Audits.* The recipient shall provide access at all times for the department, the authority, the state auditor, and the Office of the Inspector General (OIG) at EPA to all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment. The same access to the project site(s) shall be provided for inspection purposes.

**44.11(3)** *Cross-cutters.* Other federal and state statutes and programs, including federal "cross-cutters," will be applicable to DWSRF projects.

**44.11(4)** *Additional loan amount.* If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request by considering available money in the fund as well as compliance with other state and federal requirements.

**567—44.12(455B) Construction phase and postconstruction phase requirements.**

**44.12(1)** *Final inspection.* A final inspection of the project may be performed by the director to verify that construction is complete (except for weather-related items) and conforms with the approved plans and specifications and all approved change orders.

**44.12(2)** *Adequate project performance.* The department shall undertake measures to discern adequate project performance as follows:

*a.* The loan recipient must certify to the director that the project is operating as planned and designed using a form approved by the department.

*b.* If the loan recipient is unable to certify that the project is operating as planned and designed, the recipient must submit a corrective action report to the director for review and approval. An acceptable corrective action report must contain an analysis of the project's failure to operate as designed; a

discussion of the nature, scope, and cost of the action needed to correct the failure; and a schedule for completing the corrective work.

**567—44.13(455B) Sanctions.** Failure of a project to conform to approved plans and specifications or failure of a loan recipient to comply with the requirements of 567—Chapter 40 through 567—Chapter 44 constitutes grounds for the withholding of loan disbursements. The loan recipient is then responsible for ensuring that the identified problem is rectified such that disbursements may be resumed. Once an agreement for correcting the conditions that led to the withholding of funds is reached between the department and the loan recipient, the retained funds shall be released according to the provisions of the agreement.

**567—44.14(455B) Disputes.** A person or entity that disagrees with the project rankings, department decisions, or the withholding of project funding pursuant to this chapter may request a formal review of the action. A person or entity must submit a review request in writing to the director within 45 days of the action date. A decision by the director in a formal review case may be further appealed to the EPC.

These rules are intended to implement Iowa Code sections 455B.291 through 455B.299.

## ARC 8618C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to water use, withdrawals, and diversions and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice"; to adopt a new Chapter 50, "Water Use, Withdrawals, and Diversions"; and to rescind Chapter 51, "Water Permit or Registration—When Required," and Chapter 52, "Criteria and Conditions for Authorizing Withdrawal, Diversion and Storage of Water," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(11), 455B.105(3), 455B.263(8) and 455B.265(4).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 17A.3, 455B.105, 455B.171, 455B.190, 455B.264, 455B.268 and 455B.278 and chapter 460.

*Purpose and Summary*

Proposed Chapter 50 establishes a water use and allocation program as authorized by Iowa law. This chapter will ensure ground and surface waters of the state are put to beneficial use, prevent waste or unreasonable use of water, prevent unreasonable methods of water use, and conserve and protect the state's water resources in the interest of the people. Additionally, proposed Chapter 50 clarifies when a water use permit or registration is required for the withdrawal, diversion, and use of water, and establishes criteria for issuance of water permits, permit conditions, and conditions under which the Department of Natural Resources (Department) may modify, terminate, or suspend permits. Finally, proposed Chapter 50 includes special criteria applicable to particular types of water uses, such as irrigation and criteria applicable to particular types of sources of water such as surface waters and groundwater sources.

Existing Chapters 50, 51, and 52 were reviewed consistent with Executive Order 10. Consequently, Chapters 51 and 52 are being rescinded and merged into the new Chapter 50. The content of existing

Chapters 50, 51, and 52 are closely related, and efficiencies in rule language are produced from this consolidation.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Chad Fields
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at chad.fields@dnr.iowa.gov.

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 3, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |
| February 4, 2025 | Virtual meeting |
| 10 to 11 a.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 50 and adopt the following **new** chapter in lieu thereof:

DIVISION C
WITHDRAWAL, DIVERSION AND STORAGE OF WATER: WATER RIGHTS ALLOCATION

## CHAPTER 50
## WATER USE, WITHDRAWALS, AND DIVERSIONS

**567—50.1(455B) Scope of division.** The department has jurisdiction over the surface and groundwater of the state to establish and administer a comprehensive program to ensure that the water resources of the state be put to beneficial use to the fullest extent possible, that the waste or unreasonable use or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people.

Any person who proposes to pump or divert by gravity more than 25,000 gallons of water during a period of 24 hours or less from any source of groundwater or surface water, including streams bordering the state; impound surface water; divert surface runoff into a well, sinkhole or excavation; or inject water or any material into a well has a duty to review the thresholds in this chapter and contact the department to resolve any doubt concerning whether a permit is required.

Chapter 50 explains when approval is required for withdrawal, diversion, or storage of water and the criteria for permitting the withdrawal or diversion of water. Chapter 53 sets forth the procedure for designating certain ground and surface water sources as protected sources and explains special criteria and conditions that may be applicable to those sources. Chapter 54 describes procedures and criteria for determining compensation to owners of nonregulated wells for well interference caused by permitted uses.

**567—50.2(455B) Definitions.** In addition to the definitions, references, and abbreviations in 567—Chapter 40, the following definitions apply to this title unless otherwise specified in the particular chapter of this title:

*"Administrative resolution"* means the settlement of well interference conflicts by the department according to established rules and procedures.

*"Aquifer"* means a water-bearing geological formation of sufficient volume, porosity, and permeability to be capable of yielding a usable quantity of water to a well or spring.

*"Certified well contractor"* means a well contractor who has successfully passed an examination prescribed by the department to determine the applicant's qualifications to perform well drilling or pump services or both pursuant to 567—Chapter 82.

*"Community public water supply"* or *"CWS"* means a system for the provision to the public of piped water for domestic use that has at least 15 service connections used by year-round residents or serves at least 25 year-round residents.

*"Confined aquifer"* means an aquifer that contains water under pressure and bounded above and below by confining layers. In a well penetrating a confined aquifer, pressure will cause water to rise above the top of the aquifer.

*"Confining layer"* means a body of low permeable geologic material that is located above or below one or more aquifers.

*"Conflict"* means a dispute between a nonregulated or regulated well owner and a permitted water user regarding the liability of the permitted user for well interference damages to the nonregulated well.

*"Consumptive use"* means any use of water that involves substantial evaporation, transpiration, incorporation of water into a product, or removal of water from a source without return.

*"Domestic use"* means a use of water for human consumption and sanitation and public safety (fire protection).

*"Drainage system"* means tile lines, laterals, surface inlets, or other improvements that are constructed to facilitate land drainage.

*"Drawdown"* means the decrease in groundwater level due to well pumping.

*"General crop"* means commercial field corn, hay, soybeans, oats, grain sorghum, or wheat.

*"Industrial use"* means a use of water by manufacturing, processing, commercial, and other industrial facilities to provide a product or a service, excluding domestic use, irrigation use, livestock use, quarry use, power generation use, and recreational and aesthetic use.

*"Interior stream"* means rivers, creeks, or other watercourses located within the interior of Iowa, not forming the borders of the state.

*"Irrigation use"* means a use of water that is artificially applied to land to aid vegetative growth.

*"Livestock use"* means a use of water in the production of animals, such as for drinking, sanitation, and cooling.

*"Nonregulated well"* means a well used to supply water for a nonregulated use.

*"Permitted use"* means a use of water in excess of 25,000 gallons per day that requires a water use permit pursuant to these rules and Iowa Code chapter 455B, subchapter III, part 4.

*"Pesticide"* means (1) any substance or mixture of substances intended to prevent, destroy, repel, or mitigate, directly or indirectly, any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary of agriculture shall declare to be a pest; and (2) any substance intended for use as a plant growth regulator, defoliant, or desiccant.

*"Power generation use"* means a use of water incidental to the generation of electric power for distribution and sale to the public, including process water and water for cooling purposes.

*"Protected flow"* means the *"established average minimum flow"* defined in Iowa Code section 455B.261.

*"Protected source"* means a surface water or groundwater source recognized by rule as needing special protection to ensure its long-term availability, in terms of either quality, quantity, or both, to preserve the public health and welfare.

*"Pump test"* means a department-approved test for pumping from a well at controlled rate(s) for a specified duration while water levels are accurately measured at given frequencies in the pumping well and observation well(s).

*"Quarry use"* means a use of water for the extraction of stone, sand, minerals, or other geologic materials from the earth.

*"Recreational and aesthetic use"* means a use of water that is not essential for the preservation of life, the general welfare, or the state's economic base. Examples include but are not limited to flooding of wildlife areas, filling of pools and fountains, nonessential cooling, car washing, street cleaning, washing of other exterior surfaces, amusement park-type water rides, turf watering, and watering of landscape plantings.

*"Seven-day, 1-in-10 year low flow"* or *"7Q10"* means the minimum average flow expected to occur during a period of seven consecutive days that has an average recurrence interval of once in ten years.

*"Specialty crop"* means all other crops not listed as a general crop.

*"Stream"* means a watercourse other than a lake as defined in Iowa Code section 455B.261.

*"Stream bordering the state"* means those reaches of the Missouri, Mississippi, Des Moines, and Big Sioux rivers that mark Iowa's boundaries.

*"Sufficient water supply"* means a nonregulated well that is capable of providing enough water for the nonregulated use.

*"Surface water"* means water occurring on the surface of the ground.

*"Surface water intake"* means an artificial opening to a drain tile that drains into an agricultural drainage well, if the artificial opening allows surface water to enter the drain tile without filtration through the soil profile.

*"Test pumping"* means a controlled aquifer test for verification of well interference.

*"Verified well interference"* means well interference that has been proven by test pumping or with other substantial evidence to have caused or will cause a nonregulated well to be unable to maintain a sufficient water supply.

*"Water use reduction plan"* means a plan that establishes numeric water reduction goals on a short-term time frame through either voluntary or mandatory water conservation requirements.

*"Well interference"* means the lowering of water level in a well caused by the withdrawal of water at another location (usually a nearby well).

**567—50.3(17A,455B) Forms.**

**50.3(1)** *Application forms.* The following application forms are currently in use:

Form 16: Application for a New Water Use Permit or to Modify an Existing Water Use Permit. 542-3106.

Form 18: Application for Permit to Store Water for Beneficial Use. 542-3109.

Form 20: Registration of Minor Nonrecurring Use of Water. 542-3112.

Form 542-1470: Water Supply Section Water Use Permit Renewal.

Form 542-1539: Application for Use of an Agricultural Drainage Well.

**50.3(2)** *Supplementary information forms.* The following forms are used to obtain additional information to supplement applications:

Form 21: Survey of Land Owners and Occupants. 542-3113.

Form 22: Well Inventory Form. 542-3114.

Form 122: Water Well Inspection Report.

**50.3(3)** *Reporting form.* The following form is for reporting permitted activities:

Form 23: Report of Water Use by all Regulated Users. 542-3115.

**567—50.4(17A,455B) When a water use permit is required.** Unless otherwise provided herein, a water use permit shall be required for the use, withdrawal, or diversion of more than 25,000 gallons of water per day for any purpose.

**50.4(1)** *Drainage at construction sites.* A permittee may obtain permit coverage through registration as described in 50.4(4) for a withdrawal of water to lower the water table as necessary at a construction site.

**50.4(2)** *Pump test.* The department may authorize by registration as described in 50.4(4) test pumping of sources of water to determine the source's adequacy and the effects of water withdrawals on other users and the natural environment. The department may require an applicant to submit the pump test results to the department. No registration for a pump test shall be for a period of more than one year. A registration must be obtained from the department for any pump test in which more than 25,000 gallons of water will be withdrawn in a 24-hour period.

**50.4(3)** *Rural water districts.* A water use permit shall be required for withdrawals of water by any rural water district having its own source of water, and such a withdrawal shall be classified as a use by a CWS.

**50.4(4)** *Permit coverage obtained by registration for minor, nonrecurring uses.* Any use of water that is a minor, nonrecurring use, including but not limited to highway construction and maintenance, charging of lagoons, drilling wells, or hydrostatic testing of pipelines, shall require permit coverage that may be obtained through registration.

*a.* An applicant may register a minor, nonrecurring water use by submitting the registration form provided by the department. Such registrations shall be for up to one year.

*b.* After an investigation of any withdrawal allegedly causing material damage, the department shall require prompt, appropriate action for the alleviation of damages. Where agreement cannot be reached on the action necessary for the alleviation of damages, withdrawal of water shall cease immediately upon notification by the department and a water use permit application shall be submitted.

**50.4(5)** *Research contracts.* Water withdrawals for research purposes by the Iowa Geological Survey through its agents, employees, or contractees may be authorized by registration under 50.4(4) and may be subject to conditions set by the department.

**50.4(6)** *Excavation and processing of rock and gravel products.* A water use permit is required for withdrawal of more than 25,000 gallons of surface water or groundwater in one day in connection with removal or processing of rock or gravel products. A water use permit is not required for the following:

*a.* Operation of a hydraulic dredge that returns all water used as a transport medium directly back into the pit from which it is withdrawn by the dredge; and

*b.* Water withdrawal from a gravel pit or rock quarry sump pit for material washing if the wash water is discharged directly back into the pit from which it is withdrawn.

**50.4(7)** *Diversion from surface into aquifer.* A water use permit is required for diversion of water or any other material from the surface directly into any aquifer, including diversion by means of an agricultural drainage well. Diversion by tile or ditch into a sinkhole or quarry excavated in carbonate rock is presumed to be a diversion from the surface directly into an aquifer in the absence of convincing evidence to the contrary.

**50.4(8)** *Cooling/heating systems.* A water use permit to withdraw groundwater for use as a heat exchange media in a heating/cooling system may be granted, allowing such groundwater to be discharged into sanitary or storm sewers when the use is complete. However, a permittee that has such a system shall make a plan and design provisions to the permittee's system to allow the groundwater to be reinjected to the aquifer from which it was originally pumped. The department reserves the right to order such direct return as part of its water conservation plan responsibility described in 50.16(3) and its priority allocation plan responsibility described in rule 567—50.17(455B).

**50.4(9)** *Drain tile lines.* Water in drain tile lines shall be considered surface water.

These rules are intended to implement Iowa Code sections 455B.262, 455B.264 through 455B.274, and 455B.278 and chapter 460.

**567—50.5(17A,455B) Water use permit applications.**

**50.5(1)** *Application forms.* Department forms for water use permit applications and modifications are listed in 50.3(1) and are located on the water use program website at www.iowadnr.gov/wateruse.

*a. Application for approval of a new withdrawal or diversion of water.* For withdrawals or diversions of water, a water use permit application shall be submitted to the department by or on behalf of the owner, lessee, easement holder, or option holder of the source and area where the water is to be withdrawn, diverted, and used. An application shall be accompanied by a map portraying the withdrawal or diversion points and the land area on which water is to be used.

*b. Application for modification or renewal of a water use permit.* A request for renewal of a water use permit shall be submitted to the department. A request to modify an existing water use permit shall be submitted to the department and must include an explanation of the necessity for the modification.

**50.5(2)** *Fees.*

*a. Water use permit application fees.* A new water use permit application, an existing water use permit modification request, or a registration of a minor nonrecurring use of water must be accompanied by the fee listed in the table below. These fees are nonrefundable and nontransferable. For any single application, if more than one fee applies, only the higher fee is required.

| Water Use Permit Application Description | Form | Fee, in dollars |
|---|---|---|
| (1) To apply for a new permit to withdraw or divert water | 16 (542-3106) | $350 |
| (2) To renew an existing permit | 542-1470 | $0 |
| (3) To modify an existing permit to either add a new source or increase the amount or rate of water withdrawn or diverted from a source or sources | 16 (542-3106) | $350 |

| Water Use Permit Application Description | Form | Fee, in dollars |
|---|---|---|
| (4) To modify the conditions of an existing permit that are not described in Item 3 of this table | 16 (542-3106) | $0 |
| (5) To apply for an ASR permit or a protected source designation | N/A | $700 |
| (6) To register a minor nonrecurring use of water | 20 (542-3112) | $75 |

*b. Annual water use permit fee.* In addition to the application fee, there is an annual permit fee. Each water use permittee shall pay the same annual fee. The fee is not prorated and is nonrefundable. The annual water use permit fee is due December 1 of each year. The department will provide an annual fee notice to each permittee at least 60 days prior to the fee due date. An additional fee of $100 will be imposed if the fee is not received by December 1. Failure to remit the fee by January 1 may result in permit termination.

(1) The annual fee shall be based on the costs for administering the water use permitting program for the previous calendar years and on the anticipated expenses for succeeding fiscal years. The department will review the annual permit fee each year and adjust the fee as necessary to cover all reasonable costs required to develop and administer the water use permitting program. The department shall request commission approval of the amount of the annual fee no later than September 30 of each year.

(2) Permittees that have paid an application fee after December 1, but prior to November 30, will not be required to pay an annual fee until December 1 of the following year. If an applicant remits an annual fee for the 12-month period beginning December 1 and then later submits an application fee for a permit modification, the applicant will be refunded the lesser fee.

**50.5(3)** *Required supporting information.* A water use permit application shall not be considered complete until the fee specified in this rule and all supporting information requested under rule 567—50.6(17A,455B) has been submitted by the applicant or the applicant's agent.

**50.5(4)** *Initial screening of water use permit applications.*

*a. General procedure.* Upon receipt, each application shall be evaluated by the department to determine whether adequate information is available to review the project. The department shall then advise the applicant of additional information required for project review.

*b. Application to withdraw groundwater.* Evaluation of the potential effects of a proposed withdrawal of groundwater requires review of available hydrogeological information. The department may require additional supporting hydrogeological information, which the applicant is responsible for providing.

**567—50.6(17A,455B) Supporting information for water use permit applications.** As described in this rule, applicants shall submit supporting information reasonably required to assist the department in conducting the investigation required by Iowa Code sections 455B.264 and 455B.281 and in determining whether permit issuance would be consistent with the beneficial use policies and principles in Iowa Code section 455B.262. The department may require additional information relative to applications for the following types of permits.

**50.6(1)** *Groundwater withdrawal permit.*

*a. Identification of source and effects of pumping.* Applicants for a water use permit to withdraw groundwater shall submit information to identify the well location(s) and the aquifer(s) from which water withdrawals are proposed, predict the effects of pumping with a reasonable degree of confidence, and determine any permit conditions for well interference pursuant to 567—Chapter 54. In areas of uncertainty, to determine the availability of a water source of adequate quantity and quality and to predict the effects of pumping, the applicants shall perform test drilling, yield testing, and pump testing that includes measurements in one or more observation wells conducted with prior approval and in a manner acceptable to the department. Applicants shall perform each of these exploratory operations to the extent necessary for the department to determine whether a water use permit should be issued and to identify conditions which should be imposed in a permit. The following requirements apply to exploratory drilling, yield testing, and pump testing.

(1) Test drilling. Where test drilling is needed for geological information relevant to the application, an applicant shall employ a driller to collect, bag, and properly label cutting samples at each five-foot interval and at each apparent change in geological formation from a test hole or production well hole at least the approximate depth of the proposed production well. The cutting samples shall be saved for collection in sample bags provided by the Iowa Geological Survey (IGS). The samples shall be submitted to the IGS and be accompanied by a driller's log showing the well's location and total depth and a description of the materials encountered at successive intervals.

(2) Yield testing. An applicant shall construct a well and test pump it for yield to the extent necessary to determine whether water is available at the applicant's proposed rate of withdrawal from the proposed source. A written registration from the department is required before any yield test in which more than 25,000 gallons will be withdrawn in a period of 24 hours or less, as provided in 50.4(4).

(3) Pump testing. An applicant shall conduct a controlled aquifer pump test with supervision by a certified well contractor, licensed professional engineer, or other department designee as a condition of obtaining a water use permit, if the department finds an aquifer test necessary to determine the effects that the proposed withdrawal has on other nearby water users. An applicant may be required to construct, develop, and maintain adequate observation wells for use in an aquifer pump test, subsequent water level measurements, or water quality monitoring. An applicant shall obtain a registration for an aquifer pump test as provided in 50.4(4).

*b. Cooperation in obtaining well information.* An applicant requesting a permit authorizing groundwater withdrawals from a well or reservoir may be required to assist the department in conducting an inventory of nearby wells within a designated radius of the proposed site. The need for an inventory and the appropriate radius will be determined after considering the characteristics of the aquifer that is proposed as a source of water and the proposed withdrawals. The department shall provide the applicant a map specifying the proposed inventory area, forms specifying the information to be gathered in the inventory, and a description of regulated uses within the inventory area. The applicant shall make a good-faith effort to assist the department in obtaining information from public records to identify landowners and occupants and from drilling contractors or pump installers identified by a landowner or occupant responding to the inventory.

**50.6(2)** *Irrigation permit.* An applicant proposing to irrigate crops on land shall submit a conservation plan that addresses soil loss to NRCS planning criteria for the land where crop irrigation is proposed, if the land includes soils more erodible than Capability Subclass II as defined by the NRCS. A soil conservation plan shall include a written explanation of how operation of the proposed irrigation system will be compatible with the plan.

**50.6(3)** *Quarry permit.* Iowa Code section 455B.268 requires that a water use permit be obtained before diverting water or material from the surface directly into any underground watercourse or basin.

**50.6(4)** *Diversion of water into an aquifer not related to the use of an agricultural drainage well.* An applicant for a water use permit to divert water or any other material from the surface into an aquifer not related to the use of an agricultural drainage well shall submit information showing that the requested diversion will not alter the quality of the aquifer.

**50.6(5)** *Water withdrawal from a protected water source.* An applicant for a water use permit to withdraw water from a protected water source designated in 567—Chapter 53 may be required to provide specific information to support the application as required by rule 567—53.3(455B).

**567—50.7(17A,455B) Review of complete water use permit applications.**

**50.7(1)** *Summary report.* Before a decision is made on a water use permit application, the department shall prepare a summary report stating whether the withdrawal, diversion, or use of water described in the application conforms to relevant criteria. The report shall identify the information used to determine the potential for a proposed use of water to adversely affect other water users. For an application to withdraw groundwater, the report shall describe the anticipated effects on water levels resulting from the proposed use, indicate if verified well interference has been found, and provide options for resolving any verified well interference in accordance with 567—Chapter 54.

**50.7(2)** *Public notice (PN).*

*a. New water use permits and permit modifications.* Prior to issuing a permit to withdraw, divert, or inject water, the department shall publish a PN of recommendation to issue a water use permit. A PN shall summarize the application and the recommendations in the summary report and allow the public 20 days to request a copy of the summary report and submit comments on the report. The department may extend the comment period upon request for good cause. PNs may be published in a newspaper circulated in the locality of the proposed water source, or the department may use other publication methods to ensure adequate notice to the affected public. A PN shall be sent to any person who has requested a copy of the notice concerning the particular water use under consideration.

*b. Water use permit renewals.* The PN provisions of 50.7(2)*"a"* shall not apply to water use permit renewals.

**50.7(3)** *Notice to the applicant of criteria violation.* If the application review determines that the proposed withdrawal, diversion, or use of water violates one or more criteria and the application should therefore be disapproved, or approved only subject to special conditions to which the applicant has not agreed, the department shall notify the applicant and, when practical, suggest appropriate project modifications. The department shall offer the applicant an opportunity to submit comments before a decision is made.

**567—50.8(17A,455B) Decision by the department.**

**50.8(1)** *Form of decision.* The decision by the department shall be either approval or denial of the water use permit application. Each water use permit shall include appropriate standard and special conditions consistent with Iowa Code sections 455B.261 through 455B.274 and 455B.281 and 567—Chapters 50, 53 and 54. The decision shall incorporate by reference or attachment the summary report described in 50.7(1). Each decision shall include the following:

*a.* Determinations as to whether the project satisfies all relevant criteria not addressed in the attached summary report;

*b.* An explanation of the purpose for imposing each special condition; and

*c.* An explanation of consideration given to all comments submitted pursuant to 50.7(2) unless the comments are adequately addressed in the attached summary report.

**50.8(2)** *Notice of decision.* Copies of the decision shall be mailed to the applicant, any person who commented pursuant to 50.7(2), and any other person who has requested a copy of the decision. The decision shall be sent by certified mail. A decision becomes the final decision of the department unless a timely notice of appeal is filed in accordance with 50.8(3).

**50.8(3)** *Appeal of decision.* Any person aggrieved by a decision issued under this rule may file a notice of appeal with the director. The notice of appeal must be filed within 30 days following the certified mailing date of the decision unless the appellant shows good cause for failure to receive actual notice and file within the allowed time. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7. The department shall mail a copy of the notice of appeal to each person who commented on the application. If the appeal is from denial of a permit and a notice of recommendation to grant a permit was not published, the department shall publish the notice of commencement of a contested case and provide an opportunity for interested people to seek intervention in the contested case.

These rules are intended to implement Iowa Code sections 17A.3, 455B.105, 455B.171, 455B.262, 455B.264 through 455B.274, 455B.278, and 455B.281.

**567—50.9(455B) Conditions on permitted water uses.** This rule includes permit restrictions that apply to various types of permitted water uses. A permitted use may be subject to additional restrictions related to its potential effects on surface or groundwater. Procedures for determining conditions imposed due to well interference are found in 567—Chapter 54.

**50.9(1)** *Irrigation water use permits.*

*a. Authorized irrigation season.* Permits shall authorize irrigation of any general crop from April 1 to September 30 and any specialty crop from April 1 to October 31 unless the department finds that a different period is justified.

*b. Authorized annual amount.* Permits shall authorize withdrawals equivalent to one acre-foot per acre for a general crop and two acre-feet per acre for a specialty crop unless the department finds that a different amount is justified. Notwithstanding the general criteria in this paragraph, permits for irrigation of general crops from the alluvial aquifers of the Missouri and Mississippi Rivers shall authorize withdrawals of up to 1.5 acre-feet per acre if requested by the applicant unless the department finds that a different amount is justified.

*c. Conservation plan for erosion control.* Where 50.6(2) requires the submission of a soil conservation plan, an irrigation water use permit shall make authorization of irrigation contingent upon compliance with the soil conservation plan.

*d. Irrigation scheduling.* The department may require that irrigation of a general crop be scheduled according to a department-recommended method to minimize the potential for waste of water or by an equivalent method selected by the permittee and approved by the department.

*e. Irrigation system check valve.* Each irrigation water use permit shall require the installation of an adequate check valve and frequent inspections of proper valve function to prevent contaminants from back-siphoning into the water source before a fertilizer, pesticide, herbicide, or other additive is introduced into the irrigation system.

**50.9(2)** The amount of water authorized for industrial use or power generation use shall be consistent with industry-wide usage for the same or similar purposes and types of facilities and shall provide for growth where need is demonstrated by the applicant.

**50.9(3)** The amount of water authorized for use by a CWS shall not exceed 200 gallons per day per capita, except that additional water may be authorized for growth and industrial use where need is demonstrated by the applicant.

**50.9(4)** *Recreational and aesthetic water use permits.*

*a. Authorized amount.* The amount of water authorized for recreational and aesthetic uses shall be determined on a case-by-case basis.

*b. Watering system backflow-prevention valve.* Water use permits authorizing the use of water for turf or landscape plantings shall require the installation of an adequate check valve and annual inspections of proper valve function to prevent contaminants from back-siphoning into the water source before a fertilizer, pesticide, herbicide, or other additive is introduced into the irrigation system.

This rule is intended to implement Iowa Code section 455B.265.

**567—50.10(455B) Conditions on withdrawals from streams.** Water withdrawals from streams shall be subject to the following conditions:

**50.10(1)** *Protected flow restriction.* Except as provided in 50.10(2), withdrawals for consumptive uses, with the exception of CWSs, shall cease when the streamflow is below the protected flow designated in 50.15(3). When the flow of a stream, or portion thereof designated by the department, is below a flow equal to the protected flow plus the summation of all permitted consumptive withdrawals by permittees whose permits provide for maintenance of a protected flow in such stream or portion thereof, the department may, subject to the provisions of 50.10(2), order temporary cessation or rotation of all consumptive withdrawals, with the exception of CWSs, to ensure that the protected flow is preserved.

**50.10(2)** *Replacement water exemption.* Subrule 50.10(1) shall not apply to withdrawals for consumptive uses from a stream if the permittee discharges replacement water into such stream or tributary thereto at rates sufficient to offset the consumptive withdrawals and the department approves the method and location of discharge.

**567—50.11(455B) Conditions on water withdrawals from groundwater sources.**

**50.11(1)** *Withdrawals from unconfined aquifers adjacent to streams.* Water withdrawals from unconfined aquifers adjacent to streams shall be subject to the following conditions:

*a. Protected flow restriction.* Withdrawals for consumptive uses, with the exception of CWSs, at any point within 1/8 mile (660 feet) of an interior stream shall be considered withdrawals from the

stream and shall cease when the stream is below the protected flow designated in rule 567—50.15(455B) except as provided in 50.11(1)*"c"* to *"f."*

*b. Seven-day, one-in-ten-year low flow (7Q10) restriction.* Withdrawals for consumptive uses, with the exception of CWSs, at any point located between 1/8 mile (660 feet) and ¼ mile (1,320 feet) of a stream, other than a stream bordering the state, shall cease when the streamflow is at or below the 7Q10 as determined at the nearest downstream USGS gage, except as provided in 50.11(1)*"c"* to *"f."*

*c. Missouri/Mississippi River-interior stream confluence restriction.* Withdrawals for consumptive uses, with the exception of CWSs, from the alluvial aquifers below the floodplains of streams bordering the state at any point within 1/8 mile (660 feet) of any interior stream shall cease when the flow of such interior stream is at or below the 7Q10, except as provided in 50.11(1)*"d."*

*d. Other conditions.* Notwithstanding 50.11(1)*"a"* to *"c,"* other conditions may be imposed as necessary to ensure adequate protection of water supplies for ordinary household, livestock, and domestic uses; fish and wildlife use; recreational use; preservation and enhancement of aesthetic values; or other uses of a public nature.

*e. Replacement water exemption.* 50.11(1)*"a"* through *"c"* shall not apply to withdrawals for consumptive uses from an unconfined aquifer, if the permittee discharges replacement water into such stream or tributary thereto at rates sufficient to offset the consumptive withdrawals and the department approves the method and location of discharge.

*f. Exemptions from low-flow restrictions.* The restrictions of 50.11(1)*"a"* through *"d"* may be waived if the applicant or permittee can conclusively demonstrate, by conducting pump testing, that the withdrawal will not reduce the flow of the adjacent stream. The pump testing plan must be approved by the department prior to the testing.

**50.11(2)** *Withdrawals from the Cambrian-Ordovician (Jordan) aquifer.* Water withdrawals from the Cambrian-Ordovician (Jordan) aquifer, including the St. Peter sandstone formation, the Prairie du Chien group, and the Jordan sandstone formation, shall be subject to the following conditions:

*a. Two-hundred-gallon-per-minute (gpm) restriction.* New withdrawals of water for irrigation, recreational, or aesthetic uses shall not exceed 200 gpm. Existing permits for irrigation, recreational, and aesthetic uses that authorize withdrawal rates in excess of 200 gpm may be modified or rescinded if the department determines that any well in the vicinity experiences loss of water due to pumping or if the pumping water level is reduced to or below the levels described in 50.11(2)*"f"*(1) and 50.11(2)*"g"*(1).

*b. Two-thousand-gallon-per-minute (gpm) restriction.* New water withdrawals for industrial or power generation uses at a single plant location shall not exceed 2,000 gpm. Existing permits for industrial or power generation use that authorize withdrawal rates in excess of 2,000 gpm may be modified or rescinded if the department determines that any well in the vicinity experiences a loss of water due to pumping or if the pumping water level is reduced to or below the levels described in 50.11(2)*"f"*(1) and 50.11(2)*"g"*(1).

*c. Limited cooling and geothermal use.* No once-through (single pass with disposal to storm sewer or equivalent) cooling water or geothermal usage is allowed. Withdrawals for geothermal purposes are prohibited unless 100 percent of the withdrawn water is reinjected into the aquifer in accordance with department requirements.

*d. Jordan aquifer high-capacity permits and wells.* Water use permits for the Jordan aquifer shall be issued on a five-year permit cycle. A water use permit for wells expected to pump over 25,000 gallons per day from the Jordan aquifer shall be obtained from the department before any water well construction permit is issued. After a water use permit has been obtained, a county may issue a Jordan aquifer water well construction permit for any nonpublic water supply system unless that well is located in one of the protected-source areas listed in 567—subrules 53.5(2) and 53.5(3). The department may issue a Jordan aquifer water well construction permit for a public water supply system or a well located in the protected source areas listed in 567—subrules 53.5(2) and 53.5(3). All driller's logs for water use wells completed in the Jordan aquifer shall be submitted to the department and the Iowa Geological Survey.

*e. Tier 1 Jordan wells.* A Jordan water use well is classified as Tier 1 when pumping water levels have not reached the Tier 2 or Tier 3 levels described in 50.11(2)*"f"*(1) and 50.11(2)*"g"*(1). Permittees

with Tier 1 Jordan wells shall follow standard water use reporting procedures for the Jordan aquifer pursuant to rule 567—50.13(455B).

*f. Tier 2 Jordan wells.*

(1) A Jordan well is classified as Tier 2 when the pumping water level measured at the well declines over 300 feet below the 1978 Horick and Steinhilber potentiometric surface, or the pumping water level declines over 50 percent from the 1978 Horick and Steinhilber potentiometric surface and the top of the Jordan aquifer, whichever is more conservative.

(2) Permittees with Jordan wells that have reached the Tier 2 level shall develop a site-specific water use reduction plan and submit it to the department for review and approval. The water use reduction plan shall set a defined usage percent reduction target that will minimize Jordan aquifer withdrawals and prevent the decline of the water level from reaching the Tier 3 category pursuant to 50.11(2)*"g"*(1). If the water use reduction plan is not implemented, the department may reduce the permitted water use allocation, pursue permit enforcement, or rescind the permit.

*g. Tier 3 Jordan wells.*

(1) A Jordan well is classified as Tier 3 when the pumping water level measured at the well declines over 400 feet below the 1978 Horick and Steinhilber potentiometric surface, or the pumping water level declines over 75 percent from the 1978 Horick and Steinhilber potentiometric surface and the top of the Jordan aquifer, whichever is more conservative.

(2) Permittees with Jordan wells that have reached the Tier 3 level shall develop an aggressive water use reduction plan using an approved predictive model that will lead to recovery of the pumping water level to elevations above Tier 3 levels. The department shall review and approve the plan and model predictions. If water levels continue to decline beyond the Tier 3 level, the department may reduce the permitted water use allocation; pursue permit enforcement, including aspects of the water use reduction plan; or rescind the permit.

*h. Waivers.* Waivers from these rules will be considered by the department through the procedures found in 561—Chapter 10.

*i. Plan resources.* Resources for developing water use reduction plans are listed in 50.16(3)*"d."*

**567—50.12(455B) Duration of water use permits for withdrawal or diversion of water.**

**50.12(1)** *General.* A water use permit shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any permit extension unless the permit or its extension is terminated under rule 567—50.14(455B). A water use permit may be renewed if an application is submitted prior to the termination date specified in the permit.

**50.12(2)** *Withdrawal or diversion of surface water.* Water use permits for withdrawal or diversion of surface water shall be issued for ten years.

**50.12(3)** *Withdrawal of groundwater.* Water use permits for groundwater withdrawal shall be issued for a maximum period of ten years and may be granted for less than ten years if geological data on the capacity of the aquifer and its rate of recharge are indeterminate.

This rule is intended to implement Iowa Code section 455B.265.

**567—50.13(455B) Monitoring, recording, and reporting of water use and effects on water sources.**

**50.13(1)** *Water use reports.* Each permittee shall submit to the department, at least annually, or as prescribed by the department, reports of water used, diverted, or stored and any other information deemed necessary by the department.

**50.13(2)** *Access ports.* All new water use permits authorizing withdrawals from wells shall require that each authorized production well be equipped with an access port with a minimum diameter of ¾ inch. Access ports must be located to allow insertion of a steel tape or electric probe into the well casing for measurement of water levels.

**50.13(3)** *Pump tests and observation wells.* A permittee may be required to conduct a pump test as a condition of keeping a water use permit if the department finds a pump test is necessary to determine the effects that the authorized withdrawals have on other water users. A pump test, authorized by the department and supervised by a certified well contractor, licensed professional engineer, or other

department designee, may be required for an administrative resolution of a well interference conflict pursuant to 567—Chapter 54. A permittee may be required to construct, develop, and maintain adequate observation wells for use in a pump test and for subsequent water level measurements or water quality monitoring.

This rule is intended to implement Iowa Code sections 455B.261, 455B.264, 455B.266, 455B.268(1) and 455B.281.

**567—50.14(455B) Modification, termination, and emergency suspension of water use permits.**

**50.14(1)** *General.* Except as provided in 50.14(2), after at least 30 days' written notice mailed to the permittee's last-known address by certified mail, and an opportunity for the permittee to be heard in an evidentiary hearing conducted in accordance with Iowa Code chapter 17A, the department may modify or terminate a water use permit or any permit condition, notwithstanding any other rule, for any of the following reasons:

*a. Violation of permit condition or law.* Violation of a permit condition or the law pertaining to the water use permit by the permittee or permittee's agent, tenant, or consultant.

*b. Nonuse.* The permittee has failed for three consecutive years to use the water, and the permittee has not demonstrated adequate plans to use the water within a reasonable time. Nonuse due to adequate rainfall shall not be a justification for permit termination. However, authorization to withdraw water from a proposed well may be terminated after notice to the permittee if the permittee has failed to construct the proposed well within three years after permit issuance.

*c. Public health and safety.* Modification or termination is necessary to protect the public health and safety, to protect the public interests in lands and waters, or to prevent any manner of substantial injury to persons or property.

*d. Addition of conservation provisions.* Modification to include conservation provisions is deemed necessary by the department.

*e. Allocated amount.* For three consecutive years, annual water use has exceeded the amount of water allocated in the water use permit.

**50.14(2)** *Emergency suspension or restriction.* Notwithstanding any other rule or permit conditions, if the department finds that it is imperatively necessary in an emergency to protect from imminent danger or substantial injury the public health, welfare, or safety, or the public or private interest in lands or water, or to implement the priority allocation system pursuant to rule 567—50.17(455B), and these findings are incorporated into a written emergency order to the permittee, the department may immediately suspend or restrict operations under a water use permit and require the permittee to take measures necessary to prevent or remedy the injury. The emergency order shall state an effective date appropriate to the situation that invoked the suspension or restriction and shall be immediately effective on that date unless stayed, modified, or vacated at a hearing before the commission or by the court. The emergency order shall remain in effect until a date specified in the order unless the order is revoked or the expiration date is modified due to a change in the situation giving rise to the order or a decision following appeal.

This rule is intended to implement Iowa Code sections 455B.271, 455B.272 and 17A.3.

**567—50.15(455B) Designated protected flows of streams.**

**50.15(1)** *Purpose.* A protected flow is designed to protect and maintain adequate water supplies for: ordinary household, livestock, and domestic uses; fish and wildlife use; recreational use; in-stream wasteload assimilation and pollution control; beneficial water use needs in the watershed; preservation or enhancement of aesthetic values; and other uses of a public nature.

**50.15(2)** *Protected flow basis.* Protected flows are based in part on statistical information in "Low-Flow Characteristics of Iowa Streams" (INRC Bulletin No. 9 (1958)), "Low-Flow Characteristics of Iowa Streams through 1966" (INRC Bulletin No. 10 (1970)), "Annual and Seasonal Low-Flow Characteristics of Iowa Streams" (INRC Bulletin No. 13 (1976)), and "Statistical Summaries of Selected Iowa Streamflow Data Through September 1996, USGS Open-File Report 98-176 (1998)."

**50.15(3)** *Protected flow levels.*

*a. At stream gaging stations.* Protected flows, expressed in cubic feet per second (cfs) at points on a stream with an official USGS streamflow gage, are listed in the table below.

**Protected Flow at USGS Stream Gaging Locations**

| River or Stream | Gage Location | USGS Gage Number | Protected Low Flow (CFS) |
|---|---|---|---|
| Beaver Creek | New Hartford | 5463000 | 18 |
| Big Creek | Mount Pleasant | 5473450 | 2 |
| Black Hawk Creek | Hudson | 5463500 | 4.5 |
| Boone River | Webster City | 5481000 | 24 |
| Boyer River | Logan | 6609500 | 41 |
| Cedar River | Conesville | 5465000 | 1240 |
| Cedar River | Cedar Rapids | 5464500 | 937 |
| Cedar River | Waterloo | 5464000 | 710 |
| Cedar River | Janesville | 5458500 | 185 |
| Cedar River | Charles City | 5457700 | 100 |
| Chariton River | Rathbun | 6903900 | 2.9 |
| Des Moines River | Keosauqua | 5490500 | 350 |
| Des Moines River | Ottumwa | 5489500 | 300 |
| Des Moines River | Tracy | 5488500 | 300 |
| Des Moines River | Des Moines (14th St.) | 5485500 | 300 |
| Des Moines River | Saylorville | 5481650 | 200 |
| Des Moines River | Stratford | 5481300 | 310 |
| Des Moines River | Fort Dodge | 5480500 | 220 |
| East Fork Des Moines River | Dakota City | 5479000 | 42 |
| East Nishnabotna River | Red Oak | 6809500 | 37 |
| East Nishnabotna River | Atlantic | 6809210 | 18 |
| Floyd River | James | 6600500 | 22 |
| Iowa River | Wapello | 5465500 | 1390 |
| Iowa River | Lone Tree | 5455700 | 150 |
| Iowa River | Iowa City | 5454500 | 150 |
| Iowa River | Marengo | 5453100 | 204 |
| Iowa River | Marshalltown | 5451500 | 104 |
| Iowa River | Rowan | 5449500 | 21 |
| Little Cedar River | Ionia | 5458000 | 28 |
| Little Sioux River | Turin | 6607500 | 200 |
| Little Sioux River | Correctionville | 6606600 | 106 |
| Little Sioux River | Linn Grove | 6605850 | 42 |
| Maple River | Mapleton | 6607200 | 50 |
| Maquoketa River | Maquoketa | 5418500 | 372 |
| Middle Raccoon River | Panora | 5483600 | 20 |
| Middle River | Indianola | 5486490 | 14.6 |
| Monona-Harrison Ditch | Turin | 6602400 | 27 |
| Nishnabotna | Hamburg | 6810000 | 128 |
| Nodaway | Clarinda | 6817000 | 15 |
| North Raccoon River | Jefferson | 5482500 | 82 |
| North Raccoon River | Sac City | 5482300 | 14 |
| North River | Norwalk | 5486000 | 5.6 |
| North Skunk River | Sigourney | 5472500 | 35 |
| Raccoon River | Van Meter | 5484500 | 190 |
| Rock River | Rock Valley | 6483500 | 26 |
| Shell Rock River | Shell Rock | 5462000 | 147 |
| Skunk River | Augusta | 5474000 | 287 |

| River or Stream | Gage Location | USGS Gage Number | Protected Low Flow (CFS) |
|---|---|---|---|
| Soldier River | Pisgah | 6608500 | 20 |
| South Raccoon River | Redfield | 5484000 | 58 |
| South River | Ackworth | 5487470 | 4.1 |
| South Skunk River | Oskaloosa | 5471500 | 94 |
| South Skunk River | Ames (below Squaw Creek) | 5471000 | 23 |
| South Skunk River | Ames | 5470000 | 4.8 |
| Thompson River | Davis City | 6898000 | 13 |
| Turkey River | Garber | 5412500 | 210 |
| Upper Iowa River | Decorah | 5387500 | 80 |
| Walnut Creek | Hartwick | 5452200 | 2 |
| Wapsipinicon River | DeWitt | 5422000 | 150 |
| Wapsipinicon River | Independence | 5421000 | 17 |
| West Fork Cedar River | Finchford | 5458900 | 66 |
| West Fork Ditch | Hornick | 6602020 | 12 |
| West Nishnabotna River | Randolph | 6808500 | 67 |
| West Nishnabotna River | Hancock | 6807410 | 49 |
| White Breast Creek | Dallas | 5487980 | 3.2 |
| Winnebago River | Mason City | 5459500 | 39 |

*b. At stream locations other than gaging stations.* The protected flow for points on a stream, other than at a USGS gaging station, shall be established, as the need arises, by comparison of available streamflow data and basin characteristics.

This rule is intended to implement Iowa Code sections 455B.261, 455B.262 and 455B.267.

**567—50.16(455B) Water conservation.**

**50.16(1)** *General.* The purpose of these water conservation requirements is to preserve the availability of water that is withdrawn for use, as opposed to protected flow provisions that preserve in-stream flows.

*a.* Each water use permit, including any permit granted to a CWS, will include conditions requiring routine (day-to-day) conservation practices and emergency conservation practices after department notification. Existing permits may be modified to include conservation conditions pursuant to 50.14(3) if deemed necessary by the department.

*b.* Only general provisions for routine conservation will be included in a water use permit unless water is to be withdrawn from a protected water source designated in 567—Chapter 53 that has specific requirements for routine conservation. Such permit conditions are primarily intended to raise awareness of water usage, develop a preparedness for periods of water shortages, and minimize waste of water.

*c.* General conditions involving emergency conservation will be included in all water use permits. Specific emergency conservation conditions may be included in a permit pursuant to 50.16(2). If specific emergency conservation permit conditions are required, they will be based on a department-approved water conservation plan developed by the permittee or applicant in accordance with 50.16(3).

*d.* The purpose of emergency conservation is to minimize consumptive use of water from a source experiencing a temporary shortage. Emergency conservation restrictions will be imposed only when water shortages are imminent or actually exist, in accordance with rule 567—50.17(455B). Long-term water shortages are addressed in the protected source rules, 567—Chapter 53.

**50.16(2)** *Applicability of emergency conservation.* Specific emergency conservation requirements may be made a condition of a water use permit if the proposed or permitted withdrawal could result in a significant consumptive use of water from a source that is likely to experience a short-term shortage. Specific emergency conservation requirements will not normally be included in a water use permit under any of the following conditions:

*a.* The proposed or existing permitted water use involves a consumptive use of less than 25,000 gallons per day from any water source during periods of substantial water shortage.

*b.* The proposed or permitted use is subject to protected streamflow conditions pursuant to rule 567—50.15(455B).

*c.* The water source for the proposed or permitted use is a surface water impoundment or purchased storage owned by the applicant or permittee.

*d.* The proposed or permitted use is unable to conserve water without substantially disrupting or ceasing an essential activity that requires water.

*e.* The proposed or permitted withdrawal is from a source of water that is not likely to experience a substantial short-term water shortage, including but not limited to the Missouri and Mississippi Rivers and adjacent alluvial aquifers and the Iowa Great Lakes (West Okoboji, East Okoboji, Big Spirit, Little Spirit, Upper Gar, Lower Gar, and Lost Island Lakes).

*f.* The source of water is or will be utilized by only the permitted or proposed water user and withdrawal from the source for the permitted or proposed use has no potential for affecting other water uses.

**50.16(3)** *Water conservation plans.* The department may require a water conservation plan to be submitted by any existing permittee after a minimum of 90 days' notice. If a water conservation plan is required with a renewal application, the department will notify the permittee at least 120 days prior to expiration of the water use permit. Water conservation plans shall describe the measures to be used to achieve water conservation and estimate the water savings from each measure.

*a. General provisions.* The following information shall be included in all water conservation plans:

(1) A description of each source of water withdrawal, including the location, well depth, pumping rate, and date of installation.

(2) A description of the wastewater discharge, including the location and discharge frequency.

(3) Monthly withdrawal amounts from each source for the past five years.

(4) Monthly total water withdrawal amount for the past five years.

(5) Monthly total wastewater discharge amount for the past five years.

(6) A quarterly breakdown, by the water use categories in 50.17(3), of total water use and estimated consumptive water use over the past five years.

(7) A description of any previous water shortage problems, including the cause, frequency, other affected parties, and how they were resolved.

(8) Identification of nearby water supplies that are potentially affected by or could potentially affect the proposed or permitted withdrawal.

(9) A means of identifying impending water shortage problems.

*b. Routine conservation provisions.* Consideration of routine conservation is encouraged in a water conservation plan. Documented water savings from routine conservation measures will be credited toward emergency conservation requirements. Suggested routine conservation measures include:

(1) Use of water-saving plumbing devices or required use of these devices in building codes.

(2) Scheduling irrigation to minimize peak water use.

(3) Use of efficient irrigation techniques.

(4) Implementing programs to minimize lost water, such as distribution system leaks.

(5) Use of metered water billing by public water supplies.

(6) Utilizing best commercially available technology to optimize efficiency of water use.

(7) Implementing recycling and reuse practices.

(8) Developing alternative water sources that are not susceptible or are less susceptible to shortages.

(9) Increasing rates charged for water or eliminating reduced rates for large users.

*c. Emergency conservation provisions.* Water conservation plans shall contain emergency conservation provisions in accordance with the following criteria.

(1) General.

1. The consumptive nature of a water use, as described in 50.16(2) and in accordance with this subrule, shall be reduced by at least 50 percent over similar periods of normal use. This criterion does not apply to irrigation use. If this requirement cannot be met, justification for nonattainment shall be provided. Justification shall include documentation that an activity involving water use is essential and

that the best commercially available technology is being used. The department may then grant waivers on a case-by-case basis.

2. Measures that will be credited for emergency conservation include but are not limited to the following:

- Documented water savings resulting from routine water conservation measures;
- Shutdown, postponement, or curtailment of nonessential water use activities;
- Switching to nonaffected sources for water supply;
- Mitigation of consumptive uses by directly discharging stored water or water from a nonaffected source to the affected water source;
- Acquisition and retirement of existing consumptive uses from the affected water source (credit for retirement of existing consumptive uses will be given only for the amount authorized during periods when emergency conservation is required); and
- Imposing surcharges on water use during periods of shortage.

(2) Public water supplies (PWSs). At a minimum, emergency water conservation plans for PWSs must include provisions for restricting outside, consumptive water use.

(3) Irrigation water use.

1. Emergency water conservation plans for irrigation water uses shall limit irrigation water use to the equivalent of one inch per irrigated acre per week for general crops and specialty crops unless the plan contains other mitigating provisions, such as those listed above in 50.16(3)*"c"*(1).

2. Water conservation plans shall address irrigation scheduling. Irrigation scheduling should attempt to provide approximately equal water use on each day of an irrigation cycle. Scheduling may be done in cooperation with other nearby irrigators who utilize the same water source.

*d. Resources for water conservation and water use reduction planning.*

(1) The following resources are suggested by and available from the department as guidance for the development of water conservation plans and water use reduction plans:

1. "Water Wise—Efficiency Planning and Water Conservation Plan Workbook for Water and Wastewater Utilities," Iowa Association of Municipal Utilities, 2013 (available online through the department's website).

2. "Water Conservation Programs—A Planning Manual," Manual of Water Supply Practices M52, American Water Works Association, 2006.

3. "Handbook of Water Use and Conservation," Amy Vickers, Waterplow Press, Amherst, Massachusetts, 2001.

(2) Water conservation plans and water use reduction plans shall comply with the standards of the American Water Works Association or a reasonable equivalent as determined by the department.

This rule is intended to implement Iowa Code sections 455B.262 and 455B.265.

**567—50.17(455B) Priority allocation restrictions.**

**50.17(1)** *General.* After any triggering event described in 50.17(2) occurs, the department will investigate and may restrict water use according to the priority allocation plan described in 50.17(3). Prior to imposing the priority allocation plan, the department will normally require emergency conservation measures to be taken by existing permittees. The department will not normally require emergency conservation until a shortage of water is imminent and will not normally impose the priority allocation plan until an actual impairment of water usage exists.

*a.* The department will notify existing permittees of any emergency restriction or suspension of water use by written order pursuant to 50.14(2). A permittee will be required to maintain daily water withdrawal and wastewater discharge records, if any, while the emergency order is in effect. These records shall be available for department inspection to verify compliance with the order.

*b.* Suspension or restriction of water usage applicable to otherwise nonregulated water users shall be by emergency order of the director that the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified, or vacated at a hearing before the commission or by a court.

*c.* The department will lift the suspension or restriction of water usage, as deemed appropriate, when evidence of sustained, improved conditions is available.

*d.* The department will not impose a suspension of water or a further restriction, other than emergency conservation, on the uses of water provided in 50.17(3)*"b"*(6) through (8), or on uses of water pursuant to a contract with the state as provided in Iowa Code sections 455B.263(5) and 455B.263(6), unless the governor has issued a proclamation as described in 50.17(2)*"b."* Notwithstanding such proclamation, in the case of water use under a contract with the state pursuant to Iowa Code sections 455B.263(5) and 455B.263(6) and in effect prior to March 5, 1985, restriction or suspension measures will be limited to emergency conservation.

**50.17(2)** *Triggering events.* The department may implement the priority allocation plan following the occurrence of any of the following:

*a.* Receipt of a petition by a governmental subdivision or 25 persons to implement the priority allocation plan due to a substantial local water shortage adversely affecting their water supply.

*b.* Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

*c.* Determination by the department in conjunction with the homeland security and emergency management division of the Iowa Department of Public Defense of a local crisis that affects availability of water.

*d.* Receipt of information from a state or federal natural resource, research, or climatological agency indicating that a drought of local or state magnitude is imminent. As a general guideline, emergency conservation or priority allocation restrictions will not be imposed on withdrawals from a surface stream or adjacent alluvial aquifer when streamflow is above the 7Q10 level.

**50.17(3)** *Priority allocation plan.* Notwithstanding a person's possession of a permit or a person's use of water being a nonregulated use, the department may suspend or restrict water use by use category on a local or statewide basis in the following order:

*a.* Water conveyed across state boundaries.

*b.* Water used for:

(1) Recreational or aesthetic purposes.

(2) Irrigation of general crops.

(3) Irrigation of specialty crops.

(4) Manufacturing or other industrial processes.

(5) Generation of electrical power.

(6) Livestock production.

(7) Human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies.

(8) Human consumption and sanitation supplied by a private water supply.

This rule is intended to implement Iowa Code section 455B.266.

**567—50.18(455B) Well plugging.** When a water use well is no longer used, or is in a state of disrepair or neglect, the permittee shall be responsible for plugging the well in accordance with Iowa Code section 455B.190, 567—Chapter 39, or by an alternate method approved by the department for prevention of groundwater pollution. The well plugging form must be completed and submitted as specified on the form. However, the department shall grant a waiver from the well plugging requirement if a permittee demonstrates an intent to maintain the well as a source of water for a nonregulated use or if the department determines that the well should be maintained as an observation well.

This rule is intended to implement Iowa Code sections 455B.262 through 455B.279(2).

ITEM 2. Rescind and reserve **567—Chapter 51**.

ITEM 3. Rescind and reserve **567—Chapter 52**.

# ARC 8652C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to protected water sources and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 53, "Protected Water Sources — Purposes — Designation Procedures — Information in Withdrawal Applications — Limitations — List of Protected Sources," and to adopt a new Chapter 53, "Protected Water Sources," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3), 455B.262(3), 455B.263(8), 455B.264, 455B.274, 455B.275(9) and 455B.278(1).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.262, 455B.264 through 455B.274 and 455B.278.

*Purpose and Summary*

Proposed Chapter 53 provides procedures for designating specific surface water and groundwater sources as protected sources, including information that water use permit applicants and nonregulated entities are to provide to withdraw water from such sources. The sources designated as protected sources are clearly listed and mapped in the chapter. Designation of protected surface and groundwater sources allows for continued beneficial use of those sources while protecting their capacity to supply adequate quantity and quality of water for use within the state of Iowa. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Chad Fields
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at chad.fields@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al chad.fields@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 3, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |
| February 4, 2025 | Virtual meeting |
| 10 to 11 a.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at chad.fields@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.725.3407 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al chad.fields@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.725.3407 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 53 and adopt the following **new** chapter in lieu thereof:

CHAPTER 53
PROTECTED WATER SOURCES

**567—53.1(455B) Designation of protected sources.**

**53.1(1)** The department may designate a surface water or groundwater source within a defined geographical area as a protected source. Notwithstanding the requirements in this chapter, the department may impose permit conditions on a case-by-case basis to protect the water resources of the state.

**53.1(2)** The purpose of designating a water source as a protected source is to ensure long-term availability in terms of quantity and quality to preserve public health and welfare. Purposes include but are not limited to the following:

*a.* To preserve the availability of the protected source for sustained beneficial use.

*b.* To prevent or minimize the movement of groundwater contaminants.

*c.* To maintain the surface water quality within a specific stream segment in order to meet state or federal standards, to preserve protected flows, or to maintain its availability for other beneficial use.

*d.* To preserve the protected flows in a stream that is hydraulically connected to a protected groundwater source.

This rule is intended to implement Iowa Code sections 455B.262, 455B.264 through 455B.274 and 455B.278.

**567—53.2(455B) Designation procedure.** The procedure for designation of a protected source shall be a rulemaking to amend the list of protected sources in rule 567—53.5(455B). In addition to the requirements of rule 561—5.1(17A), an interested person who petitions the department to designate a protected water source may also be required to provide supporting information, including but not limited to:

**53.2(1)** Facts and arguments demonstrating that existing rules and the opportunity for public participation in the application review and decision-making procedures of rule 567—50.7(17A,455B) and 567—subrule 50.8(3) are inadequate to ensure the long-term availability of the source and to preserve the public health and welfare.

**53.2(2)** Predictive geohydrological and chemical analyses of the groundwater source if the petition is to prevent or minimize the movement of known or suspected contaminants.

**53.2(3)** Facts and arguments demonstrating the effect that additional withdrawals from a stream or stream segment proposed for designation would have on downstream discharges, surrounding alluvial systems, and biological systems, and on potential changes in the frequency at which the protected stream discharge levels are reached.

This rule is intended to implement Iowa Code sections 455B.262, 455B.264 through 455B.274 and 455B.278.

**567—53.3(455B) Information requirements for applications to withdraw water from protected sources.** An applicant proposing to withdraw water from a protected source, as listed in rule 567—53.5(455B), may be required to submit information necessary for the department to determine the effects resulting from such withdrawal.

**53.3(1)** *Withdrawals from protected groundwater sources.* Applicants for water use permits may be required to provide the information detailed in rule 567—50.7(17A,455B) and additional predictive geohydrological and chemical analyses of the groundwater source. Where there is potential for a known contaminant to migrate, predictive analyses may also be requested to show potential movement and effects of the withdrawal on the hydraulic head. Monitoring may be required in permits authorizing withdrawals from a protected groundwater source.

**53.3(2)** *Withdrawals from protected surface water sources.* Applicants for water use permits may be required to demonstrate the effect of proposed withdrawals on downstream discharges, surrounding alluvial systems, and biological systems, and of potential changes in the frequency at which protected stream discharge levels are reached, for any stream or stream reaches listed in rule 567—53.5(455B).

This rule is intended to implement Iowa Code sections 455B.262, 455B.264 through 455B.274 and 455B.278.

**567—53.4(455B) Conditions in permits for withdrawals of water from a protected source.** The designation of a protected water source in rule 567—53.5(455B) may include a list of special conditions for permits issued for withdrawals of water from the designated source. The designation may also include guidelines for the imposition of special limitations on withdrawals authorized by permits that were in force on the effective date of the protected source designation. However, such guidelines may be enforced only in accordance with the procedures in rule 567—50.14(455B) for modification, termination, and emergency suspension of permits, or after a permittee has had an opportunity to contest the imposition of proposed special limitations in permit renewal proceedings. When a group of permits is

potentially affected by the guidelines in rule 567—53.5(455B), hearings under rule 567—50.14(455B) may be consolidated.

**53.4(1)** *Withdrawals from streams or associated alluvium that are protected sources.* The department may apply special conditions on all water use permits for withdrawals from streams and associated alluvial systems that are protected water sources listed in rule 567—53.5(455B). Such conditions may include a cessation of withdrawals at a stream discharge rate as determined by the department when withdrawals may be in excess of the level required by 567—subrule 50.15(3). These conditions may apply to both consumptive and nonconsumptive withdrawals.

**53.4(2)** *Withdrawals from groundwater sources that are protected sources.* The department may apply special conditions on all water use permits for withdrawals from groundwater systems that are protected water sources listed in rule 567—53.5(455B). Such conditions may include immediate cessation of withdrawals if declines in hydraulic head or movement of known contaminants in the source are detected. These conditions may apply to both consumptive and nonconsumptive withdrawals.

This rule is intended to implement Iowa Code chapter 455B.is

**567—53.5(455B) List of protected water sources.** The following list identifies water sources designated as protected sources under this chapter. Each listing includes the name of the designated surface water or groundwater source, the geographical areas affected, the specific purposes for designating the source, and special limitations imposed or recommended to achieve the purpose of the protected source designation. The listing may also include special monitoring requirements or specify a date by which the department must review a protected source designation.

**53.5(1)** *Ralston Site, Linn County.*

*a. Geographic area.* The protected water source area includes an area within the boundaries of the cities of Cedar Rapids and Marion in Linn County. The actual geographical boundaries of the area are defined in 53.5(1)*"d."*

*b. New or modified water use permits.* Any new application for a permit to withdraw groundwater or to increase an existing permitted groundwater withdrawal from within the protected water source area will be restricted or denied, if necessary to preserve public health and welfare or to minimize movement of groundwater contaminants from the Ralston Site. The Ralston Site is identified as an EPA Comprehensive Environmental Response, Compensation, and Liability Act site under identification number IAD 980632491.

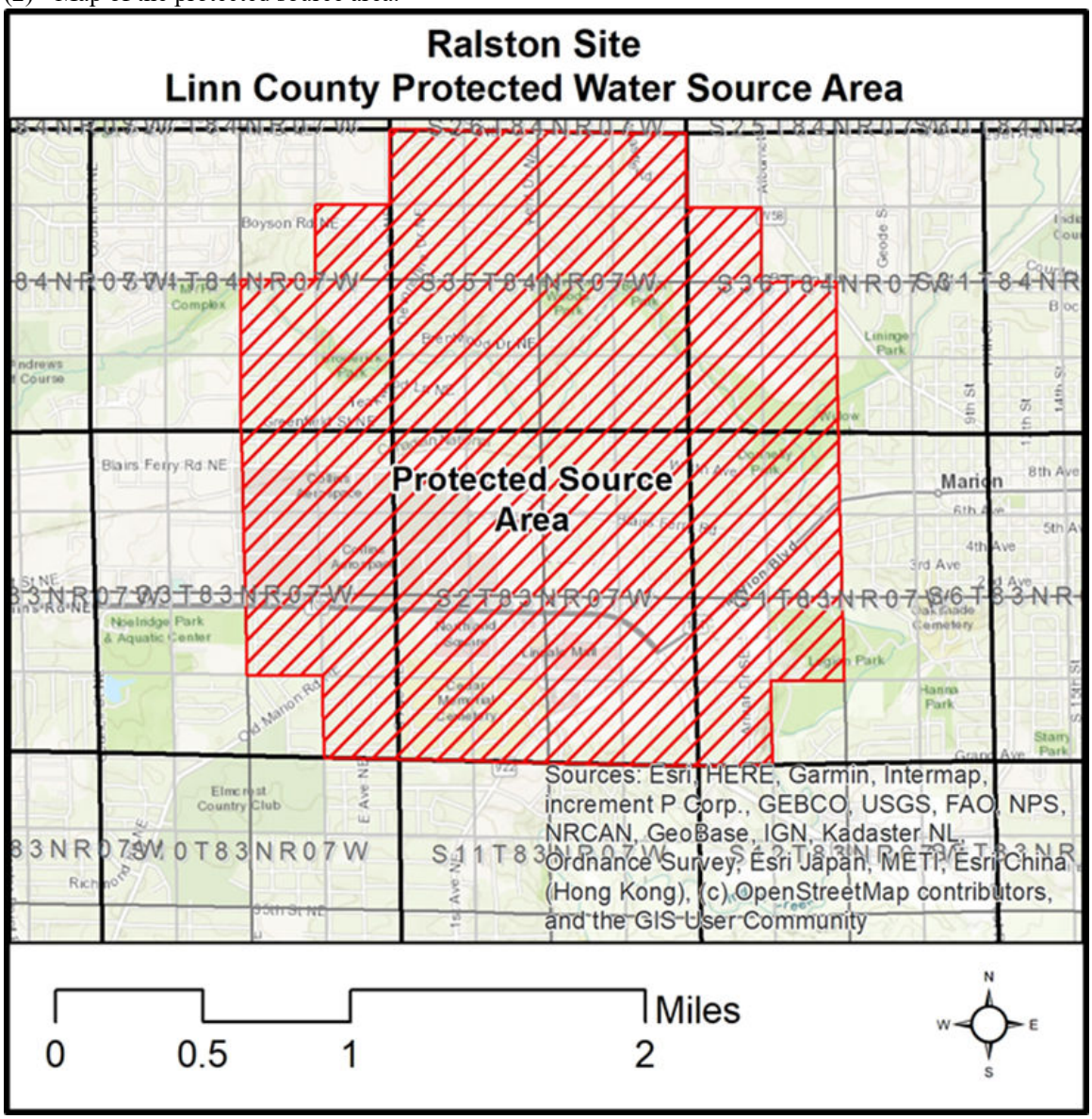
*c. Groundwater withdrawal.* Groundwater withdrawal from within the protected water source area may also be restricted or denied from what would otherwise be nonregulated wells, if necessary to preserve public health and welfare or to minimize the movement of groundwater contaminants from the Ralston Site. The Linn County health department will refer any application for a private well construction permit within the protected water source area to the department, which will determine whether to permit the proposed well.

*d. Map of protected water source area.* The department shall maintain a map of the protected water source area.

(1) The entire following described area within Linn County is defined as a protected water source:

1. All areas of Section 35, Township 84 North, Range 7 West.
2. All areas of the SW ¼ of Section 36, Township 84 North, Range 7 West.
3. All areas of the SW ¼ of the NW ¼ of Section 36, Township 84 North, Range 7 West.
4. All areas of the SE ¼ of Section 34, Township 84 North, Range 7 West.
5. All areas of the SE ¼ of the SE ¼ of Section 34, Township 84 North, Range 7 West.
6. All areas of Section 2, Township 83 North, Range 7 West.
7. All areas of the NW ¼ of the NW ¼ of Section 1, Township 83 North, Range 7 West.
8. All areas of the N ½ of the SW ¼ of Section 1, Township 83 North, Range 7 West.
9. All areas of the SW ¼ of the SW ¼ of Section 1, Township 83 North, Range 7 West.
10. All areas of the NE ¼ of Section 3, Township 83 North, Range 7 West.
11. All areas of the N ½ of the SE ¼ of Section 3, Township 83 North, Range 7 West.
12. All areas of the SE ¼ of the SE ¼ of Section 3, Township 83 North, Range 7 West.

(2) Map of the protected source area.




**53.5(2)** *Cambrian-Ordovician (Jordan) aquifer in Johnson and Linn Counties.*

*a. Geographical area.* The protected water source area includes portions of Johnson and Linn Counties. The actual geographical boundaries of the area are defined in 53.5(2)*"d."*

*b. New or modified water use permits.* Any new application for a permit to withdraw groundwater or to increase an existing permitted groundwater withdrawal from the Cambrian-Ordovician (Jordan) aquifer within the protected water source area will be restricted or denied if necessary to preserve public health and welfare.

*c. Groundwater withdrawal.* Groundwater withdrawal from within the protected water source area may also be restricted or denied from water supply wells constructed in the Cambrian-Ordovician (Jordan) aquifer, public or private, and the construction of all new water supply wells in this aquifer shall be restricted or denied, if necessary, to preserve public health and welfare or to minimize adverse effects to the available head. The Johnson County and Linn County health departments are not authorized to issue a construction permit for a private well drilled into or through the Cambrian-Ordovician (Jordan) aquifer within the protected water source area without department approval. The department will

determine whether the proposed well can be constructed and may require that the well meet public water well standards.

*d. Map of protected water source area.* The department shall maintain a map of the protected water source area.

(1) The entire following described area within Johnson County and within Linn County is defined as a protected water source.

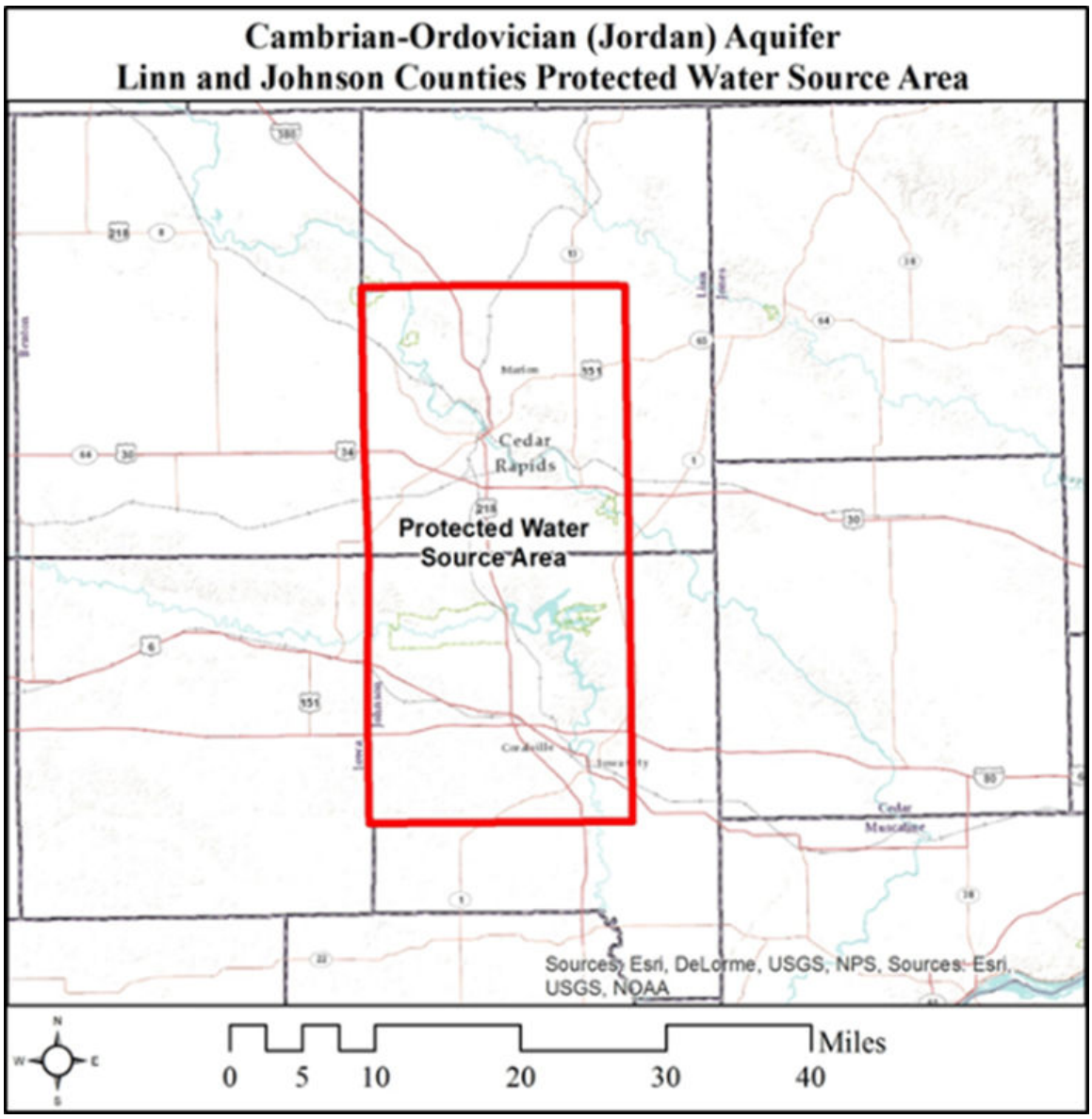
**Johnson County**

1. All areas of Township 79 North, Range 6 West.
2. All areas of Township 79 North, Range 7 West.
3. All areas of Township 79 North, Range 8 West.
4. All areas of Township 80 North, Range 6 West.
5. All areas of Township 80 North, Range 7 West.
6. All areas of Township 80 North, Range 8 West.
7. All areas of Township 81 North, Range 6 West.
8. All areas of Township 81 North, Range 7 West.
9. All areas of Township 81 North, Range 8 West.

**Linn County**

1. All areas of Township 82 North, Range 6 West.
2. All areas of Township 82 North, Range 7 West.
3. All areas of Township 82 North, Range 8 West.
4. All areas of Township 83 North, Range 6 West.
5. All areas of Township 83 North, Range 7 West.
6. All areas of Township 83 North, Range 8 West.
7. All areas of Township 84 North, Range 6 West.
8. All areas of Township 84 North, Range 7 West.
9. All areas of Township 84 North, Range 8 West.

(2) Map of the described protected water source area in Linn and Johnson Counties.




**53.5(3)** *Cambrian-Ordovician (Jordan) aquifer in Webster County.*

*a. Geographical area.* The protected water source area includes portions of Webster County. The actual geographical boundaries of the area are defined in 53.5(3)*"d."*

*b. New or modified water use permits.* Any new application for a permit to withdraw groundwater or to increase an existing permitted groundwater withdrawal from the Cambrian-Ordovician (Jordan) aquifer within the protected water source area will be restricted or denied if necessary to preserve public health and welfare.

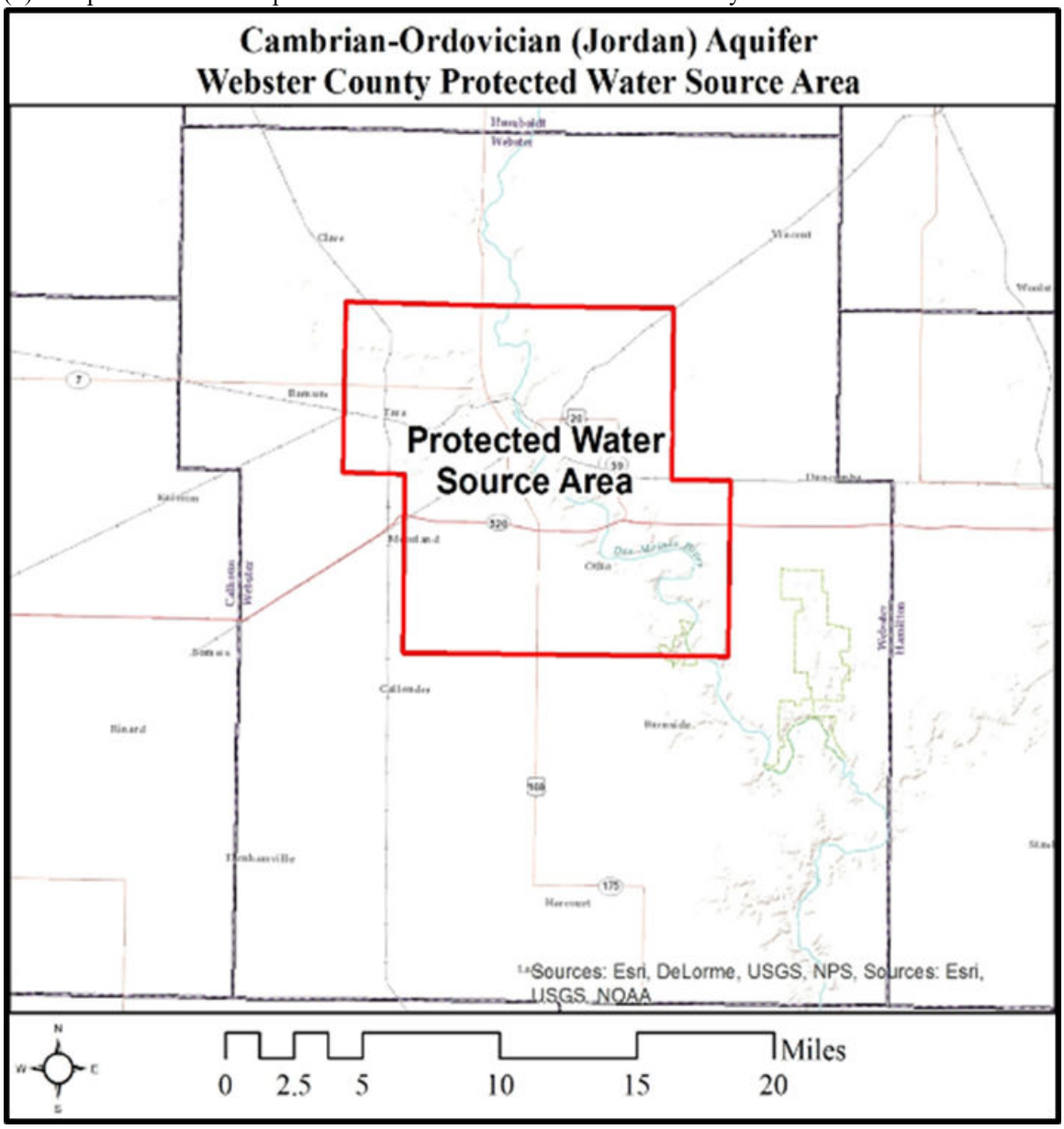
*c. Groundwater withdrawal.* Groundwater withdrawal from within the protected water source area may also be restricted or denied from water supply wells constructed in the Cambrian-Ordovician (Jordan) aquifer, public or private, and the construction of all new water supply wells in this aquifer shall be restricted or denied, if necessary, to preserve public health and welfare or to minimize adverse effects to the available head. The Webster County health department is not authorized to issue a construction permit for a private well drilled into or through the Cambrian-Ordovician (Jordan) aquifer within the protected water source area without department approval. The department will determine whether the proposed well can be constructed and may require that the well meet public water well standards.

*d. Map of protected water source.* The department shall maintain a map of the protected water source area.

(1) The entire following described area within Webster County is defined as a protected water source.

1. All areas of Township 88 North, Range 28 West.
2. All areas of Township 88 North, Range 29 West.
3. All areas of Township 89 North, Range 28 West.
4. All areas of Township 89 North, Range 29 West.

(2) Map of the described protected water source area in Webster County.




**53.5(4)** *Iowa Army Ammunition Plant (IAAAP) RDX Contaminant Site in Des Moines County and Lee County.* The IAAAP hexahydro-1,3,5-trinitro-1,3,5-triazine (CAS Registry Number 121-82-4, also known as RDX, or Royal demolition explosive) protected water source area is known as the IAAAP RDX protected water source area.

*a. Geographical area.* The IAAAP RDX protected water source area includes portions of Des Moines and Lee Counties. The geographical boundaries of the area are defined in 53.5(4)*"e."* The

IAAAP site is identified as an EPA Comprehensive Environmental Response, Compensation, and Liability Act site under identification number IA7213820445.

*b. New or modified water use permits.* Any new application for a permit to withdraw groundwater or to increase an existing permitted groundwater withdrawal from the IAAAP RDX protected water source area will be restricted or denied if necessary to preserve public health and welfare and to minimize the movement of groundwater contaminants from the IAAAP RDX site.

*c. Groundwater withdrawal.* Groundwater withdrawal from within the protected water source area may also be restricted or denied from regulated or nonregulated water supply wells, and the construction of all new water supply wells shall be restricted or denied, if necessary, to preserve public health and welfare and to minimize movement of groundwater contaminants.

(1) The department is the only authorized well permitting authority within the protected water source area. No well shall be constructed within the protected water source area unless a written permit is obtained from the department.

(2) All well construction permit applications for this protected water source area shall be submitted to the department. The Des Moines County and Lee County health departments or their designated permitting authorities shall refer all private well construction permit applications to the department when the proposed wells are located within the protected water source area.

(3) The department will determine whether the proposed well can be installed and the well construction standards that are required for the well's installation. All approved well construction shall use department-approved well construction standards and operational standards to ensure the protection of public health and welfare and to minimize the potential movement of contaminants in the groundwater within the protected water source area.

*d. Boundaries.* When monitoring results, or an investigation conducted by the department, the IAAAP, or an agent designated by either party indicates that the monitored contaminant concentrations or the monitored contaminant boundaries have significantly changed, the department may increase or decrease the boundaries of the protected water source area to maintain the separation distance to the monitored contamination. The department will publish any changes in the contaminant boundaries and send a notice to the IAAAP, the Des Moines County and Lee County health departments, and the affected landowners.

*e. Map of protected water source.* The department shall maintain a map of the protected water source area.

(1) The following described area within Des Moines County and Lee County is defined as a protected water source.

1. Des Moines County, Union Township

- East one-half of section 34 in Township 69 North, Range 3 West
- All areas of section 35 in Township 69 North, Range 3 West
- West one-half of section 36 in Township 69 North, Range 3 West

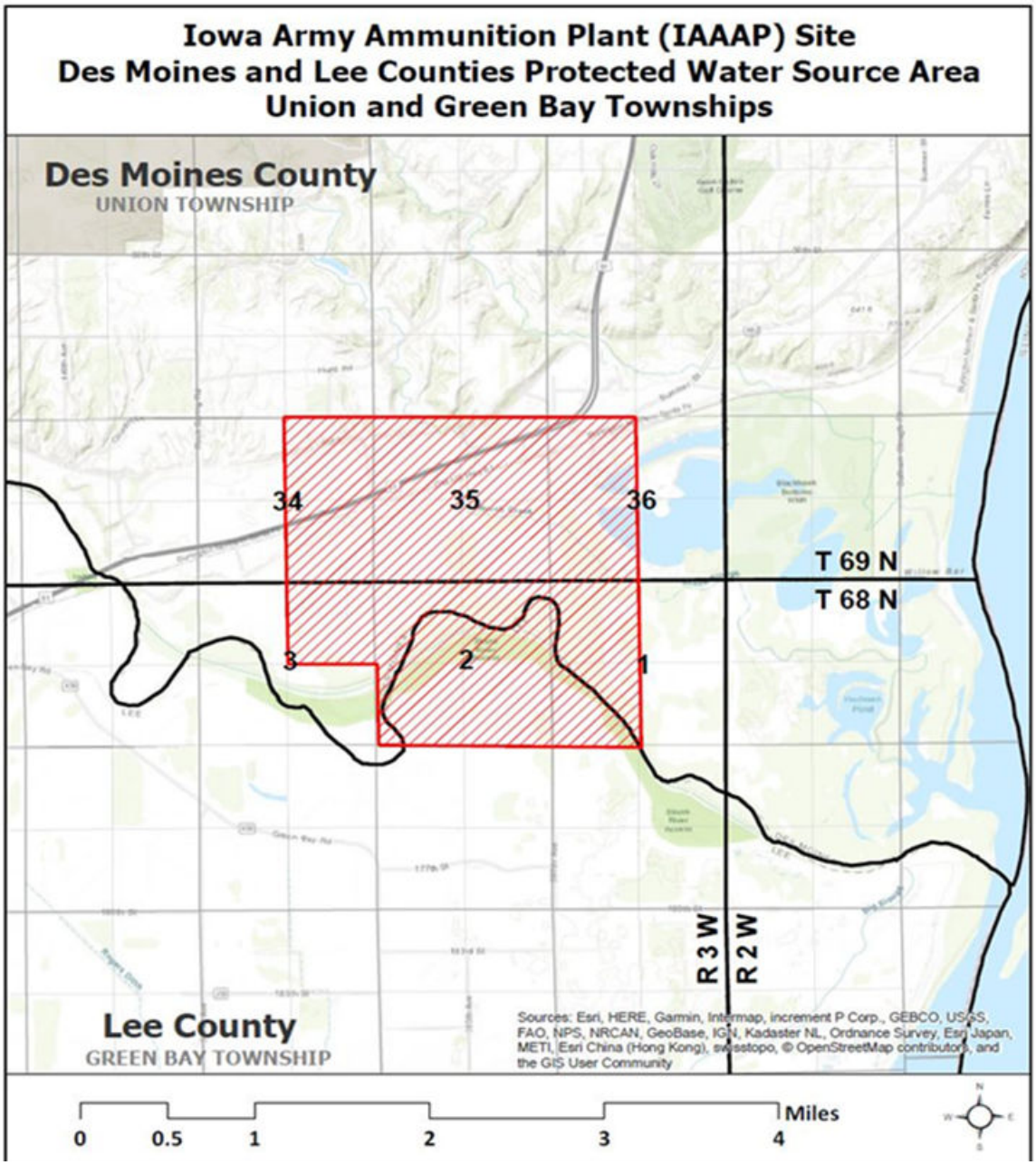
2. Des Moines County, Green Bay Township

- Northeast quarter section 3 in Township 68 North, Range 3 West
- All areas of section 2 in Township 68 North, Range 3 West
- West one-half of section 1, Township 68 North, Range 3 West

3. Lee County, Green Bay Township

- All areas of section 2 in Township 68 North, Range 3 West
- All areas of section 1 in Township 68 North, Range 3 West

(2) Map of the described protected water source area in Des Moines and Lee Counties.




NOTE: When protected sources are designated, they will be listed as part of this rule.

This rule is intended to implement Iowa Code sections 455B.262, 455B.264 through 455B.274 and 455B.278.

**ARC 8630C**

## ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to water use permit restrictions or compensation and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 54, "Criteria and Conditions for Permit Restrictions or Compensation by Permitted Users to Nonregulated Users Due to Well Interference," and to adopt a new Chapter 54, "Water Use Permit Restrictions or Compensation by Permitted Users to Nonregulated Users Due to Well Interference," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3), 455B.262(3), 455B.263(8), 455B.281(1) and 455B.281(2).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.171 and 455B.281.

*Purpose and Summary*

Proposed Chapter 54 provides a framework for resolving well interference conflicts in situations where an existing or proposed permitted use causes or will cause well interference in a nonregulated well and informal negotiation between the parties has failed. This framework is intended for situations in which an adequate groundwater supply is available from the utilized aquifer but withdrawal for a permitted use causes, or will cause, a water level decline in a nonregulated well such that it does not, or will not, provide a sufficient water supply. This framework is limited to conflicts in which the nonregulated well provides sufficient water prior to the interference. Proposed Chapter 54 allows for either a settlement or continued use of water resources in the event that well interference is experienced by a nonregulated water user within the state. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Chad Fields
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge, contact the Department at chad.fields@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al chad.fields@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 3, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |
| February 4, 2025 | Virtual meeting |
| 10 to 11 a.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at chad.fields@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.725.3407 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al chad.fields@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.725.3407 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 54 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 54
## WATER USE PERMIT RESTRICTIONS OR COMPENSATION BY PERMITTED USERS TO NONREGULATED USERS DUE TO WELL INTERFERENCE

**567—54.1(455B) Definitions.** The following definitions apply to this chapter:

*"Adequate groundwater supply"* means an aquifer that is capable of providing enough water to satisfy the demands that have been placed on it.

*"Apparent well interference"* means well interference in a nonregulated well resulting from a permitted use is likely but has not been verified.

*"Compensation"* means payment to the owner of a nonregulated well for damages caused by a lowered water level in the well due to withdrawal of water for a permitted use.

*"Complainant"* means the owner of a nonregulated well who is suspected of being or has been shown to be adversely affected by well interference.

*"Complaint"* means the formal allegation against a permitted water user who is suspected of causing well interference.

*"Informal negotiations"* means discussion between a complainant and permittee or applicant regarding settlement of a well interference conflict.

*"Informal settlement"* means a resolution of a well interference conflict by informal negotiations between a complainant and permittee or applicant without formal action by the department.

*"Suspect permittee"* means a party possessing a water use permit when the permitted use is suspected of causing well interference in a nonregulated well.

*"Technical Bulletin No. 23"* means "Technical Bulletin No. 23, Guidelines for Well Interference Compensation," Iowa Department of Natural Resources, April 1986, available on the department's website at www.iowadnr.gov.

*"Test pumping"* means a controlled aquifer test for verification of well interference using the existing wells and pumping systems of the complainant and suspect permittee.

**567—54.2(455B) Requirements for informal negotiations.**

**54.2(1)** The complainant and permittee or applicant must attempt to negotiate an informal settlement prior to the department becoming involved in the verification and settlement procedures described in rules 567—54.6(455B) and 567—54.7(455B). If informal negotiations fail, a letter stating the reasons for the failure to achieve a settlement, signed by all parties to the complaint or identifying those parties who refuse to sign, shall be sent to the department. Verbal notification will be accepted if followed by written confirmation.

**54.2(2)** Guidelines for informal negotiations are provided in Technical Bulletin No. 23. Settlements which result from informal negotiations may be registered with the department for consideration in subsequent conflicts.

**567—54.3(455B) Failure to cooperate.** If any party refuses to cooperate, fails to provide the required information, or fails to meet the specified deadlines, the complaint may be dismissed, a permanent permit modification or termination may be issued pursuant to 567—subrule 50.14(1) or an application may be conditioned or denied.

**567—54.4(455B) Well interference by proposed withdrawals.** If the department, using supporting data provided by the applicant pursuant to rule 567—50.5(455B), determines that a proposed withdrawal will cause verified well interference in a nonregulated well(s), the applicant will be given options for resolving the imminent conflict(s) in accordance with 567—subrule 50.7(1). If the applicant selects an option involving compensation to the nonregulated well owner(s), the applicant and nonregulated well owner(s) must attempt to negotiate an informal settlement in accordance with rule 567—54.2(455B). If informal negotiations fail, the department shall pursue administrative resolution of the conflict, pursuant to rule 567—54.7(455B). The applicant will remain liable for future well interference that is proven to be greater than the amount resolved in the original settlement and for other well interference that was not previously verified.

**567—54.5(455B) Well interference by existing permitted uses.** If a complaint is made to the department by the owner of a nonregulated well regarding suspected well interference, the following procedures will be followed.

**54.5(1)** *Initial notification of complaint.* The complainant shall provide the department with the following information:

*a.* The complainant's name, address, email address, and telephone number;

*b.* A description of the nonregulated well, including location, depth, construction data, and other pertinent information, as available;

*c.* A description of the problem; and

*d.* The suspected cause of well interference.

**54.5(2)** *Initial department response.* The department will provide the complainant with a description of procedures, guidelines for resolving well interference complaints, and information from department files on permitted uses in the area. The department will also notify any permitted user who is suspected of causing well interference of a possible well interference complaint.

**54.5(3)** *Well inspection.* It is the complainant's responsibility to have the affected well inspected by a certified well contractor, to have the contractor complete Appendix C (Well Inspection Form) from Technical Bulletin No. 23, and to submit the document to the department. Well inspection costs are eligible for compensation if well interference is subsequently verified.

**54.5(4)** *Corrective work prior to a settlement.*

*a.* The complainant may proceed with corrective measures prior to a settlement and remain eligible for compensation if well interference is subsequently verified. However, there will be no assurance of compensation. To be eligible for compensation, conditions prior to the corrective work must be documented using Appendix C (Well Inspection Form) from Technical Bulletin No. 23.

*b.* The department and suspect permittee(s) should be notified, given opportunity to inspect the nonregulated well, and consider alternative means for resolving the possible conflict prior to proceeding with any corrective work.

*c.* Determination of apparent well interference, verified well interference, and compensation, if any, will proceed in accordance with this chapter.

**54.5(5)** *Determination of apparent well interference.*

*a.* The department will determine that a complaint appears valid if all of the following criteria are met:

(1) The well inspection found no mechanical or structural reason for well failure;

(2) A permitted use can be identified as an apparent cause of well interference;

(3) The nonregulated well was in use when the permitted use began or the suspect permitted use changed significantly while the nonregulated well was still active;

(4) The suspect permittee and complainant withdraw water from the same aquifer or sources likely to be in close hydraulic connection;

(5) The suspect permittee was withdrawing water during the period when well interference was claimed;

(6) Well interference is reasonably possible with known conditions (i.e., pumping rates, separation distances, aquifer properties, and relative water levels in the wells); and

(7) Other obvious causes of water level decline are not apparent.

*b.* The department may identify permitted uses, in addition to those identified by the complainant, as apparent causes of well interference and will so notify the complainant and each suspect permittee. The department or a suspect permittee may identify other nonregulated wells that may also be affected by well interference caused by the suspected permittee(s), and the department will so notify the suspect permittee(s) and each potential complainant who has been identified.

*c.* If the department determines that apparent well interference exists, it will immediately notify the complainant and suspect permittee(s) of the situation, procedures, and required informal negotiations. If the department determines that apparent well interference does not exist, the complaint will be dismissed and the complainant and each suspect permittee will be so notified. A dismissal may be appealed by the complainant as provided in 54.9(2).

**54.5(6)** *Emergency withdrawal suspension or restrictions.* If the complainant's well is not able to deliver a sufficient water supply due to apparent well interference, the department may immediately suspend or restrict withdrawal by the suspect permittee(s) pursuant to 567—subrule 50.14(2). Restrictions may include but are not limited to scheduling withdrawals or reducing withdrawal rates. If approved by the department, the permittee(s) may elect to provide a temporary water supply to the complainant or take other appropriate measures as an alternative to withdrawal suspension or restrictions.

**567—54.6(455B) Verification of well interference.**

**54.6(1)** *Test pumping.* Test pumping of the complainant's and permittee's wells may be required for verification of well interference. A permittee may perform test pumping to verify well interference even if it is not required by the department.

*a.* Test pumping shall be authorized by the department and supervised by a certified well contractor, registered professional engineer, or other department designee. The test pumping shall be

performed within 30 days of department notification to the permittee and the complainant that test pumping is to be conducted. The permittee and complainant shall each be responsible for all costs associated with test pumping their own wells, although the complainant's costs may be eligible for compensation.

*b.* The complainant shall provide access to the nonregulated well for water level measurements during test pumping by the permittee. The permittee may be required to provide the complainant with a temporary water supply during test pumping. Test pumping shall be performed in accordance with Technical Bulletin No. 23.

**54.6(2)** *Determination of verified well interference.* The department will evaluate the occurrence of well interference based on data from the test pumping or other available hydrologic information and notify the affected parties of the results.

*a.* If test pumping was not performed under critical conditions (e.g., pumping rate less than maximum permitted rate, pumping duration less than critical duration, recharge more than minimum, etc.), the department will adjust the test pumping results accordingly and qualify estimations when reporting the results.

*b.* The evaluation results will be used by the department to determine if well interference is verified in accordance with Technical Bulletin No. 23. Generally, well interference will be verified if it causes the water in a nonregulated well to drop to a level below the pump suction, or it is shown to significantly diminish well performance.

*c.* If well interference is verified, the settlement procedures in 567—54.7(455B) will be followed. If well interference is not verified, the complaint will be dismissed and any emergency order will be removed. The department will notify the complainant and permittee of its decision regarding the complaint, and either party may appeal pursuant to 54.9(2).

**567—54.7(455B) Settlement procedures.**

**54.7(1)** *Settlement options.*

*a.* At the same time as notification prescribed in 54.6(2)*"c"* or upon notice to the applicant of verified well interference according to 567—subrule 50.14(2), the department will also advise the permittee or applicant of available settlement options, including the following:

(1) Permanent permit modifications (e.g., reduced pumping rate or scheduled pumping).

(2) Compensation to the complainant (see 54.7(3) and Technical Bulletin No. 23).

*b.* In situations where verified well interference occurs due to an existing permitted use, the permittee shall notify the department of the selected option within 30 days of notification.

**54.7(2)** *Compensation offer requirements.* If the compensation option is selected, the applicant or permittee shall submit a notarized offer to the complainant and the department. This offer shall be submitted by a permittee within 30 days of the notification prescribed in 54.6(2) and 54.7(1). An offer must include the following:

*a.* Written comments by a certified well contractor or licensed professional engineer detailing well improvements needed in order to provide the complainant with a sufficient water supply;

*b.* Itemized costs of the improvements by a certified well contractor with a breakdown of costs eligible for compensation (see 54.7(3) and Technical Bulletin No. 23);

*c.* A water quality analysis of the existing well water, if a new well is proposed. The analysis shall include, at minimum, determination of levels of nitrate, bacteria, iron, and hardness; and

*d.* A statement of what is being offered to the complainant and terms of the offer (e.g., timing, who will perform the work, or a completed work settlement).

**54.7(3)** *General criteria for cost liability.* The nonregulated well owner's costs for well inspection and test pumping are eligible for compensation. All costs for remedial work necessary to resolve a verified well interference problem are eligible for compensation, except as noted below. Technical Bulletin No. 23 includes additional details on cost liability. The following costs are not eligible for compensation:

*a.* When the existing well does not comply with applicable well construction standards (567—Chapter 49), costs required to bring the well up to standards;

*b.* Costs for work requested by the nonregulated well owner that result in upgrading the nonregulated water supply;

*c.* Legal fees;

*d.* Operation and maintenance costs of the water supply system;

*e.* Well rejuvenation costs, unless the well still fails to provide a sufficient water supply after the well rejuvenation requested by the permittee is completed; and

*f.* Costs due to temporary loss of water for such things as hauling water or going to a laundromat, unless the permittee refuses to comply with an emergency order by the department.

**54.7(4)** *Complainant's response to the compensation offer.* The complainant shall respond in writing to the department within 15 days of an offer receipt and indicate acceptance or rejection of the offer. If the offer is rejected, the complainant shall submit a counteroffer with the response. The counteroffer shall contain supporting information including an itemized cost estimate of needed improvements by a certified well contractor or licensed professional engineer, if appropriate.

**54.7(5)** *Department review of compensation offer and counteroffer.* The department will review the offer and counteroffer and determine if the offer is reasonable in accordance with Technical Bulletin No. 23.

*a.* If the offer is determined to be reasonable but is rejected by the complainant, the complainant will be given 15 days to reconsider the offer, after which the complaint will be dismissed and any suspension or restrictions on withdrawals by the permittee will be removed or, in the case of an application, the permit process will be continued. The complainant may appeal a dismissal as provided in 54.9(2).

*b.* If the offer is not found to be reasonable, the permittee will be given one opportunity to revise the offer in accordance with department determinations. If a revised offer is not received within 15 days or the department determines the revised offer is not reasonable, the department will determine appropriate compensation or withdrawal restrictions to resolve the well interference. This determination will be enforced through either the imposition of permit conditions, permit termination, or permit denial. For an existing permit, the department will modify or terminate the permit as provided in 567—subrule 50.14(1). For a pending permit application, the department will either deny the application or approve it with appropriate conditions, pursuant to 567—50.8(455B).

**567—54.8(455B) Recurring complaints.**

**54.8(1)** If a complainant accepts compensation from a permittee for settlement of a well interference conflict, any future complaint by the complainant against the same permittee will not be considered unless either a significant change in the permitted withdrawal occurs; the permittee utilized simplified test pumping procedures or other less than optimal verification methods, as described in Technical Bulletin No. 23; or the permittee provided compensation to resolve less than the estimated worst-case well interference. A complainant who accepts compensation from an applicant is still eligible for compensation if subsequent well interference is proven to be greater than that resolved in the original settlement.

**54.8(2)** If a previous complaint was dismissed or settled without compensation, a new complaint must include justification for reconsideration. Justification may include a significant change in withdrawals by the suspect permittee or water level measurements from the complainant's well which indicate more well interference than found in the previous complaint. A physical change to withdrawal facilities may be considered a significant change to a permitted use (e.g., moving the withdrawal location, installing a new well, or installing a higher-capacity pump).

**54.8(3)** A complaint that was dismissed due to failure to cooperate, as provided in 567—54.3(455B), will be reconsidered when the required cooperation is demonstrated. However, it will be treated as a new complaint.

**567—54.9(455B) Waivers and appeals.**

**54.9(1)** *Waiver procedures.* Waivers to these rules may be granted by the department provided just cause can be demonstrated. Waiver requests and supporting information shall be submitted in writing to the department.

**54.9(2)** *Appeal procedures.* Department determinations under 54.5(5), 54.6(2) and 54.7(4) may be appealed by following the procedure in 561—Chapter 7.

These rules are intended to implement Iowa Code sections 455B.171 and 455B.281.

## ARC 8619C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to aquifer storage and recovery and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 55, "Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water," and to adopt a new Chapter 55, "Aquifer Storage and Recovery," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3), 455B.263(8) and 455B.265(4).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.261, 455B.265 and 455B.269.

*Purpose and Summary*

Proposed Chapter 55 regulates aquifer storage and recovery (ASR) wells. The programs in this chapter are intended to allow for the beneficial use of water resources, protect public health and safety, and protect the public interest in water resources. This chapter does this by defining the affected area within the aquifer, creating a permit program with technical criteria for evaluating ASR projects, and incorporating technical additions for the practice of treated water recovery. Proposed Chapter 55 also includes definitions of legal rights and obligations affecting ASR permit holders. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Chad Fields
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at chad.fields@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al chad.fields@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 3, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |
| February 4, 2025 | Virtual meeting |
| 10 to 11 a.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al chad.fields@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.725.3407 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 55 and adopt the following **new** chapter in lieu thereof:

# CHAPTER 55
# AQUIFER STORAGE AND RECOVERY

**567—55.1(455B) Statutory authority and purpose.**

**55.1(1)** The authority for the Department of Natural Resources to permit persons to inject, store, and recover treated water for potable use is given by Iowa Code sections 455B.261, 455B.265 and 455B.269. This permit requirement applies to any aquifer storage and recovery (ASR) system. An entity seeking an ASR permit must review the permit criteria and contact the department if a permit is required.

**55.1(2)** The ASR rules are intended to describe aquifer storage and recovery, including defining the affected area within the aquifer, creating a permit program with technical criteria for evaluating ASR projects, incorporating the practice of treated water recovery, and defining legal rights and obligations affecting ASR permit holders.

**567—55.2(455B) Definitions.** The following definitions apply to this chapter:

*"Aquifer storage and recovery"* or *"ASR"* means the injection and storage of treated water in an aquifer through a permitted well during times when treated water is available and withdrawal of the treated water from the same aquifer through the same well during times when treated water is needed.

*"Contiguous"* means directly adjacent along all or part of one side of a legally defined piece of property. Tracts of land involved in the same water supply and separated only by separators such as roads, railroads, or bike trails are deemed contiguous tracts.

*"Displacement zone"* means the three-dimensional area of dispersion into which treated water is injected for storage, subject to later recovery.

*"Limited registration"* means a two-year written authorization for a nonrecurring use of water for the purpose of forecasting and testing an ASR well system, including cyclic test pumping as necessary.

*"Mechanical integrity"* means any structural or material defect in an ASR well, well casing, or appurtenance that will prevent or materially impair the injection or pumping of water within an aquifer or contribute to aquifer contamination.

*"Permit"* means a written department authorization issued to a permittee for the storage of treated water in an existing aquifer or the subsequent withdrawal of treated water from an existing aquifer. A permit specifies the quantity, duration, location, and instantaneous rate of this storage or withdrawal.

*"Permittee"* means a water supply system that obtains a permit authorizing the injection of and possession by storage of treated water in an aquifer, the withdrawal of this water at a later date, and the actual beneficial use of the water.

*"Receiving aquifer"* means the aquifer into which treated water is injected under the terms of an ASR permit.

*"Recovered water"* means water that is recovered from storage within a displacement zone under the terms of an ASR permit.

*"Stored water"* means injected, treated potable water that is stored in a receiving aquifer within the displacement zone under the terms of an ASR permit.

*"Treated water"* means water that has been physically, chemically, or biologically treated to meet national drinking water standards and is fit for human consumption as defined in 567—Chapters 40 through 43.

*"Zone of influence"* means a circular area surrounding a pumping water well where the water table has been measurably lowered due to the action of the pump.

**567—55.3(455B) ASR project application processing.**

**55.3(1)** *Applications.*

*a. Initial application.* An ASR permit shall be required for the storage of all treated water in an aquifer for later recovery for potable uses. An initial ASR permit application (a request for a new permit) shall be made on a form obtained from the department. An application must be submitted by or on behalf of the water system owner, lessee, or option holder of the area where the water is to be stored and recovered.

(1) An application must be accompanied by a map portraying:

1. The points of injection and withdrawal;
2. The immediate vicinity of the receiving aquifer;
3. Any production, test, or other observation wells within the aquifer; and
4. The area of water storage.

(2) An application must include a description of the land where wells are located and water will be injected, withdrawn, and used, oriented as quarter-section, section, township, and range.

(3) One application will be adequate for all uses on contiguous tracts of land.

(4) A PWS construction permit issued pursuant to 567—Chapter 43 is also required for all injection/recovery wells.

*b. Limited registration.* In response to an initial application, the department will issue a limited registration to initiate an ASR pretesting program pursuant to 55.4(1)*"a."* The department will only issue an ASR permit after approval and completion of an ASR pretesting program, with appropriate public notification pursuant to 55.3(3) and evaluation of the test results.

*c. Modification or renewal.* An ASR permit modification or renewal request shall be made in a manner similar to an initial application. A modification or renewal request does not need to reiterate map and location information unless the information has changed. The limited registration requirement for aquifer pretesting does not apply to modified or renewed ASR permit requests unless required by the department.

**55.3(2)** *Application fee.* A nonrefundable fee of $700 in the form of a credit card, check, electronic payment, or money order made payable to "Iowa Department of Natural Resources" must accompany any ASR permit application, modification request, or renewal request.

**55.3(3)** *Published notice—limited registration.* Prior to receiving a limited registration, an applicant shall publish a notice of intent to test the injection and water pumpage/recovery equipment. Publication shall be in a manner acceptable to the department and in the newspaper of largest circulation in the county where the ASR project is located. Proof of publication shall be submitted to the department. After the publication, the department will issue a limited registration allowing the applicant to conduct test pumping pursuant to 55.4(1)*"a,"* and the applicant shall notify contiguous landowners by mail of receipt of the limited registration and the intent to test an ASR site.

**55.3(4)** *Published notice—departmental notice of proposed decision.* Before issuance of a final ASR permit, the department shall publish notice of proposed decision to issue an ASR permit or deny an ASR application. Publication shall be in the newspaper of largest circulation in the county where the ASR project is located.

*a.* A notice of proposed decision shall summarize the department's findings on whether an application conforms to relevant criteria as outlined in 55.4(1). An engineering or hydrogeological summary report prepared by the department may be attached to the notice.

*b.* The notice of proposed decision shall be mailed to the applicant, any person who commented, and any other person who requests a copy of a proposed decision. The notice shall be accompanied by a certification of the mailing date.

*c.* A proposed decision becomes the final department decision unless a timely notice of appeal is filed in accordance with 55.3(6).

**55.3(5)** *Department decision.* The department's decision on an application shall be an ASR permit or denial letter. Each ASR permit shall include appropriate standard and special conditions consistent with Iowa Code sections 455B.261 through 455B.274 and 455B.281 and 567—Chapters 50 through 55. The decision may incorporate the summary report described in 55.3(4). Each decision shall include the following:

*a.* Determinations as to whether the project satisfies all relevant criteria not addressed in an attached summary report;

*b.* An explanation of each special condition; and

*c.* An explanation of consideration given to all comments submitted pursuant to subrules 55.3(3) and (4), unless comments are addressed in the attached summary report.

**55.3(6)** *Appeal of department decision.* Any person aggrieved by an initial ASR permit decision may appeal the action. An appeal request must be submitted in writing to the director within 30 days of the date of issuance of the final department decision. The director's decision on an appeal may be further appealed to the commission. The form of appeal and appeal procedures are governed by 567—Chapter 7. The department shall mail a copy of the notice of appeal to each person who commented on the application.

**567—55.4(455B) ASR technical evaluation criteria.**

**55.4(1)** *Requirements.* Injections into aquifers for the purpose of treated water storage and subsequent withdrawals from the receiving aquifers intended for potable uses shall be subject to the following requirements:

*a. Aquifer pretesting.*

(1) A limited registration for aquifer pretesting as described in 55.3(1)*"b"* shall be for the period of two years and may be renewed for two additional one-year periods, for a total cumulative registration time not to exceed four years, should pretesting completion require more than one year.

(2) A limited registration shall allow aquifer pretesting for determining the feasibility of ASR, including placement of pumping and storage/extraction equipment. The pretesting program shall be designed to provide the information to evaluate the ultimate capacity anticipated for the ASR project and provide assurance that the ASR site shall not restrict other uses of the aquifer. The pretesting program shall include injection rates and schedules, water storage volumes, recovery rates and schedule, and a final testing report.

*b. Engineering report.* An engineering report evaluating the technical feasibility of the proposed water injection and the probable percentage of recovery of treated water when pumped for recovery shall be submitted to the department.

(1) The engineering report shall include preliminary information from conceptual evaluations and aquifer pretesting, such as:

1. Injection rates and schedules;
2. Water storage volumes;
3. The length of time the injected water will be stored;
4. The projected recovery rate;
5. Water quality data necessary to demonstrate that the water meets national drinking water standards;
6. Water level monitoring data, including the location of observation wells, if any;
7. A plan detailing what will be done with the recovered water if the intended use is not possible; and
8. A final testing protocol.

(2) If the report can demonstrate, by field test results or by conceptual or mathematical hydrogeologic modeling, that the injection, storage, and subsequent recovery will not adversely affect nearby users, an ASR project may be permitted after department review.

(3) A displacement zone containing the stored volume of water will not be allowed if it adversely affects another user's zone of influence. If the department finds, through hydrogeologic modeling or during pretesting, that the proposed displacement zone may impact the zone of influence of another user's existing well, additional testing will be required. The department may require the applicant to construct observation wells between the ASR site and nearby wells and may designate project-specific monitoring and reporting requirements at the observation wells.

(4) A hydrogeologic site investigation that evaluates potential quantitative and qualitative impacts to the aquifer, including changes to localized aquifer geochemistry, shall be part of the engineering report. Preliminary hydrogeologic information shall include:

1. The local geology;
2. A hydrogeologic flow model of the area flow patterns;
3. A description of the aquifer targeted for storage;
4. The estimated flow direction and rate of movement;

5. Locations of both permitted and private wells within the area affected by ASR wells, including best estimates of respective zones of influence;

6. A basis for estimating the displacement zone; and

7. Potable water quantity recovery estimates.

*c. Protection of nearby existing water uses.* An ASR permit applicant shall demonstrate that an ASR site will not restrict other uses of the aquifer by nearby water use permittees.

(1) An applicant shall conduct an inventory of nearby wells and submit it to the department with an ASR permit application. The department, after considering the rate and amount of the ASR injections and withdrawals and the aquifer characteristics, will determine the inventory's extent and the appropriate radius from the proposed ASR site.

(2) An applicant shall make a good-faith effort to obtain information from public records to identify nearby landowners and occupants and information from drilling contractors identified by a landowner or occupant who responds to the inventory.

(3) An applicant shall immediately notify the department of all objections raised by nearby landowners or other on-site problems.

(4) Well interference conflicts arising from the proposed ASR site or project shall be resolved as outlined in 567—Chapter 54 or as otherwise specified by the department.

**567—55.5(455B) ASR permits.**

**55.5(1)** *Water use restriction.* Water recovery from an ASR site will not be permitted to any user other than the ASR permittee.

**55.5(2)** *MCL exceedance limitation.* Contaminant levels in water injected in accordance with an ASR permit shall not exceed the maximum contaminant levels (MCLs) established by the department in 567—Chapters 40 through 43. Chemicals associated with disinfection of the water may be injected into the aquifer up to the standards established under 567—Chapters 40 through 43 or as otherwise specified by the department.

**55.5(3)** *Reporting and recordkeeping.* Permittees shall maintain a monthly record of injection and recovery, including the total number of hours of injection and recovery and the total metered quantity injected and recovered. These records must be submitted to the department annually.

*a.* Applicants shall keep project records, including water quality monitoring records, for a period of five years. Water quality monitoring shall be performed at the frequency required by 567—Chapters 40 through 43 and as identified in the system's PWS operation permit.

*b.* Applicants shall keep records for a period of three years after ASR project termination and recovery well closure(s).

**55.5(4)** *Vacating a permit.*

*a.* The department may vacate an ASR permit if:

(1) An applicant fails to construct injection and water pumpage/recovery and ancillary equipment within three years of permit issuance, or the term of subsequent permit modifications or renewals.

(2) An applicant does not use the storage system within three years of permit acquisition.

*b.* If a permit is vacated, the permittee must submit a site abandonment plan that includes the physical removal of injection and water recovery equipment and the abandonment of all injection/recovery and observation wells, pursuant to 567—Chapter 39.

*c.* A permittee whose permit is vacated may request a formal review of the action. The permittee must submit a review request in writing to the director within 30 days of notification of the final department decision. The director's decision in a formal review case may be further appealed to the commission.

**55.5(5)** *Mechanical integrity conditions.* Other conditions necessary to ensure adequate protection of water supplies may be imposed in a permit for mechanical integrity checks of the injection and treated water recovery well.

**55.5(6)** *Permit modification or revocation.* The department may revoke or modify a permit to prevent or mitigate injury to other water users or otherwise protect aquifer water quality. The department may, based upon valid scientific data, further restrict certain chemicals in the injection source water if the

department finds the constituents will interfere with or pose a threat to the maintenance of Iowa's water resources for present or future beneficial uses.

**55.5(7)** *Permit duration and conditions, permittee property rights, and well restrictions.*

*a. Term.* ASR permits shall be issued for 20 years.

*b. Permit conditions.* ASR permits will specify the maximum allowable injection rate at each well, the maximum allowable annual quantitative storage volume, and the maximum allowable instantaneous water withdrawal rate at each well.

*c. Permittee property.*

(1) The department shall not authorize withdrawals of treated water from an ASR site by anyone other than the permittee while the permit or subsequent renewal permits are in effect.

(2) Stored water and recovered water are the property of the permittee.

(3) If a permit is revoked or otherwise surrendered, the ownership of the injected water within the aquifer (the water considered as "property") reverts to the State of Iowa.

*d. Restrictions on wells within displacement zone.*

(1) No new private water wells, injection/withdrawal wells, observation wells, or PWS wells shall be permitted by any governmental entity within the ASR displacement zone while an ASR permit is in effect. Existing wells within a permitted displacement zone shall be plugged pursuant to 567—Chapter 39.

(2) ASR permits shall be filed with the appropriate county recorders to provide notice to present and future landowners of all permit conditions or requirements, including the well prohibition condition.

These rules are intended to implement Iowa Code sections 455B.261, 455B.265 and 455B.269.

## ARC 8629C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to scope of title, definitions, wastewater construction permits, and operation permits and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 60, "Scope Of Title—Definitions—Forms—Rules of Practice"; to adopt a new Chapter 60, "Scope of Title, Definitions, Wastewater Construction Permits, and Operation Permits"; and to rescind Chapter 64, "Wastewater Construction and Operation Permits," and Chapter 66, "Pesticide Application to Waters," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173(3).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.171, 455B.172, 455B.173 through 455B.175, 455B.177, 455B.183, 455B.184 through 455B.186, 455B.196 through 455B.198 and 455B.199B, Clean Water Act §402(b), and 40 CFR §123.25.

*Purpose and Summary*

Proposed Chapter 60 establishes the requirements for the pre-construction review and permitting program applicable to new or modified wastewater disposal systems. The Department of Natural Resources (Department) evaluates all wastewater construction permit applications to ensure that proposed treatment facilities will comply with National Pollutant Discharge Elimination (NPDES) permit limits or land disposal requirements. Proposed Chapter 60 also establishes requirements for the NPDES program, which regulates the amount of pollutants that can be discharged into waters of the

United States from point sources. Finally, the chapter also provides requirements for the state wastewater operating permit program, which regulates wastewater disposal to land and water.

Existing Chapters 60, 64, and 66 were reviewed consistent with Executive Order 10. Consequently, Chapters 64 and 66 will be rescinded and merged into new Chapter 60. This consolidation removes outdated requirements; shortens, simplifies and clarifies regulations and terminology; removes redundancy; and references regulations that appear elsewhere in state or federal law. A new operation permit exemption is included for nondischarging water treatment plants to remove the redundancy created by another existing permit covering the design of these systems. The rule-referenced documents were similarly reviewed. Some have been strategically consolidated as well. Chapters 11 through 21 of the Iowa Wastewater Facilities Design Standards (IWFDS) have been combined into one document with renumbered chapters. The revised IWFDS document is available at: www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking. The IWFDS has been updated to reflect current practices and technologies, along with a general cleanup of outdated requirements and corrected rule references. The remaining rule-referenced documents and General Permits 1 through 9 (various issuance dates, available at: www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits) are not changing.

Finally, Chapter 66 covers discharges of pesticide residues to waters of the United States. The requirements of this chapter were moved years ago into a NPDES General Permit No. 7 (available at: www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDESGeneral-Permits/GP7-Pesticides). Accordingly, consistent with Executive Order 10, this chapter will be rescinded, and a portion of the text from the chapter will be moved into the new Chapter 60.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: courtney.cswercko@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at npdes.mail@dnr.iowa.gov.

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |
| January 29, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 60 and adopt the following **new** chapter in lieu thereof:

TITLE IV
*WASTEWATER TREATMENT AND DISPOSAL*

CHAPTER 60
SCOPE OF TITLE, DEFINITIONS, WASTEWATER CONSTRUCTION PERMITS, AND OPERATION PERMITS

**567—60.1(455B) Scope of title and definitions.**

**60.1(1)** *Scope of title.* The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control water pollution by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state and by regulating potential sources of water pollution through a system of general rules or specific permits. The construction and operation of any wastewater disposal system (DS) and the discharge of any pollutant to a water of the state require a specific permit from the department unless exempted by the department. This chapter provides general definitions applicable in this title, including 567—Chapters 61 through 69.

**60.1(2)** *Definitions.* The following definitions apply to this title, unless otherwise specified in a chapter of this title:

*"7Q10"* or *"seven-day, ten-year low stream flow"* means the lowest average stream flow that would statistically occur for seven consecutive days once every ten years.

*"Acute toxicity"* means that level of pollutants that would rapidly induce a severe and unacceptable impact on organisms.

*"ADW flow"* or *"Average dry weather flow"* means the daily average flow when the groundwater is at or near normal and runoff is not occurring.

*"Aquatic pesticide"* means any pesticide, as defined in Iowa Code section 206.2, that is labeled for application to surface water.

*"ASTM"* means the Annual Book of Standards, Section 11, Water and Environmental Technology, published by ASTM International, www.astm.org.

*"Average"* means the sum of the total daily discharges by weight, volume or concentration during the reporting period divided by the number of days during the reporting period when the measurements were made.

*"AWW flow"* or *"average wet weather flow"* means the daily average flow for the wettest 30 consecutive days for mechanical plants or for the wettest 180 consecutive days for controlled discharge lagoons.

*"BMP"* or *"best management practice"* means a practice or combination of practices that is determined, after problem assessment, examination of alternative practices, and appropriate public participation, to be the most effective, practicable (including technological, economic and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

*"$BOD_5$"* or *"biochemical oxygen demand (five-day)"* means the amount of oxygen consumed in the biological processes that break down organic matter in water by aerobic biochemical action in five days at 20°C.

*"Bypass"* means the diversion of waste streams from any portion of a treatment facility or collection system. A bypass does not include internal operational waste stream diversions that are part of the design of the treatment facility, maintenance diversions where redundancy is provided, diversions of wastewater from one point in a collection system to another point in a collection system, or wastewater backups into buildings that are caused in the building lateral or private sewer line.

*"$CBOD_5$"* or *"carbonaceous biochemical oxygen demand (five-day)"* means the amount of oxygen consumed in the biological processes that break down carbonaceous organic matter in water by aerobic biochemical action in five days at 20°C.

*"CFR"* or *"Code of Federal Regulations"* means the federal administrative rules adopted by the United States in effect as of July 1, 2024. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in 567—Chapters 60 through 69, Title IV, unless a date of adoption is set forth in a specific rule.

*"Chronic toxicity"* means that level of pollutants that would, over long durations or recurring exposure, cause a continuous, adverse or unacceptable response in organisms.

*"Compliance schedule"* means "schedule of compliance" as defined in Iowa Code section 455B.171.

*"Construction permit"* means a written approval from the director to construct a wastewater DS or part thereof in accordance with the plans and specifications approved by the department.

*"Crossover point"* means that location in a river or stream in which the flow shifts from being principally along one bank to the opposite bank. This crossover point usually occurs within two curves or an S-shaped curve of a water course.

*"Culture water"* means reconstituted water or other acceptable water used for culturing test organisms.

*"CWA"* or *"Clean Water Act"* means the federal Water Pollution Control Act effective July 1, 2024, 33 U.S.C. §1251 et seq.

*"Diluted effluent sample"* means a sample of effluent diluted with culture water at the same ratio as the dry weather design flow to the applicable receiving stream flow contained in the zone of initial dilution as allowed in 567—paragraphs 61.2(4)*"b," "c,"* and *"d."*

*"Dilution ratio"* means, for a specific wastewater discharger, the ratio of the seven-day, ten-year low stream flow to the effluent design flow (e.g., a dilution ratio of 2:1 has two parts stream flow to one part effluent flow).

*"Discharge of a pollutant"* means any addition of any pollutant or combination of pollutants to navigable waters or waters of the state from any point source. "Discharge of a pollutant" includes additions of pollutants into navigable waters or waters of the state from surface runoff that is collected or channeled by human activity; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. "Discharge of a pollutant" does not include an addition of pollutants by any indirect discharger.

*"GP"* or *"general permit"* means an NPDES permit issued to a class of facilities that could be conditioned and described by a single permit.

*"Human health (HH) criteria"* means that level of pollution that, in the case of noncarcinogens, prevents adverse health effects in humans and, in the case of carcinogens, represents a level of incremental cancer risk of 1 in 100,000. The numerical criteria are based on the human consumption of an average of 6.5 grams of fish and shellfish per day by a 70-kilogram individual for a life span of 70 years.

*"Individual nonstormwater permit"* means a site-specific NPDES or operation permit that is not an individual stormwater permit and that authorizes discharges of sewage, industrial waste, or other waste and allowable discharges of stormwater associated with industrial activity, as specifically noted in the permit.

*"Individual stormwater permit"* means an individual site-specific NPDES permit that authorizes discharges composed entirely of stormwater associated with industrial activity or construction activity and other allowable nonstormwater discharges as specifically noted in the permit.

*"Intermittent watercourses"* means watercourses that contain flow associated with rainfall/runoff events and that periodically go dry even in pooled areas.

*"Lake"* means a natural or man-made impoundment of water with more than one acre of water surface area at the high water level.

*"Local public works department"* means a city or county public works department, a board of trustees of a city utility organized pursuant to Iowa Code chapter 388, or a sanitary sewer district organized pursuant to Iowa Code chapter 358.

*"Losing streams"* means streams that lose 30 percent or more of their flow during the seven-day, ten-year low stream flow periods to cracks and crevices of rock formations, sand and gravel deposits, or sinkholes in the streambed.

*"Low permeability"* means a soil layer of well-sorted, fine grain-sized sediments or of rock that under normal hydrostatic pressures would not be significantly permeable. Low permeability soils may include homogeneous clays below the zone of weathering, mudstone, claystone, shale, and some glacial till.

*"Major"* for municipalities, means a facility having an average wet weather design flow of 1.0 million gallons per day (MGD) or greater. For industries, "major" means a facility that is designated by EPA as a major industry.

*"Major permit amendment"* means a permit amendment that is not a minor permit amendment as defined in this rule.

*"mg/L"* or *"milligrams per liter"* means milligrams of solute per liter of solution (equivalent to parts per million-assuming unit density). A microgram (µg) is 1/1,000 of a milligram.

*"Minimum flow"* means that established stream flow in lieu of the seven-day, ten-year low stream flow to which the provisions of 567—Chapter 61 apply.

*"Minor"* means all remaining facilities that have wastewater discharge flows and that are not designated as major facilities.

*"Minor permit amendment"* means a permit amendment that occurs as a result of any of the following:

1. Correction of a typographical error;

2. Modification of the monitoring and reporting requirements in the permit to include more frequent monitoring or reporting;

3. Revision of an interim date in a compliance schedule, provided that the new date is not more than 120 days after the date specified in the permit and does not interfere with the attainment of the final compliance date;

4. Revision of interim or final dates in a schedule to comply with the provisions of the Iowa nutrient reduction strategy;

5. Change in facility name or ownership;

6. Deletion of a point source outfall that does not result in the discharge of pollutants from other outfalls; or

7. Incorporation of an approved local pretreatment program.

*"Mixing zone"* means a delineated portion of a stream or river in which wastewater discharges will be allowed to combine and disperse into the water body. The chronic criteria of 567—subrule 61.3(3) will apply at the boundary of this zone.

*"Mortality"* means, for the purpose of a WET test, death, immobilization, or serious incapacitation of the test organisms.

*"MWW flow"* or *"maximum wet weather flow"* means the total maximum flow received during any 24-hour period when the groundwater is high and runoff is occurring.

*"Nephelometric"* means the nephelometric method of determining turbidity as stated in 40 CFR Part 136.

*"Nonpoint source"* means a source of pollutants that is not a point source.

*"NPDES permit"* means an operation permit issued under an EPA-approved National Pollutant Discharge Elimination System (NPDES) program.

*"Operation permit"* means a permit by the director authorizing the operation of a wastewater DS or part thereof or discharge source and, if applicable, the discharge of wastes from the DS or part thereof or discharge source to waters of the state. An NPDES permit will constitute the operation permit in cases where there is a discharge to a WOTUS and an NPDES permit is required by the CWA.

*"Pass through"* means a discharge that, alone or in conjunction with a discharge or discharges entering the treatment facility from other sources, exits a POTW or semipublic sewage DS in quantities or concentrations that cause a violation of any requirement of the treatment facility's NPDES permit, including an increase in the magnitude or duration of a violation.

*"Pathogen"* means any microorganism or virus that can cause disease.

*"PE"* or *"population equivalent"* means the calculated number of people who would contribute an equivalent amount of biochemical oxygen demand (BOD) per day as the system in question, assuming that each person contributes 0.167 pounds of five-day, 20°C, BOD per day.

*"Permit rationale"* means a document that sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft NPDES permit.

*"pH"* means the hydrogen ion activity of a solution expressed as the logarithm of the reciprocal of the hydrogen ion concentration in moles per liter at 25°C. pH is a measure of the relative acidity or alkalinity of the solution. The range extends from 0 to 14; 7 being neutral, 0 to 7 being acidic, and 7 to 14 being alkaline.

*"Pond"* means a natural or man-made impoundment of water with a water surface area of one acre or less at the high water level.

*"POTW"* or *"publicly owned treatment works"* means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature that is owned by a municipality or other public body created by or under Iowa law and having jurisdiction over disposal of sewage, industrial wastes or other wastes. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW.

*"Primary contact"* means any recreational or other water use in which there is direct human contact with the water involving considerable risk of ingestion of water or contact with sensitive body organs, such as the eyes, ears and nose, in quantities sufficient to pose a significant health hazard.

*"Qualified volunteer"* means a person or group of people acting on their own behalf, and not for a government agency or under contract with the department, to produce water quality monitoring data in accordance with a department-approved volunteer monitoring plan. Qualified volunteers must have the training and experience to ensure quality assurance and quality control for the data being produced or be under the direct supervision of a person having such qualifications. A person or persons identified as participants in a department-approved volunteer monitoring plan will be considered qualified volunteers.

*"Operation records"* means department report forms or other report forms, letters, or documents that may be acceptable to the department that are designed to indicate specific physical, chemical, or biological values for wastewater during a stated period of time.

*"Secondary contact"* means any recreational or other water use in which contact with the water is either incidental or accidental and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, commercial and recreational boating and any limited contact incidental to shoreline activity. This would include users who do not swim or float in the water body while on a boating activity.

*"Sinkhole"* means any depression caused by the dissolution or collapse of subterranean materials in a carbonate formation or in gypsum or rock salt deposits through which water may be drained or lost to the local groundwater system. Such depressions may or may not be open to the surface at times. Intermittently, sinkholes may hold water forming a pond.

*"Temperature"* means a measure of the heat content of water.

*"Turbidity"* is a measure of the optical property of the particles of mud, clay, silt, finely divided organic matter, or microscopic organisms suspended in water that interfere with light transmission, causing the light to be scattered and absorbed rather than transmitted through the water in straight lines.

*"Water contact recreational canoeing"* means the type of activities associated with canoeing outings in which primary contact with the water does occur. This would include users who swim or float in the water body while on a canoeing outing.

*"WET test"* or *"whole effluent toxicity test"* means a test to determine the toxicity of a chemical or chemicals contained in a wastewater discharge on living organisms.

*"WQS"* or *"water quality standards"* means the water quality standards as enumerated in 567—Chapter 61.

*"ZID"* or *"zone of initial dilution"* means a delineated portion of a mixing zone in which wastewater discharges will be allowed to rapidly combine and begin dispersing into the water body. The acute criteria of 567—subrule 61.3(3) will apply at the boundary of this zone.

**60.1(3)** *Definitions in Iowa Code and the Iowa Administrative Code (IAC).* The following terms applicable to this title are defined in the referenced locations:

*a.* Iowa Code section 455B.101: "department."

*b.* Iowa Code section 455B.171: "disposal system," "effluent standard," "industrial waste," "other waste," "point source," "pollutant," "schedule of compliance," "semipublic sewage disposal system," "septage," "sewage," "sewage sludge," "treatment works," and "water of the state."

*c.* Iowa Code section 455B.171 and rule 567—69.1(455B): "PSDS" or "private sewage disposal system."

*d.* Iowa Code section 455B.171(16) and in 40 CFR §403.3(m): "new source."

*e.* Iowa Code section 206.2: "pesticide."

*f.* Rule 567—40.2(455B): "deep well" and "shallow well."

**60.1(4)** *CFR definitions.* The following terms applicable to this title are defined in the referenced locations:

*a.* 40 CFR §121.1(j): "water quality requirements."

*b.* 40 CFR §122.2: "CSO" or "combined sewer overflow," "CSS" or "combined sewer system," "daily discharge," "indirect discharger," "maximum daily discharge limitation," "new discharger," "regional administrator," "sewage from vessels," and "waters of the U.S.," or "waters of the United States."

*c.* 40 CFR §122.26(b): "small MS4" or "municipal separate storm sewer system," "stormwater," "stormwater discharge associated with industrial activity," "stormwater discharge associated with small construction activity," and "uncontrolled sanitary landfill."

*d.* 40 CFR §122.41(m): "severe property damage."

*e.* 40 CFR §133.101: "7-day average" and "30-day average."

*f.* 40 CFR §401.11(l): "navigable waters."

*g.* 40 CFR §403.3: "approved POTW pretreatment program," "interference," "non-significant categorical industrial user," "pretreatment," "pretreatment requirements," "pretreatment standard" or "national pretreatment standard," and "significant industrial user."

**60.1(5)** *Abbreviations.* In addition to the abbreviations listed in the definitions in 60.1(2), the following abbreviations are applicable to this title.

| **Abbreviation** | **Meaning** |
|---|---|
| °C | Degrees Celsius |
| AASHTO | American Association of State Highway and Transportation Officials |
| AICP | alternatives implementation compliance plan |
| ANSI | American National Standards Institute |
| BLM | Biotic Ligand Model |
| CCC | Criterion Continuous Concentration |
| CEU | Continuing education units |
| CMC | Criterion Maximum Concentration |
| Corps | United States Corps of Engineers |
| DC | disadvantaged community |
| DCA | disadvantaged community analysis |
| DCM | disadvantaged community matrix |
| DS | disposal system |
| DUC | disadvantaged unsewered community |
| DUCA | disadvantaged unsewered community analysis |
| DUCM | disadvantaged unsewered community matrix |
| *E. coli* | *Escherichia coli* |
| ELS | early life stage |
| EPA | U.S. Environmental Protection Agency |
| EPS | Expanded polystyrene |
| F & W | fish and water |
| FCP | future compliance plan |
| FO | regional Field Office of the department (1, 2, 3, 4, 5, or 6) |
| ft | foot |
| $ft^2$ | square feet |
| gal | gallon |
| $gal/ft^2$ | gallons per square foot |
| $gal/ft^2/day$ | gallons per square foot per day |
| gpd | gallons per day |
| hr | hour |
| I/I | infiltration and inflow |
| IAC | Iowa Administrative Code |
| IAPMO | International Association of Plumbing and Mechanical Officials |
| Iowa DOT | Iowa Department of Transportation |
| IWFDS | Iowa Wastewater Facilities Design Standards |
| kg | kilogram |
| MCL | maximum contaminant level |
| mg | milligram |
| µg/L | micrograms per liter |
| mgd | million gallons per day |
| mL | milliliter |
| MHI | median household income |

| Abbreviation | Meaning |
|---|---|
| mm | millimeter |
| MPN | most probable number |
| mt | metric tons |
| NH3-N | ammonia nitrogen |
| NOAA | National Oceanic and Atmospheric Administration |
| NOD | notice of discontinuation |
| NOI | notice of intent |
| NSF | National Sanitation Foundation |
| NSCIU | non-significant categorical industrial user |
| O&M | operation and maintenance |
| OIW | outstanding Iowa waters |
| ONRW | outstanding national resource waters |
| PAH | polycyclic aromatic hydrocarbon |
| PCB | polychlorinated biphenyl |
| PFRP | processes to further reduce pathogens |
| PGP | pesticides general permit |
| PN | public notice |
| POA | plan of action |
| psi | pound per square inch |
| PSRP | processes to significantly reduce pathogens |
| SD | separation distance |
| SDMP | septage disposal management plan |
| SIU | significant industrial user |
| sp. | species |
| SS | suspended solids (the pollutant parameter total suspended solids) |
| SWESI | substantial and widespread economic and social impact |
| TA | treatment agreement |
| TAPC | total annual project costs |
| TKN | total kjeldahl nitrogen |
| Tm | terameter |
| TMDL | total maximum daily load |
| TOT | time of transfer |
| TRC | total residual chlorine |
| TRE | toxicity reduction evaluation |
| TSS | total suspended solids |
| U.S. | United States |
| USDA | U.S. Department of Agriculture |
| USGS | U.S. Geological Survey |
| VAR | vector attraction reduction |
| WER | water-effect ratio |
| WLA | wasteload allocation |
| WLAP | Iowa Wasteload Allocation Procedure |
| WOTUS | waters of the U.S. |
| WQBEL | water quality-based effluent limit |

**567—60.2(455B) Construction permits.**

**60.2(1)** *Construction permit requirement.*

*a.* No person shall construct, install or modify any wastewater DS or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits under Iowa Code section 455B.183, nor shall any connection to a sewer extension in violation of any special limitation specified in a construction permit pursuant to 60.2(4) be allowed by any person subject to the conditions of the permit.

*b.* Exemptions to the requirement to obtain a construction permit are listed in the Iowa Wastewater Facilities Design Standards, effective *Month Day*, 2025, located on the department's website; hereafter referred to as the IWFDS.

**60.2(2)** *Construction sites.*

*a.* The site for each new wastewater treatment plant, plant expansion, or upgrade of existing facilities must be inspected and approved by the department prior to submission of plans and specifications. Site survey applications must be submitted in accordance with this rule.

*b.* Site approval under this subrule shall be based on the criteria contained in:

(1) The IWFDS;

(2) The Recommended Standards for Wastewater Facilities, 2014 Edition, a report of the Great Lakes - Upper Mississippi Board of State and Provincial Public Health and Environmental Managers, available on their website at: www.health.state.mn.us/communities/environment/water/tenstates/standards.html; hereafter referred to as the Ten States Standards;

(3) Applicable federal guidelines and standards; and

(4) Other design documents, including standard textbooks, current technical literature and applicable safety standards.

*c.* The minimum separation distances for PSDS, onsite treatment systems, building sewer service lines and laterals, wastewater treatment works, sewage sludge, septage, and land application wetted disposal areas are as listed below in Table I. Additional separation distances for gravity sanitary sewers, sanitary sewer force mains, storm sewers, drains, and other conveyances are provided in Table A of 567—paragraph 43.3(7)*"d"* and for PSDS in 567—Chapter 69, and specific narrative separation distances for conveyances are provided in 567—subparagraphs 43.3(2)*"a"*(3) and (4). Sewage sludge, septage, and domestic or industrial wastewater shall be land applied in accordance with 567—Chapter 67, 567—Chapter 68, and the IWFDS, respectively.

**Table I: Wastewater Separation Distances**

| Structure or Source of Contamination | Required Minimum Lateral Distance, as Measured Horizontally on the Ground Surface, in feet | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | PSDS and Onsite Treatment Systems[1] | | Building Sewer Service Lines and Laterals[2] | Wastewater Treatment Works[3] | | Land Application | | |
| | Closed Portion | Open Portion | | Lagoons[4] | Mechanical[5] | Sewage Sludge | Septage | Domestic or Industrial Wastewater, Wetted Disposal Area[6] |
| **WELLS:** | | | | | | | | |
| Public wells: | | | | | | | | |
| Public water supply well - deep[7] | 100 | 200 | 25: Water main<br>75: Standard sanitary sewer | 400 | 200 | 200 | 500 | 200 |
| Public water supply well - shallow[7] | 200 | 400 | 25: Water main<br>75: Standard sanitary sewer | 1000 | 400 | 200 | 500 | 400 |
| Below-ground level finished water storage facility | 50 | | 25: Water main<br>75: Standard sanitary sewer | 50 | 50 | 50 | 50 | |
| New or existing private well - deep or shallow | 50 | 100 | 10 | 400[8,9] | 200 | 500 | | |

| | Required Minimum Lateral Distance, as Measured Horizontally on the Ground Surface, in feet | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **WASTEWATER DISPOSAL SYSTEMS:** | | | | | | | | |
| Other PSDSs and onsite treatment systems – open or closed portions[10] | 5[10] | 10[10] | | | | | | |
| **WATERBODIES:** | | | | | | | | |
| Flowing streams or ponds | 25 | | | | | 35[11] | 35[11] | 300 |
| Lakes or reservoirs | 50 | 100 | | 400 | | 35[11] | 35[11] | 300 |
| Wetlands or drainage channels[12] | | | | | | 35[11] | 35[11] | 300 |
| **MISCELLANEOUS:** | | | | | | | | |
| Inhabitable residences, other inhabitable structures, or commercial buildings | 10[13] | | | 1000[14,15,16] | 1000[13,15] | 200 | 750[17] | 300 |
| Public use areas (not including roads or highways) | | | | Anaerobic lagoons only[16] | | | | 300 |
| GHEX loop boreholes[18] | 50 | 100 | | | | | | |
| Roadside ditches | 10 | | | | | | | |
| Road rights-of-way | | | | 25[20] | | | | |
| Property lines | 10[19] | | | 25[20] | | | | |
| Suction water lines | 50 | 100 | | | | | | |
| Water lines continually under pressure, foundation drains, or subsurface tiles[21] | 10 | | | | | | | |

[1]PSDS (private sewage disposal system) is defined in 567—subrule 69.1(2). For the purposes of this table, "onsite treatment system" includes any wastewater treatment system not included in the definition of a PSDS (i.e., provides treatment or disposal of domestic sewage from more than four dwelling units or 16 or more individuals on a continuing basis) that is utilizing wastewater treatment technologies described in 567—Chapter 69 to treat domestic waste. Closed portion refers to the part of a treatment system that is fully contained and does not allow effluent or pretreated effluent to enter soil or groundwater (e.g., septic tank or impervious vault toilet). Open portion refers to the part of a treatment system that allows effluent or pretreated effluent to discharge into soil or groundwater for treatment or disposal (e.g., soil absorption system or unlined ISSF system). These SDs also apply to onsite treatment systems that are not considered privately owned.

[2]The SDs for building sewer service lines and laterals shall be considered minimum distances when constructing sewer lines, and shall be increased where possible to provide better protection. "Water main" and "standard sanitary sewer" are the type of materials or pipe used to construct the specified type of sewer, in accordance with 567—subrule 43.3(2) and Section 2.4 of the IWFDS.

[3]For the purposes of this table, "wastewater treatment works" includes lagoons as specified in superscript 4 and mechanical treatment works as specified in superscript 5. When the SDs for wastewater treatment systems and structures other than wells cannot be maintained for the expansion, upgrading, or replacement of existing facilities, the SDs shall be maintained at no less than 90 percent of the existing distance on the site, providing no data is available indicating that a problem has existed or will be created. The wastewater treatment works SDs shall not apply to control buildings, including but not limited to laboratories, offices, and toilet or shower rooms.

[4]The term "lagoons" includes aerated lagoon systems, advanced aerated lagoon systems, and waste stabilization lagoons, as defined in 567—subrule 81.1(1), and holding ponds, equalization basins, and sludge digestion or holding tanks, as described in the IWFDS. The term does not include lagoons used to dispose of water treatment plant wastes and anaerobic lagoons used for animal wastes (as noted in superscript 8). The SD from lagoons shall be measured from the water surface.

[5]The term "mechanical" includes activated sludge systems and fixed film biological treatment systems, as defined in 567—subrule 81.1(1), and any other wastewater disposal system that is not a PSDS, an onsite treatment system, or a lagoon. The mechanical wastewater treatment plant SDs are recommended for pumping stations at sites remote from new or expanded wastewater treatment facilities. All pumping stations shall be off the traffic ways of streets and alleys.

[6]The wetted disposal area is the land and area that is normally wetted by wastewater application. The wetted disposal area shall be established at least 50 feet inside the property line on all sides of the land application site. Distances may be reduced depending upon the extent of pretreatment and operational techniques.

[7]Deep and shallow wells are defined in 567—subrule 40.2(1).

[8]The SD between a private well and an anaerobic lagoon, earthen manure slurry storage basin, earthen manure storage basin, or runoff control basin shall be 1,000 feet. If an applicant for a private well construction permit demonstrates through percolation testing

that the seepage loss through the lagoon or basin does not exceed 1/16 inch/day (0.0625 inch/day), the SD shall be 400 feet. The percolation test shall meet the requirements of ASTM D1587/D1587M-15 and 567—subrule 65.15(11).

[9]The 400 foot SD between an existing, nonpotable, deep or shallow private well owned by an industry and an industrial wastewater treatment works may be reduced to 200 feet at the department's discretion for industrial facilities expanding or upgrading their existing treatment works within the industry's existing property boundaries.

[10]Required distance between a new PSDS and an existing other type of PSDS.

[11]If sewage sludge or septage is land applied within 200 feet upgradient of a stream, lake, sinkhole, or tile line surface intake, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours of application unless otherwise approved by the department.

[12]Includes drainage channels that may have a direct connection to the groundwater table or a surface water.

[13]If an onsite treatment system (as described in superscript 1) has a design AWW flow of greater than 1,500 gpd and less than or equal to 5,000 gpd, the SD between an inhabitable residence, other inhabitable structure, or commercial building and the onsite treatment system shall be 100 feet.

[14]The SDs between an inhabitable residence, other inhabitable structure, or commercial building and the types of lagoons specified in this superscript shall apply as indicated. If a flow equalization basin is covered and at a site that is remote from new or expanded wastewater treatment facilities, the SD may be reduced to 300 feet at the department's discretion. If the top of a remote flow equalization basin is underneath the surface of the earth, the 1,000-foot SD is recommended but not required, and the minimum SD is 100 feet. If a wastewater treatment lagoon is used solely for the retention or storage of the industrial waste from a boiler or cooling tower blow down facility and its sole use is filed with the county recorder for abstract of title purposes, the 1,000-foot distance is recommended but not required, and the minimum SD is 100 feet.

[15]If the inhabitable structure or commercial building is the property of the owner of the proposed lagoon or mechanical treatment facility, or there is written agreement with the owner of the building, the 1,000-foot distance shall not apply. Any such written agreement shall be submitted to the department and filed with the county recorder for abstract of title purposes, and a copy submitted to the department.

[16]See 60.2(2)*"d"* for specific anaerobic lagoon SDs.

[17]Septage shall not be applied within 750 feet of an occupied residence, except for the residence of the owner of the septic tank that was pumped or the residence of the licensed commercial septic tank cleaner.

[18]GHEX loop boreholes are defined in 567—subrule 49.2(1).

[19]The 10-foot distance between a PSDS and property lines applies unless a mutual easement is signed and recorded by both parties.

[20]An SD of at least 300 feet between a wastewater treatment works and property lines or rights-of-way is recommended where treatment works may be expanded in the future.

[21]"Foundation drain" is defined in 567—subrule 69.1(2).

*d.* For anaerobic lagoons used in connection with industrial wastewater treatment or pretreatment, the following SDs shall apply between the anaerobic lagoon and the nearest inhabitable residence, other inhabitable structure, or commercial building not owned by the owner of the lagoon, or from a public use area other than a public road. These SDs do not apply to controlled discharge or aerated facultative lagoon systems.

(1) Where the average rated flow is 100,000 gpd or less, the SD shall be at least 1,250 feet.

(2) Where the average rated flow is greater than 100,000 gpd, the SD shall be at least 1,875 feet.

(3) A person may build or expand an anaerobic lagoon closer to an inhabitable residence, other inhabitable structure, or commercial building not owned by the owner of the anaerobic lagoon, or to a public use area other than a public road, if the affected landowners sign a written agreement with the anaerobic lagoon owner to waive the SDs under such terms the parties negotiate. Any such agreement shall be submitted to the department and filed with the county recorder for abstract of title purposes.

(4) When the SDs in this subparagraph cannot be maintained for the expansion, upgrade, or replacement of existing anaerobic lagoon facilities, the SD may be reduced to 1,000 feet provided all of the following criteria are met:

1. The anaerobic lagoon will be completely covered and provided with approved off gas treatment throughout its entire operation life;

2. An operation and maintenance manual shall be prepared and submitted to the department in accordance with the IWFDS; and

3. No data are available indicating that a problem has existed or will be created.

**60.2(3)** *Construction permit applications—general.*

*a. General.* All applications for a construction permit required under this rule shall be made in accordance with the requirements in the IWFDS and on forms provided by the department. The applicant will be promptly notified if the application is incomplete or improperly filled out, and an application will not be reviewed until it is complete. A construction permit will be denied when the application does not

meet all requirements for permit issuance. For a system with permits conditioned by limitations on additional loads under 60.2(4), construction permit applications must be accompanied by an accounting of connections and additional loading since the time the initial conditioned permit was issued.

*b. Submission date.* Applications for a construction permit must be submitted to the director at least 120 days in advance of the construction start date.

*c. Site surveys.*

(1) For new or expanded wastewater treatment facilities, an application for a site survey must be submitted by the applicant's engineer in advance of a full application for construction permit. An applicant should allow 60 days from the submission date of the site survey application for preliminary approvals.

(2) A site survey application must include the following minimum information:

1. A preliminary engineering report or a cover letter that contains a brief description of the proposed treatment process and assurance that the project is in conformance with the long-range planning of the area.

2. The general information, treatment project site selection, and treatment project design data portions of the construction permit application forms, as provided by the department.

(3) If a site survey application is incomplete, it will be returned to the engineer for completion. When a site survey application is complete, it will be reviewed as follows:

1. If the data submitted indicates on its face that the site would be unsuitable for its intended purpose, a letter of rejection will be sent to the applicant and the engineer. Clarifications and additional data may be requested of the applicant and the engineer.

2. If the data submitted indicates on its face that the site may be suitable, a site survey will be conducted by department staff.

*d. Fee.* A single construction permit application fee of $100 as specified in Iowa Code section 455B.197(2) is due at the time of construction permit application submission.

*e. Director action.* The director shall act upon the application within 60 days of receipt of a complete application by either issuing a construction permit or denying the construction permit in writing unless a longer review period is necessary and the applicant is so notified in writing.

*f. Modification after construction permit issuance.* Applicants seeking a modification to plans and specifications after having been issued a construction permit shall submit an addendum to plans and specifications, a change order, or revised plans and specifications, along with the reasons for the proposed changes, to the department. A supplemental written permit or approval will be issued when the changes submitted by the applicant meet department requirements. Construction shall not proceed until such changes have been approved.

**60.2(4)** *Sanitary sewer extension construction permit applications.* Applications for sanitary sewer extension construction permits shall conform to the IWFDS. If a sanitary sewer extension construction permit application does not provide sufficient information to grant or deny a sewer system construction permit, additional information may be requested and evaluated. Sanitary sewer extension approval shall be subject to the following:

*a.* A sanitary sewer extension construction permit may be denied if, at the time of application, the treatment facility treating wastewater from the proposed sewer is not in substantial compliance with its operating permit or if the treatment facility receives wastes in volumes or quantities that exceed its design capacity and interfere with its operation or performance. If the applicant is operating under a compliance schedule that is being adhered to and that will lead to resolution of the substantial compliance issues, or if the applicant can demonstrate that the problem has been identified, the planning completed, and corrective measures initiated, then the construction permit may be granted.

*b.* A sanitary sewer extension construction permit may be denied if bypassing has occurred at the treatment facility, except when any of the following conditions are being met:

(1) The bypassing is due to a combined sewer system, and the facility is in compliance with a department-approved long-term CSO control plan;

(2) The bypassing occurs as a result of a storm with an intensity or duration greater than that of a storm with a return period of five years, according to the NOAA Atlas 14 Point Precipitation Frequency Estimates; or

(3) The department determines that timely actions are being taken to eliminate the bypassing.

*c.* A sanitary sewer extension construction permit may be denied if an existing downstream sewer is or will be overloaded or surcharged, resulting in bypassing, flooded basements, or overflowing manholes, unless:

(1) The bypassing or flooding is the result of a precipitation event with an intensity or duration greater than that of a storm with a return period of two years, according to the NOAA Atlas 14 Point Precipitation Frequency Estimates; or

(2) The system is under full-scale facility planning and the applicant provides a schedule that is approved by the department for rehabilitating the system to the extent necessary to handle the additional loadings.

**60.2(5)** *Application review.*

*a.* Review of construction permit applications shall be based on the criteria listed in 60.2(2)*"b"* and on the Iowa Antidegradation Implementation Procedure, incorporated by reference in 60.7(2)*"d"*(4). In any conflict between the criteria, the IWFDS shall prevail.

*b. IWFDS waivers.* Requests for waivers from the IWFDS shall be submitted and reviewed in accordance with 561—Chapter 10.

**60.2(6)** *Commencing construction.* Notwithstanding the 120-day requirement in 60.2(3)*"b,"* construction of the approved system may commence immediately after the issuance of a construction permit.

**60.2(7)** *Expiration.* The construction permit shall expire if construction thereunder is not commenced within one year of the date of issuance thereof. The director may grant an extension of time to commence construction if it is necessary or justified, upon showing of such necessity or justification to the director.

**60.2(8)** *Modification or revocation.* The director may modify or revoke a construction permit for cause, including but not limited to the following:

*a.* Failure to construct said wastewater DS or part thereof in accordance with the approved plans and specifications;

*b.* Violation of any term or condition of the permit;

*c.* Obtaining a permit by misrepresentation of facts or failure to disclose fully all material facts; or

*d.* Any change during construction that requires material changes in the approved plans and specifications.

**60.2(9)** *Certification of completion.* Within 30 days after completion of construction, installation or modification of any wastewater DS or part thereof or extension or addition thereto, the construction permit holder shall submit a certification by a registered professional engineer that the project was completed in accordance with the approved plans and specifications.

**567—60.3(455B) Operation permits.**

**60.3(1)** *Operation permit requirement.* Except as otherwise provided in this subrule, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any wastewater DS or part thereof without, or contrary to any condition of, an operation permit issued by the director. An operation permit is not required for the following:

*a.* A PSDS that does not discharge into, or have the potential to reach, a designated water of the state or subsurface drainage tile (Note: PSDSs under this exemption are regulated under 567—Chapter 69).

*b.* A semipublic sewage DS, the construction of which has been approved by the department and that does not discharge into a water of the state.

*c.* A pretreatment system, the effluent of which is to be discharged directly to another DS for final treatment and disposal.

*d.* A discharge from a geothermal heat pump that does not reach a navigable water.

*e.* Water well construction and well services related discharge that does not reach a WOTUS as defined in 40 CFR §122.2.

*f.* Discharges from the application of biological pesticides and chemical pesticides where the discharge does not reach a WOTUS as defined in 40 CFR §122.2. Aquatic pesticides may be applied to any WOTUS in accordance with this chapter and NPDES General Permit No. 7, "Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides."

*g.* Agricultural stormwater discharges. This exclusion applies only to the operation permit requirement set forth in this rule and does not alter other requirements of law, including but not limited to any applicable requirements of Iowa Code chapters 459 and 459A.

*h.* Dewatering discharge from the installation, repair, or maintenance of agricultural drainage systems that does not reach a water of the state. This activity is not considered operation of a wastewater DS.

*i.* A wastewater discharge from a water treatment plant that does not reach a WOTUS as defined in 40 CFR §122.2.

**60.3(2)** *Applications.*

*a. Individual permit applications.*

(1) Application Forms. Applications for operation permits required under this paragraph shall be made on forms provided by the department.

(2) Application due dates.

1. Applications for an individual permit for a new discharge of stormwater associated with construction activity as defined in 40 CFR §122.26(b)(14) under "stormwater discharge associated with industrial activity" must be submitted at least 60 days before the date on which construction is to commence.

2. The due date for an application for a new discharge of wastewater is 180 days prior to the date the operation is scheduled to begin unless a shorter period is approved by the director.

3. The due date for a renewal application is 180 days prior to the expiration date of the current permit. For a POTW, permission to submit an application at a later date may be granted by the director.

(3) Application completeness.

1. A permit application is complete and approvable when all necessary questions on the application have been completed and the application is signed pursuant to this subrule, and when all applicable portions of the application, including the application fee, treatment agreement forms, and required attachments, have been submitted. The director may require the submission of an antidegradation alternatives analysis or other additional information deemed necessary to evaluate the application.

2. Incomplete applications may be returned to the applicant for completion. Authorization to discharge will be suspended if a complete application is not submitted to the department before the expiration date of the current permit. In the case of new applications, no discharge will be allowed until an operation permit is issued. In the case of existing discharges, if a permit application is incomplete or has not been submitted, the department shall notify the applicant of a violation of this rule.

3. If a permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, the permittee shall promptly submit such facts or information.

(4) Application receipt. Upon completion of a tentative determination with regard to a permit application as described in 60.5(1), the director shall issue an operation permit for applications filed pursuant to this subrule within 90 days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time is necessary and the applicant is notified.

*b. GP applications.* A Notice of Intent (NOI) for coverage under a GP shall be completed on forms provided by the department and in accordance with 60.6(1). An NOI must be submitted for any of the following:

(1) Stormwater discharge associated with industrial activity;

(2) Stormwater discharge associated with small construction activity;

(3) PSDSs that discharge to a WOTUS;

(4) Discharges, except a stormwater only discharge, from a mining or processing facility;

(5) Discharges from hydrostatic testing, tank ballasting and water lines, if required to be submitted by GP No. 8; or

(6) Discharges from dewatering or residential geothermal systems, if required to be submitted by GP No. 9.

*c. Application fees.* Required fees shall be submitted with all permit applications pursuant to Iowa Code section 455B.197(3).

*d. Signatories of permit applications.* Permit applications for operation and NPDES permits shall be signed in accordance with 40 CFR §122.22.

**60.3(3)** *Indirect discharger requirements.*

*a. Information requirement.* The director may require an indirect discharger to submit information similar to that required in an application for an operation permit, but no operation permit is required for such discharge.

*b. Treatment agreement (TA).* A POTW intending to accept waste from a SIU as defined in 40 CFR §403.3(v) must submit a TA that:

(1) Is on the TA form provided by the department;

(2) Identifies and limits the monthly average and daily maximum flows and identifies and limits all other pollutants or pollutant parameters necessary to ensure that the discharge will be in accordance with the applicable requirements in 567—Chapter 62; and

(3) Is signed and dated by the SIU and the owner of the POTW accepting the wastewater.

*c. TA submittal timelines.* A POTW receiving waste from an existing or proposed SIU shall submit a complete TA form to the department in accordance with the following time lines:

(1) For an existing SIU with an existing TA, 60 days in advance of a proposed expansion, production increase or process modification that may result in discharges of sewage, industrial waste, or other waste in excess of the discharge stated in the existing TA.

(2) For an indirect discharger that would become a SIU as a result of a proposed expansion, production increase or process modification, 60 days in advance of the proposed expansion, production increase or process modification.

(3) For a new indirect discharger that will qualify as a SIU, 180 days in advance of a proposed discharge.

*d. Construction and operation permit applications—TA submittal.*

(1) A construction permit application for the construction or modification of a POTW must include current TA forms for each SIU discharging to the POTW. These TAs will be used in determining the design basis of the new or upgraded system.

(2) An operation permit application from a POTW must include information and current TA forms for each SIU discharging to the POTW, and information on any Non-Significant Categorical Industrial User discharging to the POTW.

**60.3(4)** *Effective period.* NPDES permits may be granted for any period of time not to exceed five years. All other operation permits may be granted for an appropriate period of time as determined by the director, based on the type of wastewater DS being permitted. GPs will be issued for a period not to exceed five years. Each permit to be renewed shall be subject to the provisions of all department rules in effect at the time of the renewal.

**60.3(5)** *Permit conditions.* Operation permits shall contain conditions deemed necessary by the director to ensure compliance with all applicable department rules, including monitoring and reporting conditions, to protect the public health and beneficial uses of waters of the state, and to prevent water pollution from waste storage or disposal operations.

**60.3(6)** *Modification or termination.* The director may amend, revoke and reissue, or terminate in whole or in part any permit for cause, either at the request of any interested person (including the permittee) or upon the director's initiative, according to the provisions of this subrule.

*a. GP.* The director may revoke and reissue or terminate in whole or in part any GP or coverage under a GP for cause. A waiver or amendment of the terms and conditions of a GP shall not be granted.

If a waiver or amendment of a GP is desired, the permittee must apply for an individual permit following the procedures in 60.3(2)*"a."*

*b. Individual permit.* All requests to amend, revoke and reissue, or terminate an individual permit shall be in writing and contain information or reasons supporting the request.

(1) A permittee shall furnish to the director, within a reasonable time, any information that the director may request to determine whether cause exists for amending, revoking and reissuing, or terminating a permit, including a new permit application.

(2) Required amendment fees shall be submitted in accordance with 60.14(3).

(3) The filing of a request by an interested person for an amendment, revocation and reissuance, or termination does not stay any permit condition.

*c. Cause.* Cause under this subrule includes but is not limited to the following:

(1) Violation of any term or condition of the permit.

(2) Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(4) Failure to submit records and information the director requires, both generally and as a condition of the permit, in order to ensure compliance with the discharge conditions specified in the permit.

(5) Failure or refusal of an NPDES permittee to carry out the requirements of 60.7(7)*"f."*

(6) Failure to provide all the required application materials or appropriate fees.

(7) Causes listed in 40 CFR §§122.62 and 122.64.

*d. Individual permit compliance schedule amendments.*

(1) A request to amend an interim date in a compliance schedule shall be made at least 30 days prior to the next scheduled date that the permittee contends it is unable to meet. The request shall include proposed changes to the existing compliance schedule and documentation supporting the need for an extension.

(2) A request to amend a final date in a compliance schedule shall be made at least 120 days prior to the final compliance date. An extension of the final date may be granted by the department for cause, including unusually adverse weather conditions, equipment shortages, labor strikes, federal grant regulation requirements, or any other extenuating circumstances beyond the control of the requesting party. Cause does not include economic hardship, profit reduction, or failure to proceed in a timely manner.

*e. Reduction of individual permit minimum monitoring requirements.* The minimum monitoring requirements in an existing or reissued individual permit as established in 567—Chapter 63 may be modified or reduced at the director's discretion or when requested by the permittee.

(1) A request to modify or reduce the minimum monitoring requirements in an existing individual permit is considered a waiver request. A request shall include a written description of the proposed modification or reduction, monitoring results that are frequent enough to reflect variations in wastewater characteristics over a period of time and are consistent in results from sample to sample, and a completed Petition for Waiver form, available on the department's website.

(2) Any request to modify or reduce minimum monitoring requirements must adequately justify that the modified or reduced monitoring will accurately reflect actual wastewater characteristics and will not adversely impact facility operations.

(3) The department will evaluate a request to modify or reduce the minimum monitoring requirements in an existing permit based upon whether or not less frequent sample results would accurately reflect actual wastewater characteristics and whether operational control could be maintained.

(4) All reductions or modifications of monitoring incorporated into an individual operation or NPDES permit by amendment or upon reissuance are only effective until the expiration date of that permit.

*f. Requests to amend, revoke and reissue, or terminate.*

(1) Individual permit requests.

1. If the director tentatively decides to amend or revoke and reissue an individual permit, a draft permit shall be prepared according to 60.5(1)*"a."* When an individual permit is amended under this subrule, only those conditions to be amended shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit. If an amendment falls under the definition of "minor amendment," the individual permit may be amended without a draft permit or PN.

2. If the director decides to terminate an individual permit, a termination decision shall be prepared and transmitted to the permittee. The permittee will have 60 days to appeal the termination.

(2) GP requests. If the director tentatively decides to revoke and reissue or terminate a GP, a draft reissuance or termination will proceed in accordance with Iowa Code sections 455B.103A and 455B.173.

(3) When an individual or general permit is revoked and reissued under this subrule, the entire permit is reopened just as if the permit had expired and was being reissued.

(4) During any amendment, revocation and reissuance, or termination proceeding, the permittee or permittees shall comply with all conditions of the existing permit until a new final permit is reissued or the existing permit is terminated.

(5) If the director decides the request is not justified, the director shall deny the request and send the requester a brief written response giving a reason for the decision. Denials of requests for permit amendment, revocation and reissuance, or termination are not subject to PN, comment, hearings, or appeals.

**60.3(7)** *Prohibitions on permit issuance.* 40 CFR §122.4 is adopted by reference.

**60.3(8)** *Public access to NPDES information.* Department records connected with NPDES permits are available for public inspection and copying to the extent provided in 567—Chapter 2.

**567—60.4(455B) Issuance of NPDES permits.**

**60.4(1)** *Individual permit.* An individual NPDES permit is required when there is a discharge of a pollutant from any point source into navigable waters. An NPDES permit is not required for the discharges listed in 40 CFR §122.3.

**60.4(2)** *General permits (GPs).*

*a.* The director may issue GPs consistent with this chapter to regulate one or more categories or subcategories of discharges, if the sources within each category or subcategory meet the criteria in 40 CFR §122.28(a)(2).

*b.* Each GP issued by the department must be adopted as an administrative rule in accordance with Iowa Code chapter 17A. Each proposed permit will:

(1) Be accompanied by a rationale setting forth the principal facts and methodologies considered during permit development,

(2) Correspond to existing geographic or political boundaries, and

(3) Be identified in rule 567—60.13(455B).

*c.* If an NPDES permit is required for an activity covered by a GP, the applicant may seek either GP coverage or an individual permit as provided in this chapter.

**60.4(3)** *Effect of a permit.* 40 CFR §122.5 is adopted by reference.

**567—60.5(455B) Notice and public participation in the individual permit process.**

**60.5(1)** *Formulation of tentative determination.* The department shall make a tentative determination to issue or deny an operation or NPDES permit for the discharge described in a permit application in advance of the PN (described in 60.5(2)). If the tentative determination is to:

*a.* Issue an NPDES permit, the department shall prepare a permit rationale pursuant to 60.5(3) and a draft permit. The draft permit shall include:

(1) Effluent limitations identified pursuant to 60.7(2) and 60.7(3) for those pollutants proposed to be limited;

(2) If necessary, a proposed compliance schedule, pursuant to 60.7(4) and 60.7(5) that includes interim dates and requirements for meeting the effluent limitations and other permit conditions; and

(3) Any other special conditions (other than those required in 60.7(7)) that will have a significant impact upon the discharge described in the permit application.

*b.* Deny an NPDES permit, the department shall prepare a notice to deny the permit application and place it on PN as described in 60.5(2).

*c.* Issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit it to the applicant. The applicant will have 60 days to appeal the final operation permit.

*d.* Deny an operation permit (non-NPDES permit), no PN is required. The department shall send written notice of the denial to the applicant. The applicant will have 60 days to appeal the denial.

**60.5(2)** *Public notice (PN) for individual NPDES permits.*

*a.* Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, a PN shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge.

(1) The PN shall be transmitted by the department to the persons noted in 40 CFR §124.10(c)(1).

(2) The PN shall be transmitted by the department to any person upon request. Any person or group may request to receive copies of any PNs concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area.

(3) The department shall periodically notify the public of the opportunity to receive PNs. The director may update the PN distribution list from time to time by requesting written indication of continued interest from those listed. The director may delete from the list the name of any person or group who fails to respond to such a request.

*b.* The director may publish all notices of activities described in 60.5(2)*"a"* to the department's website. If this option is selected for a draft permit, the director must post the draft permit and permit rationale on the website for the duration of the public comment period.

*c.* The department shall provide not less than 30 days following the PN date during which time interested persons may submit their written views on the tentative determinations with respect to the permit application and request a public hearing pursuant to 60.5(4). Written comments may be submitted by paper or electronic means. All pertinent comments submitted during the 30-day comment period shall be retained by the department and considered by the director in the formulation of the final determinations with respect to the permit application. The comment period may be extended at the department's discretion. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to 60.5(5).

*d.* A PN of a draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit shall contain:

(1) The name, email address, and telephone number of the permit writer.

(2) The name and address of the applicant.

(3) A brief description of the applicants' activities or operations that result in the discharge described in the permit application.

(4) The name of the waterway to which each discharge of the applicant is made.

(5) A statement of the department's tentative determination to issue, amend, or deny an NPDES permit for the discharge or discharges described in the permit application.

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by 60.5(2)*"c,"* procedures for requesting a public hearing and any other means by which interested persons may influence or comment upon those determinations.

(7) The address, telephone number, email address, and website of places at which interested persons may obtain further information and request copies of, or inspect and copy the tentative determination, permit rationale, and any associated documents.

*e.* No PN is required for a minor permit amendment.

*f.* No PN is required when a request for a permit amendment or permit termination is denied. The department shall send written notice of the denial to the requester and the permittee only. No PN is required if an applicant withdraws a permit application.

**60.5(3)** *Permit rationales and notices of intent to issue or deny.*

*a.* When the department has made a determination to issue or deny an NPDES or operation permit as described in 60.5(1), it shall prepare and send the following information, specific to each determination.

(1) NPDES permit issuance. For a determination to issue an NPDES permit, the department shall prepare and, upon request, shall send to any person a permit rationale with respect to the application described in the PN. Permit rationales shall include at least the following information:

1. For each discharge described in the permit application, a detailed description of the discharge location and a quantitative description of the discharge.

2. A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the WQS applicable to the receiving waters, and of the effluent standards and limitations applicable to the proposed discharge.

3. An explanation of the principal facts and the significant factual, legal, methodological, and policy questions considered in the preparation of the draft permit.

4. Any calculations or other necessary explanation of the derivation of effluent limitations.

(2) NPDES permit application denial. For a determination to deny an application for an NPDES permit, the department shall prepare and, upon request, shall send a notice to deny with respect to the application described in the PN. A notice to deny shall include:

1. The location of the discharge; and

2. A description of the reasons supporting the tentative decision to deny the permit application.

(3) Operation permit issuance. For a determination to issue an operation permit, the department shall prepare and issue a permit. The reasons supporting the decision to issue an operation permit can be sent to the operation permit applicant upon request.

(4) Operation permit application denial. For a determination to deny an application for an operation permit, the department shall prepare and send written notice of the denial to the applicant only. The written denial shall include a description of the reasons supporting the decision to deny the permit application.

*b.* Upon request, the department shall add the name of any person or group to a distribution list to receive copies of permit rationales and notices to deny and shall make copies of all permit rationales and notices to deny available.

**60.5(4)** *Public hearings on proposed NPDES permits.* The applicant, any affected state, the regional administrator, or any interested agency, person, or group of persons may request a public hearing with respect to a tentative determination to issue or deny an NPDES permit.

*a.* Public hearing requests shall:

(1) Clearly state issues and topics to be addressed at the hearing;

(2) Be filed with the director within the 30-day period prescribed in 60.5(2)*"c"*; and

(3) Indicate the interest of the party filing the request and the reasons why a hearing is warranted.

*b.* The director shall hold an informal and noncontested case hearing if there is a significant public interest in holding a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding a hearing.

*c.* Any hearing held pursuant to this subrule shall be held in the geographical area of the proposed discharge when possible or other appropriate area at the director's discretion. Web-based hearings may also be held at the director's discretion. In addition, any hearing held pursuant to this subrule may, as appropriate, consider related groups of permit applications.

*d.* PN of any hearing held pursuant to this subrule shall be circulated at least as widely as was the notice of the tentative determination with respect to the permit application. Notice pursuant to this paragraph shall be made at least 30 days in advance of the hearing. Notice shall be transmitted to:

(1) All persons and government agencies that received a copy of the notice for the permit application; and

(2) Any person or group upon request.

*e.* The contents of a PN of any hearing held pursuant to this subrule shall include at least the following:

(1) The name, email address, and telephone number of the permit writer;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) The name of the waterbody to which each discharge is made;

(4) A brief reference to the PN issued for each NPDES application, including the date of notice;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the person or persons requesting the hearing;

(8) The address, telephone number, email address, and website where interested persons may obtain further information and request copies of, or inspect and copy the draft NPDES permit, permit rationale, and any associated documents;

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(10) The final date for submission of comments regarding the tentative determination.

**60.5(5)** *Response to comments.* At the time a final NPDES permit is issued, the director shall respond to significant and pertinent comments in the form of a responsiveness summary. A copy of the responsiveness summary shall be sent to the permit applicant and made available on the department's website. The responsiveness summary shall:

*a.* Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and

*b.* Briefly describe and respond to all significant and pertinent comments on the draft permit raised during the public comment period provided for in the PN or during any hearing. Comments on a draft permit may be submitted by paper or electronic means or orally at a public hearing.

**567—60.6(455B) Completing a Notice of Intent (NOI) for coverage under a GP.**

**60.6(1)** *Contents of a complete NOI.* An applicant proposing to conduct activities covered by a GP shall file a complete NOI by submitting to the department materials required in this subrule, as applicable. An NOI is not required for discharges authorized under GPs No. 6 or No. 7, for certain discharges under GP No. 8, or for certain discharges under GP No. 9.

*a. NOI Form.* Electronic NOI forms provided by the department must be completed in full and may be obtained on the department's website. Paper NOI forms, when provided, must be completed in full.

*b. GP fee.* The applicable GP fees are listed in 60.14(2).

*c. Public notice (PN) for GPs No. 1, No. 2, and No. 3.* Applicants for GPs No. 1, No. 2 and No. 3 must publish a PN in accordance with Iowa Code section 455B.103A.The newspaper notice shall, at the minimum, contain the following information:

(1) A brief description of the applicants' activities or operations that result in the discharge described in the NOI;

(2) The name of the waterway to which each discharge of the applicant is made and a short description of the location of each discharge of the applicant on the waterway; and

(3) The address, telephone number, email address, and website of places at which interested persons may obtain further information or inspect and copy the NOI.

**60.6(2)** *Authorization to discharge under a GP.*

*a.* Upon the submittal of an NOI in accordance with 60.3(2)*"b"* and 60.6(1), an applicant is authorized to discharge after the department has determined that the contents of the NOI satisfy the requirements of this chapter and of a GP. The department will notify the applicant of coverage under a GP. If any of the items required for filing an NOI specified in 60.6(1) are missing, the department will consider the NOI incomplete and will notify the applicant of the incomplete items.

*b.* If the discharge described in the NOI does not meet the requirements of a GP, an NOI may be denied. The department will notify applicants of denial within 30 days.

*c.* Authorization to discharge is automatic only for the GPs that do not require an NOI under 60.3(2)*"b,"* provided the discharge is a covered activity and the permittee complies with all applicable permit requirements.

**60.6(3)** *GP suspension or revocation.* In addition to the causes for suspension or revocation listed in 60.3(6), the director may suspend or revoke coverage under a GP and require the applicant to apply for an individual NPDES permit in accordance with 60.3(2)*"a."* The department will notify the affected discharger and establish a deadline, not longer than one year, for submitting an individual permit application. Coverage may be suspended or revoked for the following reasons:

*a.* The discharge would not comply with Iowa's WQS pursuant to 567—Chapter 61,

*b.* The department finds that the activities associated with an NOI do not meet the conditions of the applicable GP, or

*c.* The department finds that any discharge covered under a GP is not consistent with the conditions specified in the applicable GP.

**60.6(4)** *Eligibility for individual NPDES permit holders.* A person holding an individual NPDES permit for an activity covered by a GP may apply for coverage under a GP by filing an NOI according to the procedures described in 60.3(2)*"b"* and this rule. In addition to these requirements, the permittee must submit a written request, with the NOI, to either terminate the individual NPDES permit or to amend the individual NPDES permit to remove the GP-covered activity.

*a.* Upon receipt of a complete NOI and request for individual NPDES permit termination or amendment, the applicant shall be authorized to discharge under the GP in accordance with 60.6(2). The applicant will receive notification from the department of coverage under the GP and of the termination or amendment of the individual permit.

*b.* Authorization to discharge under a GP that does not require an NOI will be automatic in accordance with 60.6(2) and shall commence upon completion of individual NPDES permit termination or amendment.

*c.* Individual NPDES permit amendments under this subrule shall follow the applicable PN procedures in rule 567—60.5(455B).

**60.6(5)** *Filing a Notice of Discontinuation (NOD).* A notice to discontinue discharge associated with an activity covered by a GP shall be made electronically or in writing to the department in accordance with the conditions established in each GP.

**567—60.7(455B) Terms and conditions of NPDES permits.**

**60.7(1)** *Prohibited discharges.* No NPDES permit may authorize any of the discharges prohibited by rule 567—62.1(455B).

**60.7(2)** *Application of effluent and pretreatment standards, WQS, and other requirements.* Each NPDES permit shall include any of the following that is applicable:

*a.* An effluent limitation guideline; a standard of performance for a new source; or an effluent standard, effluent prohibition, or pretreatment standard promulgated by the administrator under Sections 301, 304, 306, or 307 of the CWA and adopted by reference in 567—Chapter 62.

*b.* A water quality-based effluent limitation established by the administrator pursuant to Section 302 of the CWA.

*c.* Prior to promulgation of applicable effluent and pretreatment standards under Sections 301, 302, 306, and 307 of the CWA, such conditions as the director determines are necessary to carry out the provisions of the CWA.

*d.* Any other limitation, including those necessary to:

(1) Meet or implement any applicable WQS, treatment or pretreatment standards, or compliance schedules established pursuant to any Iowa law or regulation;

(2) Meet any other federal law or regulation;

(3) Implement total maximum daily loads established pursuant to Section 303(d) of the CWA; or

(4) Comply with the antidegradation policy requirements of 567—subrule 61.2(2) implemented according to the "Iowa Antidegradation Implementation Procedure," effective February 17, 2010, hereby incorporated by reference, and available on the department's website.

*e.* Limitations pursuant to 40 CFR §122.44(d)(1)(i), (ii), and (iii).

**60.7(3)** *Effluent limitations in NPDES permits.*

*a.* In the application of effluent standards and limitations, WQS, and other legally applicable requirements, pursuant to 60.7(2), the director shall, unless impracticable, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director may, in addition to the specification of daily quantitative limitations by weight, specify other limitations for the level of pollutants authorized in the discharge.

*b.* The manner in which effluent limitations are expressed will depend upon the nature of the discharge.

(1) Continuous discharges shall be limited by daily loading figures and, where appropriate, may be limited as to concentration or discharge rate (e.g., for toxic or highly variable continuous discharges).

(2) Noncontinuous discharges should be more particularly described and limited in accordance with 40 CFR §122.45(e).

**60.7(4)** *Compliance schedules in NPDES permits.* An NPDES permit may specify a compliance schedule in accordance with 40 CFR §122.47. Compliance shall be achieved as soon as possible, consistent with the guidelines and requirements of the CWA and with the provisions of Iowa Code sections 455B.173(2)*"b"* and 455B.173(3)*"b."* If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, such noncompliance shall constitute a violation of the permit for which the director may, pursuant to this chapter and 567—Chapter 7, modify, suspend or terminate the permit or take direct enforcement action. Compliance schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to this chapter.

**60.7(5)** *Compliance schedules in NPDES permits for disadvantaged communities (DCs).* If compliance with applicable federal or state regulations or an order of the department will result in substantial and widespread economic and social impact (SWESI) to ratepayers and an affected community, the director may establish in an NPDES permit a compliance schedule that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI.

*a. DC status.* The director shall find that a regulated entity and the affected community are a DC according to Iowa Code section 455B.199B(2).

*b. DC analysis (DCA).* A regulated entity or affected community must submit a DCA to the director to be considered for disadvantaged status.

(1) When new requirements in a proposed or reissued NPDES permit may result in SWESI, a DCA may be submitted by:

1. A POTW or semipublic facility;
2. A wastewater DS for the treatment or disposal of domestic sewage that is not a semipublic DS or a PSDS and that is not owned by a city or sanitary sewer district; or
3. Any other owner of a wastewater DS that is not a PSDS and does not discharge industrial wastes.

(2) A DCA may be submitted prior to the issuance of an initial NPDES permit if the facility does not discharge industrial wastes and is not a new source or new discharger.

*c. DCA contents.*

(1) A DCA must contain all of the following:

1. Proposed TAPC as defined in 60.7(5)*"d."*
2. The number of households or ratepayers in the affected community.
3. A description of the bond rating of the affected community over the last year, if available.
4. The user rates, as follows:

- For a municipality or other community, the current sewer rate ordinances, including the sewer rates of any industrial users;
- For any other entity, the monthly ratepayer charge for wastewater treatment.
- For a water treatment facility, the water rate schedules or tables; or

5. An explanation of why the regulated entity or affected community believes that compliance with the proposed requirements will result in SWESI.

(2) If a DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the DCA must also contain either:

1. For entities with more than ten households or ratepayers, the MHI or ratepayer income, as determined by an income survey conducted by the regulated entity; or

2. For entities with ten or fewer households or ratepayers, an estimate of MHI or ratepayer income.

*d. Definition of total annual project costs (TAPC).* "Total annual project costs" means the current costs of wastewater treatment in the community (if any) plus the future costs of proposed wastewater system improvements that will meet or exceed all applicable federal or state regulations or requirements of an order of the department. The TAPC shall include any current and proposed facility O&M costs and any existing and proposed system debt, as expressed in current and proposed sewer rates. The costs shall be amortized for a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the TAPC.

The TAPC formula is: TAPC = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Current annual system budget, including O&M and existing debt service + Future annual O&M costs.

*e. DC matrix (DCM).* Upon receipt of a complete DCA, the director shall use the DCM to evaluate the disadvantaged status of an entity or community. A regulated entity or affected community shall be considered a DC if the point total derived in the DCM is equal to or greater than 12. The following data sources shall be used to derive the point total in the DCM:

(1) The TAPC, the number of households or ratepayers in a community, and the bond rating of the community, as stated in the DCA;

(2) The MHI of either:

1. The community, as found in the most recent American Community Survey or United States Census or as stated in an income survey conducted by the regulated entity or community; or

2. The ratepayer group, as stated in an income survey conducted by the regulated entity; and

(3) The unemployment rate of the local county and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

*f. Ratio and determination.* The ratio of the TAPC per household or per ratepayer to MHI shall be calculated in the DCM as follows: the TAPC shall be divided by the number of households or ratepayers to obtain the costs per household or ratepayer, and the costs per household or ratepayer shall be divided by the MHI to obtain the ratio. If the ratio of compliance costs to MHI is:

(1) Less than 1 percent, the entity or community is not considered disadvantaged.

(2) Greater than or equal to 2 percent, the entity or community is considered a DC.

(3) Greater than or equal to 1 percent and less than 2 percent, the director shall use the point total in the DCM to determine if the entity or community is disadvantaged.

*g. DC compliance schedule—first part.* A compliance schedule established in an NPDES permit for a DC as a result of SWESI may contain one or two parts. The first part of a DC compliance schedule shall encompass one five-year NPDES permit cycle and require the permittee to submit an alternatives report, an alternatives implementation compliance plan (AICP), and annual progress reports.

(1) Alternatives report. An alternatives report shall be submitted no later than two years after permit issuance and shall:

1. Detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with applicable federal or state regulations or an order of the department without creating SWESI;

2. Describe which measures will be evaluated for feasibility and affordability during the next portion of the compliance schedule; and

3. Include a plan for pursuing funding options, including grants and low-interest loans.

(2) Alternatives implementation compliance plan (AICP). An AICP shall be submitted no later than 4½ years after permit issuance and shall include:

1. The results of the investigation detailed in the alternatives report;

2. A description of any feasible and affordable alternative(s) that will be implemented;

3. A schedule of the time necessary to implement the alternative(s); and

4. An updated DCA.

*h. DC compliance schedule—second part.* If the entity or community continues to qualify as disadvantaged according to the DCM evaluation of the DCA submitted with the AICP, the entity or community may receive a second compliance schedule as specified in this subrule.

(1) AICP schedule. If the AICP proposes an implementation schedule, the proposed schedule shall be included in the community's NPDES permit.

(2) Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the DC cannot feasibly implement any alternatives and if the community is still disadvantaged according to the DCM evaluation of the DCA submitted with the AICP. An FCP shall be submitted no later than three years after permit issuance. A compliance schedule requiring an FCP shall also require annual progress reports, including an updated DCA. If a DCM evaluation determines that an entity or community is no longer disadvantaged based on the most recent DCA, the NPDES permit may be amended to change the compliance schedule. An FCP shall:

1. Detail how the DC will meet the applicable federal or state regulations or an order of the department and the period necessary to do so, and

2. Review the types of technology capable of treating the pollutant of concern and the costs of installing and operating each technology. All technically feasible alternatives shall be explored.

(3) Schedule extension. The second part of a DC compliance schedule may be extended at the director's discretion.

*i.* Compliance schedules issued in accordance with this subrule shall comply with 60.7(4).

**60.7(6)** *Disadvantaged unsewered communities (DUCs).* If compliance with applicable federal or state regulations or an order of the department will result in SWESI to the ratepayers of an unsewered community, the director may negotiate a compliance agreement that will result in an improvement of water quality and reasonable progress toward complying with the applicable regulations but does not result in SWESI.

*a. DUC status.* The director shall find that an unsewered community is a DUC according to Iowa Code section 455B.199B(3).

*b. DUC analysis (DUCA).*

(1) An unsewered community must submit a DUCA to the director to be considered for DUC status. Only unsewered communities may submit a DUCA under this subrule. For the purposes of this subrule, an unsewered community is defined as a grouping of ten or more residential houses with a density of one house or more per acre and with either no wastewater treatment or inadequate wastewater treatment. An entity defined in 60.1(2) as a PSDS may not submit a DUCA or qualify for a DUC compliance agreement under this subrule.

(2) An unsewered community may submit a DUCA to the director prior to the issuance of or amendment to an administrative order with requirements that could result in SWESI and that are based on applicable federal or state regulations or an order of the department.

*c. DUCA contents.* A DUCA must contain all of the following:

(1) Proposed TAPC as defined in 60.7(6)*"d"*;

(2) The number of households in the unsewered community and source of household information;

(3) Total amount of any awarded grant funding;

(4) MHI or ratepayer income information. If no MHI information is available for the unsewered community, the community should conduct a rate survey to determine the MHI; and

(5) An explanation of why the unsewered community believes that compliance with the proposed requirements will result in SWESI.

*d. Definition of total annual project costs (TAPC).* "Total annual project costs" means the future costs of proposed wastewater system installation or improvements that will meet or exceed all applicable federal or state regulations or requirements of an order of the department. The TAPC shall include the proposed facility O&M costs and the proposed debt of the system as expressed in the proposed sewer rates. The costs shall be amortized over a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the TAPC.

The TAPC formula for an unsewered community is: TAPC = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Future annual O&M costs.

*e. DUC matrix (DUCM).* Upon receipt of a complete DUCA, the director shall use the DUCM to evaluate the disadvantaged status of an unsewered community. An unsewered community shall be considered a DUC if the point total derived from the DUCM is equal to or greater than 10. The following data sources shall be used to derive the point total in the DUCM:

(1) The TAPC and number of households in the unsewered community, as stated in the DUCA;

(2) The MHI of the unsewered community as found in the most recent American Community Survey or United States Census or as stated in an income survey conducted by the unsewered community; and

(3) The unemployment rate of the local county and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

*f. Ratio and determination.* The director shall not require installation of a wastewater DS by an unsewered community if the director determines that such installation would create SWESI, in accordance with Iowa Code section 455B.199B.

(1) The ratio of TAPC per household to MHI shall be calculated in the DUCM as follows: the TAPC shall be divided by the number of households to obtain the costs per household, and the costs per household shall be divided by the MHI to obtain the ratio.

(2) If the ratio of compliance costs to MHI is:

1. Less than 1 percent, the unsewered community is not considered disadvantaged.
2. Greater than or equal to 2 percent, the unsewered community is considered a DUC.
3. Greater than or equal to 1 percent and less than 2 percent, the director shall use the point total in the DUCM to determine if the unsewered community is disadvantaged.

*g. DUC compliance agreement.* A compliance agreement negotiated with a DUC as a result of SWESI shall require the unsewered community to submit an alternatives report and an AICP.

(1) Alternatives report. An alternatives report shall be submitted no later than two years after a DUC determination and shall:

1. Detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with the WQS without creating SWESI;
2. Describe which measures will be evaluated for feasibility and affordability after the report submittal; and
3. Include a plan for pursuing funding options, including grants and low-interest loans.

(2) Alternatives implementation compliance plan (AICP). An AICP shall be submitted no later than 4½ years after a DUC determination. An AICP shall include:

1. The results of the investigation detailed in the alternatives report,
2. A description of any feasible and affordable alternative(s) that will be implemented,
3. A schedule of the time necessary to implement the alternative(s), and
4. An updated DUCA.

(3) AICP schedule. If the AICP proposes an implementation schedule of one or more feasible alternatives, the proposed schedule shall be included in an administrative order between the department and the unsewered community. If the feasible alternative that will be implemented requires a construction, operation, or NPDES permit, the unsewered community shall comply with the rules regarding those permits in this chapter.

(4) Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the unsewered community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the DUCM evaluation of the DUCA submitted with the AICP. An FCP shall be submitted no later than seven years after a DUC determination. An administrative order requiring an FCP shall also require the submittal of biennial progress reports containing an updated DUCA. If the DUCM evaluation determines that an unsewered community is no longer disadvantaged based on the most recent DUCA, the order may be amended at the director's discretion. An FCP shall:

1. Detail how the unsewered community will meet the WQS and the period necessary to do so; and

2. Review the types of technology capable of treating the pollutant of concern and the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored.

**60.7(7)** *Other terms and conditions of NPDES permits.* Each NPDES permit shall provide for and ensure all of the following:

*a.* That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit.

*b.* That facility expansions, production increases, or process modifications that result in new or increased pollutant discharges will be reported by submission of a new permit application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharges of pollutants.

*c.* That the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.

*d.* That if the terms and conditions of a GP are no longer applicable to a discharge, the applicant shall apply for an individual NPDES permit.

*e.* That the permit may be amended, revoked and reissued, or terminated in whole or in part for the causes provided in 60.3(6)*"c."*

*f.* That the permittee allows for facility inspection and entry pursuant to 40 CFR §122.41(i), which is adopted by reference.

*g.* That, if the permit is for a discharge from a POTW, the permittee shall provide notice to the director:

(1) 180 days in advance of any new introduction of pollutants into the POTW from a new source if such source was discharging pollutants;

(2) 60 days in advance of any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of permit issuance; and

(3) Pursuant to 60.3(3)*"c."*

Such notice shall include information on the quality and quantity of effluent to be introduced into the POTW and any anticipated impact of such change on the quantity or quality of effluent to be discharged from the POTW.

*h.* That, if the permit is for a discharge from a POTW, the permittee shall require any industrial user to comply with the requirements of Sections 204(b), 307, and 308 of the CWA.

*i.* That the facility is properly operated and maintained pursuant to 40 CFR §122.41(e), which is adopted by reference.

*j.* That the permit will be modified upon the establishment of a toxic effluent standard or prohibition pursuant to 40 CFR §122.44(b)(1), which is adopted by reference.

*k.* That the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

*l.* That the need to halt or reduce the permitted activity is not a defense in an enforcement action pursuant to 40 CFR §122.41(c), which is adopted by reference.

**60.7(8)** *POTW compliance—plan of action (POA).* The owner of a POTW must prepare and implement a POA to achieve and maintain compliance with final effluent limitations in its NPDES permit as specified below:

*a.* The director shall notify a POTW owner of the POA requirement and of an opportunity to meet with department staff to discuss the plan requirements. The POTW owner shall submit the POA to the appropriate regional department field office within six months of such notice unless a longer time is needed and is authorized in writing by the director.

*b.* A POA must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures and a schedule to correct the deficiencies or meet the needs, and discuss the method of financing the proposed improvements. A POA may include the

submittal of a DCA in accordance with 60.7(5) or may provide for a phased construction approach to meet interim and final limitations.

This rule is intended to implement Iowa Code chapter 455B, subchapter III, part 1 (Iowa Code sections 455B.171 through 455B.187 and 455B.199B).

**567—60.8(455B) Reissuance of operation and NPDES permits.**

**60.8(1)** *Individual operation and NPDES permit reissuance.* Any operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance pursuant to 60.3(2)*"a."*

**60.8(2)** *Renewal of coverage under a GP.* A permittee authorized to discharge under a GP is subject to the permit terms until coverage is obtained under an individual permit or the permitted discharge has ceased and, if required, an NOD is submitted in accordance with the GP.

*a.* If a permittee continues the activity beyond the expiration date of a GP and the permit will be reissued, the conditions of the expired GP will remain in effect until the effective date of the reissued GP.

*b.* If a permittee continues the activity beyond the expiration date of a GP and the permit will not be reissued or renewed, the discharge must be permitted with an individual NPDES permit in accordance with 60.3(2).

**60.8(3)** *Continuation of expiring operation and NPDES permits.*

*a.* The conditions of an expired operation or NPDES permit will continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely and complete application under 60.3(2); and

(2) The department does not issue a new permit with an effective date on or before the expiration date of the previous permit.

*b.* Operation and NPDES permits continued under this subrule remain fully effective and enforceable.

*c.* If a permittee is not in compliance with the conditions of the expiring or continued permit, the department may choose to do any of the following:

(1) Initiate enforcement action on a permit that has been continued or reissued;

(2) Issue a notice of intent to deny a permit under 60.5(3);

(3) Reissue a permit with appropriate conditions in accordance with this subrule; or

(4) Take other actions authorized by this chapter.

**567—60.9(455B) Monitoring, recordkeeping and reporting by operation permit holders.** Operation permit holders are subject to the applicable requirements and provisions specified in 567—Chapter 63 and those specified in the operation permit issued by the department.

**567—60.10(455B) Silvicultural activities.** The following is adopted by reference: 40 CFR §122.27.

**567—60.11(455B) Stormwater discharges.**

**60.11(1)** The following are adopted by reference: 40 CFR §§122.26, 122.32, 122.33, 122.34, and 122.35.

**60.11(2)** Small municipal separate storm sewer systems (MS4s).

*a.* The following municipal MS4s that are not qualified as medium or large MS4s, in accordance with 40 CFR §122.26, are considered regulated small MS4s:

(1) All MS4s located in urban areas with a population of at least 50,000 people as defined by the latest decennial census, and

(2) All MS4s located outside urbanized areas that serve 10,000 people or more where the average population density is 1,000 people/square mile or more.

*b. NPDES permit applications for small MS4s.* An NPDES permit application shall be submitted for any discharge from a regulated small MS4 designated under this subrule. The first permit application submitted by a small MS4 shall demonstrate how the applicant will develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable, in order to protect water quality and to comply with the CWA. Renewal

applications shall demonstrate how the existing stormwater management program is being implemented and enforced. An application shall:

(1) Discuss the manner in which the permittee will or has addressed:

1. Public education and outreach on stormwater impacts;
2. Public involvement and participation;
3. Illicit discharge detection and elimination;
4. Construction site stormwater runoff control;
5. Post construction stormwater management in new development and redevelopment; and
6. Pollution prevention for municipal operations.

(2) Include measurable goals that the applicant intends to meet and dates by which the goals will be accomplished.

*c. Permit coverage waivers for small MS4s.*

(1) Permit coverage for small MS4s located in urbanized areas that serve 1,000 people or more and fewer than 10,000 people may be waived if the following requirements are met:

1. Where the small MS4 discharges any pollutants of concern that have been identified as a cause of an impairment of any waterbody to which the MS4 discharges, the department has determined that stormwater controls are not needed based on a wasteload allocation that is part of an EPA-approved TMDL that addresses the pollutants of concern.
2. Where the small MS4 discharges any pollutants of concern to an unimpaired waterbody or to a waterbody for which a TMDL has not been approved, the department has determined that stormwater controls are not needed based on an analysis equivalent to a TMDL that determines sources and allocations for the pollutants of concern. The pollutants of concern are BOD, sediment or a parameter that addresses sediment, pathogens, or oil and grease.
3. The department has determined that future discharges from the small MS4 do not have the potential to result in exceedances of WQS, including impairments or other significant water quality impacts.

(2) Permit coverage for small MS4s located in urbanized areas that serve fewer than 1,000 people may be waived if the following requirements are met:

1. Where the small MS4 discharges any pollutants of concern that have been identified as a cause of an impairment of any waterbody to which the MS4 discharges, the department has determined that stormwater controls are not needed based on a wasteload allocation that is a part of an EPA-approved TMDL that addresses the pollutants of concern.
2. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated under this rule.

(3) Permit coverage for small MS4s located outside of urbanized areas that serve 10,000 people or more where the average population density is 1,000 people/square mile or more may be waived if the MS4 is not discharging pollutants that are the cause of an impairment of any waterbody to which the MS4 discharges.

(4) Should conditions under which a waiver was granted change, the waiver may be rescinded by the department and permit coverage may be required.

**567—60.12(455B) Transfer of title and owner or operator address change.**

**60.12(1)** *Transfer.* If title to any DS or part thereof for which a permit has been issued under this chapter is transferred, the new owner or owners shall be subject to all terms and conditions of the permit. Whenever title to a DS or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer of title.

**60.12(2)** *Address change.* Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change.

Rules 567—60.3(455B) through 567—60.12(455B) are intended to implement Iowa Code section 455B.173.

**567—60.13(455B) General permits (GPs) issued by the department.** The following is a list of GPs adopted by the department through the Administrative Procedure Act, Iowa Code chapter 17A, and the term of each permit.

**60.13(1)** "Storm Water Discharge Associated with Industrial Activity," NPDES General Permit No. 1, effective March 1, 2023, to February 29, 2028.

**60.13(2)** "Storm Water Discharge Associated with Industrial Activity for Construction Activities," NPDES General Permit No. 2, effective March 1, 2023, to February 29, 2028.

**60.13(3)** "Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities," NPDES General Permit No. 3, effective March 1, 2023, to February 29, 2028.

**60.13(4)** "Discharge from Private Sewage Disposal Systems," NPDES General Permit No. 4, effective March 1, 2023, to February 29, 2028.

**60.13(5)** "Discharge from Mining and Processing Facilities," NPDES General Permit No. 5, effective July 1, 2023, to June 30, 2028.

**60.13(6)** "Discharge Associated with Well Construction Activities," NPDES General Permit No. 6, effective July 1, 2023, to June 30, 2028.

**60.13(7)** "Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides," NPDES General Permit No. 7, effective July 1, 2023, to June 30, 2028.

**60.13(8)** "Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines," NPDES General Permit No. 8, effective July 1, 2023, to June 30, 2028.

**60.13(9)** "Discharge from Dewatering and Residential Geothermal Systems," NPDES General Permit No. 9, effective July 1, 2023, to June 30, 2028.

**567—60.14(455B) Fees.**

**60.14(1)** *Fee types.*

*a.* Application and NOI fees.

(1) For individual nonstormwater NPDES and operation permits, an application fee must be submitted with the application as specified in this rule.

(2) For authorization under GPs Nos. 1, 2, 3 and 5, an applicant has the option of paying an annual permit fee or a multiyear permit fee when the NOI is submitted as specified in this rule.

(3) For MS4 permits and individual stormwater permits, a one-time, multiyear permit fee must be submitted at the time of application as specified in this rule.

(4) If a facility needs coverage under more than one NPDES or operation permit, fees for each permit must be submitted appropriately.

*b.* Annual fees. Certain individual nonstormwater facilities covered by NPDES and operation permits must submit annual fees on a yearly basis as specified in this rule.

*c.* Fees are nontransferable. Failure to submit the appropriate fee at the time of application renders the application incomplete, and the department shall suspend application processing until the fee is received. Failure to submit the appropriate annual fee may result in permit revocation or suspension as noted in 60.3(6).

**60.14(2)** *Fee payment.* Fees shall be paid by check, credit card, electronic payment, or money order made payable to the "Iowa Department of Natural Resources." For facilities needing coverage under more than one permit (e.g., general, individual stormwater, individual nonstormwater), separate payments shall be made according to the fee schedule in this rule.

**60.14(3)** *Fee schedule.* The following fees have been adopted:

*a. GP fees.* No fees shall be assessed for coverage under GPs not listed in this paragraph. The following fees are applicable to the described GPs:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1; Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2; and Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3.

| | |
|---|---|
| Annual permit fee | $175 (per year) |
| or | |
| Five-year permit fee | $700 |
| Four-year permit fee | $525 |
| Three-year permit fee | $350 |

All fees are to be submitted with the NOI.

(2) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5.

| | |
|---|---|
| Annual permit fee | $125 (per year) |
| or | |
| Five-year permit fee | $500 |
| Four-year permit fee | $400 |
| Three-year permit fee | $300 |

New facilities seeking GP No. 5 coverage shall submit fees with the NOI. Maximum coverage is for five years. Coverage may also be obtained for four years, three years, or one year as shown in the fee schedule above. Existing facilities shall submit annual fees by August 30 of every year unless a multiyear fee payment was received in an earlier year. In the event a facility is no longer eligible to be covered under GP No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

*b. Individual NPDES and operation permit fees.* The following fees are applicable for the described individual permits:

(1) For individual stormwater permits, the following fees are due at the time of application, in accordance with whether or not the discharge will reach an OIW identified in the "Iowa Antidegradation Implementation Procedure" (incorporated by reference in 60.7(2)*"d"*(4)), as follows:

1. Where the discharge will not reach an OIW: a five-year permit fee of $1,250.
2. Where the discharge will reach an OIW: a two-year permit fee of $500.

(2) For permits that authorize the discharge of only stormwater from MS4s and any allowable nonstormwater, a five-year permit fee of $1,250 must accompany the application.

(3) For individual nonstormwater NPDES and operation permits, a single application fee of $85 as established in Iowa Code section 455B.197 is due at the time of a new application, renewal application, or amendment application.

1. The $1,250 fee in 60.14(3)*"b"*(1) and (2) is not required for individual nonstormwater permits that authorize stormwater discharges along with other wastewater discharges.
2. Before an approved amendment request submitted by a facility holding a nonstormwater NPDES or operation permit can be processed by the department, the $85 fee must be submitted, except when an amendment is initiated by the director, when the requested amendment will correct an error in the permit, when the amendment is for a DC compliance schedule or the Iowa nutrient reduction strategy, or when there is a transfer of title or change in the address of the owner as noted in rule 567—60.12(455B).

(4) For individual nonstormwater NPDES and operation permits, the following annual fees as established in Iowa Code section 455B.197(3) are due by August 30 of each year:

1. Major municipal facility: $1,275.
2. Minor municipal facility: $210. For a city with a population of 250 or less, the maximum fee shall be $210 regardless of how many individual nonstormwater NPDES permits the city holds.
3. Semipublic facility: $340.
4. Major industrial facility: $3,400.
5. Minor industrial facility: $300.
6. Facilities that hold an operation permit: $170.
7. Animal feeding operations covered by a nonstormwater NPDES permit: $340.

(5) For a municipal water treatment facility with an individual nonstormwater NPDES permit, no fees shall be assessed.

(6) For a new facility covered by an individual nonstormwater NPDES or operating permit, a prorated annual fee, calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by 12, is due 30 days after the new permit is issued.

**60.14(4)** *Fee refunds.*

*a.* Individual and general permit application, permit, and annual fees may be refunded, completely or in part, at the director's discretion. Permittees who wish to receive fee refunds should notify the department electronically or in writing. Fees may be refunded under various circumstances, including but not limited to:

(1) Submission of a duplicate fee;

(2) Overpayment of a fee;

(3) A fee was submitted but is not required; or

(4) The department returns an application to the applicant without decision.

*b.* Fees shall not be refunded under any of the following conditions:

(1) If a permit or permit coverage is suspended, revoked, or modified, or if an activity is discontinued or ceased;

(2) If a permit is amended; or

(3) If a permit application is withdrawn by the applicant or denied by the department pursuant to 60.5(1).

This rule is intended to implement Iowa Code section 455B.197.

**567—60.15(455B) Nutrient reduction exchange.** The department shall maintain a registry of nonpoint source nutrient reduction practices installed by permittees. Practices listed in the registry may be eligible for future regulatory incentives.

**567—60.16(455B) Validity of rules and applicability.**

**60.16(1)** *Validity.* If any section, paragraph, sentence, clause, phrase or word of these rules, or any part thereof, be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect.

**60.16(2)** *Applicability.* This chapter shall apply to all waste DSs treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements in 567—Chapter 65. However, the provisions of this chapter concerning NPDES permits that relate to notice and public participation, permit terms and conditions, permit reissuance, and monitoring, reporting and recordkeeping activities shall apply to animal feeding operations that are required to apply for and obtain an NPDES permit to the extent that such requirements are not inconsistent with 567—Chapter 65.

These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 1.

ITEM 2. Rescind and reserve **567—Chapter 64**.

ITEM 3. Rescind and reserve **567—Chapter 66**.

## ARC 8626C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to effluent and pretreatment standards and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173(3).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 455B.174, Clean Water Act Section 402, and 40 CFR §123.25.

*Purpose and Summary*

Proposed Chapter 62 establishes the requirements for National Pollutant Discharge Elimination System (NPDES) permit limits and contains restrictions on certain types of wastewater discharges. The Department establishes limits in NPDES permits for the pollutants in wastewater. Pollutant limits included in proposed Chapter 62 will apply to facilities that discharge wastewater into Waters of the United States and to facilities that discharge wastewater to city treatment plants.

The U.S. Environmental Protection Agency (EPA) delegated NPDES permitting authority to Iowa in 1978 for all facilities outside tribal lands, as granted under Clean Water Act Section 402(b). Iowa's NPDES rules must implement all of the provisions in 40 CFR §123.25, and these rules must be as stringent as the federal provisions.

This chapter was reviewed and edited consistent with Executive Order 10. This rulemaking removes outdated requirements; shortens, simplifies and clarifies regulations and terminology; removes redundancy; and references regulations that appear elsewhere in State or federal law. Chapter 62's rule-referenced document, the Iowa Wasteload Allocation Procedure (www.iowadnr.gov/Environmental-Protection/Water-Quality/Wasteload-Allocations), has been updated to reflect the November 11, 2020, version already cited in Chapter 61.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: courtney.cswercko@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at npdes.mail@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al npdes.mail@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |
| January 29, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at npdes.mail@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.322.2157 at least seven days before the event.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 62 and adopt the following **new** chapter in lieu thereof:

CHAPTER 62
EFFLUENT AND PRETREATMENT STANDARDS:
OTHER EFFLUENT LIMITATIONS OR PROHIBITIONS

**567—62.1(455B) Prohibited discharges.**

**62.1(1)** The discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit or by a permit issued pursuant to Section 404 of the CWA and certified pursuant to 567—subrule 61.2(6).

**62.1(2)** The prohibitions in 40 CFR §122.4 are adopted by reference.

**62.1(3)** The following discharges are prohibited:

*a.* The discharge of wastewater into a POTW or a semipublic sewage disposal system (DS) in volumes or quantities in excess of those to which a significant industrial user is committed in either a treatment agreement described in 567—subrule 60.3(3) or a local control mechanism (in the case of a POTW with an approved pretreatment program); and

*b.* Discharge of the pollutants listed in 40 CFR §403.5(b) to a POTW, a semipublic sewage DS, or a PSDS.

**62.1(4)** Waste in such volumes or quantities as to exceed the design capacity of the treatment works, cause interference or pass through, or reduce the effluent quality below that specified in the operation permit of the treatment works is considered to be a waste that interferes with the operation or performance of a POTW or a semipublic sewage DS and are prohibited.

**567—62.2(455B) Secondary treatment information: effluent standards for POTWs and semipublic sewage DSs.**

**62.2(1)** *General.* This subrule describes the minimum level of effluent quality attainable by secondary treatment in terms of $CBOD_5$; suspended solids (SS), the pollutant parameter total suspended solids; and pH. The pollutant measurement $CBOD_5$ is used in lieu of the pollutant measurement $BOD_5$, as noted in 40 CFR §133.102(a)(4). All requirements for each pollutant measurement shall be achieved by POTWs and semipublic sewage DSs except as provided for in 62.2(2) and 62.2(3). Effluent limitations on pollutants other than $CBOD_5$, SS and pH may be imposed in an NPDES permit. Such limitations will reflect pretreatment requirements that may be imposed on users of the treatment works.

*a.* $CBOD_5$, as noted in 40 CFR §133.102(a)(4). The 30-day average percent removal shall not be less than 85 percent, and the percent removal shall be calculated by adding five units to the effluent $CBOD_5$ monitoring data and comparing that value to the influent $BOD_5$ monitoring data. Site-specific information on the relationship between $BOD_5$ and $CBOD_5$ shall be used in lieu of the five-unit relationship if such information is available.

*b.* SS, as noted in 40 CFR §133.102(b).

*c.* pH, as noted in 40 CFR §133.102(c).

**62.2(2)** *Special considerations.*

*a. Combined sewers and percent removal.* 40 CFR §133.103(a) is adopted by reference.

*b. Industrial wastes and POTWs; standard secondary adjustment.* 40 CFR §133.103(b) is adopted by reference.

*c. Waste stabilization lagoons.* Secondary treatment standards for waste stabilization lagoons are the same as those found in 62.2(1) concerning secondary treatment with the exception of the SS standards, which are as follows:

(1) The 30-day average shall not exceed 80 mg/l.

(2) The 7-day average shall not exceed 120 mg/l.

*d. Less concentrated influent wastewater for separate sewers; lower percent removal or mass loading limit.* 40 CFR §133.103(d) is adopted by reference.

*e. Upgraded facilities designed to operate in a split flow mode.*

(1) The department may substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements in 62.2(1), provided that the treatment works is designed to split part of the primary treated wastewater flow around the secondary treatment unit(s). The design to accommodate split flow must be approved by the department and consistent with applicable design standards for wastewater treatment facilities. Subrule 62.2(2)*"d"* applies to facilities considered under this subrule. This subrule shall not be considered for facilities eligible for treatment equivalent to secondary treatment under 62.2(3).

(2) Any applicant requesting a permit limit adjustment pursuant to this subrule must include as part of the request an analysis of the infiltration and inflow (I/I) sources in the system and a plan for the elimination of all inflow sources such as roof drains, manholes, and storm sewer interconnections. Infiltration sources that can be economically eliminated or minimized shall be corrected.

*f. Dilution.* Nothing in this subrule or any other department rule shall be construed to encourage dilution of sewage as a means of complying with secondary treatment effluent standards. Reasonable

efforts to prevent and abate infiltration of groundwater into sewers, and prevention or removal of any significant source of inflow, are required of all persons responsible for facilities subject to these standards.

**62.2(3)** *Treatment equivalent to secondary treatment.* 40 CFR §133.105 is adopted by reference. Treatment works shall be eligible for consideration of effluent limitations described for treatment equivalent to secondary treatment in accordance with 40 CFR §133.101(g). The pollutant measurement $CBOD_5$ will be used in lieu of the pollutant measurement $BOD_5$, as noted in 40 CFR §133.105(e).

**567—62.3(455B) Federal standards and effluent limitations.**

**62.3(1)** *Federal effluent and pretreatment standards.* The following are adopted by reference: 40 CFR Part 125, Subparts H, I and J, and 40 CFR Parts 401 through 471.

**62.3(2)** *Federal toxic pollutant effluent standards.* 40 CFR Part 129 is adopted by reference.

**62.3(3)** *Effluent limitations and pretreatment requirements for sources for which there are no federal effluent or pretreatment standards.* For discharges of pollutants from sources that are not subject to the federal effluent standards adopted by reference in 62.3(1), the department shall establish effluent limitations, pretreatment requirements, or both, that represent the best professional judgment for pollutant reduction, consistent with the CWA and Iowa Code chapter 455B.

**62.3(4)** *Effluent limitations less stringent than the effluent limitation guidelines.* 40 CFR Part 125 Subpart D is adopted by reference.

**567—62.4(455B) Effluent limitations or pretreatment requirements more stringent than the effluent or pretreatment standards.**

**62.4(1)** *Effluent limitations necessary to meet water quality standards (WQSs).* No effluent, alone or in combination with the effluent of other sources, shall cause a violation of any applicable WQS. When it is found that a discharge that would comply with applicable effluent standards or effluent limitations in this chapter would cause a violation of WQSs, the discharge will be required to meet the water quality-based effluent limits (WQBELs) necessary to achieve the applicable WQSs as established in 567—Chapter 61. WQBELs shall be derived from a wasteload allocation (WLA) calculated for the discharge, as described in the Iowa Wasteload Allocation Procedure (WLAP) (Nov. 11, 2020), or a WLA calculated for a TMDL, whichever is more stringent, except that the daily sample maximum criteria for E. coli set forth in 567—Chapter 61 shall not be used as an end-of-pipe permit limitation.

**62.4(2)** *Pretreatment requirements more stringent than categorical standards.* The department or POTW may impose pretreatment requirements more stringent than the applicable categorical standards in 62.3(1) when more stringent requirements are necessary to prevent violations of WQSs, pass through, acute worker health or safety problems, or interference (including inhibiting or disrupting sludge use and disposal practices).

**62.4(3)** *Effluent limitations for pollutants not covered by effluent or categorical standards.* When a pollutant is not otherwise regulated under rules 567—62.2(455B) through 62.3(455B), effluent limits or pretreatment requirements may be imposed on a case-by-case basis.

*a.* Effluent limits shall be based on the effect of the pollutant in water and the feasibility and reasonableness of treating the pollutant.

*b.* Pretreatment requirements shall be based on the effect of the pollutant in water, the effect on the receiving treatment works (including pass through, inhibition, worker safety, and sludge disposal), and the feasibility and reasonableness of treating the pollutant.

**567—62.5(455B) Effluent reuse.**

**62.5(1)** *Manner of reuse.* Treated final effluent may be reused in a manner noted in this rule or as specified in an NPDES permit.

**62.5(2)** *Reuse for golf course irrigation.* Treated final effluent may be reused for golf course irrigation if one of the conditions described in 62.5(2)*"a"* and all of the conditions in 62.5(2)*"b"* are met.

*a.* The treated final effluent must meet one of the following conditions:

(1) A minimum total residual chlorine (TRC) level of 0.5 mg/l must be maintained at a minimum of 15 minutes' contact time of chlorine to wastewater prior to the irrigation of the golf course with treatment plant effluent; or

(2) Disinfected effluent shall be held in a retention pond with a detention time of at least 20 days prior to reuse as irrigation on a golf course. For this purpose, effluent may be disinfected using any common treatment technology, and either an existing pond or a pond constructed specifically for effluent retention may be used.

*b.* A golf course utilizing treated final effluent shall take all of the following actions:

(1) Clearly state on all scorecards that treated final effluent is used for golf course irrigation and oral contact with golf balls and tees should be avoided;

(2) Post signs that warn against consumption of water at all water hazards;

(3) Color code, label, or tag all piping and sprinklers associated with the distribution or transmission of the treated final effluent to clearly warn against the consumptive use of the contents; and

(4) Restrict public access to any area of the golf course where spraying is being conducted.

These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 1.

## ARC 8635C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to monitoring, analytical and reporting requirements and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 455B.174.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.173 and 455B.174, Clean Water Act §402(b), and 40 CFR §123.25.

*Purpose and Summary*

Proposed Chapter 63 establishes the monitoring, analytical methods, and reporting requirements for National Pollutant Discharge Elimination System (NPDES) permits and wastewater disposal operation permits. Wastewater monitoring, using the correct methods, and reporting results is essential to determine if a facility is complying with every permit limit. Monitoring also helps the Department of Natural Resources (Department) determine which pollutants need limits when the permit is renewed or amended.

The U.S. Environmental Protection Agency (EPA) delegated NPDES permitting authority to Iowa in 1978 for all facilities outside tribal lands, as granted under Clean Water Act Section 402(b). Iowa's NPDES rules must implement all of the provisions in 40 CFR §123.25, and these rules must be as stringent as the federal provisions. Iowa also regulates wastewater disposal to the land and to waters of the state, as authorized in Iowa Code section 455B.174.

Proposed Chapter 63 was reviewed and edited consistent with Executive Order 10. This proposed rulemaking removes outdated requirements; shortens, simplifies and clarifies regulations and terminology; removes redundancy; and references regulations that appear elsewhere in state or federal law. Monitoring frequencies were slightly revised to account for only the number of samples the Department needs to reissue a permit and ensure proper treatment. Chapter 63's rule-referenced

document, the Supporting Document for Permit Monitoring Frequency Determination, March 2022 (www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDESRules), is unchanged.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: courtney.cswercko@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at npdes.mail@dnr.iowa.gov.

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| January 29, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63
MONITORING, ANALYTICAL AND REPORTING REQUIREMENTS

**567—63.1(455B) Guidelines establishing test procedures for the analysis of pollutants.** Only the procedures prescribed in this chapter shall be used to perform the measurements indicated in an application for an operation permit submitted to the department, a report required to be submitted by the terms of an operation permit, and a certification issued by the department pursuant to Section 401 of the CWA.

**63.1(1)** *Identification of test methods, application for alternative test methods, and method modifications.*

*a.* Laboratories shall use methods promulgated or approved by the EPA or by the department in accordance with 567—subrule 83.5(1).

*b.* All parameters for which testing is required by a wastewater discharge permit, permit application, or administrative order, except operational performance testing, must be analyzed using one of the following:

(1) An approved method specified in 40 CFR §136.3;

(2) An alternative method that has been previously approved pursuant to 40 CFR §136.4 or 136.5; or

(3) A method identified by the department when no approved method is specified for the parameter in 40 CFR Part 136.

*c.* Applications for alternative test procedures shall follow the requirements of 40 CFR §136.4 or 136.5.

*d.* Method modifications shall follow the requirements of 40 CFR §136.6.

**63.1(2)** *Containers, preservation techniques and holding times.* All samples collected in accordance with the self-monitoring requirements defined in an operation permit shall comply with the container, preservation techniques, and holding time requirements as specified in 40 CFR §136.3, Table II (Required Containers, Preservation Techniques, and Holding Times). Sample preservation should be performed immediately upon collection, if feasible.

**63.1(3)** All laboratories conducting analyses required by this chapter must be certified in accordance with 567—Chapter 83. Routine on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine (TRC), other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements such as flow and cell depth, and operational monitoring tests specified in 63.3(4) are excluded from this requirement.

**63.1(4)** All instrumentation used for conducting any analyses required by this chapter must be properly calibrated according to the manufacturer's instructions.

**567—63.2(455B) Monitoring activities and records.** Permittees shall maintain records of all information resulting from any monitoring activities required in an operation permit and from any operational performance monitoring.

**63.2(1)** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity, in accordance with 40 CFR §122.41(j)(1).

**63.2(2)** Permittees shall retain, for a minimum of three years, all paper and electronic records of monitoring activities and results in accordance with 40 CFR §122.41(j)(2).

**63.2(3)** Records of monitoring activities and results shall include the information specified in 40 CFR §122.41(j)(3).

**567—63.3(455B) Minimum self-monitoring requirements in permits.**

**63.3(1)** *Organic waste dischargers.* The minimum self-monitoring requirements to be incorporated in operation permits for facilities discharging organic wastes shall be the appropriate requirements in Tables I and II of this chapter. Additional monitoring may be specified in operation permits in accordance with 63.3(5).

**63.3(2)** *Inorganic waste dischargers.* The self-monitoring requirements to be incorporated in operation permits for facilities discharging inorganic wastes shall be determined on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit, as described in the Supporting Document for Permit Monitoring Frequency Determination, March 2022, hereafter referred to as the Supporting Document, located on the department's website. Grab samples shall be taken in accordance with 567–63 Table I (455B) Superscript 4, and composite samples shall be taken in accordance with 567–63 Table I (455B) Superscript 4a or 4c.

**63.3(3)** *Significant industrial users (SIUs) of publicly owned treatment works (POTWs).* Monitoring for SIUs shall be determined as described in the Supporting Document, located on the department's website. Monitoring results shall be submitted to the department in accordance with the reporting requirements in the operation permit. The monitoring program of a POTW with a department-approved pretreatment program may be used in lieu of the Supporting Document.

**63.3(4)** *Operational performance monitoring.* Operational performance monitoring for treatment unit process control shall be conducted to ensure that a facility is properly operated in accordance with its design. The results of any operational performance monitoring need not be reported to the department but shall be maintained in accordance with rule 567—63.2(455B), and shall be submitted to the department upon request. Additional operational performance monitoring may be specified in operation permits in accordance with 63.3(5). The results of operational performance monitoring specified in an operation permit shall be submitted to the department in accordance with the permit requirements.

**63.3(5)** *Additional monitoring.*

*a.* Additional monitoring may be specified in operation permits in accordance with this subrule, as follows:

(1) For facilities discharging organic wastes;

(2) As operational performance monitoring; or

(3) For the purposes of whole effluent toxicity (WET) testing.

*b.* Additional monitoring requirements in operation permits shall be based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexity of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit, as described in the Supporting Document.

**63.3(6)** *Modification of minimum monitoring requirements.* Monitoring requirements may be modified or reduced at the director's discretion or when requested by the permittee, in accordance with 567—paragraph 60.3(6)*"e"*.

**567—63.4(455B) Whole effluent toxicity (WET) testing requirements in permits.**

**63.4(1)** *WET testing.*

*a.* All major municipal and industrial dischargers shall conduct WET testing. Additional toxicity monitoring may be specified in operation permits for major or minor facilities in accordance with 63.3(5).

*b.* All dischargers required to conduct WET tests shall conduct, at a minimum, one valid WET test annually. The testing requirements will be placed in the operation permit for each discharger required to conduct this testing. A "valid WET test" is one that meets the testing requirements in 63.4(2)*"a."*

*c.* Any WET test completed by the department or other agency and conducted according to the procedures stated or referenced in this rule may be used to determine compliance with an operation permit.

**63.4(2)** *Testing procedures.*

*a.* All WET tests shall be conducted as follows:

(1) Use a 24-hour composite sample of the effluent collected at the location stated in the operation permit;

(2) Commence within 36 hours of sample collection;

(3) Use the test methods referenced in 40 CFR Part 136 and protocols described in the EPA document EPA-821-R-02-012, Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, 5th edition, October 2002;

(4) Use the water flea (*Ceriodaphnia dubia*) and the fathead minnow (*Pimephales promelas*);

(5) Be conducted as static pass/fail;

(6) Include the following for each organism: a 100 percent culture water control series, a 100 percent effluent series, and any additional dilution series specified in the operation permit;

(7) Last for 48 hours, at which time the mortality will be determined for all tests; and

(8) Be conducted by a laboratory certified in Iowa.

*b.* All WET test results, including results of any tests performed at a greater frequency than required in the operation permit, shall be submitted to the department within 30 days of test completion.

**63.4(3)** *Positive result.* If there is a positive toxicity test result in the diluted effluent sample from a valid WET test, the following requirements apply unless the exception in paragraph *"d"* of this subrule is applicable. For the purposes of this rule, "positive toxicity test result" means a statistically significant difference of mortality rate between the control and the diluted effluent test.

*a.* At a minimum, the discharger shall conduct quarterly WET tests until three successive tests are determined not to be positive, after which the toxicity testing shall be resumed as specified in the operation permit.

*b.* If the discharger has two successive positive valid diluted WET test results or three positive test results out of five valid diluted tests, the discharger shall conduct a toxicity reduction evaluation (TRE). A TRE is a stepwise process, similar to that found in EPA Document 600/2-88/062, that combines effluent toxicity tests and analysis of the chemical characteristics of the effluent to determine the cause of the effluent toxicity or the treatment methods that will reduce the effluent toxicity, or both.

*c.* The discharger may be required to conduct instream monitoring or other analyses in conjunction with the TRE. If at any time during the course of conducting a TRE there are three consecutive follow-up toxicity test results for the diluted sample which are not positive, the discharger will be considered as in compliance and work on the TRE may cease. WET testing shall then resume as specified in the operation permit. Nothing in these rules shall preclude the department from taking enforcement action beyond that described in these rules.

*d.* When the pretest chemical analysis for un-ionized ammonia nitrogen (NH3-N) or TRC on the diluted effluent sample exceeds the concentrations given below, a positive test result is likely to have been caused by high concentrations of un-ionized NH3-N or TRC, and the test result will not be used to determine if follow-up testing is needed.

(1) Un-ionized NH3-N—0.9 mg/l

(2) TRC—0.1 mg/l

**567—63.5(455B) Self-monitoring and reporting for animal feeding operations.**

**63.5(1)** The following self-monitoring requirements may be imposed on an animal feeding operation in any operation permit issued for such an operation.

*a.* Measurement of liquid level in a waste storage facility on a periodic basis.

*b.* Measurement of daily precipitation, as appropriate.

*c.* Sampling and analysis of groundwater as necessary to determine effects of wastewater application.

*d.* Other measurements necessary to evaluate the adequacy of a waste disposal system.

**63.5(2)** Reports of the self-monitoring results shall be submitted to the appropriate regional department field office (hereafter referred to as FO) quarterly. The quarterly reports shall cover the periods January through March, April through June, July through September, and October through December. The quarterly report for each period shall be submitted by the tenth day of the month following the quarter being reported.

**567—63.6(455B) Bypasses and upsets.**

**63.6(1)** *Prohibition.* Bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. The department may not assess a civil penalty against a permittee for a bypass if the permittee has complied with all of the following:

*a.* The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

*b.* There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

*c.* The permittee submitted the information required in 63.6(2), 63.6(3), and 63.6(5).

**63.6(2)** *Request for anticipated bypass.* Except for bypasses that occur as a result of mechanical failure or acts beyond the control of the owner or operator of a waste disposal system (unanticipated bypasses), the owner or operator shall obtain written permission from the department prior to any discharge of sewage or wastes from a waste disposal system not authorized by a discharge permit. The director may approve an anticipated bypass after considering its adverse effects if the director determines that it will meet the conditions in 63.6(1).

*a.* The request for a bypass shall be submitted in writing to the appropriate FO at least ten days prior to the expected date of the event.

*b.* The request shall include all of the following:

(1) The reason for the bypass;

(2) The date and time the bypass will begin;

(3) The expected duration of the bypass;

(4) An estimate of the amount of untreated or partially treated sewage or wastewater that will be discharged;

(5) The location of the bypass;

(6) The name of any body of surface water that will be affected by the bypass; and

(7) Any actions the owner or operator proposes to take to mitigate the effects of the bypass upon the receiving stream or other surface water.

**63.6(3)** *Notification of unanticipated bypass or upset and public notices (PNs)* In the event that a bypass or upset occurs without prior notice having been provided pursuant to 63.6(2) or as a result of mechanical failure or acts beyond the control of the owner or operator, the owner or operator of the treatment facility or collection system shall notify the department by telephone as soon as possible but not later than 24 hours after the onset or discovery.

*a.* Notification shall be made by contacting the appropriate FO during normal business hours. After-hours notification may be made by calling the Department of Natural Resources emergency response hotline at 515.725.8694.

*b.* Notification shall include information on as many items listed in 63.6(3)*"d"*(1) through 63.6(3)*"d"*(6) as available information will allow.

*c.* Upon notification, the department shall determine if a PN for an unanticipated bypass is necessary. If the department determines that a PN is necessary, the owner or operator of the treatment facility or the collection system shall prepare a PN.

*d.* A written submission describing the bypass shall also be provided to the appropriate FO within five days of the time the permittee becomes aware of the bypass. The written submission shall contain the following:

(1) The reason for the bypass, including the amount and duration of any rainfall event that may have contributed to the bypass;

(2) The date and time of onset or discovery of the bypass;

(3) The duration of the bypass;

(4) An estimate of the amount of untreated or partially treated sewage or wastewater that was discharged;

(5) The location of the bypass; and

(6) The name of any body of surface water that was affected by the bypass.

**63.6(4)** *Monitoring, disinfection, and cleanup.* The owner or operator of the treatment facility or collection system shall perform any additional monitoring, sampling, or analysis of the bypass or upset requested by the FO and shall comply with department instructions intended to minimize the effect of a bypass or upset on the receiving water of the state. In addition, the department may require the following:

*a.* Temporary disinfection, depending on the volume and duration of the bypass, the classification of the stream affected by the bypass, and the time of year during which the bypass occurs;

*b.* Cleanup of any debris and waste materials deposited in the area affected by the bypass; or

*c.* Lime application to the ground surface or disinfection of the affected area with chlorine solution.

**63.6(5)** *Reporting of subsequent findings and additional information requested by the department.* All subsequent findings and laboratory results concerning a bypass shall be submitted in writing to the appropriate FO as soon as they become available. Any additional information requested by the department concerning the steps taken to minimize the effects of a bypass shall be submitted within 30 days of the request.

**63.6(6)** *Upset.* 40 CFR §122.41(n) is adopted by reference.

**567—63.7(455B) Submission of operation records.**

**63.7(1)** *Electronic reporting.*

*a.* Except as provided in this rule and 63.3(4) and 63.5(2), operation records required by NPDES permits shall be submitted electronically to the department within 15 days following the close of the reporting period specified in 63.7(5) and in accordance with monitoring requirements derived from this chapter and incorporated in the NPDES permit.

*b.* Operation records required by operation permits shall be submitted to the department within 15 days following the close of the reporting period specified in 63.7(5) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit.

**63.7(2)** *Temporary or permanent paper submittal of operation records.* Upon satisfaction of the following criteria and written approval from the department, temporary or permanent paper submittal of operation records may be allowed in lieu of electronic reporting.

*a. Written request for paper submittal.*

(1) To obtain an approval for temporary or permanent paper submittal of operation records, a permittee must submit a paper copy of a written request to the department's NPDES section. The written request for paper submittal must include all of the following:

1. The facility name;
2. The individual NPDES permit number or GP authorization number;
3. The facility address;

4. The owner's name and contact information;

5. The name and contact information of the person submitting operation records (if different than the owner); and

6. The reason for the request, including a justification of why electronic submission is not feasible at this time.

(2) Requests for paper submittal that do not contain all of the above information will not be considered. Electronic (email) requests for paper submittal will not be considered.

*b. Temporary paper submittal.*

(1) The department will approve or deny a request for temporary paper submittal of operation records within 60 days of receipt. Paper submittal requests shall be approved or denied at the director's discretion.

(2) All approvals for temporary paper submittal will expire five years from department approval. After an approval for temporary paper submittal expires, the permittee must submit all operation records electronically, unless another approval is obtained.

(3) Approved temporary paper submittals are nontransferable.

*c. Permanent paper submittal.*

(1) The department will approve or deny a request for permanent paper submittal of operation records within 60 days of receipt. Permanent paper submittal approvals shall only be granted to facilities and entities owned or operated by members of religious communities that choose not to use certain modern technologies (e.g., computers, electricity). Permanent approvals for paper submittal shall not be granted to any other facilities or entities.

(2) Approved permanent paper submittals are nontransferable.

*d. Paper copies of operation records.* All permittees who have received temporary or permanent paper submittal approvals must submit paper copies of all operation records to the department within 15 days following the close of the reporting period specified in 63.7(5) and in accordance with monitoring requirements derived from this chapter and incorporated in the NPDES permit.

**63.7(3)** *Electronic reporting pursuant to NPDES general permits (GPs).* Both electronic and paper reporting options are available to permittees covered under GP No. 5. Paper operation records are accepted under GP No. 4.

**63.7(4)** *Episodic paper submittal of operation records.* In accordance with this subrule, episodic paper submittal of operation records may be allowed in lieu of electronic reporting. The department shall provide notice, individually or through means of mass communication, regarding when episodic paper submittal is allowed, the facilities and entities that qualify for episodic paper submittal, and the likely duration of episodic paper submittal. The department shall determine if and when episodic paper submittal is warranted.

*a.* Episodic paper submittal is only allowed under the following circumstances:

(1) Large-scale emergencies involving catastrophic circumstances beyond permittee control, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes) or other national disasters.

(2) Prolonged electronic reporting system outages (i.e., outages longer than 96 hours).

*b.* Permittees are not required to request episodic paper submittal. If the department determines that episodic paper submittal is warranted, a permittee shall submit paper copies of all operation records to the department within 15 days following the close of the reporting period specified in 63.7(5) and in accordance with monitoring requirements derived from this chapter and incorporated in the NPDES permit.

*c.* Episodic paper submittal is not transferable and cannot last more than 60 days.

**63.7(5)** *Submission frequency.* Except as provided in 63.3(4) and 63.5(2), or as specified in an NPDES GP issued in accordance with 567—subrule 60.4(2), operation records required by these rules shall be submitted at monthly intervals. The department may vary the submission frequency in certain cases for only non-NPDES permits. Variation from the monthly interval shall be made only under such conditions as the department may prescribe in writing to the permittee.

**567—63.8(455B) Operation records; content, forms, certification, and signature.**

**63.8(1)** *Content.* Operation records shall include the results of all monitoring specified in or authorized by this chapter or incorporated in the operation permit. The results of any monitoring not specified in the operation permit performed at the compliance monitoring point and analyzed according to 40 CFR Part 136 shall be included in the calculation and reporting of any data submitted in accordance with this chapter and the operation permit.

**63.8(2)** *Forms.* Operation record forms shall be those provided by the department unless a permittee has obtained department approval to use an alternative reporting form. Properly completed reporting forms and all attachments shall be submitted in accordance with department instructions.

**63.8(3)** *Certification and signatory requirements.* All operation records required by these rules shall include certification that attests that all information contained therein is representative and accurate. Each operation record, including those for operation permits, shall be signed in accordance with 40 CFR §122.22. For electronic submissions of operation records, a signed paper copy of the record that was submitted electronically must be maintained at the facility for a minimum of three years.

**567—63.9(455B) Other reporting and notice.**

**63.9(1)** *Twenty-four-hour reporting.* Pursuant to 40 CFR §122.41(l)(6), all permittees shall report any permit noncompliance that may endanger human health or the environment. Information shall be provided orally to the appropriate FO within 24 hours from the time the permittee becomes aware of the circumstances. In addition, a written submission containing the information required in 40 CFR §122.41(l)(6)(i) must be provided to the appropriate FO within five days of the occurrence.

**63.9(2)** *Planned changes.* Pursuant to 40 CFR §122.41(l)(1), a permittee shall give notice to the appropriate FO 30 days prior to any planned physical alterations or additions to the permitted facility.

**63.9(3)** *Anticipated noncompliance.* Pursuant to 40 CFR §122.41(l)(2), a permittee shall give advance notice to the appropriate FO of any activity which may result in noncompliance with permit requirements.

**63.9(4)** *Other noncompliance.* Pursuant to 40 CFR §122.41(l)(7), a permittee shall provide a written description of all instances of noncompliance not reported under 63.9(1) or 567—subrule 60.7(4) at the time operation records are submitted. The written description shall contain the information required in 40 CFR §122.41(l)(6)(i).

**63.9(5)** *Notice exemption.* Notice under this subrule is only required when previous notice has not been given to any other section of the department.

**63.9(6)** *Other information.* Pursuant to 40 CFR §122.41(l)(8), if a permittee becomes aware that it failed to submit any relevant facts in any report to the director, the permittee shall promptly submit such facts or information.

**63.9(7)** *Applicability.* The other reporting and notice requirements in this rule apply to all NPDES permits and apply as specified in operation permits.

**567—63.10(455B) Sampling procedures for monitoring wells.** The following steps shall be taken prior to monitoring well sampling.

**63.10(1)** Measure depth from top of well head casing to water table.

**63.10(2)** Calculate quantity of water to be flushed from well using the formula:

Gallons to be pumped = 0.221 d(squared)h, where:

d = well diameter in inches

h = depth in feet of standing water in well prior to pumping

**63.10(3)** Pump well.

**63.10(4)** Measure depth from well head casing to water table after pumping.

**63.10(5)** Wait for well to recharge to or near static water level prior to sampling.

**Table I — Minimum Self-Monitoring in Permits for Organic Waste Dischargers**
**Controlled Discharge Wastewater Treatment Plants**

| Wastewater Parameter | Sampling[5] Location | Sample Type[4] | Frequency by PE[1,5,6] | | | |
|---|---|---|---|---|---|---|
| | | | <100 | 101-500 | 501-1,000 | >1,001 |
| Flow[2] | Raw | 24-Hr Total | 1/Week | Daily | Daily | Daily |
| | Final | Instantaneous | 2/Week During Drawdown | Daily During Drawdown | | |
| $BOD_5$ | Raw | 24-Hr Composite | -- | -- | -- | 1/3 Months |
| $CBOD_5$ | Cell Contents | Grab | At least two weeks prior to drawdown[3] | | | |
| | Final | Grab | 1/Drawdown[7] | Twice during drawdown | | |
| Total Suspended Solids (TSS) | Cell Contents | Grab | At least two weeks prior to drawdown[3] | | | |
| | Raw | 24-Hr Composite | -- | -- | -- | 1/3 Months |
| | Final | Grab | 1/Drawdown[7] | Twice during drawdown | | |
| Ammonia Nitrogen (NH3-N) | Final | Grab | 1/Drawdown | Twice during drawdown | | |
| *E. coli* | Final | Grab | Twice During Drawdown | | | |
| pH[8] | Raw | Grab | -- | -- | -- | 1/3 Months |
| | Final | Grab | 1/Drawdown | 1/Drawdown | Twice During Drawdown | 1/Week During Drawdown |
| Cell Depth[9] | Each Cell | Measurement | 1/Week | 1/Week | 1/Week | 2/Week |
| Total Residual Chlorine (TRC)[10] | Final | Grab | 1/Drawdown | 1/Drawdown | Twice during drawdown | |

1 - The PE (population equivalent) shall be computed on the basis of the original engineering design criteria for the facility and any modifications thereof. Where such design criteria are not available, the PE shall be computed using 0.167 pounds of $BOD_5$ per capita per day.

2 - Facilities serving a PE less than 100 are not required to provide continuous flow measurement but are required to provide manual flow measurement at the specified frequency. Facilities serving a PE greater than 100 must provide continuous flow measurement of the raw waste but need only provide manual flow measurement of the final effluent. Acceptable flow measurement and recording techniques shall be those described in the Iowa Wastewater Facilities Design Standards, effective [month] 2025.

3 - The sampling that is required at least two weeks prior to lagoon drawdown (pre-discharge sampling) shall be collected at a point near the outlet structure and analyzed at least two weeks prior to an anticipated discharge to demonstrate that the wastewater is of such quality to meet the effluent limitations in the permit. The $CBOD_5$ and TSS results must be compared with the 30-day average effluent limits. If the results are less than the 30-day average limits, the permittee may isolate the final cell and draw down the lagoon cell. If the pre-discharge sample results exceed the 30-day average effluent limits for either $CBOD_5$ or TSS, the permittee must contact the appropriate FO for guidance before beginning to discharge.

4 - Sample types are defined as follows:

"Grab Sample" means a representative, discrete portion of sewage, industrial waste, other waste, surface water or groundwater taken without regard to flow rate.

"24-Hour Composite" means:

a. A sample made by collecting a minimum of six grab samples taken four hours apart and combined in proportion to the flow rate at the time each grab sample was collected, unless otherwise noted in b. Generally, grab samples should be collected at 8 a.m., 12 p.m. (noon), 4 p.m., 8 p.m., 12 a.m. (midnight), and 4 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.

b. For a POTW with an SIU, a sample made by collecting a minimum of 12 grab samples taken two hours apart and combined in proportion to the flow rate at the time each grab sample was collected. Generally, grab samples should be collected at 8 a.m., 10 a.m., 12 p.m. (noon), 2 p.m., 4 p.m., 6 p.m., 8 p.m., 10 p.m., 12 a.m. (midnight), 2 a.m., 4 a.m., and 6 a.m. on weekdays (Monday through Friday) unless local conditions indicate another more appropriate time for sample collection.

c. An automatic composite sampling device may also be used for collection of flow-proportioned or time-proportioned composite samples.

5 - Raw wastewater samples shall be taken continuously (year-round) at the specified frequency. Final effluent wastewater samples shall be taken only during the drawdown period. The first final effluent sample shall be taken the third day after the drawdown begins, and subsequent samples shall be taken at the specified frequencies. For final effluent samples that are required to be taken twice during drawdown, the first sample shall be taken the third day after the drawdown begins, and the second sample shall be taken between three and five days before the drawdown ends.

6 - If a facility has a PE greater than 3,000 or an SIU, additional monitoring may be required.

One-cell controlled discharge lagoon facilities with a PE less than 100 must perform final effluent sampling for $CBOD_5$ and TSS twice during drawdown in accordance with superscript #5.

8 - pH can be monitored using electrometric measurement or an automated electrode, pursuant to 40 CFR Part 136.

9 - Cell Depth monitoring must be conducted year-round (not exclusively during drawdown periods). It may be applied to lagoon cells at continuous discharge wastewater treatment facilities on a case-by-case basis.

10 - TRC monitoring is only required for facilities with TRC effluent limitations.

## Table II — Minimum Self-Monitoring in Permits for Organic Waste Dischargers

## Continuous Discharge Wastewater Treatment Plants

| Wastewater Parameter | Sampling Location | Sample Type[3,11] | Frequency by PE[1,6] | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | ≤ 100 | 101-500 | 501-1,000 | 1,001-3,000 | 3,001-15,000 | >15,001 |
| Flow[2] | Raw or Final | 24-Hr Total | 1/week | Daily | Daily | Daily | Daily | Daily |
| $BOD_5$ | Raw | 24-Hr Comp. | 1/6 Months | 1/3 Months | 1/Week | 1/Week | 2/Week | 2-5/Week[5] |
| $CBOD_5$ | Final | 24-Hr Comp. | 1/3 Months | 1/Month | 1/Week | 1/Week | 2/Week | 2-5/Week[5] |
| Total Suspended Solids (TSS) | Raw | 24-Hr Comp. | 1/6 Months | 1/3 Months | 1/Month | 1/2 Weeks | 1/Week | 2-5/Week[5] |
| | Final | 24-Hr Comp. | 1/3 Months | 1/3 Months | 1/Month | 1/2 Weeks | 1/Week | 2-5/Week[5] |
| Ammonia Nitrogen ($NH_3$-N)[10] | Final | 24-Hr Comp. | 1/Month | 1/Month | 1/Week | 1/Week | 2/Week | 2-5/Week[5] |
| TKN[8] | Raw | 24-Hr Comp. | — | — | — | — | 1/Month | 1/Month |
| Total Nitrogen[9] | Final | 24-Hr Comp. | — | — | — | — | 1/3 Months | 1/2 Months |
| Total Phosphorus[9] | Final | 24-Hr Comp. | — | — | — | — | 1/3 Months | 1/2 Months |
| pH[12] | Raw | Grab | — | — | 1/Week | 1/Week | 2/Week | 2-5/Week[5] |
| | Final | Grab | 1/3 Months | 1/Month | 1/Week | 1/Week | 2/Week | 5/Week |
| *E. coli*[4,7] | Final | Grab | 5 samples, 1/3 Months | 5 samples, 1/3 Months | 5 samples, 1/3 Months | 5 samples, 1/3 Months | 5 samples, 1/3 Months | 5 samples, 1/3 Months |
| Temperature | Raw | Grab | — | — | 1/Week | 1/Week | 2/Week | 2-5/Week[5] |
| | Final | Grab | 1/3 Months | 1/Month | 1/Week | 1/Week | 2/Week | 2-5/Week[5] |
| Total Residual Chlorine (TRC)[13] | Final | Grab | 1/Week | 1/Week | 2/Week | 2/Week | 3/Week | 5/Week |

1 - See Superscript #1, Table I.

2 - See Superscript #2, Table I. Both raw and final flow monitoring may be required if the raw and final wastewater flows may be different for any reason.

3 - See Superscript #4, Table I.

4 - Analysis is required only when the facility discharges directly to a stream designated as Class A1, A2, or A3 in 567—Chapter 61 or there is a reasonable potential for the discharge to affect a stream designated as Class A1, A2, or A3.

5 - The frequency of sample collection and analysis shall be increased by 1/week according to the following: 15,001 to 30,000 – 2/week; 30,001 to 45,000 – 3/week; 45,001 to 75,000 – 4/week; > 75,001– 5/week.

6 - The requirements for SIUs shall be those specified in the permit for final effluent monitoring.

7 - Bacteria Monitoring. All facilities must collect and analyze a minimum of five *E. coli* samples in one calendar month during each three-month period (quarter) during the appropriate recreation season associated with the receiving stream designation as specified in 567—subrule 61.3(3). For sampling required during the recreational season, March 15 to November 15, the three-month periods are March through May, June through August, and September through November. For year-round sampling, the three-month periods are January through March, April through June, July through September, and October through December. For each three-month period, the operator must take five samples during one calendar month, resulting in 15 samples in one year for sampling required during the recreation season and 20 samples per year for sampling required year-round.

The following requirements apply to the individual samples collected in one calendar month:

a. Samples must be spaced over one calendar month.

b. No more than one sample can be collected on any one day.

c. There must be a minimum of 48 hours between each sample.

d. No more than two samples may be collected in a period of seven consecutive days.

The geometric mean must be calculated using all valid sample results collected during a month. The geometric mean formula is as follows: Geometric Mean = (Sample one × Sample two × Sample three × Sample four × Sample five…Sample N)^(1/N), which is the $N^{th}$ root of the result of the multiplication of all of the sample results where N = the number of samples. If a sample result is a less than value, the value reported by the lab without the less than sign shall be used in the geometric mean calculation.

8 - Additional TKN monitoring may be required if the facility has one or more significant industrial users or has effluent ammonia violations.

9 - Total nitrogen (as N) is defined as TKN (as N) plus nitrate (as N) plus nitrite (as N). Nitrate + nitrite can be analyzed together or separately. Total phosphorus shall be reported as P. Analyses must be performed by a laboratory certified in Iowa.

10 - NH3-N monitoring is only required for facilities with NH3-N effluent limitations.

11 - For aerated lagoons, 24-hour composite samples are not required on the final effluent; grab samples are acceptable.

12 - See Superscript #8, Table I.

13 - See Superscript #10, Table I.

These rules are intended to implement Iowa Code section 455B.173.

# ARC 8638C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

## Notice of Intended Action

### Proposing rulemaking related to standards for the land application of sewage sludge and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 67, "Standards for the Land Application of Sewage Sludge," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173(3).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 174 and 183 and sections 455B.173 and 455B.304, 40 CFR §503 and 40 CFR §127.

*Purpose and Summary*

Proposed Chapter 67 establishes requirements for land application of sewage sludge. Specifically, the chapter establishes the requirements for land application of sludge generated as a byproduct of the treatment of domestic wastewater.

This chapter has been reviewed and edited consistent with Executive Order 10. The chapter has been streamlined to remove obsolete and duplicative language, including revisions to adopt federal regulations and definitions by reference.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: courtney.cswercko@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at npdes.mail@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al npdes.mail@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| January 29, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at npdes.mail@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.322.2157 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al npdes.mail@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.322.2157 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 67 and adopt the following **new** chapter in lieu thereof:

CHAPTER 67
STANDARDS FOR THE LAND APPLICATION OF SEWAGE SLUDGE

**567—67.1(455B) Purpose and scope.**

**67.1(1)** This chapter establishes standards for the land application of sewage sludge generated during the treatment of domestic sewage in a treatment works. This chapter applies to any generator, applicator, or both, and to sewage sludge applied to the land.

*a.* In areas that are not specifically addressed in this chapter or in 567—Chapter 68, but which are addressed in federal regulations for sewage sludge applied to land at 40 CFR Part 503, the federal regulations shall apply under this rule and are hereby adopted by reference under this chapter.

*b.* On a case-by-case basis, the department may impose requirements for the land application of sewage sludge in addition to or more stringent than the requirements in this chapter when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

**67.1(2)** Sewage sludge generators shall ensure that the applicable requirements in this chapter are met when sewage sludge is land applied. If a sewage sludge generator determines that a person being supplied sewage sludge for land application is not complying with applicable requirements of the land application program, the generator shall work with the applicator to obtain compliance with the requirements. If subsequent compliance cannot be achieved, the generator shall not supply additional sewage sludge to the applicator.

**67.1(3)** Exclusions. In accordance with 40 CFR §503.6, this chapter does not establish requirements for the land application of sludge generated at an industrial facility, hazardous sewage sludge, sewage sludge with a polychlorinated biphenyl (PCB) concentration of 50 mg/kg or higher, incinerator ash, grit and screenings, or drinking water treatment sludge.

**567—67.2(455B) Sampling and analysis.**

**67.2(1)** Any sewage sludge generator who intends to land apply sewage sludge shall:

*a.* Sample and analyze the waste to determine whether it meets the criteria for sewage sludge for Class I, II, or III; and

*b.* Analyze the waste to determine if any sources exist which may contribute significant quantities of potentially hazardous chemicals or other toxic substances. If any are found, the generator shall inform the department of their presence and shall analyze the waste for chemicals or substances in accordance with department guidelines.

**67.2(2)** Unless rules for specific programs under EPA or department authority provide otherwise, or unless other methods are approved by the department for a specific situation, samples taken and analyses made to document contamination under this chapter shall be conducted in accordance with the methods described in 567—67.9(455B).

**567—67.3(455B) Land application plan.** All sewage sludge generators wishing to land apply sewage sludge shall establish and maintain in writing a long-range plan for land application of sewage sludge. A copy of this plan shall be available at the facility for department inspection.

**67.3(1)** The long-range plan shall be:

*a.* Developed for a minimum period of five years;

*b.* Updated annually; and

*c.* Designed to ensure that land application can be conducted in accordance with the requirements of this chapter.

**67.3(2)** At a minimum, the long-term plan shall contain the following information in detail for the next calendar year and in general terms for the following four years:

*a.* An outline of the sewage sludge sampling schedule and procedures that will be followed;

*b.* A determination of the amount of land required for proper land application of the sewage sludge;

*c.* Identification of the land areas and appropriate land application methods that will be used;

*d.* For each land application area, the names of the landowners and the applicators, an identification of any legal arrangements related to the use of an area, and an outline of any restrictions or special conditions that exist regarding the use of an area for the land application of sewage sludge;

*e.* An overall land application schedule, including the areas being used, the time of year that land application will occur on each area, and the estimated application rate for each area; and

*f.* A determination of all of the following:

(1) The types and capacities of the required application equipment, including an outline of how the equipment will be made available and who will be responsible for conducting land application operations;

(2) The types and capacities of necessary sludge storage and handling structures;

(3) Whether any additional sludge storage or handling facilities are needed; and

(4) A timeline to construct or obtain any required additional sludge storage, handling, or application facilities or equipment.

**567—67.4(455B) Special definitions.**

**67.4(1)** *Definitions in the Iowa Code.* "Sewage sludge" is defined in Iowa Code section 455B.171(34). For the purposes of this chapter, the term includes materials derived from sewage sludge.

**67.4(2)** *Definitions in the CFR.* The following terms applicable to this chapter are defined in the referenced locations:

*a.* 40 CFR §503.9: "dry weight basis," "food crops," and "person who prepares sewage sludge."

*b.* 40 CFR §503.11: "agronomic rate," "annual whole sludge application rate," "bulk sewage sludge," and "cumulative pollutant loading rate."

*c.* 40 CFR §503.31: "land with a high potential for public exposure" and "land with a low potential for public exposure."

**67.4(3)** The following definitions apply to this chapter:

*"Applicator"* or *"sewage sludge applicator"* means any person who applies sewage sludge to the land.

*"Class I sewage sludge"* means sewage sludge that meets the criteria under 67.6(1).

*"Class II sewage sludge"* means sewage sludge that meets the criteria under 67.7(1).

*"Class III sewage sludge"* means any sewage sludge that cannot meet either Class I sewage sludge criteria or Class II sewage sludge criteria.

*"Generator"* or *"sewage sludge generator"* means any person who generates sewage sludge, who derives a material from sewage sludge, or both.

**567—67.5(455B) Permit requirements.** Prior to any land application of sewage sludge, a permit must be obtained by the sewage sludge generator in accordance with the following requirements:

**67.5(1)** The permit for the land application of sewage sludge produced by a wastewater treatment facility that has been issued a construction permit from the department will be issued concurrently and as part of an operation permit or NPDES permit. The issuance process and permit terms will be the same as those specified for NPDES permits in 567—Chapter 60.

**67.5(2)** The department will review, on a case-by-case basis, requests for a permit to land apply sewage sludge or any material derived from sewage sludge if the sewage sludge is produced outside of

the state of Iowa or produced by a wastewater treatment plant that has not been issued a construction permit from the department.

**567—67.6(455B) Land application requirements for Class I sewage sludge.**

**67.6(1)** *Class I criteria.* Class I sewage sludge is sewage sludge that meets the pollutant concentrations in 67.6(1)*"a,"* the Class A pathogen reduction requirements in 67.6(1)*"b,"* and the vector attraction reduction (VAR) requirements in 67.6(1)*"c."*

*a. Class I pollutant concentrations.* The concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 1.

**TABLE 1—POLLUTANT CONCENTRATIONS**

| Pollutant | Monthly average concentration in mg per kg, dry weight basis |
|---|---|
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 17 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |

*b. Class I pathogen requirements (Class A).* The sewage sludge shall comply with 67.6(1)*"b"*(1) and (2).

(1) The sewage sludge shall comply with one of the following monitoring processes. Compliance with pathogen density shall not be based on an average value. Each individual sample result shall meet the numerical pathogen standards.

1. The fecal coliform density in the sewage sludge shall be less than 1,000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or

2. The *Salmonella* sp. bacteria density in the sewage sludge shall be less than three MPN per four grams of total solids (dry weight basis).

(2) The sewage sludge shall comply with one of the following analytical and treatment processes:

1. The sewage sludge temperature shall be maintained at a specific value for a period of time using one of the procedures detailed below.

● When the percent solids of the sewage sludge is 7 percent or higher, the sewage sludge temperature shall be 50 degrees Celsius (°C) or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using Equation 1, except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

● When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the sewage sludge temperature shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using Equation 1.

● When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using Equation 1.

Equation 1: $D = 131{,}700{,}000/10^{0.1400t}$

Where D = time in days; t = temperature in °C

● When the percent solids of the sewage sludge is less than 7 percent, the sewage sludge temperature is 50°C or higher, and the time period is 30 minutes or longer, the temperature and time period shall be determined using Equation 2.

Equation 2: $D = 50{,}070{,}000/10^{0.1400t}$

Where D = time in days; t = temperature in °C

2. The sewage sludge shall meet all of the following requirements:

- The sludge pH shall be raised to above 12 and shall remain above 12 for 72 hours;
- The sludge temperature shall be above 52°C for 12 hours or longer during the period that the sludge pH is above 12; and
- At the end of the 72-hour period during which the sludge pH is above 12, the sludge shall be air dried to achieve a percent solids in the sludge greater than 50 percent.

3. Sewage sludge treated in other known processes shall be analyzed prior to pathogen treatment to determine whether it contains enteric viruses and viable helminth ova. After pathogen treatment, the density of enteric viruses in the sewage sludge shall be less than one plaque-forming unit per four grams of total solids (dry weight basis), and the density of viable helminth ova shall be less than one per four grams of total solids (dry weight basis). Once the process has been demonstrated to achieve the required pathogen reduction, the process must be operated under the same conditions that were used during the demonstration.

4. Sewage sludge treated by unknown processes or by processes operating at conditions less stringent than the operating conditions at which the sewage sludge could qualify as Class I under other alternatives shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova. The density of enteric viruses in the sewage sludge shall be less than one plaque-forming unit per four grams of total solids (dry weight basis), and the density of viable helminth ova shall be less than one per four grams of total solids (dry weight basis).

5. Sewage sludge shall be treated in one of the Processes to Further Reduce Pathogens (PFRP) described in 67.10(2).

6. Sewage sludge shall be treated in a process that is equivalent to a PFRP, as determined by the department.

*c. Class I VAR requirements.* The sewage sludge shall meet one of the following VAR requirements.

(1) The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38 percent.

(2) A portion of the previously anaerobically digested sewage sludge shall be digested anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. If, at the end of the 40 days, the volatile solids in the sludge at the beginning of that period are reduced by less than 17 percent, VAR is achieved.

(3) A portion of the previously aerobically digested sewage sludge that has 2 percent solids or less shall be digested aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. If, at the end of the 30 days, the volatile solids in the sludge at the beginning of that period is reduced by less than 15 percent, VAR is achieved.

(4) The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams (mg) of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

(5) Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the sewage sludge temperature shall be higher than 40°C and the average sewage sludge temperature shall be higher than 45°C.

(6) The sewage sludge pH shall be raised to 12 or higher, measured at 25°C, by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

(7) The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials.

(8) The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

(9) Sewage sludge shall be injected below the land surface, and no significant amount of the sludge shall be present on the land surface within one hour after injection.

(10) Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.

**67.6(2)** *Class I management practices.* Class I sewage sludge may be land applied in conformance with the following rules:

*a.* Class I sewage sludge may be applied to a lawn or a home garden.

*b.* Class I sewage sludge shall be applied to the land at an annual whole sludge application rate that is equal to or less than the agronomic nitrogen uptake rate, unless otherwise specified by the department.

*c.* An information sheet shall be provided to a person who receives Class I sewage sludge that is sold or given away in a container for land application. The information sheet shall contain:

(1) The name and address of the sewage sludge generator;

(2) A statement that land application of the sewage sludge is prohibited except in accordance with the instructions on the information sheet; and

(3) The annual application rate for the sewage sludge.

**67.6(3)** *Class I monitoring frequency.*

*a.* The pollutants listed in Table 1, the pathogen density requirements, and the VAR requirements shall be monitored at the frequency stated in Table 2.

**TABLE 2—MONITORING FREQUENCY**

| Amount of sewage sludge per 365-day period, dry weight basis | Monitoring Frequency |
|---|---|
| Greater than 0 but less than 290 metric tons (mt) (or 320 English tons) | once per year |
| Equal to or greater than 290 but less than 1,500 mt (320 to 1,653 English tons) | once per quarter (4 times per year) |
| Equal to or greater than 1,500 but less than 15,000 mt (1,653 to 16,535 English tons) | once per 60 days (6 times per year) |
| Equal to or greater than 15,000 mt (or 16,535 English tons) | once per month (12 times per year) |

*b.* After the sewage sludge has been monitored for two years, the department may reduce the monitoring frequency, but in no case shall the monitoring frequency be less than once per year when sewage sludge is land applied.

**67.6(4)** *Class I recordkeeping.*

*a.* Both the generator and bulk sludge applicator of Class I sewage sludge shall develop the following information and retain it for five years:

(1) The concentration of each pollutant listed in Table 1 in the sewage sludge.

(2) The following certification statement: "I certify, under penalty of law, that the Class I sewage sludge requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(3) Descriptions of how the PFRP are met, how one of the VAR requirements is met, and how the management practices are met for each site.

*b.* Treatment works with a design flow rate of 1 million gallons per day (mgd) or greater and treatment works that serve 10,000 people or more shall submit the above information to EPA, using EPA's NPDES eReporting Tool (NeT), by February 19 of each year for the previous calendar year.

**567—67.7(455B) Land application requirements for Class II sewage sludge.**

**67.7(1)** *Class II criteria.* Class II sewage sludge is sewage sludge that meets the pollutant concentrations in 67.7(1)*"a,"* the pathogen reduction requirements in 67.7(1)*"b,"* and the VAR requirements in 67.7(1)*"c."*

*a. Class II pollutant concentrations.* The concentration of any pollutant in Class II sewage sludge shall not exceed the ceiling concentration for the pollutant in Table 3.

**TABLE 3—CEILING CONCENTRATIONS**

| Pollutant | Ceiling concentration in mg per kg, dry weight basis |
|---|---|
| Arsenic | 75 |
| Cadmium | 85 |
| Copper | 4300 |
| Lead | 840 |
| Mercury | 57 |
| Molybdenum | 75 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 7500 |

*b. Class II pathogen reduction requirements.* Class II sewage sludge shall meet one of the following three alternatives:

(1) Seven samples of the sewage sludge shall be collected at the time of disposal, and the geometric mean of the fecal coliform density shall be less than 2,000,000 MPN per gram of total solids (dry weight basis);

(2) Sewage sludge shall be treated in a PSRP described in 67.10(1); or

(3) Sewage sludge shall be treated in a process that is equivalent to a PSRP, as determined by the department.

*c. Class II VAR requirements.* The Class II VAR requirements are the same as those for Class I sewage sludge in 67.6(1)*"c."*

**67.7(2)** *Class II management practices.* Class II sewage sludge may be land applied in conformance with the following:

*a.* Class II sewage sludge shall not be land applied:

(1) To a lawn or a home garden; or

(2) If it is likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act, 16 U.S.C. 1533, effective December 27, 2022, or the species' designated critical habitat.

*b.* Land application sites accepting Class II sewage sludge not meeting pollutant concentrations listed in Table 1 in 67.6(1) are subject to the cumulative pollutant loading rates listed in Table 4.

**TABLE 4—CUMULATIVE POLLUTANT LOADING RATES**

| Pollutant | Cumulative Pollutant Loading Rate | |
|---|---|---|
| | kg per hectare | pounds per acre |
| Arsenic | 41 | 36 |
| Cadmium | 39 | 34 |
| Copper | 1500 | 1335 |
| Lead | 300 | 267 |
| Mercury | 17 | 15 |
| Nickel | 420 | 373 |
| Selenium | 100 | 89 |
| Zinc | 2800 | 2490 |

*c. Class II* sewage sludge shall be land applied:

(1) At an annual whole sludge application rate that is equal to or less than the agronomic nitrogen uptake rate, unless otherwise specified by the department; and

(2) Only to soils classified as acceptable throughout the top five feet of soil profile. Sewage sludge shall not be applied to soils classified as sand, loamy sand, or silt. The acceptability of a soil shall be determined using the USDA soil classifications.

*d.* Land application sites shall have soil pH maintained above 6.0, unless

(1) Crops prefer soils with lower pH conditions;

(2) The sludge meets the pollution concentrations contained in Table 1; or

(3) The site does not exceed calcium carbonate equivalent levels according to sound farm management practices.

If the soil pH is below 6.0, agricultural lime can be used to increase the pH to an acceptable level.

*e.* If sewage sludge is applied to land on which the soil loss exceeds the soil loss limits established by the county soil conservation district, the sludge shall be injected on the contour or shall be applied to the surface and mechanically incorporated into soil within 48 hours of application. Sewage sludge shall not be applied to ground having greater than 9 percent slope unless approved by the department.

*f.* Sewage sludge application on frozen or snow-covered ground should be avoided unless special precautions are taken, such as proven farm management practices to avoid runoff. If application on frozen or snow-covered ground is necessary, it shall be limited to land areas of less than 5 percent slope unless otherwise approved by the department.

*g.* In accordance with Table I in 567—paragraph 60.2(2)*"c,"* sewage sludge shall not be applied to land that is 35 feet or less from an open waterway. If sewage sludge is applied within 200 feet upgradient of a stream, lake, sinkhole, or tile line surface intake, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours of application unless otherwise approved by the department.

*h.* If sewage sludge is applied to land subject to flooding more frequently than once in ten years, the sludge shall be injected or shall be applied to the surface and mechanically incorporated into the soil within 48 hours. Information on which land is subject to flooding more frequently than once in ten years is available from the department.

*i.* Sewage sludge shall not be applied within 200 feet of an occupied residence or any well. Distances may be reduced to a minimum of 35 feet with the written agreement of both the well or residence owner and, in the case of residences, the occupant and an approved farm management plan that addresses soil erodibility, harvest residuals, buffer strips, and other sound farm management practices. The farm management plan shall be approved by the local soil conservation district in accordance with rules implementing Iowa Code sections 161A.42 through 161A.51.

*j.* After the land application of sewage sludge, all of the following restrictions shall apply:

(1) Food crops with harvested parts that touch the sewage sludge/soil mixture and that are totally above the land surface shall not be harvested for 14 months;

(2) Food crops, feed crops, and fiber crops shall not be harvested for 30 days;

(3) Animals shall not be allowed to graze on the land for 30 days;

(4) Turf grown on land where sewage sludge is applied shall not be harvested for one year after application when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the department;

(5) Public access to land with a high potential for public exposure shall be restricted for one year; and

(6) Public access to land with a low potential for public exposure shall be restricted for 30 days.

*k.* When required by the director, groundwater monitoring wells and surface monitoring points shall be installed and a monitoring program implemented. Samples must be analyzed by a laboratory that is equipped and competent to perform the required tests. The results shall be forwarded to the department on a stipulated schedule.

*l.* The sewage sludge generator shall provide information necessary to comply with the requirements of this chapter to the sewage sludge applicator and landowner.

*m.* The sewage sludge applicator shall provide written notice to the department prior to the initial application of sewage sludge. The notice shall include:

(1) The location, by legal description, of the land application site, and

(2) The name, address, telephone number, and NPDES permit number (if appropriate) of the landowner, sewage sludge generator, and applicator.

**67.7(3)** *Class II monitoring frequency.*

*a.* The pollutants listed in Table 3, the pathogen density requirements, and the VAR requirements shall be monitored at the frequency stated in Table 2.

*b.* After the Class II sewage sludge has been monitored for two years, the department may reduce the monitoring frequency, but in no case shall the monitoring frequency be less than once per year when sewage sludge is land applied.

**67.7(4)** *Class II recordkeeping.*

*a.* Both the generator and applicator of Class II sewage sludge shall develop all of the following information and retain it for five years:

(1) The concentration of each pollutant listed in Table 3 in the sewage sludge.

(2) The following certification statement: "I certify, under penalty of law, that the Class II sewage sludge requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(3) A description of how the PSRP and VAR requirements are met.

(4) A description of how the management practices for Class II sewage sludge are met for each site.

(5) The location and surface area of each site.

(6) The date and time of sewage sludge application at each site.

(7) If subjected to cumulative loading limits, the amount and cumulative amount of each pollutant listed in Table 4 of 67.7(2)*"b"* in the sewage sludge applied to each site.

(8) The amount of sewage sludge (i.e., metric tons) applied to each site.

*b.* Treatment works with a design flow rate of 1 mgd or greater and treatment works that serve 10,000 people or more shall submit the above information to EPA, using EPA's NPDES eReporting Tool (NeT), by February 19 of each year for the previous calendar year. In addition, a supplemental sewage sludge report that includes the land application information listed in 67.7(4)*"a"*(6) to (9) shall be submitted to the department by the same due date.

**567—67.8(455B) Class III sewage sludge.**

**67.8(1)** Class III sewage sludge is any sewage sludge that cannot meet either Class I or Class II sewage sludge criteria.

**67.8(2)** Class III sewage sludge shall not be utilized for beneficial use for land application as specified in the chapter.

**67.8(3)** Class III sewage sludge shall be disposed according to 40 CFR Part 503, Subpart C, "Surface Disposal," or according to 40 CFR Part 503, Subpart E, "Incineration."

**567—67.9(455B) Sampling and analytical methods.**

**67.9(1)** *General.* Representative samples of sewage sludge that are applied to the land shall be collected and analyzed. The methods and calculation procedures listed below shall be used to analyze samples and to calculate the percent of volatile solids reduction.

**67.9(2)** *Enteric viruses.* 40 CFR §503.8(b)(1) is adopted by reference.

**67.9(3)** *Fecal coliform.*

*a.* 40 CFR §503.8(b)(2) is adopted by reference.

*b.* EPA Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using Lauryl Tryptose Broth (LBT) and EC Medium, EPA-821-R-14-009, September 2014.

*c.* EPA Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A-1 medium, EPA-821-R-06-013, July 2006.

**67.9(4)** *Helminth ova.* 40 CFR §503.8(b)(3) is adopted by reference.

**67.9(5)** *Inorganic pollutants.*

*a. Metals.* 40 CFR §503.8(b)(4) is adopted by reference.

*b. Nonmetals.* For nonmetals not identified elsewhere in this chapter, methods listed in 567—paragraph 83.5(1)*"c."*

**67.9(6)** *Salmonella sp. bacteria.*

*a.* 40 CFR §503.8(b)(5) is adopted by reference.

*b.* EPA Method 1682: *Salmonella* in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium, EPA-821-R-06-14, July 2006.

**67.9(7)** *Specific oxygen uptake rate.* 40 CFR §503.8(b)(6) is adopted by reference.

**67.9(8)** *Total, fixed, and volatile solids.* 40 CFR §503.8(b)(7) is adopted by reference.

**67.9(9)** *Percent volatile solids reduction calculation.* "Environmental Regulations and Technology - Control of Pathogens and Vectors in Sewage Sludge," EPA-625/R-92/013, July 2003.

**567—67.10(455B) Pathogen treatment processes.**

**67.10(1)** 40 CFR Part 503, Appendix B, section A, Processes to Significantly Reduce Pathogens (PSRP), is adopted by reference.

**67.10(2)** 40 CFR Part 503, Appendix B, section B, Processes to Further Reduce Pathogens (PFRP), is adopted by reference.

These rules are intended to implement Iowa Code section 455B.174.

## ARC 8632C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to commercial septic tank cleaners and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 68, "Commercial Septic Tank Cleaners," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173(3).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.172 and 455B.172A.

*Purpose and Summary*

Proposed Chapter 68 contains standards for the commercial cleaning of and the disposal of waste from private sewage disposal systems and on-farm food processing operations. The chapter also includes licensing requirements and procedures. These proposed rules are designed to prevent the spread of diseases and pathogens, safeguarding public health and the environment. The proposed rules allow on-farm food processors to land-apply wastes without a permit, which provides a less expensive method of waste disposal. Without this exemption, on-farm food processors would be required to obtain construction and operation permits from the Department of Natural Resources (Department).

This chapter has been reviewed and edited consistent with Executive Order 10. This rulemaking removes outdated requirements and shortens, simplifies and clarifies regulations and terminology.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Cory Frank
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: cory.frank@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at cory.frank@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al cory.frank@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |
| January 29, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at cory.frank@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.689.7941 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al cory.frank@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.689.7941 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 68 and adopt the following **new** chapter in lieu thereof:

CHAPTER 68
COMMERCIAL SEPTIC TANK CLEANERS

**567—68.1(455B) Purpose, applicability, and definitions.**

**68.1(1)** The purpose of this chapter is to implement Iowa Code sections 455B.172(5), 455B.172(6), and 455B.172A by providing standards for the commercial cleaning and disposal of waste from private sewage disposal systems (PSDSs) and toilet units and wastewater from on-farm food processing operations and by providing licensing requirements and procedures.

**68.1(2)** Definitions. For purposes of this chapter, the following definitions apply:

*"Cleaning"* means removal of waste from PSDSs and other actions incidental to that removal.

*"Commercial septic tank cleaner"* means a person or firm engaged in the business of cleaning and disposing of waste from PSDSs, including a person or firm that owns and rents or leases portable toilets.

*"Food commodity"* is defined in Iowa Code section 455B.171(8).

*"Holding tank for waste"* is defined in 567—subrule 69.1(2).

*"On-farm processing operation"* is defined in Iowa Code section 455B.171(18). "On-farm processing operation" does not include food commodities processed by a person exclusively for use by the person and members of the person's household or the person's nonpaying guests and employees.

*"Tank"* means any container that is placed on a vehicle to transport waste removed from a private waste facility.

*"Toilet unit"* is defined in Iowa Code section 455B.171(37).

*"Vehicle"* means a device used to transport a tank, including a trailer.

*"Waste"* means human or animal excreta, water, scum, sludge, septage, and grease solids from PSDSs or toilet units.

**567—68.2(455B) Commercial septic tank and toilet unit cleaner licensing requirements and procedures.**

**68.2(1)** *General.* Commercial septic tank and toilet unit cleaners must annually apply for and obtain a license from the department before engaging in the commercial cleaning of and disposal of septage from any PSDS or the commercial cleaning and disposal of wastes from any toilet unit in the state of Iowa. The license period will run from July 1 to June 30 of the following year. Owners of a septic tank may clean their own tank without being licensed if all other requirements of this chapter are met.

**68.2(2)** *Application for license.* A commercial septic tank or toilet unit cleaner must apply for a license by completing a department form and submitting it to the department with an annual septage disposal management plan (SDMP) and license fee. In the case of a commercial septic tank cleaner that is a corporation, partnership, association, or any other business entity, the entity itself must apply as provided in this rule. The entity shall designate a person with requisite authority to act as its representative when applying for a license. Individuals employed by a commercial septic tank or toilet unit cleaner business are not required to be licensed, but each cleaning unit (vehicle or tank) must display the business license number (except for the year).

**68.2(3)** *Septage disposal management plan (SDMP).* An applicant must submit an SDMP with a license application using a department form. Applicants must also submit the SDMP to the county board of health in each county where septage is to be land applied.

*a.* An SDMP shall include:

(1) A list of vehicles to be registered for use by the licensee.

(2) The volume of septage expected to be collected from PSDSs or toilet units.

(3) For disposal to another system, including a publicly owned treatment works (POTW), a different permitted wastewater disposal system (DS), a permitted septage lagoon or septage drying bed, or a permitted sanitary landfill:

1. The volume of septage or waste to be taken to each system; and
2. A letter of acceptance from the owner of each system where septage or waste is proposed to be disposed.

(4) For septage disposal by land application:

1. The location and area of all sites where septage is to be land applied;
2. The anticipated volume of septage applied to each site;
3. The type of crop to be planted on each site and the date when planting will occur; and
4. The type of land application to be used at each site.

*b.* Allowance may be made in an SDMP for septage application on the property of the owner of the tank being pumped as long as the disposal standards of this chapter are met.

*c.* A license will be issued only after department approval of the SDMP. If the SDMP is not approved by the department, it must be modified and resubmitted.

**68.2(4)** *SDMP alteration.* An amended SDMP must be submitted to the department and the county before septage is land applied to any new property not listed in the existing SDMP, or septage is taken to a system not listed in the SDMP.

**68.2(5)** *License fees.*

*a. Renewal fees.* The renewal application fee is $150 per year for the first registered vehicle and $50 for each additional vehicle. If an applicant intends to land apply any septage during the year, there will be an additional application fee of $7 per 1,000 gallons of septage to be land applied per year. Land application fees shall be based on the previous year's records.

*b. New license fees.* New license applicants will be charged the following fees:

(1) Applicants who propose to land apply shall pay a prorated $300 annual fee until the next June 30.

(2) Applicants will be charged fees of $150 for the first registered vehicle and $50 for each additional vehicle.

**68.2(6)** *License renewal.* In order to remain valid, a license must be renewed by June 30 of each year. Renewal applications must meet the requirements of this rule and be received by the department at least 30 days prior to the expiration date.

**68.2(7)** *Ownership change.* Within 30 days of a change in ownership of any commercial septic tank or toilet unit cleaner, the new owner shall furnish the department with the following information:

*a.* Business name and license number;
*b.* Name, address, email address, and telephone number of the new owner;
*c.* Date of the ownership change; and
*d.* Any change in the SDMP.

The license will transfer with the ownership with no additional fee.

**68.2(8)** *Address change.* Within 30 days of any change in the address or location of a commercial septic tank or toilet unit cleaning business, information regarding such change must be reported to the department.

**567—68.3(455B) License suspension, revocation and denial.**

**68.3(1)** *Basis for suspension, revocation, and denial.* The department may suspend, revoke, or deny a commercial septic tank or toilet unit cleaner license for any of the following reasons:

*a.* A material misstatement of facts in a license application.
*b.* Failure to provide the license fee.
*c.* Failure to provide and adhere to an approved SDMP.
*d.* Failure to satisfy the requirements of this chapter.
*e.* Failure to pay any fines assessed under 68.3(2).

**68.3(2)** *Civil penalties.* The department may assess civil penalties pursuant to Iowa Code section 455B.172.

**68.3(3)** *Appeal.* A commercial septic tank or toilet unit cleaner may appeal the suspension, revocation, or denial of a license under the provisions of 567—Chapter 7.

**68.3(4)** *Reinstatement.* In the case of a denial, revocation, or suspension pursuant to 68.3(1)*"b"* or *"e,"* the department may immediately reinstate or issue a license after receipt of the requisite fee or fine and confirmation that the commercial septic tank or toilet unit cleaner is fulfilling the requirements of 567—68.4(455B) and 567—68.6(455B). In case of a denial, revocation or suspension pursuant to 68.3(1)*"a,""c,"* or *"d,"* the department may reinstate or issue a license no sooner than 60 days after the action if the department is satisfied that the commercial septic tank or toilet unit cleaner has corrected the deficiency and will comply with department rules in the future.

**567—68.4(455B) Licensee and county obligations.**

**68.4(1)** *Licensee obligations.* A licensee shall:

*a.* Supervise the removal and disposal of septage from PSDSs or waste from toilet units;

*b.* Meet the standards established in this chapter for the cleaning of and disposal of septage from PSDSs or waste from toilet units; and

*c.* Record the location of all cleaned PSDSs or toilet units, the method of septage or waste disposal, and the volume of septage or waste disposed of for each trip. Such records shall be maintained for five years and shall be made readily available upon request by an administrative authority.

**68.4(2)** *County obligations.* The county boards of health shall enforce the standards and licensing requirements in this chapter and other referenced rules.

**567—68.5(455B) Application sites and equipment inspections.** All land application sites specified on an SDMP shall be inspected annually by a department-approved agent to ensure that the sites meet the requirements for septage disposal and are properly managed. All vehicles, tanks, and related storage and handling facilities for septage shall be inspected annually to ensure compliance with these rules. The department may contract with other entities, such as the county boards of health, to carry out inspections. However, the department shall retain concurrent authority to determine inspection requirements.

**567—68.6(455B) Standards for commercial cleaning of PSDSs and toilet units.**

**68.6(1)** *Vehicles, tanks, and equipment.* For all vehicles, tanks, and equipment used in the commercial cleaning of PSDSs and toilet units, the licensee shall:

*a.* Prevent the dripping, falling, spilling, leaking, or discharging of septage or waste onto roads, rights-of-way, or other public properties;

*b.* Provide the necessary equipment to properly clean PSDSs or toilet units and to sufficiently agitate and disperse solids, sludge, and scum into the liquid for cleaning;

*c.* Install pumps and associated piping with watertight connections to prevent leakage;

*d.* Ensure that equipment can easily be cleaned and is maintained in an essentially rust-free and sanitary condition;

*e.* If septage is to be land applied, provide a mechanism for properly mixing lime with the septage or a means to incorporate or inject the septage; and

*f.* Prominently display the license number and name of the commercial septic tank or toilet unit cleaner on the side of all vehicles or tanks in letters and numbers at least three inches high.

**68.6(2)** *Miscellaneous.*

*a.* Any tanks or equipment used for hauling septage or waste shall not be:

(1) Used to haul hazardous or toxic wastes as defined in 567—Chapter 131;

(2) Used to haul wastes detrimental to land application or wastewater treatment plants;

(3) Used in a manner that would contaminate a potable water supply; or

(4) Used in a manner that would endanger the food chain or public health.

*b.* A direct connection shall not be made between a potable water source and a tank or equipment on a vehicle.

**567—68.7(455B) Standards for septage and waste disposal.** Septage from PSDSs and on-farm processing operations and waste from toilet units and holding tanks shall be disposed of in accordance with this rule.

**68.7(1)** Waste from toilet units and holding tanks shall be disposed of by discharge, with owner approval, to a POTW or other department-permitted wastewater disposal system. Land application of wastes from toilet units or holding tanks is prohibited.

**68.7(2)** Septage from septic tanks or other types of PSDSs that normally discharge effluent for further treatment shall be disposed of by one or more of the following methods:

*a.* Septage may be discharged, with system owner approval, to any of the following systems:

(1) To a POTW or other department-permitted wastewater disposal system.

(2) To permitted septage lagoons or septage drying beds.

(3) To a permitted sanitary landfill in accordance with 567—Chapters 102 and 103 and the following requirements:

1. Septage shall be stabilized by adding and thoroughly mixing sufficient lime to produce a mixture with a pH of 12.

2. A minimum of 30 minutes of contact time shall be provided after mixing the lime with the septage prior to discharging to the landfill.

*b.* Septage from PSDSs and on-farm processing operations may be land applied when such applications are conducted in accordance with the following requirements:

(1) Land application rate. The maximum application rate is 30,000 gallons of septage per acre of cropland per 365-day period. The nitrogen application rate shall be no more than is utilized by the crop. A crop capable of using the nitrogen applied must be grown and harvested from the site after application of the maximum annual allocation or, at a minimum, every third year.

(2) Land application site restrictions.

1. Sites shall have soil pH maintained above 6.0 unless crops prefer soils with lower pH conditions. If the soil pH is below 6.0, agricultural lime may be used to increase the pH to an acceptable level. Soil pH shall be measured and reported in the annual SDMP.

2. If application on frozen or snow-covered ground is necessary, it shall be limited to land areas of less than 5 percent slope and application rates of less than 2,500 gallons per acre per day.

3. If septage is land applied to land in a floodplain with a ten-year magnitude, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours. Information on which land is in a floodplain with a ten-year magnitude is available from the department.

4. Septage shall be land applied in accordance with the separation distances in Table I in 567—paragraph 60.2(2)*"c."* If septage is land applied within 200 feet upgradient of a stream, lake, sinkhole, or tile line surface intake, it shall be injected or applied to the surface and mechanically incorporated into the soil within 48 hours of application.

5. Septage shall not be applied to any of the following:

- To a lawn or a home garden;
- To ground that has a slope greater than 9 percent; or
- To land where there is a bedrock layer or seasonal high water table within three feet of the soil surface, as noted in the county USDA soil surveys.

(3) Land application crop harvesting restrictions. After a septage application:

1. Food crops with harvested parts that touch the septage/soil mixture and are totally above ground shall not be harvested for 14 months.

2. Food crops with harvested parts below the land surface shall not be harvested for 38 months.

3. Animal feed, fiber, and those food crops with harvested parts that do not touch the soil surface shall not be harvested for 30 days.

4. Animals shall not be allowed to graze on the land for 30 days.

(4) Land application vector attraction reduction (VAR). One of the following VAR requirements shall be met when septage is land applied:

1. Septage may be injected below the surface of the land. No significant amount of septage shall be present on the land surface within one hour of septage injection.

2. Septage may be incorporated into the soil within six hours after application to or placement on the land.

3. Septage may be stabilized by adding and thoroughly mixing sufficient alkaline material (such as hydrated or quick lime) to produce a mixture with a pH of 12. A minimum of 30 minutes of contact time shall be provided after mixing the alkaline material with the septage prior to land application. Each container of treated septage shall be monitored for compliance by testing two representative samples taken a minimum of 30 minutes apart to verify that the pH remains at 12 or greater for the minimum 30-minute time period.

4. Other stabilization methods may be acceptable if shown to be equivalent to one or more of the methods described in this subparagraph.

(5) Land application records. Persons who land apply septage shall document the following information and retain the records at their residence or business for five years:

1. The location, by either street address or latitude and longitude, of each septage application site;
2. The number of acres and precise application area in each septage application site;
3. The gallons of septage applied to each site for each application;
4. The rate, in gallons per acre, of septage application at each site;
5. The total gallons of septage applied at each site to date for the year;
6. The date and time of septage application at each site; and
7. A description of how the VAR requirements are met (injection, incorporation, or stabilization).

The following certification statement shall be provided with the records when the records are submitted to or requested by the department:

"I certify, under penalty of law, that the pathogen requirements and the vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

**567—68.8(455B) Standards for disposal of wastewater from on-farm food processing operations.** On-farm food processing wastewater shall be disposed of pursuant to Iowa Code section 455B.172A. On-farm food processing operations that meet the requirements for land application in Iowa Code section 455B.172A and 567—68.7(455B) shall not be required to obtain an operation permit as prescribed in 567—60.3(455B).

These rules are intended to implement Iowa Code sections 455B.172 and 455B.172A.

## ARC 8650C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to private sewage disposal systems and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 69, "Private Sewage Disposal Systems," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.173(3).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 455B.174, Clean Water Act Section 402 and 40 CFR §123.25.

*Purpose and Summary*

Proposed Chapter 69 establishes the requirements for the construction permitting program applicable to new or modified private sewage disposal systems. The administrative authority (typically the local county boards of health) evaluates all private sewage disposal facility construction permit applications to ensure that proposed treatment facilities will comply with state and federal requirements. Proposed Chapter 69 also establishes requirements for the Time of Transfer program, which regulates the sale of properties served by a private sewage disposal system. The proposed chapter ensures that private sewage disposal facilities are properly constructed and operated, which will help prevent the spread of diseases and pathogens, safeguarding public health. Properly managed wastewater systems prevent contamination of groundwater and surface water by preserving ecosystems and habitats and helping to maintain the quality of water resources, including drinking water sources, recreational waters, and aquatic ecosystems. It also helps reduce the risk of system failures and costly environmental cleanup, saving both individuals and communities money over time.

This chapter was reviewed and edited consistent with Executive Order 10. This rulemaking removes outdated requirements; shortens, simplifies and clarifies regulations and terminology; removes outdated practices; and references regulations that appear elsewhere in state or federal law.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Cory Frank
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: cory.frank@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at cory.frank@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al cory.frank@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |
| January 29, 2025 | Virtual meeting |
| 1 to 2 p.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at cory.frank@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.689.7941 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al cory.frank@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.689.7941 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 69 and adopt the following **new** chapter in lieu thereof:

CHAPTER 69
PRIVATE SEWAGE DISPOSAL SYSTEMS

**567—69.1(455B) General.**

**69.1(1)** *Applicability.* These rules are applicable only to private sewage disposal systems (PSDSs).

**69.1(2)** *Definitions.*

*"Administrative authority"* means the department or the local county board of health as authorized by Iowa Code section 455B.172 and chapter 137.

*"Approved"* means accepted or acceptable under an applicable specification stated or cited in these rules or accepted by the administrative authority as suitable for the proposed use.

*"Area drain"* means a drain installed to collect surface or storm water from an open area of a building or property.

*"At-grade system"* means a pressurized soil absorption system constructed at or near the ground surface used to disperse effluent from septic tanks in cases in which a seasonally high water table, high bedrock conditions, slowly permeable soils, or limited land areas prevent conventional soil absorption systems.

*"Building drain"* means that part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside the walls of any building and conveys the same to the building sewer.

*"Building sewer"* means that part of the horizontal piping from the building wall to its connection with the main sewer or the primary treatment portion of a PSDS conveying the drainage of a building site.

*"Chamber system"* means a buried structure, typically with a domed or arched top, providing at least a six-inch height of sidewall soil exposure creating a covered open space above a buried soil infiltrative surface.

*"Confining layer,"* also known as "limiting condition," means solid or fractured bedrock, seasonally high groundwater level, any layer of soil with a stabilized percolation rate exceeding 60 minutes for the water to fall one inch, or any other factor (natural or manmade) that does not provide the 36 inch depth separation required for soil absorption.

*"Conventional,"* when used in reference to sewage treatment, means a soil absorption system involving a series of two- to three-foot-wide trenches filled with gravel, containing a four-inch-diameter rigid pipe or other alternative trench technologies to convey the sewage effluent. Gravel aggregate, chamber, and EPS aggregate systems are considered conventional soil absorption systems.

*"Distribution box"* means a device designed to accomplish the equal distribution of wastewater to two or more soil absorption trenches.

*"Dosing siphon"* means a manufactured device that provides a measured amount of effluent determined by the manufacturer's specifications and design.

*"Drop box"* means a structure used to divert wastewater flow into a soil absorption trench. When the trench is filled to a set level, the drop box then allows any additional wastewater not absorbed by that trench to flow to the next drop box or soil absorption trench.

*"Dwelling"* means any house or place used or intended to be used by humans as a permanent or temporary residence.

*"Expanded polystyrene aggregate systems"* or *"EPS aggregate systems"* means cylinders comprised of expanded polystyrene (EPS) synthetic aggregate contained in high-strength polyethylene netting. The cylinders are a minimum 12 inches in diameter and are produced both with and without a distribution pipe.

*"Fill soil"* means clean soil, free of debris or large organic material, which has been mechanically moved onto a site and has been in place for less than one year, and is characterized by a lack of distinct horizons or color patterns as found in naturally developed, undisturbed soils.

*"Filtered pump vault"* means a device installed in a septic or pump tank that houses a pump and screens effluent with ⅛ inch or small diameter openings before it enters the pump.

*"Foundation drain"* means the portion of a building drainage system that is provided to drain groundwater, not including any wastewater, from the outside of the foundation or over or under the basement floor and that is not connected to the building drain.

*"Gravel"* means stone screened from river sand or quarried and washed free of clay and clay coatings. Concrete aggregate designated as Class II by the Iowa DOT is acceptable.

*"Gravel aggregate system"* means a soil absorption system utilizing gravel as the media.

*"Grease interceptor"* means a watertight device designed to intercept and retain or remove grease and fatty substances. The device may be located inside (grease separator) or outside (grease tank or grease trap) a facility.

*"Holding tank for waste"* means a structure used for the retention or storage of domestic sewage pending removal for further treatment.

*"Intermittent subsurface sand filter"* or *"ISSF"* means a bed of granular materials 24 to 36 inches deep underlain by graded gravel and collecting tile and provided with a natural topsoil cover over the crown of the distribution pipes. Wastewater is applied intermittently to the surface of the bed through distribution pipes, and the bed is underdrained to collect and discharge the final effluent. Uniform distribution is best obtained by dosing so as to utilize the entire surface of the bed.

*"Mound system"* means an aboveground soil absorption system used to disperse effluent from septic tanks in cases where a seasonally high water table, high bedrock conditions, slowly permeable soils, or limited land areas prevent conventional soil absorption systems.

*"Other pressure distribution device"* means any device used to evenly distribute effluent other than a manufactured siphon device intended to be used for effluent distribution.

*"Percolation test"* means a falling water level procedure used to determine the ability of soils to absorb effluent or pretreated effluent. See Appendix B of this chapter.

*"Pressure distribution system"* means a network of distribution pipes in which effluent is forced through orifices under pressure. Pressure distribution may be accomplished by use of a pump, siphon device, or other manufactured pressure distribution devices.

*"Pretreated effluent"* means effluent treated through aeration or other methods that, upon laboratory analysis, meets or exceeds a monthly average for $CBOD_5$ of 25 mg/L and TSS of 30 mg/L.

*"Primary treatment unit"* means a unit or system used to separate the floating and settleable solids from the wastewater before the partially treated effluent is discharged for secondary treatment.

*"Private sewage disposal system"* or *"PSDS"* is defined in Iowa Code section 455B.171. For the purposes of this chapter, the term includes septic tanks, holding tanks for waste, chemical toilets, impervious vault toilets, and portable toilets.

*"Professional soil analysis"* means an alternative to the percolation test which depends upon a knowledgeable person evaluating the soil characteristics, such as color, texture, and structure, in order to determine an equivalent percolation or loading rate.

*"Professional soil scientist"* means a person with training and experience in soil morphology, including, but not limited to, experience in testing the absorption qualities of soil by the physical examination of the soil's color, mottling, texture, structure, topography, and hillslope position.

*"Proprietary treatment system"* or *"PTS"* means any device or product that is manufactured utilizing a treatment media that provides treatment minimum standards and that is certified by a third-party certifier accredited by the American National Standards Institute (ANSI) to meet National Sanitation Foundation Standard (NSF) 40 (ANSI/NSF 40: Residential Wastewater Treatment Systems), Class I, including appendices, available on the NSF website at: www.nsf.org, or equivalent testing as determined by the department. Examples may include, but are not limited to, peat moss biofilters, coconut fiber filters, synthetic foam filters, polystyrene bead media filters, textile filters, modular fixed film soil systems, or aerobic treatment units.

*"PVC"* means polyvinyl chloride.

*"Qualified sampler,"* for the purposes of collecting compliance effluent samples required under NPDES General Permit No. 4, means one of the following persons: a city or county environmental health staff person; an Iowa-certified wastewater treatment operator; or an individual who has received department-approved training to conduct effluent sampling.

*"Roof drain"* means a drain installed to receive water collecting on the surface of a roof and discharging into an area or storm drain system.

*"SCH"* means schedule, as in Schedule 40 pipe. It describes the wall thickness of a pipe.

*"SDR"* means standard dimension ratio, which is the ratio of pipe diameter to wall thickness. It is a method of rating a pipe's durability against pressure.

*"Secondary treatment system"* means a system that provides biological treatment of effluent from septic tanks or other primary treatment units. Examples include, but are not limited to, soil absorption systems, ISSFs, PTSs, or other systems providing equivalent treatment.

*"Septic tank"* means a watertight structure into which wastewater is discharged for solids separation and digestion (referred to as part of the closed portion of the treatment system).

*"Stream"* means any watercourse listed as a "designated use segment" in 567—61.3(455B).

*"Soil absorption bed system"* means a soil absorption system that is a shallow excavation lined with aggregate or other suitable materials, including leaching chamber or EPS materials, that is greater than five feet in width.

*"Soil absorption system"* means a conventional, at-grade, mound, or soil absorption bed system that uses a system of perforated conduits connected to a distribution system, forming a series of subsurface, water-carrying channels into which the treated effluent or pretreated effluent is discharged for direct absorption into the soil (referred to as part of the open portion of the treatment system).

**69.1(3)** *General PSDS regulations.*

*a. Connections to approved sewer systems.*

(1) No PSDS shall be installed, repaired, or rehabilitated where a publicly owned treatment works (POTW) is available or where a local ordinance requires connection to a POTW. A POTW may be considered unavailable when the POTW, or any building or any exterior drainage facility connected thereto, is located more than 200 feet from any proposed building or exterior drainage facility on any lot or premises which abuts and is served by a POTW. Final determination of availability shall be made by the administrative authority.

(2) When a POTW becomes available within 200 feet, any building then served by a PSDS shall be connected to said POTW within a time frame and under conditions set by the administrative authority.

(3) When a POTW is not available, every building wherein persons generate domestic sewage shall be provided with an approved PSDS. A holding tank for waste may be used only if all other PSDS options are impractical.

(4) If a building is to be connected to an existing PSDS, that existing system shall meet the requirements of these rules.

*b. Construction or alteration.* All constructed or altered PSDSs shall comply with this chapter. Alteration includes any changes that affect the treatment or disposal of the waste. Repair of existing components of a PSDS that do not change the treatment or disposal of the waste are not considered alterations. However, the discharge restrictions in 69.1(9) apply.

*c. Abandonment.* PSDSs shall be abandoned in the following manner:

(1) Concrete tanks shall be pumped, the tank lid crushed into the tank, and the tank filled with sand or soil.

(2) Plastic, fiberglass, or metal tanks shall be pumped and removed, and the cavity filled with sand or soil.

**69.1(4)** *Construction permit required.* No PSDS shall be installed or altered as described in 69.1(3) *"b"* unless a construction permit issued by the administrative authority is obtained prior to construction. PSDS installation shall be in accordance with these rules.

**69.1(5)** *Permit by rule.* This chapter is intended to act as a permit by rule for PSDSs. Activities in compliance with this chapter are permitted by the director for purposes of compliance with Iowa Code sections 455B.183 and 455B.186.

**69.1(6)** *Equivalent of 16 individuals.*

*a.* A PSDS may be permitted by the local county board of health in accordance with this chapter if a PSDS provides treatment for the equivalent of less than 16 individuals on a continuing basis as described in this subrule. A system that provides treatment for sixteen or more individuals on a continuing basis must be permitted by the department under 567—Chapter 60.

*b.* A PSDS provides treatment for the equivalent of less than 16 individuals on a continuing basis when any of the following are true:

(1) It is a single or interconnected PSDS which has a secondary treatment system with a maximum design flow of 1,500 gpd, and there are no other PSDSs on the property containing the treating system;

(2) It is a single or interconnected PSDS which has a secondary treatment system with a maximum design flow of 1,500 gpd, and all other PSDSs on the property containing the system are either holding tanks for waste, chemical toilets, impervious vault toilets, or portable toilets; or are used solely to treat domestic waste from a private dwelling; or

(3) It is part of a propertywide scheme to provide for the treatment and disposal of domestic waste, where:

1. The propertywide scheme utilizes multiple septic tank-style or other PSDS, but does not include holding tanks for waste, chemical toilets, impervious vault toilets, or portable toilets;

2. The sum of the total maximum design flow of all the secondary treatment systems used in the propertywide scheme is less than 1,500 gpd; and

3. All other disposal systems on the property not used in the scheme are either holding tanks for waste, chemical toilets, impervious vault toilets, or portable toilets; or are used solely to treat domestic waste from a private dwelling.

*c.* For purposes of this subrule, "property" includes contiguous properties which are under common ownership.

**69.1(7)** *Site analysis.*

*a. Site evaluation.* The administrative authority shall conduct a site evaluation prior to the issuance of a construction permit. Consideration shall be given, but not be limited, to the impact of the following:

(1) Topography, including, but not limited to, drainage ways, terraces, floodplains, and percent of land slope;

(2) The location of property lines, easements, buried utilities, existing and proposed tile lines, and existing, proposed, and abandoned water wells;

(3) The amount of available area for installation of the system;

(4) Evidence of unstable ground; and

(5) Alteration (cutting, filling, compacting) of existing soil profiles.

*b. Soil characteristics and permeability.* The soil characteristics and permeability of a specific site shall be determined by performing a percolation test or a soil analysis. The local administrative authority shall determine who is a trained and qualified professional soil scientist and who may conduct percolation tests. All percolation tests shall be conducted in accordance with Appendix B of this chapter.

*c. Final inspections.* The administrative authority shall conduct an at-location inspection of all newly constructed PSDSs before the system is backfilled. A final as-built drawing shall be made as part of the final inspection and kept on file with the construction permit.

*d. Onsite wastewater tracking system.* All pertinent information including, but not limited to, the site address, owner, type, date of installation, percolation test or soil analysis, and as-built drawing of the PSDS shall be entered into the department's onsite wastewater tracking system, available on the department's website at www.iowadnr.gov, after a final inspection is conducted.

**69.1(8)** *Separation distances (SDs).* All PSDSs shall be located in accordance with the minimum SDs in Table I in 567—paragraph 60.2(2)*"c."*

**69.1(9)** *Discharge restrictions.* It is prohibited to discharge any wastewater from PSDSs (except as permitted in this chapter) to any ditch, stream, pond, lake, natural or artificial waterway, county drain tile, surface water drain tile, or land drain tile, to the groundwater, or to the surface of the ground. Under no conditions shall effluent from PSDSs be discharged to any abandoned well, agricultural drainage well, or sinkhole. Existing discharges to any of the above-listed locations or structures shall be eliminated by the construction of a system in compliance with this chapter.

*a. Requirements when effluent is discharged into surface water.* All discharges from PSDSs which are discharged into any designated waters of the state or subsurface drainage tile shall conform with the requirements of NPDES General Permit No. 4 (GP 4) issued by the department, as referenced in 567—Chapter 60. Prior to the use of any system discharging to designated waters of the state or a subsurface drainage tile, a Notice of Intent to be covered by GP 4 shall be submitted to the department. Systems covered by GP 4 must meet all applicable permit requirements, including effluent sampling and monitoring. No PSDS shall discharge to a state-owned natural or artificial lake, an outstanding Iowa water, or an outstanding national water as defined in 567—subrule 61.2(2).

*b. Requirements when effluent is discharged above the ground surface.* All discharges from PSDSs that are discharged to the surface of the ground and require a maintenance contract shall be installed, operated, and maintained by a manufacturer-certified technician in accordance with the manufacturer's instructions and the requirements of the local administrative authority.

*c. Requirements when effluent is discharged into the soil.* No septage or wastewater shall be discharged into the soil except in compliance with this chapter.

**69.1(10)** *Maximum flow rates.*

*a.* Residential wastewater design flow rates are based on 150 gallons per bedroom per day. Wastewater design flow rates for non-residential waste applications serving the equivalent of fewer than 16 individuals on a continuing basis are detailed in Appendix A of this chapter.

*b.* Wastewater design flow rates for a non-residential use that are not listed in Appendix A may be determined by a professional engineer licensed in the State of Iowa prior to issuance of a construction

permit by a local administrative authority. The local administrative authority may require a system to be designed using the non-residential flows listed in Appendix A.

**69.1(11)** *Flow equalization.* Flow equalization may be used at the discretion of a professional engineer licensed in the state of Iowa. The determination to use flow equalization shall be made prior to issuance of a construction permit by a local administrative authority. If used, flow equalization shall meet all of the following criteria:

*a.* The design flow of the secondary treatment unit receiving the equalized flow cannot exceed 1,500 gallons per day.

*b.* Equalized flow to the secondary treatment unit shall be mechanically time dosed.

**567—69.2(455B) General design standards.**

**69.2(1)** *Building sewers.*

*a. Location and construction.* Building sewers shall be constructed in accordance with the SDs in Table I in 567—paragraph 60.2(2)*"c."* The distances shall be considered minimum distances and shall be increased where possible to provide better protection.

*b. Type.* Building sewers used to conduct wastewater from a building to the primary treatment unit of a PSDS shall be constructed of:

(1) SCH 40 PVC pipe (SDR 26 or stronger) with solvent-weld or bell-and-gasket-type joints approved for use for below grade applications or for the wastewater industry; or

(2) Cast iron with integral bell-and-gasket-type joints.

*c. Size.* Building sewers shall not be less than four inches in diameter.

*d. Grade.* Building sewers shall be laid to the following minimum grades:

4-inch sewer . . . . . 12 inches per 100 feet
6-inch sewer . . . . . 8 inches per 100 feet

**69.2(2)** *Cleanouts.*

*a. Spacing.* A cleanout shall be provided where the building sewer leaves the structure and at least every 100 feet.

*b. Change of direction or grade.* An accessible cleanout shall be provided at each change of direction or grade if the change exceeds 45 degrees prior to primary treatment.

**69.2(3)** *Grease interceptors.*

*a. Applicability.* Grease interceptors shall be provided for kitchen flows at restaurants, nursing homes, schools, hospitals, and any other facilities from which grease can be expected to be discharged.

*b. Installation.* Grease interceptors shall be installed on separate building sewers serving kitchen flows into which the grease will be discharged. A discharge from a grease interceptor must flow to either a properly designed septic tank or to a building sewer and then to the primary treatment unit.

**69.2(4)** *Impervious vault toilets.*

*a. Location.* Impervious vault toilets shall be located in accordance with the SDs in Table I in 567—paragraph 60.2(2)*"c."* for the closed portion of a treatment system.

*b. Construction.* The vault shall be constructed of reinforced, impervious concrete at least four inches thick. The superstructure, including floor slab, seat, seat cover, riser, and building, shall comply with good design and construction practices to provide permanent, safe, and sanitary facilities. The vault shall be provided with a cleanout opening fitted with a fly-tight cover.

*c. Wastewater disposal.* Wastewater from impervious vault toilets shall be disposed of at a POTW or other department-permitted wastewater disposal system (DS).

**69.2(5)** *Portable toilets.*

*a. Design.* All portable toilets shall be designed to receive and retain the wastes deposited in them and shall be located and maintained in a manner that will prevent the creation of any nuisance condition.

*b. Wastewater disposal.* Wastewater from portable toilets shall be disposed of at a POTW or other department-permitted wastewater DS.

**69.2(6)** *Holding tanks for waste.*

*a. General.* Holding tanks may only be used when site characteristics or restrictions do not allow for the installation of a system that consists of both primary and secondary treatment or when the use will be seasonal or sporadic.

*b. Capacity.* The minimum liquid-holding capacity shall be 1,250 gallons.

*c. Pumping frequency.* Holding tanks shall be pumped as necessary to prevent overflows, leaks, or releases of waste.

*d. Recordkeeping.* Holding tank owners shall keep all pumping records for three years. Records shall be made available to the administrative authority upon request.

*e. Construction.* Holding tanks shall be constructed and installed using the materials and processes allowed for septic tanks in 69.3(8). All holding tanks shall be equipped with a high-water alarm.

*f. Wastewater disposal.* Wastewater from holding tanks shall be disposed of at a POTW or other department-permitted wastewater DS.

**69.2(7)** *Location.* No PSDS shall be located upon property under ownership different from the ownership of that property or lot upon which the wastewater originates unless easements to that effect are legally recorded and approved by the proper administrative authority.

**567—69.3(455B) Primary treatment unit.**

**69.3(1)** *General.* Every PSDS shall have, as a primary treatment unit, a septic tank as described in this rule.

*a.* All wastewater from a facility shall discharge into a septic tank, and all septic tank effluent shall discharge into a secondary treatment system in compliance with this chapter.

*b.* Septic tanks shall not be used for the disposal of chemical wastes or grease in quantities which might be detrimental to the bacterial action in the tank, or for the disposal of drainage from roof drains, foundation drains, or area drains.

**69.3(2)** *Capacity.*

*a.* The minimum liquid-holding capacity for septic tanks is specified in Table I (capacity may be obtained by using one or more tanks):

**Table I - Septic Tank Holding Capacity**

| Home Size | Septic Tank Minimum Liquid Holding Capacity in gallons |
|---|---|
| Up to and including 3-bedroom homes | 1,250 gal. |
| 4-bedroom homes | 1,500 gal. |
| 5-bedroom homes | 1,750 gal. |
| 6-bedroom homes | 2,000 gal. |
| Each additional bedroom | + 250 gal. |

*b.* Approval of septic tank capacity and design must be obtained from the administrative authority, if an installation serves a facility other than a house and serves the equivalent of fewer than 16 individuals on a continuing basis. Minimum septic tank liquid-holding capacity shall either be 1,250 gallons or two times the daily sewage flow as estimated from Appendix A, whichever is greater.

*c.* The minimum liquid-holding depth in any tank compartment shall be 40 inches. The maximum liquid-holding depth for calculating capacity of a tank shall not exceed 6½ feet.

*d.* The interior length of a septic tank should not be less than five feet and shall be at least 1½ times the width (larger length-to-width ratios are preferred). No tank or compartment shall have an inside width of less than two feet. The minimum inside diameter of a vertical cylindrical septic tank shall be five feet.

**69.3(3)** *Compartmentalization.* Every septic tank shall be divided into two compartments as follows. Compartmentalization may be obtained by using more than one tank.

*a.* The influent compartment capacity shall not be less than ½ or more than ⅔ of the total tank capacity.

*b.* The effluent compartment capacity shall not be less than ⅓ or more than ½ of the total tank capacity.

*c.* The invert of the inlet pipe shall be a minimum of two inches and a maximum of four inches higher than the invert of the outlet pipe.

**69.3(4)** *Baffles.*

*a.* Four-inch-diameter SCH 40 PVC pipe tees shall be used as inlet and outlet baffles.

*b.* Inlet tees shall extend at least six inches above and eight inches below the liquid level of the tank. The inlet tee shall extend below the liquid level for no more than 30 percent of the liquid depth.

*c.* The outlet tee shall extend above the liquid level a distance of at least six inches and below the liquid level a distance of at least 15 inches, but no more than 40 percent of the liquid depth.

*d.* A minimum one-inch clearance between the top of the inlet and outlet tees and the bottom of the tank lid shall be provided. A horizontal separation of at least 36 inches shall be provided between the inlet baffle and the outlet baffle in each compartment.

*e.* Outlet baffles shall be fitted with, or replaced by, an approved effluent screen. All effluent screens shall be certified by a third-party certifier accredited by ANSI to meet NSF/ANSI Standard 46: Water Treatment System Components, available on the NSF website at: www.nsf.org; or other equivalent testing as determined by the department. Effluent screens require periodic inspection and cleaning to ensure their continued proper operation.

*f.* A horizontal slot four inches by six inches, or two suitably spaced four to five-inch-diameter holes in the tank partition, may be used instead of a tee or baffle. The top of the slot or holes shall be located below the water level within the middle third of the liquid depth. A ventilation hole or slot, located at least eight inches above the liquid level, shall be provided in the partition.

**69.3(5)** *Access.*

*a.* Access necessary for adequate inspection, operation, and maintenance must be provided to all parts of septic tanks.

*b.* Access openings shall be provided for each chamber, including the inlet, outlet, and pump chamber (if applicable). Openings shall be at least 18 inches in the smallest dimension, and of adequate size to allow for pumping, maintenance, and visual inspection.

*c.* Watertight risers with a minimum diameter of 18 inches shall be installed to bring the access openings to the ground surface. To deter tampering, risers shall be secured using either stainless steel fasteners of sufficient complexity, locking devices, concrete lids of sufficient weight, or another device approved by the administrative authority.

**69.3(6)** *Installation.*

*a.* Concrete, fiberglass, or plastic tanks shall be bedded and installed according to the manufacturer's specifications. Provisions should be made to prevent flotation of the tanks when they are empty.

*b.* Any septic tank placed in fill soil shall be placed upon a level base that is stabilized through compaction or other manufacturer allowed practices.

**69.3(7)** *Connecting pipes.*

*a.* Pipes connecting septic tanks installed in series and prior to the distribution box or distribution network or device shall be a minimum of four-inch-diameter SCH 40 PVC (SDR 26 or stronger).

*b.* All inlet and outlet connections shall be made by self-sealing gaskets either cast into the concrete or formed into the plastic or fiberglass approved for below grade applications or for use in the wastewater industry.

*c.* All joints in connecting pipe shall be approved connections that match the rating of the pipe, such as solvent-welded or compression-type gaskets approved for below grade applications or use.

*d.* Pipes shall be used to extend across excavations or unstable ground to at least two feet beyond the point where the original ground has not been disturbed during septic tank installation. If the excavation spanned is more than two feet wide, it must be filled with sand or compacted fill to provide a firm bed for the pipe. The first 12 inches of backfill over the pipe shall be applied in thin layers, using material free from stones, boulders, large frozen chunks of earth, or any similar material that could damage or break the pipe.

**69.3(8)** *Construction.*

*a.* Septic tanks shall be constructed of either watertight poured concrete, fiberglass, or plastic resistant to corrosion or decay and shall be designed so that the tanks, whether full or empty, will not collapse or rupture when subjected to anticipated earth and hydrostatic pressures. Metal tanks are prohibited.

*b.* Tanks shall be watertight. Before approving a tank, the administrative authority may ask for proof that a tank is watertight.

*c.* Tank divider walls and divider wall supports shall be constructed of either heavy, durable plastic, fiberglass, concrete, or other similar corrosion-resistant materials approved by the administrative authority.

*d.* Inlet and outlet ports of pipes shall be constructed of SCH 40 PVC sanitary tees or other similar approved corrosion-resistant material.

*e.* Concrete used in precast septic tank construction shall have a maximum water-to-cement ratio of 0.45. Cement content shall be at least 650 pounds per cubic yard. Minimum compressive strength (fc) shall be 4,000 psi (28 megapascals) at 28 days of age. The use of ASTM C150 Type II cement or the addition of either silica fume or Class F fly ash is recommended.

*f.* Minimum wall thickness for septic tanks shall conform to the current International Association of Plumbing and Mechanical Officials (IAPMO) standards, available on its website at: www.iapmo.org/publications/read-uniform-codes-online, or to the following specifications:

| | |
|---|---|
| Poured concrete | 6 inches thick |
| Poured concrete, reinforced | 4 inches thick |
| Special concrete mix, vibrated and reinforced | 2.5 inches thick |
| Fiberglass or plastic | IAPMO standard |

*g.* Septic tank bottoms shall conform to the specifications in 69.3(8)*"f"* for septic tank walls, except that special mix concrete shall be at least three inches thick.

*h.* Concrete or masonry septic tank tops shall be a minimum of four inches in thickness and reinforced with ⅜-inch reinforcing rods in a six-inch grid or equivalent. Fiberglass or plastic tank tops shall meet the IAPMO standard.

*i.* The concrete cover for reinforcing bars, mats, or fabric shall not be less than one inch.

**567—69.4(455B) Effluent distribution.**

**69.4(1)** *Pump systems.* Dosing through mechanical pumping is the recommended method of effluent distribution, and is preferred to improve distribution, improve treatment, and extend system life. In the event that effluent from a septic tank outlet cannot be discharged by gravity while maintaining the proper lateral depths, the effluent may be discharged into a watertight pump pit or tank with an inside diameter of not less than 24 inches, equipped with a tight-fitting cover at grade level. Pumps shall be of a submersible type of corrosion-resistant material.

*a. Inlet.* Pump inlets shall be elevated at least four inches above the bottom of the pump pit or tank to prevent the pump from drawing excessive settled solids.

*b. Electrical.* Electrical installations shall comply with all applicable State and local codes and ordinances. Electrical connections shall be located in an exterior weatherproof box. No onsite electrical connections shall be located in the pump pit or tank.

*c. Pump setting.* Pumps shall be installed in the pump pit or tank in a manner that ensures ease of service and protection from frost and settled sludge. Pumps shall be set to provide a dosing frequency of approximately four times a day based on the maximum design flow.

*d. Pipe.* Distribution pipe used in pressure dosed systems shall be rated for pressure use and be a minimum SCH 40 PVC pipe (SDR 26 or stronger).

*e. Pressure line size.* The diameter of the pressure line from the pump to the point of discharge shall not be smaller than the outlet of the pump it serves.

*f. Drainage.* Pressure lines shall either be installed to provide total drainage between dosing to prevent freezing or shall be buried below frost level up to the distribution point.

*g. High water alarm.* Pump pits or tanks shall be equipped with a sensor set to detect if the water level rises above the design high water level if the pump fails. This sensor shall activate an auditory or visual alarm to alert the building occupants.

*h. Discharge point.* The effluent may either be discharged under pressure into a distribution box or distributed by small-diameter pipes throughout the entire absorption system.

*i. Filtered pump vaults.* Filtered pump vaults, when used, require periodic inspection and cleaning to ensure their continued proper operation.

**69.4(2)** *Gravity distribution.* Septic tank effluent may be serially loaded to soil absorption trenches by drop boxes or overflow piping (rigid sewer pipe). Otherwise, effluent shall be distributed evenly to all trenches by use of either a distribution box or a commercial distribution regulator approved by the administrative authority.

*a. General design and use.* Gravity distribution boxes shall:

(1) Be installed with separate watertight headers leading from the distribution box to each lateral.

(2) Be constructed of corrosion-resistant rigid plastic materials. Header pipes shall be rigid SCH 40 PVC pipe (SDR 26 or stronger) meeting ASTM 2729 or equivalent.

*b. Equal length.* Soil absorptions trenches served by a gravity distribution box shall be of equal length. Soil absorptions trenches served by drop boxes may vary in length.

*c. Baffles.* There shall be a pipe tee at the inlet to break the water flow.

*d. Outlets.*

(1) A distribution box shall have outlets at the same level, at least four inches above the bottom of the box, to provide a minimum of four inches of water retention in the box.

(2) All distribution box outlets shall be made level. A four inch cap with an offset hole approximately 2½ inches in diameter shall be installed on each outlet pipe. The caps shall be rotated until all outlets discharge at the same elevation. Equivalent leveling devices may be approved by the local administrative authority.

(3) All unused outlet holes in the box shall be securely closed.

**69.4(3)** *Other distribution devices.* For all other effluent distribution devices, the manufacturer's specifications shall be adhered to for installation, cleaning, and maintenance.

**567—69.5(455B) Secondary treatment—soil absorption systems.** When a PSDS uses secondary treatment prior to the discharge, land application, or other disposal of effluent, it shall comply with all applicable provisions of this rule or 567—69.6(455B).

**69.5(1)** *Provisions.* The following provisions apply to all soil absorption systems. Soil absorption systems are the best available treatment technology and shall always be used where possible.

*a. Prohibited drainage.*

(1) Nothing shall enter a soil absorption system which does not first pass through a septic tank.

(2) Roof, foundation, area, and storm drains shall not discharge into or upon a soil absorption system.

*b. Prohibited construction.* There shall be no construction of any kind, including driveways, covering the septic tank, distribution box, or absorption field of a soil absorption system. Vehicle access should be infrequent, primarily limited to vegetation maintenance.

*c. Soil evaluation.* Either a percolation test or a professional soil analysis, including a confining layer determination, is required before any soil absorption system is installed.

(1) Percolation test. If a percolation test is performed, it shall comply with the procedure in Appendix B of this chapter.

(2) Professional soil analysis. If a professional soil analysis is performed, soil characteristics including, but not limited to, soil content, color, texture, and structure shall be used to determine the confining layer and the soil loading rate.

(3) Acceptable percolation rate. An area is deemed suitable if:

1. For conventional systems, absorption beds, and at-grade systems, the average percolation rate is less than 60 minutes per inch and greater than one minute per inch.

2. For mound systems, an average percolation rate of 120 minutes per inch is achieved.

(4) Confining layer determination. An additional test hole six feet in depth, or to water or rock, whichever occurs first, shall be provided in the center of the proposed absorption area to determine the location of any confining layer. This six-foot test hole shall be drilled prior to determining the percolation test hole depths and may be augered the same size as the percolation test holes or may be made with a soil probe.

*d. Groundwater.* If the seasonal high groundwater level is present within three feet of the trench bottom final grade and cannot be successfully lowered by subsurface tile drainage, the area shall be classified as unsuitable for a soil absorption system. The administrative authority shall be consulted to determine an acceptable alternative method of wastewater treatment.

*e. Location.*

(1) Soil absorption systems shall be located in accordance with the SDs in Table I in 567—paragraph 60.2(2)*"c."*

(2) All soil absorption systems shall be located to maximize the vertical SD from the bottom of the absorption trench to the confining layer, but under no circumstances shall this vertical separation be less than three feet.

(3) In situations where specific location or site characteristics would appear to prohibit installation of a conventional soil absorption system, design modifications to overcome such limitations may be approved by the administrative authority. Such design modifications could include, but are not limited to, the installation of subsurface drainage; the use of shallow or at-grade systems, or mound systems; or the use of pretreated effluent.

*f. Driveway crossings.* Connecting lines under driveways shall be constructed of SCH 40 PVC pipe (SDR 26 or stronger) or equivalent and shall be protected from freezing.

*g. Loading rates and trench size.*

(1) Percolation and soil loading tables. All soil absorption systems installed under this subrule shall comply with the following tables. Table IIa provides a correlation between percolation rates and soil loading rates. Table IIb provides soil loading rates based upon soil texture and structure. Table IIa and Table IIb shall be used to determine the appropriate soil loading rate. Table IIc specifies linear feet of lateral trenches required based upon the soil loading rate, wastewater flow rate, and trench width.

**Table IIa**

**Maximum Soil Application Rates Based Upon Percolation Rates - Monthly Averages in gal/ft$^2$/day**

| Percolation Rate (minutes per inch) | Septic Tank Effluent[1] $CBOD_5$ 25 mg/L - 215 mg/L; TSS 30 mg/L - 150 mg/L[(2)] | Pretreated Effluent $CBOD_5 \leq 25$ mg/L; TSS $\leq 30$ mg/L |
|---|---|---|
| 0 to 5 | 1.2 | 1.6 |
| Fine sands | 0.5 | 0.9 |
| 6 to 10 | 0.8 – 0.62 | 1.2 |
| 11 to 29 | 0.6 – 0.52 | 0.9 |
| 30 to 45 | 0.5 – 0.42 | 0.7 |
| 46 to 60 | 0.4 – 0.22 | 0.5 |
| 61 to 120 | 0.0 | 0.3 |
| Greater than 120 | 0.0 | 0.0 |

[1]Typical waste strengths for domestic waste. Pretreatment should be considered for waste of higher strength.

[2]Percolation rates and soil loading rates do not precisely correlate; therefore, a range is provided.

**Table IIb**

**Maximum Soil Loading Rates Based Upon Soil Evaluations in gal/ft$^2$/day for Septic Tank Effluent**

| Soil Texture | Single Grain | Massive | Structure - | Platy |
|---|---|---|---|---|

| | | | Granular, Blocky, or Prismatic | | | | |
|---|---|---|---|---|---|---|---|
| | | | Weak | Moderate | Strong | Weak | Moderate to Strong |
| Coarse sand and gravel | 1.2 (1.6) | X | 1.2 (1.6) | X | X | 1.2 (1.6) | X |
| Medium sands | 0.7 (1.4) | X | 0.7 (1.4) | X | X | 0.7 (1.4) | X |
| Fine sands | 0.5 (0.9) | X | 0.5 (0.9) | X | X | 0.5 (0.9) | X |
| Very fine sands[1] | 0.3 (0.5) | X | 0.3 (0.5) | X | X | 0.3 (0.5) | X |
| Sandy loam | X | 0.3 (0.5) | 0.45 (0.7) | 0.6 (1.1) | 0.65 (1.2) | 0.4 (0.6) | 0.3 (0.5) |
| Loam | X | 0.4 (0.6) | 0.45 (0.7) | 0.5 (0.8) | 0.55 (0.8) | 0.4 (0.6) | 0.3 (0.5) |
| Silty loam | X | NS | 0.4 (0.6) | 0.5 (0.8) | 0.5 (0.8) | 0.3 (0.5) | 0.2 (0.3) |
| Clay loam | X | NS | 0.2 (0.3) | 0.45 (0.7) | 0.45 (0.7) | 0.1 (0.2) | 0.1 (0.2) |
| Silty clay loam | X | NS | 0.2 (0.3) | 0.45 (0.7) | 0.45 (0.7) | NS | NS |

Notes: Values in ( ) are for pretreated effluent. “X” means not found in nature. “NS” means not suitable for soil absorption.

[1]Flow rates are difficult to determine for some very fine sands; experience may provide better information and flow rates.

**Table IIc**

**Minimum Length of Absorption Trenches in Lineal Feet by Width of Trench and Soil Loading Rate**

| **Soil loading rate gal/ft[2]** | **Two bedroom, 300 gpd[1]** | | **Three bedroom, 450 gpd[1]** | | **Four bedroom, 600 gpd[1]** | | **Five bedroom, 750 gpd[1]** | | **Six bedroom, 900 gpd[1]** | |
|---|---|---|---|---|---|---|---|---|---|---|
| | **Width of trench in feet** | | | | | | | | | |
| | 2′ | 3′ | 2′ | 3′ | 2′ | 3′ | 2′ | 3′ | 2′ | 3′ |
| | Not suitable for soil absorption trenches | | | | | | | | | |
| 0.2 | 750 | 500 | 1125[2] | 750 | 1500[2] | 1000[2] | 1875[2] | 1250[2] | 2250[2] | 1500[2] |
| 0.3 | 500 | 333 | 750 | 500 | 1000[2] | 666 | 1250[2] | 833[2] | 1500[2] | 1000[2] |
| 0.4 | 375 | 250 | 562 | 375 | 750 | 500 | 938[2] | 625 | 1125[2] | 750 |
| 0.5 | 300 | 200 | 450 | 300 | 600 | 400 | 750 | 500 | 900[2] | 600 |
| 0.6 | 250 | 167 | 375 | 250 | 500 | 333 | 625 | 417 | 750 | 500 |
| 0.7 | 214 | 143 | 321 | 214 | 428 | 286 | 536 | 357 | 643 | 429 |
| 0.8 | 188 | 125 | 281 | 188 | 375 | 250 | 469 | 312 | 562 | 375 |
| 0.9 | 167 | 111 | 250 | 167 | 333 | 222 | 417 | 278 | 500 | 333 |
| 1.0 | 150 | 100 | 225 | 150 | 300 | 200 | 375 | 250 | 450 | 300 |
| 1.1 | 136 | 91 | 205 | 136 | 273 | 182 | 341 | 227 | 409 | 273 |
| 1.2 | 125 | 84 | 188 | 125 | 250 | 167 | 313 | 208 | 375 | 250 |

[1]gpd - gallons per day. Design flow rates are based on 150 gallons per bedroom per day.

[2]Requires pressure distribution (pump).

(2) Unsuitable absorption. Conventional soil absorption trenches and at-grade systems shall not be installed in soils that have a percolation rate less than one minute per inch or greater than 60 minutes per inch.

*h. Construction details for all soil absorption trenches.*

(1) Depth. A trench bottom depth of 18 to 24 inches is recommended. Soil absorption trenches shall not exceed 36 inches in depth. Not less than six inches of porous soil shall be provided over the laterals. The minimum separation between the trench bottom and any confining layer shall be 36 inches.

(2) Length. No soil absorption trench shall be greater than 100 feet long, unless the administrative authority approves the use of a drop box.

(3) Trench SD. At least six feet of undisturbed soil shall be left between each trench edge on level sites. Two feet of SD should be added for each five percent increase in slope from level.

(4) Grade. The trench bottom should be constructed level from end to end. On sloping ground, the trench shall follow a uniform land contour to maintain a minimum soil cover of six inches and a level trench bottom.

(5) Compaction. There shall be minimum use of, or traffic of heavy equipment on, the area proposed for soil absorption. In addition, heavy equipment shall not be used on the trench bottoms in the absorption area.

(6) Soils. Soil absorption systems shall not be installed in fill soil. Disturbed soils which have stabilized for at least one year shall require a recent percolation test or professional soil analysis.

(7) Soil smearing. Soils with significant clay content should not be worked when wet. If soil moisture causes trench bottom or sidewall smearing, the installation should be discontinued until conditions improve.

**69.5(2)** *Gravel aggregate systems.* The following provisions apply to gravel aggregate systems.

*a. Gravel.*

(1) A minimum of six inches of clean, washed river gravel, free of clay and clay coatings, shall be laid below the distribution pipe, and enough gravel shall be used to cover the pipe.

(2) This gravel shall be of such a size that 100 percent of the gravel will pass a 2½-inch screen and 100 percent will be retained on a ¾-inch screen.

(3) Limestone or crushed rock is not recommended for soil absorption systems; however, if used, it shall meet the following criteria:

1. The percent wear, as determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) T 96, Grading C, shall not exceed 40 percent.

2. When gravel is subjected to the freezing and thawing test, Iowa DOT Materials Laboratory Test Method 211, Method A, the percentage loss shall not exceed 10 percent.

3. The percent absorption, determined in accordance with Iowa DOT Materials Laboratory Test Method 202, shall not exceed three percent.

*b. Trench width.* Soil absorption trenches for gravel systems shall have a minimum width of 24 inches and a maximum width of 36 inches at the bottom of the trench.

*c. Grade.* The distribution pipes shall be laid with a minimum grade of two inches per 100 feet of run and a maximum grade of six inches per 100 feet of run, with a preference given to the lesser slope.

*d. Pipe.*

(1) Distribution pipe used in gravity-based distribution type systems shall be PVC rigid plastic meeting ASTM 2729.

(2) The inside diameter shall be not less than four inches, with perforations at least ½ inch and no more than ¾ inch in diameter, spaced no more than 40 inches apart.

(3) Two rows of perforations shall be provided; located 120 degrees apart along the bottom half of the tubing and each 60 degrees up from the bottom centerline.

(4) The end of the pipe in each trench shall be sealed with a watertight cap, unless, on a level site, a footer is installed connecting the trenches together.

(5) Coiled perforated plastic pipe shall not be used.

*e. Gravel cover.* Synthetic drainage fabric or other material approved by the manufacturer or administrative authority shall be laid so as to separate the gravel from the soil backfill.

**69.5(3)** *Chamber systems.* The following provisions apply to chamber systems.

*a. Use.* Chamber systems may be used as an alternative to gravel aggregate systems.

*b. Installation.* The manufacturer's specifications and installation procedures shall be adhered to.

*c. Trench length.* The total length of soil absorption trench for chambers 22 inches wide shall be the same as specified in Table IIc for a two-foot-wide conventional soil absorption trench. Chambers 33 inches wide or greater shall be sized as specified in Table IIc for a three-foot-wide conventional soil absorption trench.

*d. Sidewall.* The chambers shall have at least six inches of sidewall effluent soil exposure height.

**69.5(4)** *EPS aggregate systems.* The following provisions apply to EPS aggregate systems.

*a. Use.* EPS aggregate systems may be used as an alternative to gravel aggregate systems.

*b. Installation.* The manufacturer's specifications and installation procedures shall be adhered to.

*c. Trench length.* The total length of soil absorption trench using a 12-inch EPS aggregate bundle configuration less than 33 inches wide shall be the same as specified in Table IIc for a two-foot-wide conventional soil absorption trench. Twelve-inch EPS aggregate bundle configurations 33 inches wide or greater shall be sized as specified in Table IIc for a three-foot-wide conventional soil absorption trench.

*d. EPS bundles.* EPS bundles may be configured in a trench, bed, at-grade, or mound application to obtain the desired width, height, and length. EPS bundles containing a distribution pipe shall be connected end-to-end with an internal coupling device.

**69.5(5)** *Mound systems.* The following provisions apply to mound systems.

*a. General design and use.*

(1) Mound systems shall:

1. Only be permitted when a thorough site evaluation has been conducted and landscaping, dwelling placement, effect on surface drainage, and general topography have been considered;

2. Be constructed only upon undisturbed naturally occurring soils or where a soil analysis has determined the site is suitable; and

3. Be located in accordance with the SDs in Table I in 567—paragraph 60.2(2)*"c"* as measured from the outer edge of the sand in the mound.

(2) Mound systems shall not be utilized on:

1. Sites subject to flooding with a ten-year or greater frequency;

2. Soils where the high groundwater level, impermeable bedrock, or soil strata having a percolation rate exceeding 120 minutes per inch occurs within 12 inches of natural grade; or

3. Where creviced bedrock occurs within 20 inches of natural grade.

(3) No buildings, driveways, or other surface or subsurface obstructions shall be permitted within 50 feet on the downgradient side of the mound when the mound is constructed on a slope greater than five percent.

(4) No future construction shall be permitted in the effluent disposal area as long as the mound is in use.

*b. Specifications and design standards.* The specifications provided in these rules for mounds are minimal and may not be sufficient for all locations. Other design information beyond the scope of these rules may be necessary to properly design a mound system. Refer to Appendix C of this chapter for mound system construction design standards.

**69.5(6)** *At-grade systems.* The following provisions apply to at-grade systems.

*a. General design and use.*

(1) At-grade systems shall:

1. Only be permitted when a thorough site evaluation has been conducted and landscaping, dwelling placement, effect on surface drainage, and general topography have been considered;

2. Be constructed only upon undisturbed naturally occurring soils or where a soil analysis has determined the site is suitable; and

3. Be located in accordance with the SDs in Table I in 567—paragraph 60.2(2)*"c"* as measured from the outer edge of the distribution bed in the system.

(2) At-grade systems shall not be utilized on:

1. Sites subject to flooding with a ten-year or greater frequency, or

2. Soils where a confining layer occurs or soil strata having a percolation rate exceeding 60 minutes per inch occur within 36 inches of natural grade.

(3) No buildings, driveways, or other surface or subsurface obstructions shall be permitted within 25 feet on the downgradient side of an at-grade system when the system is constructed on a slope greater than five percent.

(4) No future construction shall be permitted in this effluent disposal area as long as the at-grade system is in use.

*b. Specifications and design standards.* The specifications provided in these rules for at-grade systems are minimal and may not be sufficient for all locations. Other design information beyond the scope of these rules may be necessary to properly design an at-grade system. Refer to Appendix D of this chapter for at-grade system construction design standards.

**69.5(7)** *Soil absorption bed systems.* The following provisions apply to soil absorption bed systems.

*a. General design and use.*

(1) Soil absorption beds may only be used when site restrictions limit the use of a conventional system and shall not be used when the soil percolation rate exceeds 30 min./inch.

(2) Soil absorption bed excavations shall be a minimum of five ft wide and have more than one distribution pipe.

(3) Distribution piping shall be uniformly spaced a maximum of five ft and a minimum of three ft apart, and a maximum of three ft and a minimum of one ft from the sidewall.

*b. Sizing.* Soil absorption bed capacity shall be sized using Table III.

**Table III**

**Alternative Option for Use of Absorption Bed Area by Percolation Rate or Loading Rate**

| Percolation Rate min./inch | Loading Rate/Day gal./ft$^2$ | Absorption Area/ Bedroom ft$^2$ |
|---|---|---|
| OR | | |
| 1 – 5 | 0.5 | 300 |
| 6 – 15 | 0.375 | 400 |
| 16 – 30 | 0.25 | 600 |

**567—69.6(455B) Secondary treatment—other.**

**69.6(1)** *Intermittent subsurface sand filters (ISSFs).* The following provisions apply to ISSF systems.

*a. General design and use.*

(1) ISSFs may be used when the administrative authority determines the site is unacceptable for a soil absorption system.

(2) ISSFs shall be located in accordance with the SDs in Table I in 567—paragraph 60.2(2)*"c."*

(3) All ISSFs shall have a sample port or means of collecting a representative effluent sample.

(4) There shall be no construction, such as buildings or concrete driveways, covering any part of an ISSF.

(5) ISSFs may be constructed where the water table is below the bottom of the collector pipe. If the water table is verified to be higher than the bottom of the collector pipe, an ISSF may only be installed if either a liner is installed or subsurface drainage tile is used to lower the water table, in accordance with the following.

1. If needed, a plastic liner shall use a minimum of 30-millimeter plastic or product of equivalent thickness as determined by the local administrative authority.

2. Where the water table is lowered by use of subsurface drainage tile, the minimum depth of the drainage tile shall be greater than or equal to the lowest portion of the sand filter bed.

*b. Specifications and design standards.* The specifications in these rules for ISSFs are minimal and may not be sufficient for all applications. Other design information beyond the scope of these rules may be necessary to properly design an ISSF. Refer to Appendix E of this chapter for ISSF construction design standards.

**69.6(2)** *Proprietary treatment systems (PTSs).* The following provisions apply to all PTSs.

*a. General.*

(1) A PTS may be used when the administrative authority determines the site is unacceptable for a soil absorption system or an ISSF.

(2) PTS manufacturers shall submit to the department, by February 1 of each year, their current installation and maintenance manual, including the applicable third-party certification.

(3) For a PTS that utilizes replaceable media, a media disposal plan shall be included in the installation and maintenance manual. Used media from a PTS is considered "septage," and septage shall be disposed of in accordance with 567—Chapter 68.

(4) PTSs shall be located in accordance with the SDs in Table I in 567—paragraph 60.2(2)*"c."*

*b. Design, installation, and operation.* A PTS shall be installed and operated in accordance with the manufacturer's requirements. Additionally:

(1) A PTS other than an aerobic treatment unit shall be preceded by a septic tank with a minimum capacity in accordance with 69.3(2), or shall have an incorporated component that is, or performs the same function as, a septic tank. A pretank or chamber that is part of the design, that is intended to serve the same function as a septic tank, and that was approved by third-party certification shall satisfy this requirement.

(2) An aerobic treatment unit PTS that does not have an incorporated component that is, or performs the same function as, a septic tank as part of the approved design shall be preceded by a pretreatment tank with a minimum capacity of 500 gallons.

(3) A PTS that utilizes a soil absorption system to disperse the treated effluent shall comply with 567—69.5(455B).

(4) All PTSs shall have a sample port or means of collecting a representative effluent sample.

*c. Monitoring and maintenance.*

(1) Prior to installation, a contract for PTS monitoring and maintenance shall be established between the system owner and a manufacturer-certified technician. A maintenance contract is required for the life of the system. A copy of the maintenance contract shall be made available to the administrative authority. A PTS shall be inspected, monitored, and maintained in accordance with the manufacturer's specifications and third-party certification, or at least once annually, whichever is more frequent.

(2) All PTS monitoring and maintenance shall be performed by a manufacturer-certified technician. PTS manufacturers shall ensure that an adequate number of certified technicians are available to service their PTSs at the specified intervals.

(3) Certified technicians shall report monitoring and maintenance results to the system owner and to the administrative authority. Certified technicians shall also report any discontinuance of PTS maintenance to the administrative authority.

**567—69.7(455B) Time of transfer (TOT) inspections.**

**69.7(1)** *Inspection criteria.* Pursuant to Iowa Code section 455B.172(11), if a building where a person resides, congregates, or is employed is served by a PSDS, the PSDS shall be inspected prior to any transfer of ownership of the building.

*a. Properly functioning system.* If a PSDS is properly treating wastewater and not creating an unsanitary condition in the environment at the time of inspection, the system is not required to meet the department's current construction standards. However, the discharge restrictions in 69.1(9) shall always apply.

*b. Future demolition.* Pursuant to Iowa Code section 455B.172(11)*"a"*(7), a TOT inspection and upgrade of a PSDS serving a building is not required when the buyer of a building served by a PSDS intends to demolish or raze the building, as long as the building is not occupied and is removed by the date agreed upon in the waiver for building demolition form, available from the department. For purposes of this paragraph, a building includes inhabitable residences, other inhabitable structures, or commercial buildings.

*c. Future inspection.* In the event that weather or other temporary physical conditions prevent an inspection from being conducted, the buyer shall execute a binding agreement for weather delayed inspection with the administrative authority, using a department form.

*d. Future installation or renovation.* In the following instances, a buyer may execute a binding agreement for future installation or renovation with the administrative authority, using a department form.

(1) If an inspection fails; or

(2) If all parties agree an existing PSDS will not pass inspection and a buyer wishes to forego an inspection.

*e. Forms.* The forms for a waiver for building demolition, binding agreement for weather delayed inspection, and binding agreement for future installation are available on the department's website at www.iowdnr.gov.

*f. Failure or improper function.* If a PSDS is failing to ensure effective wastewater treatment or is otherwise improperly functioning, the PSDS shall be renovated to meet the department's current construction standards. A PSDS is failing to ensure effective wastewater treatment or is otherwise improperly functioning when one or more of the following conditions exist:

(1) The system's septic tank is constructed of metal; is not watertight; was not designed for use as a PSDS tank; or is damaged and cannot be repaired to the manufacturer's standards using a manufacturer-approved method;

(2) The system's primary treatment tank is less than 500 gallons;

(3) All fixtures on the property served by the PSDS that produce or transport domestic waste do not enter the PSDS;

(4) More than 50 percent of the system's soil absorption area does not accept water;

(5) There is evidence that the system is failing to effectively treat wastewater or is otherwise improperly functioning in a manner not detailed above; or

(6) The system is a dry well structure or seepage pit.

*g. Exemptions.* For purposes of this subrule, transfer does not include the situations listed in Iowa Code section 455B.172(11)*"a"*(1) through 455B.172(11)*"a"*(12).

**69.7(2)** *Certified TOT inspectors.* Inspections shall be conducted by an inspector certified by the department, in accordance with Iowa Code section 455B.172 and this rule. In order to be a certified TOT inspector, an individual shall have met the experience requirements, have successfully completed the inspection course and examination, and have been issued a TOT certification by the department.

*a. Experience requirements.* In order to be certified by taking the inspection course and examination only, an individual must have at least two years' experience in the operation, installation, inspection, design or maintenance of PSDSs. Individuals lacking this experience must complete additional coursework before attending the inspection course with examination. The additional courses shall include, but not be limited to, "Basics of Onsite" offered by the Onsite Wastewater Training Center of Iowa or equivalent courses as determined by the department.

*b. Examination application form and evaluation.*

(1) All applications to take the certified TOT inspector examination shall be filed using a department form, available on the department's website at www.iowadnr.gov.

(2) Examination applications shall be reviewed by the department and an application review decision will be sent to the applicant. The applicant shall have the right to dispute the application evaluation.

(3) An examination application approval shall be valid for examination purposes for one year from the date the application is approved by the department.

*c. Certification.* Applicants who successfully meet the requirements of this subrule will receive a TOT certification from the department. The department shall maintain a current listing of certified TOT inspectors on its website at www.iowadnr.gov.

(1) All certificates shall expire on June 30 of even-numbered years and must be renewed every two years.

(2) Renewal applications shall be submitted on a department form, available on the department's website at www.iowadnr.gov, and shall be submitted 60 days before the expiration date of the current certificate. Renewal certificates will only be granted to inspectors that meet the CEU requirements of 69.7(2)*"d,"* that have paid the appropriate certification fee in 69.7(2)*"e,"* and that conduct inspections in accordance with 69.7(3).

(3) Inspectors who have complied with the continuing education requirements may continue to request a renewal up to 45 days following expiration of their certificate. However, inspectors may not perform inspections until a renewal certificate has been issued by the department.

*d. Continuing education units (CEUs).* The following CEU requirements apply to TOT certification:

(1) A certified inspector must earn 1.2 CEUs or 12 contact hours during each two-year period. Newly certified inspectors (previously uncertified) who become certified after April 1 of a two-year period will not be required to earn CEUs until the next two-year period.

(2) CEUs must be earned during each two-year period from April 1 of the even-numbered year until March 31 of the next even-numbered year. CEUs earned between April 1 and the end of the 45 day grace period cannot be counted towards a certification that expires on June 30 of that year.

(3) All activities for which CEU credit will be granted must be approved by an accredited college, university, technical institute, or the department and shall be related to PSDSs. Any entity providing training eligible for CEU credit shall, upon request, provide the training at no cost to one department staff member for audit purposes and shall provide all course materials to the department upon request.

(4) It is the personal responsibility of a certified inspector to maintain a record of and notify the department of the CEUs earned during the two-year period. The CEUs earned during the period shall be shown on the renewal application.

*e. Certification fees.* The following nonrefundable fees apply:

(1) The examination application fee is $50.

(2) The new inspector certification fee is $300. This fee must be paid prior to the issuance of a certification. This fee shall be prorated to $75 for each one-half year of a two-year period from a certification issuance date to June 30 of the next even-numbered year. Certifications obtained within the first half year period of the certification period shall be subject to the full certification fee of $300. The department will inform the applicant of the prorated fee amount prior to certification.

(3) The certification renewal fee is $300. This fee must accompany a renewal application in order for a certificate to be renewed.

*f. Certified inspector obligations.* Certified inspectors shall conduct TOT inspections in accordance with this subrule.

**69.7(3)** *Inspection procedures.* TOT inspections shall be conducted as follows:

*a. Inspection report.*

(1) A TOT inspection shall be conducted using a department form, available on the department's website at www.iowadnr.gov.

(2) Upon completion of an inspection, all information, inspection data, and all attachments shall be provided as follows: to the department for review; to the county environmental health department for review and enforcement of any follow-up mandatory improvements to the system; and to the person ordering the inspection within ten business days from the inspection date.

(3) Submittal of a complete inspection form and all attachments in the online TOT database, available on the department's website, shall be deemed compliant with this requirement.

*b. Record search.*

(1) Prior to an inspection, a certified inspector shall contact the administrative authority to obtain any permits, as-built drawings, or other available information concerning the system being inspected. Information may also be obtained from service providers or the homeowner.

(2) The inspector shall:

1. Verify an existing as-built drawing, or
2. If no as-built drawing is available, develop an as-built drawing as part of the inspection.

*c. Septic tanks, vault toilets, and holding tanks.* At the time of inspection, any existing tank(s) shall be opened and have the contents properly disposed of. Alternatively, the owner may provide evidence of proper tank pumping by a licensed commercial septic tank cleaner within three years prior to the inspection, so long as such evidence includes documentation of the size and condition of the tank and its components at the time of pumping.

*d. Pumps and pump chambers.* Pump chambers or vaults shall be opened for inspection. The pump and all alarms and controls shall be tested to ensure proper operation.

*e. Secondary treatment.* Proof that a secondary treatment system (if any) is in place shall be provided. This proof includes, but is not limited to, performing and documenting the following actions during the inspection:

(1) Opening and inspecting all distribution box(es) or drop box(es);

(2) Locating and uncovering the header pipe of a soil absorption system, if the pipe location and status is unknown;

(3) Locating the vents and discharge pipe of a sand filter and probing the treatment area. A gravity sand filter with a distribution box shall have the box opened and inspected;

(4) Locating, opening the lids, and inspecting the components of any PTS according to the manufacturer's recommendations, and documenting the product model and serial numbers of the PTS;

(5) Probing any soil-based treatment systems to determine their condition; and

(6) A hydraulic loading test.

*f. Discharging systems.* During an inspection, a representative sample of effluent shall be collected for $CBOD_5$ and TSS from all PSDSs, with the exception of soil absorption systems, and the test results shall be included in the inspection report. The effluent quality shall meet the requirements of NPDES General Permit No. 4 for $CBOD_5$ and TSS. A certified inspector shall report the discharge location(s) for all discharging PSDSs.

*g. Other systems and system components.* Any PSDS or component not mentioned above shall be inspected for compliance with these rules and for proper function. Examples of components include, but are not limited to, effluent screens, tertiary treatment systems, disinfection devices, alarms, control boxes, and timers.

**69.7(4)** *Certified TOT inspector disciplinary action.*

*a. Reasons for disciplinary action.* Disciplinary action may be taken against a certified TOT inspector on any of the grounds specified in Iowa Code section 455B.219 or the following more specific grounds:

(1) Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified inspector.

(2) Failure to submit required inspection records or other reports required under applicable permits or department rules, including failure to submit complete records or reports.

(3) Knowingly making any false statement, representation, or certification on any application, record, report, or document required to be maintained or submitted under any applicable permit or department rule.

*b. Disciplinary sanctions.* Disciplinary sanctions may include the following:

(1) Permanent revocation without chance of recertification or for a specified period of time.

(2) Revocation or suspension of the practice of a particular aspect of a PSDS inspection.

(3) Probation under specified conditions relevant to the specific grounds for disciplinary action.

(4) Additional education, training, or reexamination may be required as a condition of reinstatement.

(5) Civil penalties not to exceed $1,000 may be assessed for causes identified in 69.7(4)*"a"* through the issuance of an administrative order.

*c. Procedure.*

(1) Department staff shall initiate a disciplinary action by conducting a lawful investigation to establish a legal and factual basis for action. The department shall provide written notice to a certified inspector when considering disciplinary actions. The notice shall provide the certified inspector 20 days to state their position and present relevant facts.

(2) If an agreement as to appropriate disciplinary action, if any, can be reached between the department and the certified inspector, a written stipulation and settlement shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts established by the certified inspector, and the reasons for the particular sanction imposed.

(3) If an agreement as to appropriate disciplinary action cannot be reached, the department may initiate formal disciplinary procedures in a letter, sent by certified mail, that imposes disciplinary sanctions deemed appropriate by the department.

(4) A certified inspector may appeal any disciplinary sanction imposed by the department by filing a notice of appeal with the director within 30 days of receipt of a disciplinary sanction letter. If an appeal is filed, the department shall initiate contested case proceedings in accordance with 567—Chapter 7 and Iowa Code chapter 17A.

(5) Upon certificate revocation, application for certification may be allowed two years from the revocation date, unless otherwise specified in accordance with 69.7(4)*"b."* Any such applicant must meet all eligibility requirements in 69.2(2), successfully complete an examination, and be certified in the same manner as a new applicant.

**69.7(5)** *Procedures for noncompliance with child support order.* Upon receipt of a certification of noncompliance with a child support obligation as provided in Iowa Code section 252J.7, the department will initiate procedures to deny an application for inspector certification or renewal, or to suspend a certification in accordance with Iowa Code section 252J.8(4). The department shall issue to the person by certified mail a notice of its intent to deny or suspend inspector certification based on receipt of a certificate of noncompliance. The suspension or denial shall be effective 30 days after receipt of the notice unless the person provides the department with a withdrawal of the certificate of noncompliance from the child support recovery unit as provided in Iowa Code section 252J.8(4)*"c."* Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action under this subrule but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

**567—69.8(455B) Waivers.** Waivers to these rules may be granted by the department or the administrative authority provided sufficient information is submitted, prior to construction, to substantiate the need for and propriety of such action. Applications for waivers and justification shall be in writing and filed with the department in accordance with 561—Chapter 10.

These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 1, and Iowa Code chapter 252J.

**Appendix A - Estimates of Non-residential Domestic Sewage Design Flow Rates**

| Source of use for sewage unit | Units | Gallons per day per unit |
|---|---|---|
| **Dwelling Units** | | |
| Hotels or luxury motels | Per guest | 60 |
| | Add per employee | 13 |
| or | Per $ft^2$ | 0.3 |
| Discount motels | Per guest | 40 |
| | Add per employee | 13 |
| or | Per $ft^2$ | 0.46 |
| Rooming house | Per resident | 50 |
| | Add per nonresident meal | 4.0 |
| **Commercial/Industrial** | | |
| Retail stores | Per $ft^2$ of sales area | 0.13 |
| or | Per customer | 3.8 |
| | Plus each employee | 15 |
| or | Per toilet room | 590 |
| Offices | Per employee | 18 |
| or | Per $ft^2$ | 0.25 |
| Medical offices | Per $ft^2$ | 1.6 |
| Industrial buildings | Per employee | 20 |
| Construction camp | Per employee | 20 |
| Visitor center | Per visitor | 13 |
| Laundromat | Per machine | 690 |
| or | Per load | 50 |
| or | Per $ft^2$ | 2.6 |
| Barber shops | Per chair | 68 |
| Beauty shops | Per station | 285 |
| Car washes | Per inside $ft^2$ | 10 |
| Shopping Center | Per employee | 11.5 |
| or | Per $ft^2$ | 0.15 |
| or | Per parking space | 2.5 |
| Flea Market | Per vendor space, without food | 15 |
| or | Per vendor space, with food | 50 |
| **Eating and Drinking Establishments** | | |
| Restaurant, not including bar or lounge | Per meal, without alcoholic drinks | 3.5 |
| | Per meal, with alcoholic drinks | 8 |
| or | Per seat | 40 |
| | Add per employee | 13 |
| Restaurant (carry out, including caterers) | Per $ft^2$ | 0.5 |
| Dining hall | Per meal | 4.0 |
| Coffee shop | Per customer | 2.5 |
| | Add per employee | 13 |
| Cafeteria | Per customer | 2.5 |
| | Add per employee | 13 |

| Source of use for sewage unit | Units | Gallons per day per unit |
|---|---|---|
| Drive-in | Per car stall | 30 |
| Bar or lounge | Per customer | 4.5 |
| | Add per employee | 16 |
| or | Per seat | 36 |
| **Entertainment Establishments** | | |
| Country clubs | Per member, no meals | 22 |
| or | Per member, meals and showers | 118 |
| or | Per member in residence | 50 |
| Lodge | Per person | 74 |
| Parks/swimming pools | Per guest | 13 |
| Picnic parks with toilet only | Per guest | 10 |
| Movie theaters | Per person | 4.0 |
| Drive-in theaters | Per space | 5 |
| Skating rink/dance hall | Per person | 10 |
| Bowling lanes | Per lane | 185 |
| Stadium | Per seat | 5 |
| Health club gym | Per member | 35 |
| Fairgrounds and similar gatherings | Per visitor | 1.5 |
| Resort retail store | Per person | 4 |
| **Transportation** | | |
| Airport, bus or rail depot | Per passenger | 4 |
| or | Per $ft^2$ | 6.5 |
| or | Per public restroom | 630 |
| Auto service station | Per vehicle served | 13 |
| | Add per employee | 16 |
| or | Per inside $ft^2$ | 0.6 |
| or | Per public restroom | 630 |
| Gas station convenience store | Per customer | 3.5 |
| **Institutional** | | |
| Hospitals | Per medical bed | 220 |
| | Add per employee | 16 |
| Mental institution | Per bed | 147 |
| | Add per employee | 16 |
| Prison or jail | Per inmate | 140 |
| | Add per employee | 16 |
| Nursing home | Per resident | 125 |
| | Add per employee | 16 |
| School | Per student, no gym, cafeteria or showers | 14 |
| or | Per student, cafeteria only | 18 |
| or | Per student, cafeteria, gym and showers | 27.5 |
| Boarding school | Per student | 95 |
| Churches | Per member | 2 |
| or | Per member, with kitchen | 5 |
| Assembly hall | Per seat | 4 |
| **Outdoor recreational and related lodging facilities** | | |

| Source of use for sewage unit | Units | Gallons per day per unit |
|---|---|---|
| Campground | Per campsite with sewer hookup | 100 |
| or | Per campsite; without sewer hookup, with central toilet or shower facility | 50 |
| or | Per campsite; without sewer hookup, with central toilet or shower facility served by central dump station | 63 |
| Day camp, no meals | Per person | 16 |
| Day camp, with meals | Per person | 25 |
| Overnight camp, with meals | Per person | 45 |

## Appendix B - Percolation Test Procedure

*a.* Prior to performing a percolation test, the confining layer shall be determined.

*b.* At least three percolation test holes distributed evenly over the proposed lateral field are required.

*c.* Percolation test holes shall be four to twelve inches in diameter and to the same depth as the proposed absorption trenches (not to exceed 36 inches in depth).

*d.* Sides and bottoms of the test holes shall be scratched or roughened to provide a natural surface. All loose material shall be removed from each hole.

*e.* The bottoms of the test holes shall be covered with approximately two inches of rock to protect the bottom from scouring action when the water is added.

*f.* The hole shall be filled with at least 12 inches of clean water, and this depth shall be maintained for at least four hours; preferably overnight if clay soils are present. It is important that the soil be allowed to soak for long enough to swell if accurate results are to be obtained. Failure to perform the presoak when required will invalidate the percolation test results.

*g.* In sandy soils with little or no clay, soaking is not necessary. If, after the hole has been filled twice with 12 inches of water, the water seeps completely away in less than ten minutes, the test can proceed immediately.

*h.* Except for sandy soils, percolation rate measurements should be made at least four hours, but no more than 24 hours, after the soaking period began. Any soil that sloughed into the hole during the soaking period shall be removed, and the water level shall be adjusted to six inches above the gravel (or eight inches above the bottom of the hole). At no time during the test is the water level allowed to rise more than six inches above the gravel.

*i.* Immediately after adjustment, the water level shall be measured from a fixed reference point to the nearest ⅛ inch at 30-minute intervals. The test is continued until two successive water level drops do not vary by more than ⅛ inch. At least three measurements shall be made.

*j.* After each measurement, the water level shall be readjusted to the six inch level. Use the last water level drop to calculate the percolation rate.

*k.* In sandy soils, or soils in which the first six inches of water added after the soaking period seep away in less than 30 minutes, water level measurements shall be made at ten minute intervals for a one hour period. Use the last water level drop to calculate the percolation rate.

*l.* The percolation rate shall be calculated for each test hole by dividing the time interval between measurements by the magnitude of the last water level drop. This calculation results in a percolation rate in terms of minutes per inch.

(1) To determine the percolation rate for the area, average the rates obtained from each hole.

(2) If tests in the area vary by more than 20 minutes per inch, variations in soil type are indicated. Under these circumstances, percolation rates should not be averaged.

(3) Example: If the last measured drop in water level after 30 minutes is ⅝ inch, the percolation rate = (30 minutes)/(⅝ inch) = 48 minutes/inch.

## Appendix C - Mound System Construction Design Standards

**Mound fill material.**

*a.* A mound shall be constructed using clean, medium-textured sand (a.k.a. concrete sand). The sand size shall be such that:

(1) At least 25 percent by weight shall have a diameter between 2.0 and 0.25 millimeter (mm);

(2) Less than 35 percent by weight, a diameter between 0.25 and 0.05 mm; and

(3) Less than 5 percent by weight, a diameter between 0.05 and 0.002 mm.

*b.* Rock fragments larger than 1⁄16 inch (2.0 mm) shall not exceed 15 percent by weight of the material used for mound fill.

**Mound construction details.**

*a.* There shall be a minimum of three feet of fill material and undisturbed naturally occurring soils between the bottom of the washed gravel and the highest elevation of the confining layer in accordance with 69.5(6)*"a"*(3)"2."

*b.* Gravel shall meet the requirements specified in 69.5(3)*"a."*

*c.* From one to two feet of medium-textured sand (depending upon the underlying soil depth, see *"a"* above) must be placed between the bottom of the gravel and the top of the plowed surface of the naturally occurring soil.

*d.* Mound system absorption beds shall be installed with the long dimension parallel to the land contour. Systems on steep slopes with slowly permeable soils should be narrow to reduce the possibility of toe seepage.

*e.* Minimum spacing between distribution pipes shall be four feet, and a minimum of three feet shall be maintained between any trench and the sidewall of the mound.

*f.* No soil under or up to 50 feet downgradient of the mound may be removed or disturbed except as specified herein.

*g.* Construction equipment that would cause undesirable compaction of the soil shall be kept off the base area. Construction or plowing shall not be initiated when the soil moisture content is high. If a sample of soil from approximately nine inches below the surface can be easily rolled into a ⅛- to ¼-inch-diameter wire 1½ inches long or more, the soil moisture content is too high for construction purposes.

*h.* Above ground vegetation shall be closely cut and removed from the ground surface throughout the area to be utilized for the placement of the fill material.

*i.* The area shall be plowed to a depth of seven to nine inches, parallel to the land contour, with the plow throwing the soil up slope to provide a proper interface between the fill and the natural soil. Tree stumps should be cut flush with the surface of the ground, and roots should not be pulled.

*j.* The base absorption area of the mound shall be calculated using the flow rate and the results of the percolation rate test or soil analysis, as indicated in Table IIa or IIb of 69.5(1)*"f"*(1).

*k.* The area of the sand fill material shall be sufficient to extend at least three feet beyond the edge of the gravel area before the sides are shaped to at least a 4:1 slope.

**Distribution system.**

*a.* The distribution pipe for a mound system shall:

(1) Either be SCH 40 or 80 PVC pipe (SDR 26 or stronger), with a one-inch nominal diameter, or an equivalent design that ensures proper distribution.

(2) Have either a single row of ¼-inch perforations in a straight line 30 inches on center along the length of the pipe or an equivalent design that ensures uniform distribution. No perforations shall be permitted within three inches of the outer ends of any distribution pipe. All joints and connections shall be solvent-cemented.

(3) Be placed in the clean, washed gravel with holes downward. The gravel shall be a minimum of nine inches in depth below the pipe and three inches in depth above the pipe.

*b.* The outer ends of all pressure distribution lines shall be turned up, with either a long 90-degree elbow or two 45-degree elbows, to allow for cleaning. The outer ends shall have a screw-on cap and cover that shall be accessible from the ground surface without excavation.

*c.* The central pressure manifold should consist of 1½- or 2-inch solid plastic pipe and should use either a tee for connecting the distribution lines or an equivalent design that ensures uniform distribution.

*d.* Construction should be initiated immediately after preparation of the soil interface by placing all of the sand fill material needed for the mound (to the top of the trench) to a minimum depth of 21 inches above the plowed surface. This depth will permit excavation of the trenches to accommodate the nine inches of washed gravel or crushed stone necessary for the distribution piping.

*e.* The absorption trench or trenches shall be hand-excavated into the sand. Trench bottoms shall be level.

*f.* Nine inches of gravel shall be placed in the trench and leveled. After the distribution pipe is placed, the pipe shall be covered with three inches of gravel.

*g.* The entire sand and gravel area shall be covered with synthetic drainage fabric or other material approved by the manufacturer or administrative authority.

*h.* After installation of the distribution system, the system shall be pressure-tested before it is covered with gravel.

*i.* The entire mound shall be:

(1) Covered with topsoil native to the site or of similar characteristics to support vegetation found in the area;

(2) Crowned by providing a minimum of six inches of topsoil on the side slopes, with a minimum of 12 inches of topsoil over the center of the mound; and

(3) Seeded, sodded, or otherwise provided with a grass cover to ensure stability of the installation.

*j.* The area surrounding the mound shall be graded to provide for diversion of surface runoff water.

**Dosing.**

*a.* Pump dosing shall be required for mound systems.

*b.* The dosing volume shall be three to ten times the distribution piping network volume, but not more than 25 percent of the design flow shall be applied to the soil in one dose.

*c.* The dosing pump shall be capable of maintaining a squirt height of three feet above the pipe at the outer ends of the distribution lines. All lines shall have an equal squirt height above the pipe to maintain equal distribution.

## Appendix D - At-Grade System Construction Design Standards

**At-grade system construction details.**

*a.* There shall be a minimum of three feet of undisturbed naturally occurring soils between the bottom of the gravel, chamber, or EPS aggregate in the at-grade system and the highest elevation of any confining layers.

*b.* An at-grade system may be installed up to 12 inches deep.

*c.* Gravel shall meet the requirements of 69.5(3)*"a."* EPS aggregate or chambers are acceptable alternatives to gravel if the manufacturer's specifications and installation procedures are followed and pressure pipe is used to adequately dose the entire bed.

*d.* At-grade system beds shall be installed with the long dimension parallel to the land contour. Systems on steep slopes with slowly permeable soils should be narrow to reduce the possibility of toe seepage.

*e.* Minimum spacing between distribution pipes shall be four feet, and a minimum of three feet shall be maintained between any trench and the sidewall of the at-grade.

*f.* No soils under or within 15 feet of any at-grade system may be disturbed. On sloping sites, no soils shall be disturbed within 10 feet uphill of the system and within 15 feet downhill of the system, plus an additional five feet for every 5 percent slope downhill.

*g.* Construction equipment that would cause undesirable compaction of the soil shall be kept off the base area. Construction or plowing shall not be initiated when the soil moisture content is high. If a sample of soil from approximately nine inches below the surface can be easily rolled into a ⅛-inch diameter wire 1½ inches long, the soil moisture content is too high for construction purposes.

*h.* Aboveground vegetation shall be closely cut and removed from the ground surface throughout the area to be utilized for the placement of the fill material.

*i.* The area shall be plowed to a minimum depth of seven to nine inches, parallel to the land contour, with the plow throwing the soil up slope to provide a proper interface between the fill and the natural soil. Chisel teeth on a backhoe bucket shall be at least as long as the depth of plowing. Tree stumps should be cut flush with the surface of the ground, and roots should not be pulled. All work shall be done from the uphill side of the at-grade system.

*j.* The gravel bed absorption area of the at-grade system shall be calculated using the flow rate and the results of the percolation rate test or soil analysis, as indicated in Table IIa or IIb of 69.5(1)*"f"*(1).

*k.* One foot of loamy cover material shall be installed over the rock bed. Cover shall extend at least five feet from the ends of the rock bed and be sloped to divert surface water. Side slopes shall not be steeper than 4:1. The upper six inches of the loamy soil cover must be topsoil borrow. Topsoil borrow must be of a quality that provides a good vegetative cover on the at-grade system.

**Distribution system.**

*a.* The distribution pipe shall be:

(1) Either SCH 40 or 80 PVC pipe (SDR 26 or stronger), with a one-inch nominal diameter, or an equivalent design that ensures proper distribution.

(2) Provided with either a single row of ¼-inch perforations in a straight line 30 inches on center along the length of the pipe or an equivalent design that ensures uniform distribution. No perforations shall be permitted within three inches of the outer ends of any distribution pipe. All joints and connections shall be solvent-cemented.

(3) Be placed in the clean, washed gravel (or crushed limestone as described in 69.5(3)*"a"*(3)), with holes downward. The gravel shall be a minimum of 10 inches in depth below the pipe and two inches in depth above the pipe.

(4) Installed in the center of the gravel bed on slopes less than one percent and on the upslope edge at the gravel bed absorption width on slopes one percent or greater.

*b.* The outer ends of all pressure distribution lines shall be turned up, with either a long 90-degree elbow or two 45-degree elbows, to allow for cleaning. The outer ends shall have a screw-on cap and cover that shall be accessible from the ground surface without excavation.

*c.* The central pressure manifold should consist of 1½- or 2-inch solid plastic pipe and should use either a tee for connecting the distribution lines or an equivalent design that ensures uniform distribution.

*d.* The top of the gravel shall be covered with synthetic drainage fabric or other material approved by the manufacturer or administrative authority.

*e.* After installation of the distribution system, the system shall be pressure-tested before it is covered with gravel.

*f.* The entire at-grade system shall be:

(1) Covered with topsoil native to the site or of similar characteristics to support vegetation found in the area;

(2) Crowned by providing a minimum of six inches of topsoil on the side slopes, with a minimum of 12 inches of topsoil over the center of the at-grade system; and

(3) Seeded, sodded, or otherwise provided with a grass cover to ensure stability of the installation.

*g.* The area surrounding the at-grade system shall be graded to provide for diversion of surface runoff water.

**Dosing.**

*a.* Pump dosing shall be required for at-grade systems.

*b.* The dosing volume shall be three to ten times the distribution piping network volume, but not more than 25 percent of the design flow shall be applied to the soil in one dose.

*c.* The dosing pump shall be capable of maintaining a squirt height of three feet above the pipe at the outer ends of the distribution lines. All lines shall have an equal squirt height above the pipe to maintain equal distribution.

## Appendix E - Intermittent Subsurface Sand Filter (ISSF) Construction Design Standards

**ISSF filter sizing.**

*a. Residential systems.*

(1) Gravity flow. Residential ISSFs shall be sized at a rate of 240 $ft^2$ of surface area per bedroom.

(2) Siphon-dosed. Residential ISSFs dosed by a dosing siphon shall be sized at a rate of 180 $ft^2$ of surface area per bedroom.

(3) Pressure-dosed. Residential ISSFs dosed by a pump shall be sized at a rate of 150 $ft^2$ of surface area per bedroom.

*b. Non-residential.* Effluent application rates for commercial ISSFs treating domestic waste shall not exceed the following:

(1) 1.0 gal/$ft^2$/day.

(2) The total surface area for any non-residential ISSF shall not be less than 200 $ft^2$.

*c. Dosing.* The dosing system shall be designed to cover the entire filter bed during the dosing cycle. A dosing frequency of greater than twice per day is recommended.

**Collection pipelines.**

*a.* Each bed of an ISSF shall contain a horizontal set of collector lines.

*b.* The collector lines shall be either equivalent to SDR 35 PVC pipe, 10-inch-diameter gravelless drainage technology, EPS aggregate, chamber, or other suitable materials.

*c.* One collector line shall be provided for each six feet of width or fraction thereof. A minimum of two collector lines shall be provided.

*d.* Collector lines shall be laid to a grade of one inch in ten feet (or 0.5 percent to 1.0 percent).

*e.* Each collector line shall be vented or connected to a common vent. Vents shall either extend at least 12 inches above the ground surface with the outlet either screened, provided with a 180 degree elbow, or provided with a perforated cap.

*f.* Gravelless drainage technology with a synthetic mesh wrap may be used for the collector lines. If a synthetic mesh wrap is used, no gravel or pea gravel is required to cover the collector lines and the pipe shall be bedded in filter sand.

*g.* EPS aggregate may be used for the collection system as an alternative to gravel and rigid PVC pipe. If used, EPS aggregate shall meet requirements equivalent to 69.5(5), follow the manufacturer's specifications and installation procedures, and cover the bottom of the sand filter. A six-foot separation between collection pipes shall be maintained. Fabric filter meeting the requirements of *"h"*(2) below shall be used instead of washed pea gravel.

*h.* If four-inch plastic pipe with perforations is used for the collector lines, the lines shall be covered as follows:

(1) Gravel ¾ inch to 2½ inches in size shall be placed around and over the lower collector lines until there is a minimum of four inches of gravel over the pipes; and

(2) The gravel shall be overlaid with a minimum of three inches of washed pea gravel, ⅛-inch to ⅜-inch in size, interfacing with the filter media. A layer of fabric filter may be used in place of the pea gravel. If used, fabric filters must either be 30 by 50 mesh with a percolation rate of at least five gallons/ft2, or a material that allows for adequate air and water movement into the collector lines, per manufacturer specifications and as approved by the administrative authority.

*i.* A minimum of 24 inches of coarse washed sand shall be placed over the pea gravel or above the gravelless drainfield pipe. The sand shall meet the Iowa DOT standards for concrete sand, as follows:

(1) 100 percent of the sand shall pass a 9.5 mm screen,

(2) 90 to 100 percent shall pass a 4.75 mm screen,

(3) 70 to 100 percent shall pass a 2.36 mm screen,

(4) 10 to 60 percent shall pass a 600 Tm screen, and

(5) 0 to 1.5 percent shall pass a 75 Tm screen.

*j.* The discharge pipe that extends from the collection system shall be solid SDR 35 PVC pipe at a minimum.

**Distribution system and cover.**

*a.* Six inches of gravel ¾ inch to 2½ inches in size or other material as discussed in this section shall be placed upon the sand in the bed.

*b.* Distribution lines shall be level and horizontally spaced a maximum of three feet apart, center to center. Distribution lines shall be rigid perforated PVC pipe if used with a gravel base.

*c.* For ISSFs using gravity distribution, venting shall be placed on the downstream end of the distribution lines, with each distribution line being vented or connected to a common vent. Vents shall either extend at least 12 inches above the ground surface with the outlet screened, have a 180 degree elbow, or be provided with a perforated cap. A vent shall not be used on distribution lines for systems using pressure distribution.

*d.* Enough gravel shall be placed to cover the distributors.

*e.* Synthetic drainage fabric or other material approved by the manufacturer or administrative authority shall be placed upon the top of the upper layer of gravel.

*f.* A minimum of 12 inches of soil backfill shall be provided over the rock or other material as discussed in this section.

*g.* A distribution box shall be provided for each filter bed where gravity distribution is used. The distribution boxes shall be placed upon undisturbed earth outside the filter bed. Separate watertight lines shall be provided leading from the distribution boxes to each of the distributor lines in the beds.

*h.* EPS aggregate or chamber may be used for the distribution system as an alternative to gravel and rigid PVC pipe. If used, EPS aggregate or chamber shall meet requirements equivalent to 69.5(5), follow the manufacturer's specifications and installation procedures, and cover the top of the sand filter. A three-foot separation between distribution pipes shall be maintained.

*i.* Pressure dosing is recommended to improve effluent distribution across the surface of the filter. Pressure distribution systems may use either conventional rock and PVC pipe, chambers with small-diameter pipe, or EPS aggregate with small-diameter pipe. Distribution lines shall be level and shall be horizontally spaced a maximum of three feet apart, center to center. See Table IV below for specifications.

(1) The distribution pipe for a pressure-dosed system shall either be SCH 40 or 80 PVC pipe (SDR 26 or stronger), with a one-inch nominal diameter, or an equivalent design that ensures proper distribution.

(2) The distribution pipe for a siphon-dosed or other manufactured non-pump pressured device shall be either SCH 40 or 80 PVC pipe (SDR 26 or stronger), with a 1½-inch nominal diameter, or an equivalent design that ensures proper distribution.

(3) It is recommended that the outer ends of all pressure type distribution lines be turned up with either a long 90-degree elbow or two 45-degree elbows to allow for maintenance. The outer ends should have a screw-on cap and cover and should be accessible from the ground surface.

(4) Holes in the distribution pipe shall be configured to evenly distribute the effluent.

*j.* Distribution line specifications.

**Table IV - ISSF Distribution Line Minimum Specifications**

| Distribution Type | Pipe Diameter/Type | Hole Size | Hole Spacing |
|---|---|---|---|
| Gravity | 4 inch rigid SCH 40 PVC (SDR 26 or stronger) | Manufacturer specification | Manufacturer specification |

| Distribution Type | Pipe Diameter/Type | Hole Size | Hole Spacing |
|---|---|---|---|
| Other Distribution Device (other than pump dosed) | 1½ inch SCH 40 PVC (SDR 26 or stronger) | ¼ to 5⁄16 inch | 3 feet minimum |
| Pump Dosed | Manufacturer specification | | |

# ARC 8639C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to scope of title, definitions, forms, and rules of practice and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 70, "Scope of Title—Definitions—Forms—Rules of Practice," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.263(8) and 455B.276(1).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.105(11), 459.102, 459.301 and 481A.15, and chapter 455B, subchapter III, part 4.

*Purpose and Summary*

Proposed Chapter 70 regulates floodplains and floodways in the state. These proposed rules will help protect life and property from floods and promote the orderly development and wise use of the floodplains of the state. Proposed Chapter 70 contains applicable definitions, application requirements, and procedures for reviewing and awarding applications. This chapter has been reviewed and edited consistent with Executive Order 10. Outdated provisions have been removed, and language has otherwise been streamlined and simplified.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Jonathan Garton
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge, contact the Department at jonathan.garton@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held by conference call as follows:

| | |
|---|---|
| January 28, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| January 29, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking for meeting information.

Persons who wish to attend a conference call should contact Jonathan Garton at jonathan.garton@dnr.iowa.gov. A conference call number will be provided prior to the hearing.

Persons who wish to make oral comments at a conference call public hearing must submit a request to Mr. Garton prior to the hearing to facilitate an orderly hearing.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at jonathan.garton@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.201.1018 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.201.1018 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 70 and adopt the following **new** chapter in lieu thereof:

TITLE V
*FLOODPLAIN DEVELOPMENT*

CHAPTER 70
SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

**567—70.1(455B,481A) Scope of title.**

**70.1(1)** The department has jurisdiction over all floodplains and floodways in the state for the purpose of establishing and implementing a program to promote the protection of life and property from floods and to promote the orderly development and wise use of the floodplains of the state. Any person who desires to construct or maintain a structure, dam, obstruction, deposit or excavation, or allow the same in any floodplain or floodway has a responsibility to contact the department to determine whether approval is required from the department or a local government authorized to act for the department.

**70.1(2)** Minimum statewide criteria for most types of floodplain development are listed in 567—Chapter 72. Special requirements for dams are listed in 567—Chapter 73.

**567—70.2(455B,481A) Definitions.** Definitions used in this title are listed in alphabetical order as follows:

*"Agricultural levees or dikes"* means levees or dikes constructed to provide limited flood protection to land used primarily for agricultural purposes.

*"Animal feeding operation"* means the same as defined in 567—65.1(459,459B).

*"Animal feeding operation structure"* means the same as defined in 567—65.1(459,459B).

*"Backwater"* means the increase in water surface level immediately upstream from any structure, dam, obstruction or deposit, erected, used, or maintained in the floodway or on the floodplains caused by the resulting reduction in conveyance area.

*"Bankfull stage"* is the elevation above which a rise in water surface elevation will cause the river or stream to overflow the lowest natural bank that is not an unusually low place or a break in the natural bank through which water inundates a small area.

*"Base flood elevation"* means the elevation that floodwaters would reach at a particular site during the occurrence of a flood having a 1 percent chance of being equaled or exceeded in any given year (also commonly referred to as the "100-year flood").

*"Building"* means all residential housing including mobile homes as defined herein, cabins, factories, warehouses, storage sheds, and other walled, roofed structures constructed for occupation by people or animals or for storage of materials.

*"Channel"* means a natural or artificial flow path of a stream with definite bed and banks to collect and conduct the normal flow of water.

*"Channel change"* means either (a) the alteration of the location of a channel of a stream or (b) a substantial modification of the size, slope, or flow characteristics of a channel of a stream. (NOTE: Diversions of water subject to the permit requirements of Iowa Code sections 455B.268 and 455B.269 usually are not channel changes.) Increasing the cross-sectional area of a channel by less than 10 percent is not considered a substantial modification of the size, slope, or flow characteristics of a channel of a stream.

*"Confinement feeding operation"* means the same as defined in 567—65.1(459,459B).

*"Confinement feeding operation building"* or *"confinement building"* means the same as defined in 567—65.1(459,459B).

*"Confinement feeding operation structure"* means the same as defined in 567—65.1(459,459B).

*"Dam"* means the same as defined in rule 567—73.2(455B).

*"Development"* means a structure, dam, obstruction, deposit, excavation or flood control work in a floodway or floodplain.

*"Drainage district ditch"* means a channel located within the boundaries of a drainage district and excavated to establish a design channel-bottom profile for efficient conveyance of drainage from agricultural tile systems and open drains.

*"Elevating"* means raising buildings by fill or other means to or above a minimum level of flood protection.

*"Emergency action plan"* means the plan to adequately protect persons or materials in a floodplain during a flood event. An emergency action plan shall include action triggers such as stream levels or flood warnings, responsible parties, and a detailed plan of action.

*"Flood control works"* means physical works such as dams, levees, floodwalls, and channel improvements or relocations undertaken to provide moderate to high degree of flood protection to existing or proposed structures or land uses.

*"Floodplain"* means the land adjacent to a stream that has been or may be inundated by the 0.2 percent annual recurrence chance flood.

*"Flood proofing"* means a combination of structural provisions, changes, or adjustments in construction to buildings, structures, or properties subject to flooding primarily for the reduction or elimination of flood damages.

*"Floodway"* means the channel of a river or stream and the adjacent land areas that must be reserved in order to discharge the waters of a 1 percent annual recurrence chance flood without cumulatively increasing the water surface elevation more than one foot. Floodway establishment procedures can be found in 567—70.4(455B).

*"Floodway fringe"* means those portions of the floodplains located outside of the floodway.

*"High damage potential"* means the flood damage potential associated with the following:

1. Habitable residential buildings and building complexes, which include seasonal residential buildings; or

2. Industrial, commercial, agricultural, recreational and other similar buildings or building complexes, that, if inundated by flooding, would result in high public damages as determined by the department or that contain high-value equipment or contents that are not easily removed; or

3. Public buildings or building complexes, that, if inundated by flooding, would result in high public damages as determined by the department.

*"Low damage potential"* means all buildings, building complexes or floodplain uses not defined as maximum or high damage potential where such structures are designed in a manner that inundation by flood waters results in minimal damage to the structure and its contents. Such structures include but are not limited to the following: detached residential garages, sheds, park shelters, buildings used for storage of equipment or crops that can be easily removed before a flood event, and buildings used as temporary shelter for livestock.

*"Major water source"* means the same as defined in 567—65.1(459,459B).

*"Manure storage structure"* means the same as defined in 567—65.1(459,459B).

*"Maximum damage potential"* means the flood damage potential associated with hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; emergency response facilities, power installations needed in emergency or buildings or building complexes similar in nature or use to those listed above.

*"Minimum level of flood protection"* means the elevation corresponding to the water surface profile of the regulatory flood associated with a damage potential classification listed in these rules plus any freeboard specified in these rules.

*"Mobile home"* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

*"Nominated stream"* means the stream or water source named in the petition described in 567—Chapter 72 that seeks designation of a stream as a protected stream.

*"Protected stream"* means a stream designated by the department as a "protected stream" in 567—Chapter 72.

*"Public damages"* means costs resulting from damage to roads and streets, sewers, water mains, other public utilities and public buildings; expenditures for emergency flood protection, evacuation and relief, rehabilitation and cleanup; losses due to interruption of utilities and transportation routes, and interruption of commerce and employment.

*"Q500," "Q100," "Q50," "Q25," "Q15," "Q10,"* etc., means a flood having a 0.2, 1, 2, 4, 7, 10, etc., percent chance of being equaled or exceeded in any one year as determined by the department.

*"Repair and maintenance of a drainage district ditch"* means the restoration of the original grade line, cross-sectional area, or other design specifications of a drainage district ditch lawfully established as part of a drainage district formed and operating under the provisions of Iowa Code chapter 468.

*"Road projects"* means the construction and maintenance of any bridges, culverts, road embankments, and temporary stream crossings.

*"Rural areas"* means any area not defined or designated as an urban area.

*"Seasonal homes"* means residential buildings or building complexes that are not used for permanent or year-round human habitation.

*"Stream"* means a water source that either drains an area of at least two square miles or has been designated as a protected stream in 567—Chapter 72.

*"Urban areas"* means those lands enclosed by the incorporated limits of municipalities.

*"Water source"* means the same as defined in 567—65.1(459,459B).

**567—70.3(17A,455B,481A) Review and approval of floodplain development.**

**70.3(1)** *Development needing approval.* Any development in a floodway or floodplain that exceeds the thresholds in 567—71.1(455B), that is not exempt pursuant to 567—71.4(455B), and that is not regulated by a locally adopted ordinance, requires approval by the department.

**70.3(2)** *Permit application submittal requirements.* Applications shall be submitted on either forms or an application system provided by the department with required supporting materials as determined by the department describing the work and impacts of the proposed development. Applications shall include a project description and detailed drawings of proposed development. Certified engineering plans, specifications, hydrologic and hydraulic analysis, and other information as specified by the department that is needed for the department to conduct a technical review are also required for complex projects such as bridges, culverts, levees, channel changes and other public infrastructure where the department determines that such materials are necessary to determine impacts of the project and the design's ability to meet criteria for approval. The engineering plans and other engineering information shall be certified by a licensed professional engineer or, if applicable, a licensed land surveyor, as required by Iowa Code chapter 542B.

**70.3(3)** *Application fee.* No fee is charged at this time.

**567—70.4(455B) Establishment of a floodway.** When available, floodways calculated and published by FEMA on community adopted flood insurance rate maps may be used by the department. When unavailable, or in discretion of the department based on best available information, the department will delineate the encroachment limits defining the outer limits of the floodway, conforming to the following criteria insofar as possible:

**70.4(1)** *Increase in water surface elevation.* The increase in the water surface elevation of Q100 (100-year discharge) that would result from confining flood flows to the floodway must not exceed one foot.

**70.4(2)** *Equal and opposite conveyance.* Floodway boundaries shall be located such that the floodway areas on each side of a stream convey a share of the flood flows proportionate to the total conveyance available on each respective side of the stream.

**70.4(3)** *Protection of existing development.* To the extent feasible, floodway boundaries shall be located as follows:

*a.* To avoid the need to seek removal of a lawful existing structure in order to safely convey Q100;

*b.* To minimize any increase in the level of Q100 in an area where such increase would adversely affect an existing lawful structure; and

*c.* To avoid the need to place an existing lawful structure in a delineated floodway if the placement would result in additional restrictions on improvements or reconstruction or replacement of the structure.

**70.4(4)** *When acquisition of property interest is required.* Where protection of an existing structure necessitates prohibition of development in an area that could otherwise be developed under the criteria in

70.4(1) and 70.4(2), the department or local governmental designee may require that the owners of land benefited by the application of criteria in this subrule acquire property interests as needed to provide an adequate alternative floodway.

**567—70.5(17A,455B,481A) Procedures for review of applications.**

**70.5(1)** *Initial screening of applications.* Each application upon receipt shall be promptly evaluated by the department to determine whether adequate information is available to review the project. The department shall advise the applicant of any additional information required to review the project. If the requested information is not submitted within 60 days of the date the request is made, the department may consider the application withdrawn.

**70.5(2)** *Order of processing.* In general, complete applications including sufficient plans and specifications shall be reviewed in the order that complete information is received. However, when there is a large number of pending applications, which preclude the department from promptly processing all applications, the department may expedite review of a particular application out of order if the completed application and supporting documents were submitted at the earliest practicable time and any of the following conditions exist:

*a.* Relatively little staff review time (generally less than four hours) is required and delay will cause the applicant hardship;

*b.* The applicant can demonstrate that a delay in the permit will result in a substantial cost increase of a large project;

*c.* Prompt review of the permit would result in earlier completion of a project that conveys a significant public benefit;

*d.* The need for a permit is the result of an unforeseen emergency or catastrophic event; or

*e.* A permit is needed to complete a project that will abate or prevent an imminent threat to the public health and welfare.

**70.5(3)** *Project investigation.* The department shall make an investigation of a project for which an application is submitted. The following are standard procedures for an investigation of an application:

*a. Inspection.* Agency personnel may make one or more field inspections of the project site when necessary to obtain information about the project. Submission of the application is deemed to constitute consent by the applicant for the agency staff and its agents to enter upon the land on which the proposed activity or project will be located for the sole purpose of collecting the data necessary to process the application, unless the applicant indicates to the contrary on the application.

*b. Technical review.* The department staff shall conduct a technical review using appropriate analytical techniques such as application of hydrologic and hydraulic models to determine the effects and impacts of a proposed project.

*c. Solicitation of expert comments on environmental effects.* For channel changes or other developments that may cause significant adverse effects on the wise use and protection of water resources, water quality, fish, wildlife and recreational facilities or uses, the department shall request comments from the fish and wildlife division of the department or other knowledgeable sources.

*d. Summary report of project review.* The department staff may, if indicated, prepare a project summary report that summarizes the results of the review with respect to relevant criteria, the analytical methods used in the review and other project information. Typical indications of when project summary reports will be prepared are for those projects for which negative comments have been received from potentially affected landowners, those projects that are not approvable, and those projects that are complex in nature. Project summary reports will not normally be prepared for routine, noncontroversial projects.

*e. Notice to landowners who might be affected.* The department shall require the applicant to provide the names of the owners and occupants of land located immediately upstream, downstream, and across from the project site, and owners of any other land that the agency staff determines may be adversely affected by the project. For those landowners that the department determines may be adversely impacted by the project, the department shall then notify the landowners that the project is under consideration and provide a reasonable opportunity for submission of comments.

*f. Notice to the applicant that project does not conform to criteria.* If the project review discloses that the project violates one or more criteria and that the project should be disapproved, or approved only subject to special conditions to which the applicant has not agreed, the department shall notify the applicant and, when practical, suggest appropriate project modifications. The department shall offer the applicant an opportunity to submit comments before an initial decision is made.

**70.5(4)** *Decision by the department.* The decision by the department on an application for a floodplain development permit shall be either approval or disapproval. The decision shall include a determination whether the project satisfied all relevant criteria and may incorporate by reference and attachment the summary report described in 70.5(3)*"d."*

*a. Approval.* Issuance of a floodplain development permit shall constitute approval of a project. The permit shall include applicable general conditions listed in 567—Chapter 72 and may include one or more special conditions when reasonably necessary to implement relevant criteria.

*b. Disapproval.* A letter to the applicant denying the application shall constitute disapproval of a project.

*c. Notice of decision.* Copies of the decision shall be mailed to the applicant, any person who commented pursuant to 70.5(3)*"e,"* and any other person who has requested a copy of the decision. The decision may be sent by ordinary mail, first class, and shall be accompanied by a certification of the date of mailing. A decision becomes the final decision of the department unless a timely notice of appeal is filed in accordance with 567—70.6(17A,455B,481A). The final decision may be filed with the appropriate county recorder to give constructive notice to future landowners of any conditions or requirements imposed by the final decision.

**567—70.6(17A,455B,481A) Appeal of decision.**

**70.6(1)** Any person aggrieved by a decision issued under 567—70.5(17A,455B,481A) of these rules may file a notice of appeal with the director. The notice of appeal must be filed within 30 days following the certified date of mailing of the decision unless the appellant shows good cause for failure to receive actual notice and file within the allowed time. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

**70.6(2)** The department shall mail a copy of the notice of appeal to each person who was sent a copy of the initial decision. The department shall attach an explanation of the opportunity to seek intervention in the contested case.

These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 4, and sections 455B.105(11), 459.102, 459.301 and 481A.15.

## ARC 8633C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to floodplain or floodway development and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 71, "Floodplain or Floodway Development—When Approval is Required," and to adopt a new chapter with the same title; and to rescind Chapter 75, "Management of Specific Flood Plain Areas," and Chapter 76, "Federal Water Resource Projects," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.263(8) and 455B.276(1).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 455B, subchapter III, part 4, and sections 459.102, 459.301 and 481A.15.

*Purpose and Summary*

Proposed Chapter 71 regulates floodplains and floodways in the state. The proposed rules will help protect life and property from floods and promote the orderly development and wise use of the floodplains of the state. Proposed Chapter 71 makes clear when approval is required for floodplain development and outlines the process of local governments issuing floodplain permits on behalf of the state. This chapter has been reviewed and edited consistent with Executive Order 10. Redundant and outdated language has been removed, and language has otherwise been simplified.

Likewise, Chapters 75 and 76 were reviewed consistent with Executive Order 10. Accordingly, both are proposed to be rescinded for being redundant, unnecessary, or outdated. However, two parts of Chapter 75 are still relevant and will be moved into proposed Chapters 70 and 71.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Jonathan Garton
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jonathan.garton@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held by conference call as follows:

| | |
|---|---|
| January 28, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| January 29, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a conference call public hearing must submit a request to Mr. Garton prior to the hearing to facilitate an orderly hearing.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at jonathan.garton@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.201.1018 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.201.1018 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 71 and adopt the following **new** chapter in lieu thereof:

CHAPTER 71
FLOODPLAIN OR FLOODWAY DEVELOPMENT—WHEN APPROVAL IS REQUIRED

**567—71.1(455B) State floodplain permits.** In the following instances, approval is required by the department for any development including construction, maintenance, and use of a structure, dam, obstruction, deposit, excavation or flood control work on a regulated floodplain or floodway unless the project is otherwise approved by a delegated community's local floodplain ordinances adopted pursuant to 567—71.2(455B) or is exempt under 567—71.4(455B).

**71.1(1)** *Rural areas.* In rural areas, projects in or on the floodplain of any stream draining ten or more square miles at the downstream end of the project site.

**71.1(2)** *Urban areas.* In urban areas, projects in or on the floodplain of any river or stream draining two or more square miles at the downstream end of the project site.

**71.1(3)** *Protected streams.* On protected streams, channel changes at any location on any river or stream designated as a protected stream pursuant to Division III of 567—Chapter 72.

**71.1(4)** *Buildings and other structures adjacent to or downstream from impoundments.* For new construction, additions, lowering, or reconstruction of buildings, water and waste water treatment facilities, sanitary landfills, animal feeding operation structures, or other miscellaneous structures and associated fill, without regard to the size of the drainage area, if:

*a.* The project is adjacent to an impoundment and the lowest floor level, including any basement, is lower than the top of the adjacent dam; or

*b.* There is an upstream dam and flooding can be reasonably anticipated from principal or emergency spillway discharges; or

*c.* There is an upstream dam that does not substantially comply with high hazard criteria in these rules and where flooding can be reasonably anticipated from overtopping and failure of the dam.

**71.1(5)** *Dams.* For construction, repair, or modification of any dam that exceeds the thresholds under 567—73.3(455B).

**567—71.2(455B) Delegated state floodplain permitting by local communities.** Upon submission to the department for review and approval, a local unit of government may establish encroachment limits, floodplain regulations, and zoning ordinances, subject to the following:

**71.2(1)** Written approval from the department must be obtained before effective adoption or amendment of a local regulation that would control development in a floodplain or floodway for purposes related to flood protection. A local government may appeal the refusal of the department to approve a proposed regulation by notifying the department and requesting that the proposed local regulation be considered at the next meeting of the commission.

**71.2(2)** Prior to receiving approval, a community shall demonstrate capacity to properly review applications and issue floodplain permits.

**71.2(3)** Approved communities shall provide evidence to the department of this capacity at least every five years. Additionally, the department may, from time to time, take action to ascertain the effectiveness of department-approved, locally adopted floodplain management regulations. Upon a finding that the local government has been negligent in administering the approved regulations, the department may revoke approval of same. Floodplain works found to be in violation of department-approved, locally adopted floodplain management regulations may be handled under the provisions of the department's rules for investigation of unauthorized projects.

**71.2(4)** Where it is unclear whether the works are adequately covered by such local regulations, the department shall make the determination.

**567—71.3(455B) Review and approval of variances from local regulations.** A variance from an approved local floodplain regulation shall not be effective until it has been reviewed and approved by the department in accordance with the following procedures.

**71.3(1)** *Duty of local government to notify department of each variance request.* After receipt of each request for variance from a local floodplain regulation approved by the department, the local government shall notify the department of the variance request on a form obtained from the department. The notice must be received by the department at least 15 days before any hearing that the local government schedules on the variance request.

**71.3(2)** *Written comment from the department.* After receipt of notice of a variance request, the department shall mail or deliver a written comment on the variance request. The comment shall be issued within 15 days after receipt of the notice or in time for consideration at any hearing held after expiration of the 15-day period. The comment shall be either a statement of objection or "no objection" as follows:

*a. Objection to variance request.* The department may issue an objection to the variance request. The objection may be based upon an explanation of the minimum statewide criteria that the variance request does not satisfy and the reasons why applicable criteria should not be waived. The objection may be based on a statement that the applicant for the variance has provided insufficient information for the department to determine whether the requested variance would violate applicable minimum statewide criteria. An objection based on a statement of insufficiency of information shall identify the information needed to determine whether the request would violate applicable criteria.

*b. No objection to variance requests.* The comment issued by the department may state that the department has no objection to the variance request. The comment shall briefly explain why granting of the requested variance would not violate the purposes of minimum statewide criteria. A statement of "no objection" shall constitute approval to grant the requested variance.

**71.3(3)** *Basis for variance.* A variance from an applicable requirement should only be granted if the applicant can show that denial of the variance would cause unnecessary hardship and that granting of the variance would not be contrary to the public interest or the underlying purposes of the requirement in question.

**71.3(4)** *Review or appeal of local ruling on variance request.* The appropriate forum and procedures for review or appeal of the decision of a local government on a request for variance from a regulation approved by the department depend on the relationship between the local decision and the comment submitted by the department as follows.

*a. When local government grants variance after objection by department.* If the local government grants a variance request after issuance of an objection by the department, the local government shall give written notice of the local action and the supporting reasons to the department. The variance shall not be effective until approved by the commission. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

*b. When local government denies variance after objection by department.* If the local government denies a variance request on the basis of an objection by the department, the applicant may file a notice of appeal with the department within 20 days following the local action. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

*c. When local government grants or denies a variance request after a "no objection" comment by the department.* When a local government grants or denies a variance request after receiving a "no objection" comment from the department, any appeal normally should be taken in the manner provided for appeal of other local actions. An appeal should be filed with the department only if the purpose of the appeal is to challenge the basis of the "no objection" comment.

*d. Duty of local government to notify department of appeal.* The local government shall promptly notify the department of the filing of any petition for judicial review of local action on a variance request so the department may determine whether participation in the judicial review would be in the interest of the state.

**567—71.4(455B) Exempted activities.** Notwithstanding 567—70.3(17A,455B,481A) and 567—71.1(455B), the following activities do not require approval pursuant to this title by the department to construct in a floodplain:

**71.4(1)** *Rural bridges/culverts/road embankments and associated work.* Construction, maintenance, or use of bridges, culverts, temporary stream crossings, or road embankments in a rural area floodplain with a drainage area less than 100 square miles including associated channel changes not on protected streams with up to 500 feet in length and maximum of 25 percent reduction in length, and associated excavations within 500 feet of the project.

**71.4(2)** *Federally regulated railroad crossing.* Construction, maintenance, or use of federally regulated railroad crossings having a drainage area of any size.

**71.4(3)** *Buildings.*

*a.* Building additions that, when considered in aggregate with all additions constructed after July 4, 1965, increase the original floor area of a building by less than 25 percent.

*b.* Reconstruction of any portion of a building if the cost of reconstruction, including equivalent professional labor and material costs for proposed or actual volunteer labor and donated materials, and as would be determined by a qualified contractor, does not exceed 50 percent of the market value of the existing building or if reconstruction will not increase the market value by more than 50 percent.

**71.4(4)** *Pipeline and underground linear utility crossings.* The construction, operation and maintenance of buried pipeline, conduit and linear utility crossings if the natural contours of the channel and floodplain are maintained and no bank stabilization is required.

**71.4(5)** *Excavations.*

*a.* Excavations where the channel cross section is increased by 10 percent or less, as determined based on current survey, original engineering plans if being performed by a drainage district, if available.

*b.* Excavations for the repair and maintenance of a drainage district ditch with less than 100 square mile drainage area.

*c.* Excavations outside the channel on any floodplain of any river or stream draining more than ten square miles where excavated materials are removed from the floodplain and surface waters are not diverted into a sinkhole or quarry excavated in carbonate rock.

**71.4(6)** *Boat docks.* Construction, maintenance, or use of floating boat docks on lakes, and those recreational nonfloating style boat docks located on the Mississippi and Missouri rivers, located on reservoirs within state parks, and the conservation pools of the Coralville, Rathbun, Red Rock, and Saylorville reservoirs.

**71.4(7)** *Small projects.* For developments in rural areas for any low damage potential project where such works obstruct less than 3 percent of the cross-sectional area of the stream channel at bankfull stage or where such works obstruct less than 15 percent of the cross-sectional area of that side of the stream's floodplain at any stage. Fences that could catch debris and block flow during a flood may be considered a full obstruction to flow for purposes of determining the 3 percent or 15 percent obstruction.

These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 4, and sections 459.102, 459.301 and 481A.15.

ITEM 2. Rescind and reserve **567—Chapter 75**.

ITEM 3. Rescind and reserve **567—Chapter 76**.

## ARC 8634C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to criteria for approval and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 72, "Criteria for Approval," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.263(8) and 455B.276(1).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 455B, subchapter III, part 4, and sections 459.102 and 459.301.

*Purpose and Summary*

Proposed Chapter 72 regulates floodplains and floodways in the state. These proposed rules will help protect life and property from floods and promote the orderly development and wise use of the floodplains of the state. Proposed Chapter 72 contains the criteria that must be satisfied for the issuance of floodplain permits. This chapter has been reviewed and edited consistent with Executive Order 10. Outdated provisions have been removed and language has otherwise been streamlined and simplified.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Jonathan Garton
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jonathan.garton@dnr.iowa.gov.

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*Public Hearing*

Public hearings at which persons may present their views orally will be held by conference call as follows:

| | |
|---|---|
| January 28, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| January 29, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking for meeting information.

Persons who wish to attend a conference call should contact Jonathan Garton at jonathan.garton@dnr.iowa.gov. A conference call number will be provided prior to the hearing.

Persons who wish to make oral comments at a conference call public hearing must submit a request to Mr. Garton prior to the hearing to facilitate an orderly hearing.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 72 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 72
## CRITERIA FOR APPROVAL

### DIVISION I
### SPECIAL CRITERIA FOR VARIOUS TYPES OF FLOODPLAIN DEVELOPMENT

**567—72.1(455B) Bridges, culverts, and road embankments.** The following criteria shall apply to the construction, operation, and maintenance of bridges, culverts, and road embankments:

**72.1(1)** *Bridges and road embankments affecting low damage potential areas.* For bridges and road embankments affecting floodway or floodplain areas having a low flood damage potential, the following criteria will apply:

*a. Backwater Q100.* The maximum allowable backwater for Q100 is 1.5 feet.

*b. Freeboard.* The minimum freeboard for low superstructure horizontal bridge members above Q50 is 3 feet unless a licensed engineer provides documents on the certified plans that the bridge is designed to withstand the applicable effects of ice and the horizontal stream loads and uplift forces associated with the Q100.

**72.1(2)** *Bridges and road embankments affecting high or maximum damage potential development.* For bridges and road embankments affecting floodway or floodplain areas occupied by buildings or building complexes having a high or maximum flood damage potential, the following criteria will apply:

*a. Backwater Q100.*

(1) The maximum allowable Q100 backwater for bridges and road embankments is 1 foot.

(2) For a bridge and road embankment located within a stream reach for which the Federal Emergency Management Agency has published a detailed Flood Insurance Study which includes a floodway, the backwater for Q100 shall not exceed the surcharge associated with the delineation for the floodway at that location.

(3) In no case shall the Q100 backwater effects of a bridge or road embankment reduce the existing level of protection provided by certain flood control works, unless equivalent remedial measures are provided.

*b. Freeboard.* The minimum freeboard for low superstructure horizontal bridge members above Q50 is 3 feet unless a licensed engineer provides certification that the bridge is designed to withstand the applicable effects of ice and the horizontal stream loads and uplift forces associated with the Q100.

**72.1(3)** *Bridge and channel change.* For bridges and culverts involving channel changes on the floodway of any stream draining at the location of the channel change between 10 and 100 square miles whereby either (i) more than a 500-foot length of the existing channel is being altered or (ii) the length of existing channel being altered is reduced by more than 25 percent, the maximum allowable backwater shall correspond to the limits permitted in 72.1(1), 72.1(2) or 72.1(4) depending upon the associated damage potential.

**72.1(4)** *Culverts.* The maximum allowable backwater at culvert inlets shall correspond to the limits permitted in 72.1(1) or 72.1(2) depending upon the damage potential associated with the affected area. In the case of replacement culverts, the backwater shall not exceed that created by the culvert or waterway crossing being replaced or that specified in 72.1(1) or 72.1(2) depending upon the associated damage potential, whichever is greater.

**72.1(5)** *Road embankments.* The criteria listed in 567—72.11(455B) for miscellaneous floodplain construction projects shall apply to road embankments located on the floodplain but not crossing any stream or river channel.

**72.1(6)** *Temporary channel obstructions.* Temporary stream crossings and other temporary obstructions usually constructed, operated, and maintained during the construction phase of another floodplain construction project shall meet the following criteria:

*a. Low flow.* Said structures will provide for the passage of the prevailing flow in the stream or river.

*b. Flood flow.* Said structure shall be designed to fail, be removed quickly, or otherwise operate in the event of flooding so as to prevent premature overbank flow, or meet the backwater criteria indicated in 72.1(1) or 72.1(2).

**72.1(7)** *Emergency.* Repairs or temporary construction required to maintain the operation of a bridge, road grade or culverts in time of emergency need not be submitted for prior department approval. Plans of such emergency or temporary construction shall be submitted to the department for review after the event causing the emergency has passed.

**567—72.2(455B) Channel changes.** The following criteria shall apply to channel changes:

**72.2(1)** *Percent reduction in length.*

*a. Streams draining over 100 square miles.* For streams (other than protected streams) draining more than 100 square miles, no more than a 10 percent reduction in the original length of the existing channel through any contiguous parcel(s) of the applicant's(s') property will be allowed.

*b. Rural streams draining 10 to 100 square miles.* For streams (other than protected streams) draining between 10 and 100 square miles in rural areas, no more than a 25 percent reduction in the original length of the existing channel through any contiguous parcel(s) of the applicant's(s') property will be allowed.

*c. Urban streams draining 2 to 100 square miles.* For streams (other than protected streams) draining between 2 and 100 square miles in urban areas, no more than a 25 percent reduction in the original length of the existing channel through any contiguous parcel(s) of the applicant's(s') property will be allowed.

*d. Protected streams.* For protected streams no channel changes will be allowed, because of actual or potential significant adverse effects on fisheries, water quality, flood control, floodplain management, wildlife habitat, soil erosion, public recreation, the public health, welfare and safety, compatibility with the state water plan, rights of other landowners, and other factors relevant to the control, development, protection, allocation, and utilization of the stream. Protected stream status does not prohibit bank stabilization measures; tree maintenance or removal; maintenance or installation of tile outlets; machinery crossings, including concrete drive-throughs and bridges; boat or canoe ramps; or other structures permitted by the department; nor restrict riparian access to the protected stream for such uses as livestock watering or grazing. Protected stream status does not affect current cropping practices or require the establishment or maintenance of buffer strips, filter strips or fences along protected streams.

**72.2(2)** *Capacity.* In the project reach, excavated channels shall have a discharge capacity equal to or greater than the existing channel. Excessive channel excavation will not be permitted.

**72.2(3)** *Alignments.* The alignments and dimensions of the excavated channel shall be such as to provide a smooth transition between the existing and the excavated channel.

**72.2(4)** *Velocities.* Velocities in the excavated channel shall not cause excessive erosion of the channel or banks, with the acceptable velocities being determined by the department. Energy dissipation structures, channel and bank protection, or other engineering measures may be required to eliminate excessive erosion of the channel or banks.

**72.2(5)** *Spoil disposition.* Disposition of spoil material from channel excavation of the floodplain shall be reviewed under miscellaneous floodplain construction.

**72.2(6)** *Increase in flood peak.* No significant increase in peak flood discharge will be permitted by the department. Floodwater retardance structures may be required to minimize any increase in peak flood discharges.

**72.2(7)** *Fish and wildlife habitat and public rights.* The channel change shall not have a significant adverse effect on fish and wildlife habitat or public rights to use of the stream. Conservation easements

and other conditions may be required to mitigate potential damages to the quality of water, fish and wildlife habitat, recreational facilities, and other public rights.

**72.2(8)** *Soil erosion.* The tillage of land along the reach of a straightened stream shall be prohibited or modified when necessary to hold soil erosion to reasonable limits. Zones of land in which tillage shall be prohibited along the straightened reach shall be set on a case-by-case basis with consideration given to topography, soil characteristics, current use, and other factors affecting propensity for soil erosion. The tillage prohibition shall be recorded by the department in the office of the appropriate county recorder and shall run with the land against the applicant and all successors in interest to the land subject to the prohibition.

**72.2(9)** *Encroachment on a confinement feeding operation structure.* A major water source, as identified in Appendix B, Tables 1 and 2 of 567—Chapter 65, or a water source other than a major water source shall not be constructed, expanded or diverted if the water source or major water source as constructed, expanded or diverted is closer than the following distances from a confinement feeding operation. Measurement shall be from the closest point of the confinement feeding operation structure to the top of the bank of a stream channel or the ordinary high water mark of a lake, pond, impoundment or reservoir. Farm ponds, privately owned lakes, and confinement feeding operations constructed with a secondary containment barrier pursuant to 567—subrule 65.15(17) are exempt from the separation distance requirements. The provisions of this subrule shall not be construed to allow construction of a confinement feeding operation structure on land that would be inundated by Q100 and is adjacent to a major water source.

*a.* Minimum separation between a water source other than a major water source and a confinement feeding operation structure is 500 feet.

*b.* Minimum separation between a major water source and a confinement feeding operation structure is 1,000 feet.

**567—72.3** Reserved.

**567—72.4(455B) Levees, floodwalls, and dikes.** The following criteria shall apply to levees, floodwalls, and dikes:

**72.4(1)** *Agricultural levees or dikes.*

*a. Level of protection.* The permanent height of agricultural levees or dikes normally shall be limited so that overtopping will occur due to discharges from Q10 to Q25 with the more comprehensive levee system being permitted the greater degree of protection.

*b. Additional protection.* Where it can clearly be shown that loss of valley storage caused by construction of the levee will not increase peak flood stages and discharges, the level of protection provided by the agricultural levee or dike may be increased beyond the Q10 to Q25 range.

*c. Alignment.* The location and alignment of agricultural levees or dikes shall be compatible with existing encroachment limits so that minimum flood protection levels will not be increased, and said levee or dike shall be located outside of the floodway or demonstrate that the construction shall not result in a rise in upstream water surface elevations.

*d. Maximum effect.* The maximum increase in the flood profile resulting from the construction, operation, and maintenance of an agricultural levee or dike shall be 1 foot. Equal and opposite conveyance as defined in 567—Chapter 70 shall be used in determining the maximum increase in flood profile resulting from such levees or dikes.

*e. Interior drainage.* All agricultural levees or dikes shall be provided with adequate interior drainage facilities.

*f. Offset.* A minimum offset equal to 100 feet or twice the width of a river or stream measured from top of bank to top of bank, whichever distance is less, shall be required for all agricultural levees unless a greater offset is dictated by 72.4(1)*"c"* or *"d."*

**72.4(2)** *Flood control levees, floodwalls, or dikes.*

*a. Design level.* The minimum design flood protection level for flood control levees or dikes shall correspond to the flood profile for Q100.

*b. Freeboard.* The levee or dike height shall provide for at least 3 feet of freeboard above the design flood profile.

*c. Alignment.* The alignment of a flood control levee or dike shall be located outside of the floodway or demonstrate that the construction shall not result in a rise in upstream water surface elevations.

*d. Interior drainage.* Flood control levees or dikes shall provide for adequate interior drainage and ponding.

*e. Design and specifications.* The structural design and construction of flood control levees or dikes must be undertaken in accordance with accepted engineering and construction procedures and practices.

**567—72.5(455B) Buildings.** The following criteria apply to buildings:

**72.5(1)** *Minimum protection levels.* The minimum level of flood protection for a building depends on the damage potential of the building and contents. "Maximum" and "high" damage potential classifications are defined in 567—Chapter 70. Criteria for determining minimum levels of protection are as follows:

*a.* Buildings with maximum damage potential shall have the lowest floor (including basement) elevated a minimum of 1 foot above the Q500, or together with attendant utility and sanitary systems, be flood proofed to such a level.

*b.* Buildings with high damage potential shall have the lowest floor (including basement) elevated a minimum of 1 foot above the Q100, or together with attendant utility and sanitary systems, be flood proofed to such a level.

*c.* Buildings adjacent to an impoundment shall be protected to the elevation of the top of the dam unless the dam has adequate spillway capacity to discharge the flood corresponding to the damage potential of the building at an elevation below the top of the dam.

*d.* Buildings downstream from a dam shall be protected to a level established by the department after due consideration of the hazards posed by the dam for buildings downstream.

**72.5(2)** *Flood protection methods.* The following flood protection methods are required for buildings to which a minimum flood protection level applies.

*a. Structural design and flood proofing.* Basement walls and floors below the applicable minimum flood protection level shall be structurally designed and constructed to be flood proof and able to withstand hydrostatic pressure and buoyant forces associated with a water table elevation equivalent to the minimum flood protection level. However, attached garages and storage space may be constructed below the applicable minimum protection level without flood proofing if all electrical circuit boxes, furnaces, and hot-water heaters are located above the applicable minimum protection level and adequate flood vents are provided to equalize hydrostatic forces.

*b. Sanitary sewer drains.* Sanitary sewer drains below the applicable minimum flood protection level shall be provided with automatic closure valves to prevent backflow.

**72.5(3)** *Location.* The criteria for location of a building include consideration of the potential for obstructing flood flows and the potential hazards which may arise when the building is surrounded by floodwater. Criteria for location of buildings in floodways and floodplains are as follows:

*a.* Obstruction. Buildings shall not be located in the floodway of a stream so as to result, individually or collectively, in any increase in the elevation of Q100 as confined to the floodway. The floodway boundary applicable to an individual application shall be determined as necessary by the department in accordance with the criteria in 567—70.4(455B). Analysis of the effect that a building in the floodway would have on flood levels shall be based on the assumption that all similarly situated landowners would be allowed an equal degree of development in the floodway.

*b. Public damages.* Buildings shall be located to minimize public damages associated with isolation due to flooding of surrounding ground. In identifying the potential for public damages, the department shall determine whether there is a need for access passable by wheeled vehicles during Q100, based on the department's evaluation of flood warning and response time in the area.

*c. Existing buildings—replacement and improvements.* In applying the criteria in 72.5(3)*"a"* and *"b"* to projects that improve or replace existing lawful buildings, the department should prohibit the improvements or replacement only where extension of the useful life of the structure by improvement or replacement would contribute to perpetuation of an individual or collective obstruction that causes a significant increase in the level of Q100, perpetuation of a significant hazard to health or safety during floods, or perpetuation of the potential for significant flood damages to property and associated public costs.

**567—72.6(455B) Water supply and wastewater treatment facilities.** The following criteria shall apply to water supply and wastewater treatment facilities:

**72.6(1)** *Location.* Water supply and wastewater treatment facilities shall be located outside of the floodway or demonstrate that the construction shall not result in a rise in upstream water surface elevations.

**72.6(2)** *Flood protection.* Flood protection for water supply and wastewater treatment facilities shall be provided to the level necessary for high damage potential buildings or building complexes unless evidence is submitted indicating the facility is of a lesser damage potential.

**567—72.7(455B) Sanitary landfills.** The following criteria shall apply to sanitary landfills:

**72.7(1)** *Location.* Sanitary landfills shall be located outside of the floodway or demonstrate that the construction shall not result in a rise in upstream water surface elevations.

**72.7(2)** *Flood protection.* Flood protection for the active working portion of the sanitary landfill shall be provided to the level necessary for high damage potential buildings or building complexes.

**567—72.8(455B) Campgrounds.** The following criteria shall apply to campgrounds located in the floodplain:

**72.8(1)** *Location.* Any permanent structures, obstructions, or deposits shall be located outside of the floodway or demonstrate that the construction shall not result in a rise in upstream water surface elevations.

**72.8(2)** *Flood protection.* Any permanent structures, obstructions, or deposits shall be provided with the minimum level of flood protection associated with the designated damage potential as indicated in 72.5(1) governing buildings and building complexes.

**72.8(3)** *Recreational vehicles.*

*a.* Recreational vehicles shall be located on the site for less than 180 consecutive days, and

*b.* Recreational vehicles must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick-disconnect-type utilities and security devices and has no permanently attached additions.

**72.8(4)** *Emergency action plan.* Any campground with overnight lodging in the floodplain shall have an evacuation plan that includes the following:

*a.* Responsible parties for carrying out the evacuation plan.

*b.* Action stages that are based on stream levels, gage data, or weather forecasts, as appropriate.

*c.* A detailed list of actions that need to be taken to ensure all vehicles and campers are evacuated, including how notifications are to be delivered.

**567—72.9(455B) Stream protective devices.** The following criteria shall apply to stream protective devices:

**72.9(1)** *Overflow.* Stream protective devices shall be constructed in a manner which will not cause premature overbank flow.

**72.9(2)** *Velocity.* Increased velocities resulting from the construction, operation, and maintenance of stream protective devices shall be limited so as not to cause excessive scour in the channel as determined by the department.

**72.9(3)** *Stability.* Stream protective devices shall be anchored securely to the bank or constructed in a stable manner so as not to become dislodged and result in the scattering of debris in adjacent and downstream reaches.

**72.9(4)** *Water quality and aesthetics.* Stream protective devices shall not adversely affect the water quality, fish and wildlife habitat or aesthetics of the stream.

**567—72.10(455B) Pipeline river or stream crossings.** The following criteria shall apply to pipeline river and stream crossings:

**72.10(1)** *Protection.* Pipeline river or stream crossings shall be sufficiently buried in the stream bed and banks or otherwise sufficiently protected to prevent rupture.

**72.10(2)** *Overflow and velocities.* Pipeline river or stream crossings shall be constructed, operated, and maintained so as not to create premature overbank flow or excessive scour to the channel or banks.

**72.10(3)** *Spoil.* Spoil material resulting from the construction of a pipeline crossing shall be disposed of in a manner which will not obstruct low flow or flood flows.

**567—72.11(455B) Miscellaneous construction.** The following criteria shall apply to miscellaneous construction:

**72.11(1)** *Structures, obstructions, or deposits.*

*a. Location.* Miscellaneous structures, obstructions, or deposits shall be located outside of the floodway or demonstrate that the construction shall not result in a rise in upstream water surface elevations.

*b. Protection.* Miscellaneous structures, obstructions, or deposits shall be provided with the minimum level of flood protection associated with the designated damage potential as indicated in 72.5(1) governing buildings and building complexes.

**72.11(2)** *Excavation.*

*a. Spoil.* Spoil material resulting from an excavation shall be disposed of in a manner consistent with 72.11(1)*"a"* pertaining to miscellaneous structures, obstructions, or deposits.

*b. Levees.* Levees protecting excavations shall meet the requirements of 72.11(1)*"a"* pertaining to miscellaneous structures, obstructions, or deposits.

*c. Control of surface runoff into rock quarries.* When the department investigates an application for approval of excavation of a quarry in carbonate rock on a floodplain or floodway, the department shall consider the potential for pollution of an underground watercourse or basin from drainage of surface water into the quarry. If available information including topographic and geological information support a finding that drainage of surface water into the quarry would constitute a violation of the permit requirement in Iowa Code section 455B.268(3) and might cause pollution of an underground watercourse or basin if not controlled, then the department shall require that the applicant either request a permit under Iowa Code section 455B.268(3) and 567—51.5(455B) to authorize drainage of surface water into the quarry, or construct and maintain a means of controlling drainage of surface water which would otherwise drain into the quarry.

**72.11(3)** *Structures or materials across a channel.* The following criteria shall apply to structures or materials such as riprap that span the channel of a stream or river and do not meet the thresholds of 567—73.3(455B):

*a.* The location and design of the structure shall not adversely affect the fisheries or recreational use of the stream.

*b.* The pool created by the structure shall not adversely affect drainage on lands not owned or under easements by the applicant.

*c.* The structure shall be hydraulically designed to submerge before bankfull stage is reached in the stream channel in order that increased or premature overbank flooding does not occur. Where this cannot be reasonably accomplished in order for the structure to fulfill its intended purpose, the applicant shall demonstrate that any increased flooding will affect only lands owned or controlled by the applicant.

*d.* For projects that include significant appurtenant structures or works outside the stream channel, the combined effect of the total project shall not create more than one foot of backwater during floods which exceed the flow capacity of the channel, unless the proper lands, easements, or rights-of-way are obtained.

*e.* The structure shall be capable of withstanding the effects of normal and flood flows across its crest and against the abutments with erosion protection added as required to prevent failure of the structure during flood events.

**567—72.12** Reserved.

**567—72.13(455B) Animal feeding operation structures.** The following criteria shall apply to animal feeding operation structures:

**72.13(1)** *Confinement feeding operation structures located on the floodplain of a major water source.* As required by 567—Chapter 65, confinement feeding operation structures shall not be constructed on land that would be inundated by Q100 and is adjacent to a major water source. Placing fill material on floodplain land to elevate the land above the Q100 level will not be considered as removing the land from the one hundred year floodplain for the purpose of this subrule.

**72.13(2)** *Other animal feeding operation structures.* The following criteria shall apply to animal feeding operation structures located on the floodplain of any water source and confinement feeding operation structures located on the floodplain of a water source other than a major water source:

*a. Location.* Such structures shall be located outside of the floodway or demonstrate that the construction shall not result in a rise in upstream water surface elevations.

*b. Flood protection.* Flood protection for such structures shall be provided to the level necessary for high damage potential buildings or building complexes, pursuant to 567—72.5(455B).

These rules are intended to implement Iowa Code sections 455B.262, 455B.264, 455B.270, 455B.275, 455B.277, 459.102 and 459.301.

**567—72.14** to **72.29** Reserved.

DIVISION II
GENERAL CRITERIA

**567—72.30(455B) General conditions.** Department orders approving an activity or project shall be subject to the following conditions:

**72.30(1)** *Maintenance.* The applicant and any successor in interest to the real estate on which the project or activity is located shall be responsible for proper maintenance.

**72.30(2)** *Responsibility.* No legal or financial responsibility arising from the construction or maintenance of the approved works shall attach to the state of Iowa or the agency due to the issuance of an order or administrative waiver.

**72.30(3)** *Lands.* The applicant shall be responsible for obtaining such government licenses, permits, and approvals, and lands, easements, and rights-of-way which are required for the construction, operation, and maintenance of the authorized works.

**72.30(4)** *Change in plans.* No material change from the plans and specifications approved by the department shall be made unless authorized by the department.

**72.30(5)** *Revocation of order.* A department order may be revoked if construction is not completed within the period of time specified in the department order.

**72.30(6)** *Performance bond.* A performance bond may be required when necessary to secure the construction, operation, and maintenance of approved projects and activities in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of such bond shall be specified as special conditions in the department order.

**567—72.31(455B) Waiver.** A request for a waiver to this chapter shall be submitted in writing pursuant to 561—Chapter 10. The contents of a petition for waiver shall include information pursuant to 561—10.9(17A,455A).

**567—72.32(455B) Protected stream information.** The following describes the waiver procedure and the relation of hydrologically connected streams to protected streams:

**72.32(1)** *Protected streams variance procedure.* The variance shall be requested as part of the permit application and review process provided for in 567—70.3(17A,455B,481A) to 567—70.5(17A,455B,481A) and decisions on the variance request may be appealed in accordance with 567—70.6(17A,455B,481A). If the applicant is denied a permit to channelize a protected stream, the applicant may appeal to the environmental protection commission. The appeal will normally be heard by an administrative law judge but the applicant may request that the commission hear the appeal directly. If a proposed decision of an administrative law judge would affirm the denial of the permit, the applicant may appeal the administrative law judge's decision to the commission. If, on appeal, the commission affirms the denial of the permit, the applicant may appeal to the district court.

**72.32(2)** *Hydrologically connected streams.* Streams or waters that are hydrologically connected to protected streams are not protected streams unless specifically listed as protected streams in 72.50(2). The environmental protection commission considers the streams and waters that are hydrologically connected to streams proposed to become protected streams as one of the factors in the decision-making process to add streams to the list of protected streams in a rule-making procedure. 72.51(7) lists the other factors that affect the decision.

**72.32(3)** *Protected stream activities.* Protected stream status does not prohibit bank stabilization measures; tree maintenance or removal; maintenance or installation of tile outlets; machinery crossings, including concrete drive-throughs and bridges; boat or canoe ramps; or other structures permitted by the department; nor restrict riparian access to the protected stream for such uses as livestock watering or grazing. Protected stream status does not affect current cropping practices or require the establishment or maintenance of buffer strips, filter strips, or fences along protected streams except as may be required to mitigate environmental damage associated with a channel change on a protected stream.

These rules are intended to implement Iowa Code sections 455B.262, 455B.264, 455B.270, 455B.275, 455B.277, 459.102 and 459.301.

**567—72.33** to **72.49** Reserved.

DIVISION III
PROTECTED STREAM DESIGNATION PROCEDURE

**567—72.50(455B) Protected streams.**

**72.50(1)** *Protected streams defined.* Protected streams shall include streams designated as protected streams pursuant to the procedures of 567—72.51(455B), which upon designation will be listed in 72.50(2). Streams hydrologically connected to protected streams are not protected streams unless specifically listed as protected streams in 72.50(2).

**72.50(2)** *List of protected streams.* Streams designated as protected streams are the following:

ADAIR COUNTY

Middle River, east county line to confluence with unnamed creek (NE 1/4, S36, T76N, R30W, Adair Co.);

ALLAMAKEE COUNTY

Bear Creek, mouth (S1, T99N, R6W, Allamakee Co.) to west county line;
Clear Creek, mouth (S35, T100N, R5W, Allamakee Co.) to north line of S15, T100N, R5W;
Clear Creek, mouth (S29, T99N, R3W, Allamakee Co.) to west line of S25, T99N, R4W;
Cota Creek, mouth to west line of S10, T97N, R3W;
Dousman Creek, mouth (S33, T96N, R3W, Allamakee Co.) to south county line;
French Creek, mouth to east line of S23, T99N, R5W;
Hickory Creek, mouth to south line of S28, T96N, R5W;
Irish Hollow Creek, mouth to north line of S17, T100N, R4W;
Little Paint Creek, mouth to north line of S30, T97N, R3W;
Norfolk Creek, mouth to confluence with Teeple Creek (S24, T97N, R6W);

Paint Creek (a.k.a. Pine Creek), mouth (S9, T99N, R6W, Allamakee Co.) to west county line;
Paint Creek, mouth (S15, T96N, R3W, Allamakee Co.) to road crossing S18, T97N, R4W;
Patterson Creek, mouth to east line of S3, T98N, R6W;
Silver Creek, mouth (S4, T99N, R5W, Allamakee Co.) to south line of S31, T99N, R5W;
Suttle Creek, mouth (S17, T96N, R4W, Allamakee Co.) to south county line;
Teeple Creek, mouth (S24, T97N, R6W, Allamakee Co.) to spring source in S11, T97N, R6W;
Trout Run, mouth in S16, T98N, R4W through one mile reach;
Unnamed tributary to Village Creek (a.k.a. Erickson Spring Branch), mouth to west line of S23, T98N, R4W;
Unnamed tributary to the Yellow River (a.k.a. Bear Creek), mouth to north line of S12, T96N, R5W;
Upper Iowa River, from Lane's Bridge at river mile 6 to west county line;
Village Creek, mouth to west line of S19, T98N, R4W;
Waterloo Creek, mouth (S35, T100N, R6W) to north county line;
Wexford Creek, mouth to west line of S25, T98N, R3W;
Yellow River, mouth to west county line;

APPANOOSE COUNTY

Chariton River, Highway 2 (S27, T69N, R17W, Appanoose Co.) to Rathbun Lake Dam (S35, T70N, R18W, Appanoose Co.);

BENTON COUNTY

Bear Creek, east county line to confluence with Opossum Creek (S 5/8, T84N, R9W, Benton Co.);
Bear Creek, mouth (S21, T86N, R10W, Benton Co.) to confluence with unnamed creek (NE1/4, NE 1/4, S2, T86N, R10W, Benton Co.);
Cedar River, east county line to north county line;
Iowa River, south county line to west county line;
Lime Creek, mouth (S4, T86N, R10W, Benton Co.) to north county line;
Prairie Creek, mouth (S10, T85N, R10W, Benton Co.) to confluence with unnamed creek (S36, T86N, R10W, Benton Co.);
Salt Creek, mouth (S31, T82N, R12W, Benton Co.) to west county line;
Wild Cat Creek, mouth (S8, T84N, R9W, Benton Co.) to confluence with unnamed creek (W1/2, S33, T84N, R10W, Benton Co.);
Wolf Creek, north county line to west county line;

BLACK HAWK COUNTY

Black Hawk Creek, mouth (S22, T89N, R13W, Black Hawk Co.) to west county line;
Cedar River, east county line to north county line;
Crane Creek, mouth (S26, T90N, R11W, Black Hawk Co.) to confluence with unnamed creek (S3, T90N, R12W, Black Hawk Co.);
Shell Rock River, mouth (S4, T90N, R14W, Black Hawk Co.) to north county line;
Wapsipinicon River, east county line to north county line;
West Fork Cedar River, mouth (S10, T90N, R14W, Black Hawk Co.) to west county line;
Wolf Creek, mouth (S19, T87N, R11W, Black Hawk Co.) to south county line;

BOONE COUNTY

Big Creek, south county line to confluence with unnamed creek (NW 1/4, S34, T82N, R25W, Boone Co.);
Bluff Creek, mouth (S22, T84N, R27W, Boone Co.) to Don Williams Lake Outlet (S5, T84N, R27W, Boone Co.);
Des Moines River, south county line to north county line;

BREMER COUNTY

Cedar River, south county line to north county line;
Shell Rock River, south county line to west county line;
Wapsipinicon River, south county line to north county line;

BUCHANAN COUNTY

Cedar River, south county line to west county line;

Lime Creek, south county line to confluence with unnamed creek (S1, T87N, R10W, Buchanan Co.);

South Fork Maquoketa River, east county line to confluence with major unnamed creek (S4, T90N, R7W, Buchanan Co.);

Wapsipinicon River, south county line to west county line;

BUENA VISTA COUNTY

Little Sioux River, north county line to north county line (entire length in county);

North Raccoon River, south county line to the north line of the NW 1/4, SE 1/4, S12, T90N, R36W, Buena Vista Co.;

BUTLER COUNTY

Shell Rock River, east county line to north county line;

West Fork Cedar River, east county line to west county line;

CALHOUN COUNTY

Camp Creek, mouth (S7, T86N, R34W, Calhoun Co.) to confluence with unnamed creek (NE1/4, NE 1/4, S33, T87N, R34W, Calhoun Co.);

Cedar Creek, south county line to confluence with unnamed creek (S 1/2, S34, T86N, R32W, Calhoun Co.);

Lake Creek, mouth (S23, T86N, R34W, Calhoun Co.) to confluence with D.D. 13 (S33, T88N, R32W, Calhoun Co.);

North Raccoon River, south county line to west county line;

CARROLL COUNTY

Middle Raccoon River, south county line to confluence with unnamed creek (SE 1/4, S15, T84N, R35W, Carroll Co.);

North Raccoon River, east county line to north county line;

CEDAR COUNTY

Cedar River, south county line to west county line;

Rock Creek, mouth (S2, T79N, R3W, Cedar Co.) to confluence with West Rock Creek (S11, T81N, R3W, Cedar Co.);

Sugar Creek, south county line to confluence with unnamed creek (S35, T80N, R2W, Cedar Co.);

Wapsipinicon River, east county line to north county line;

CERRO GORDO COUNTY

Beaverdam Creek, south county line to confluence with unnamed creek (S12, T95N, R22W, Cerro Gordo Co.);

Shell Rock River, east county line to north county line;

Spring Creek, mouth (S28, T97N, R20W, Cerro Gordo Co.) to confluence with Blair Creek (S9, T97N, R20W, Cerro Gordo Co.);

Willow Creek, mouth (S3, T96N, R20W, Cerro Gordo Co.) to confluence with Clear Creek (S16, T96N, R21W, Cerro Gordo Co.);

Winnebago River, east county line to west county line (entire length in county);

CHEROKEE COUNTY

Little Sioux River, south county line to north county line;

Maple River, south county line to confluence with unnamed creek (N 1/2, S29, T91N, R39W, Cherokee Co.);

Mill Creek, confluence with Willow Creek (S1, T93N, R41W, Cherokee Co.) to north county line;

CHICKASAW COUNTY

Cedar River, south county line to west county line;

Crane Creek, east county line to confluence with unnamed creek (NE 1/4, S25, T95N, R11W, Chickasaw Co.);

Little Cedar River, mouth (S20, T94N, R14W, Chickasaw Co.) to west county line;

Wapsipinicon River, south county line to north county line;

CLAY COUNTY

Little Sioux River, west county line to north county line (entire length in county);

Lost Island Outlet, mouth (S35, T96N, R36W, Clay Co.) to County Road M 54 (S24, T96N, R36W, Clay Co.);

Muddy Creek, mouth (S15, T96N, R36W, Clay Co.) to County Road B 17 (north line, S23, T97N, R36W, Clay Co.);

Ocheyedan River, mouth (S13, T96N, R37W, Clay Co.) to confluence with Stoney Creek (S7, T96N, R37W, Clay Co.);

Prairie Creek, mouth (S26, T96N, R36W, Clay Co.) to confluence with unnamed creek (SE1/4, S35, T96N, R37W, Clay Co.);

Stoney Creek, mouth (S7, T96N, R37W, Clay Co.) to Highway 18 (S31, T96N, R37W, Clay Co.);

CLAYTON COUNTY

Bear Creek, mouth (S34, T92N, R4W, Clayton Co.) to west line of S23 T91N, R5W, Clayton Co.;

Bloody Run, mouth (S15, T95N, R3W) to source at Spook Cave;

Bloody Run Creek (a.k.a. Grimes Hollow), mouth (S36, T91N, R3W) to south county line;

Brownfield Creek, mouth to spring source (S31, T91N, R3W);

Buck Creek, mouth (S29, T93N, R2W, Clayton Co.) to west line of S9, T93N, R3W;

Cox Creek, mouth (S21, T92N, R5W, Clayton Co.) to south line S12, T91N, R6W, Clayton Co.;

Dry Mill Creek, mouth to west line of S9, T93N, R4W;

Elk Creek, mouth (S36, T92N, R4W, Clayton Co.) to south county line;

Ensign Creek, mouth (S28, T92N, R6W, Clayton Co.) to spring source (S29, T92N, R6W, Clayton Co.);

Hewett Creek, mouth to south line of S29, T92N, R6W;

Kleinlein Creek (a.k.a. Spring Creek), mouth to spring source (S10, T91N, R6W);

Maquoketa River, south county line to west county line;

Miners Creek, mouth to west line of S1, T92N, R3W;

Mink Creek, mouth (S30, T93N, R6W) to west county line;

Mossey Glen Creek, mouth (S3, T91N, R5W) to south line of S10, T91N, R5W, Clayton Co.;

North Cedar Creek, mouth (S8, T94N, R3W) to source;

Pecks Creek, mouth to south line of S15, T91N, R3W;

Pine Creek, mouth (S26, T91N, R4W) to confluence with Brownfield Creek (S25, T91N, R4W);

Point Hollow Creek (a.k.a. White Pine Creek), mouth (S31, T91N, R2W) to south county line;

Roberts Creek, mouth (SE 1/4, S25, T93N, R5W, Clayton Co.) to confluence with an unnamed creek (SE 1/4, S15, T95N, R6W, Clayton Co.);

Sny Magill Creek (a.k.a. Magill Creek), mouth to source;

South Cedar Creek (a.k.a. Cedar Creek), mouth (S33, T92N, R3W, Clayton Co.) to north line of S30, T93N, R3W, Clayton Co.;

Steeles Branch, mouth (S26, T91N, R4W) to south line S32, T91N, R4W, Clayton Co. (entire length in county);

Turkey River, confluence with Volga River to west county line;

Unnamed tributary to Sny Magill Creek (a.k.a. West Fork Sny Magill Creek), mouth (S7, T94N, R3W) to west line of S7, T94N, R3W;

Volga River, mouth (S26, T92N, R4W, Clayton Co.) to west county line;

CLINTON COUNTY

Elk River, mouth (S20, T83N, R7E, Clinton Co.) to confluence with North Branch Elk River (S10, T83N, R6E, Clinton Co.);

Wapsipinicon River, mouth (S13, T80N, R5E, Clinton Co.) to west county line (entire length in county);

CRAWFORD COUNTY

Boyer River, south county line to north county line;

DALLAS COUNTY

Des Moines River, east county line to north county line (entire length in county);

Middle Raccoon River, mouth (S9, T78N, R29W, Dallas Co.) to west county line (entire length in county);

North Raccoon River, mouth (S21, T78N, R27W, Dallas Co.) to north county line (S5, T81N, R29W, Dallas Co.) (entire length in county);

Raccoon River, east county line to confluence with North Raccoon River (S21, T78N, R27W, Dallas Co.);

DAVIS COUNTY

Des Moines River, east county line to north county line (entire length in county);

DECATUR COUNTY

Thompson River, Highway 69 (S35, T68N, R26W, Decatur Co.) to west county line;

DELAWARE COUNTY

Bloody Run Creek (a.k.a. Grimes Hollow), north county line to spring source (S3, T90N, R3W);

Coffins Creek, mouth (S19, T89N, R5W, Delaware Co.) to confluence with Prairie Creek (S29, T89N, R6W, Delaware Co.);

Elk Creek, north county line to confluence with unnamed creek (center, S13, T90N, R4W, Delaware Co.);

Fenchel Creek, mouth (S5, T90N, R6W) to Richmond Springs (center of S4, T90N, R6W);

Fountain Spring Creek (a.k.a. Odell Branch), mouth (SE 1/4, S10, T90N, R4W) to confluence with South Branch Fountain Spring Creek (SE 1/4, S16, T90N, R4W);

Little Turkey River, north county line to south line of S11, T90N, R3W;

Maquoketa River, south county line to north county line;

Sand Creek, mouth (S9, T88N, R5W, Delaware Co.) to confluence with major unnamed creek (SW 1/4, S11, T88N, R6W, Delaware Co.);

Schechtman Branch, mouth to south line of S14, T90N, R4W;

South Branch Fountain Spring Creek, mouth (S16, T90N, R4W) to spring source (S16, T90N, R4W);

South Fork Maquoketa River, mouth (S16, T90N, R6W, Delaware Co.) to west county line;

Spring Branch, mouth (S10, T88N, R5W) to major spring source, north of Highway 20 (S35, T89N, R5W, Delaware Co.);

Steeles Branch, north county line to west line of S5, T90N, R4W, Delaware Co. (entire length in county between S4, T90N, R4W and west line of S5, T90N, R4W);

Twin Springs Creek, mouth (S2, T90N, R4W) to spring source (S12, T90N, R4W);

DES MOINES COUNTY

Cedar Creek, mouth (S1, T69N, R5W, Des Moines Co.) to Geode Lake Dam;

Cedar Creek, west county line to confluence with unnamed creek (S18, T70N, R4W, Des Moines Co.);

Flint Creek, mouth (S28, T70N, R2W, Des Moines Co.) to confluence with unnamed creek (NW 1/4, S21, T71N, R4W, Des Moines Co.);

Skunk River, mouth (S8, T68N, R2W, Des Moines Co.) to east county line (entire length in county);

DICKINSON COUNTY

Little Sioux River, south county line to confluence with West Fork Little Sioux River (S7, T99N, R37W, Dickinson Co.);

DUBUQUE COUNTY

Bloody Run, mouth (S34, T90N, R2E) to west line of S21, T90N, R2E;

Catfish Creek, mouth (S5, T88N, R3E, Dubuque Co.) to source;

Cloie Branch, mouth (S5, T89N, R2E) to west line of S5, T89N, R2E;

Hogans Branch, mouth (S35, T89N, R1W) to west line of S9, T88N, R1W;

Little Maquoketa River, mouth (S26, T90N, R2E, Dubuque Co.) to north line of NE 1/4, S5, T88N, R1W, Dubuque Co.;

Middle Fork Little Maquoketa River, west line of S31, T90N, R1E to north line of S33, T90N, R1W;

Point Hollow Creek (a.k.a. White Pine Creek), north county line to spring source (S8, T90N, R2W);

Tete des Morts Creek (a.k.a. Tete des Morts River), mouth (S34, T88N, R4E, Dubuque Co.) to south county line (S34, T88N, R4E, Dubuque Co.);

EMMET COUNTY

Brown Creek, mouth (S24, T99N, R34W, Emmet Co.) to Highway 9 (S13, T99N, R34W, Emmet Co.);

Des Moines River, south county line to north county line;

East Fork Des Moines River, east county line to Tuttle Lake Outlet (S13, T100N, R32W, Emmet Co.);

FAYETTE COUNTY

Bass Creek, mouth (S3, T95N, R9W) to west line of S3, T95N, R9W;

Bear Creek, mouth (S8, T92N, R7W, Fayette Co.) to west line of S6, T92N, R7W;

Bell Creek, mouth (S10, T94N, R7W) to west line of S8,T94N, R7W;

Brush Creek, mouth (S26, T93N, R7W, Fayette Co.) to east line of S17, T92N, R7W, Fayette Co.;

Crane Creek, mouth (S31, T95N, R9W, Fayette Co.) to west county line;

Grannis Creek, mouth (S30, T93N, R7W), to west line of S36, T93N, R8W, Fayette Co.;

Little Turkey River, mouth (S18, T95N, R8W, Fayette Co.) to north county line;

Maquoketa River, east county line to north line of S24, T91N, R7W;

Mink Creek, east county line to west line of S15, T93N, R7W;

North Branch Volga River, mouth (S33, T93N, R9W, Fayette Co.) to confluence with unnamed creek (S8, T93N, R9W, Fayette Co.);

Otter Creek, mouth to confluence with unnamed tributary (a.k.a. Glovers Creek) in S22, T94N, R8W;

Turkey River, east county line to north county line;

Unnamed tributary to Otter Creek (a.k.a. Glovers Creek), mouth (S22, T94N, R8W) to west line of S15, T94N, R8W;

Volga River, east county line to confluence with an unnamed creek (NW 1/4, NE 1/4, SE 1/4, S24, T93N, R10W, Fayette Co.);

FLOYD COUNTY

Cedar River, east county line to north county line;

Little Cedar River, east county line to north county line;

Rock Creek, mouth (S24, T97N, R17W, Floyd Co.) to north county line (entire length in county);

Shell Rock River, south county line to west county line;

Winnebago River, mouth (S14, T95N, R18W, Floyd Co.) to west county line;

FRANKLIN COUNTY

Beaver Creek, east county line to road crossing (S28, T90N, R19W, Franklin Co.);

Beaverdam Creek, mouth (S19, T93N, R19W, Franklin Co.) to north county line;

Iowa River, south county line to west county line (entire length in county);

Maynes Creek, confluence with unnamed creek (S12, T91N, R19W, Franklin Co.) to confluence with unnamed creek (S30, T91N, R20W, Franklin Co.);

Otter Creek, mouth (S28, T92N, R19W, Franklin Co.) to County Road C 23 (north line of S31, T93N, R20W, Franklin Co.);

West Fork Cedar River, east county line to confluence with Beaverdam & Bailey Creeks (S19, T93N, R19W, Franklin Co.);

GREENE COUNTY

Cedar Creek, mouth (S33, T85N, R32W, Greene Co.) to north county line;

North Raccoon River, south county line to west county line (entire length in county);

GRUNDY COUNTY

Black Hawk Creek, east county line to confluence with Minnehaha Creek (S7, T87N, R16W, Grundy Co.);

Wolf Creek, east county line to confluence with unnamed creek (S32, T86N, R17W, Grundy Co.);

GUTHRIE COUNTY

Middle Raccoon River, Lake Panorama (S15, T80N, R31W, Guthrie Co.) to north county line;

Middle Raccoon River, east county line to Lake Panorama Outlet (S31, T80N, R30W, Guthrie Co.);

HAMILTON COUNTY

Boone River, west county line to north county line;

Des Moines River, west county line to west county line (entire length in county);

Eagle Creek, mouth (S6, T89N, R25W, Hamilton Co.) to north county line;

White Fox Creek, mouth (S33, T89N, R25W, Hamilton Co.) to north county line;

HANCOCK COUNTY

East Fork Iowa River, south county line to confluence with Galls Creek (S12, T95N, R24W, Hancock Co.);

West Fork Iowa River, south county line to County Road B 55 (north line of S31, T95N, R24W, Hancock Co.);

Winnebago River, east county line to north county line (entire length in county);

HARDIN COUNTY

Iowa River, south county line to north county line;

School Creek, mouth (S28, T89N, R20W, Hardin Co.) to confluence with unnamed creek (S16, T89N, R20W, Hardin Co.);

South Fork Iowa River, mouth (S4, T86N, R19W, Hardin Co.) to Highway 359 (S11, T88N, R22W, Hardin Co.);

HENRY COUNTY

Cedar Creek, mouth (S9, T71N, R7W, Henry Co.) to west county line (entire length in county);

Cedar Creek, upper extent of Geode Lake (S25, T70N, R5W, Henry Co.) to east county line;

Crooked Creek, west county line to north county line;

Skunk River, south county line to west county line (NW 1/4, S30, T73N, R7W, Henry Co.)(entire length in Henry Co.);

HOWARD COUNTY

Beaver Creek, mouth (S19, T100N, R12W, Howard Co.) to south line of S29, T100N, R13W;

Bohemian Creek, east county line to west line of S2, T97N, R11W;

Chialk Creek, mouth (S1, T98N, R11W, Howard Co.) to north line S36, T99N, R11W, Howard Co.;

Nichols Creek (a.k.a. Bigalks Creek), east county line to west line of S23, T100N, R11W;

Staff Creek, mouth to west line of S27, T100N, R14W;

Turkey River, east county line to confluence with South Branch Turkey River (S2, T98N, R12W, Howard Co.);

Upper Iowa River, all of the river located in Howard County;

Wapsipinicon River, south county line to west county line;

HUMBOLDT COUNTY

Des Moines River, south county line to north line S7, T92N, R30W, Humboldt Co.;

East Fork Des Moines River, mouth (S19, T91N, R28W, Humboldt Co.) to north county line;

IDA COUNTY

Little Sioux River, west county line to north county line;

Maple River, west county line to north county line;

IOWA COUNTY

Iowa River, east county line to north county line;

JACKSON COUNTY

Brush Creek, north line of S23, T85N, R3E to north line of S1, T85N, R3E;

Cedar Creek, mouth (S30, T85N, R3E) to east line of S29, T85N, R3E;

Little Mill Creek, mouth to west line of S29, T86N, R4E;

Maquoketa River, mouth (S7, T85N, R6E, Jackson Co.) to west county line (entire length in county);

Mill Creek, mouth (S18, T86N, R5E, Jackson Co.) to confluence with unnamed creek (S1, T86N, R3E, Jackson Co.);

Mineral Creek, mouth (S32, T85N, R1E, Jackson Co.) to west county line;

Ozark Spring Run, mouth (S32, T86N, R1E) to spring source in center of S32, T86N, R1E;

Pleasant Creek (a.k.a. Springbrook), confluence with unnamed creek (E 1/2, S11, T85N, R4E, Jackson Co.) to west line S15, T85N, R4E, Jackson Co.;

South Fork Big Mill Creek, mouth (S8, T86N, R4E, Jackson Co.) to west line S17, T86N, R4E, Jackson Co.;

Storybook Hollow, mouth (S7, T86N, R4E, Jackson Co.) to south line of S12, T86N, R3E, Jackson Co.;

Tete des Morts Creek (a.k.a. Tete des Morts River), north county line (S3, T87N, R4E, Jackson Co.) to confluence with unnamed creek (NW 1/4, S4, T87N, R3E, Jackson Co.);

Unnamed creek, mouth (S1, T86N, R3E, Jackson Co.) to west line S1, T86N, R3E, Jackson Co.;

Unnamed tributary to Lytle Creek, mouth (S7, T86N, R2E) to west line of S11, T86N, R1E;

JEFFERSON COUNTY

Crooked Creek, mouth (S1, T73N, R8W, Jefferson Co.) to east county line;

Skunk River, east county line (east line, S13, T72N, R8W, Jefferson Co.) to north county line (north line, S1, T73N, R8W, Jefferson Co.) (entire length in Jefferson Co.);

JOHNSON COUNTY

Cedar River, east county line to north county line;

Clear Creek, Interstate 380 (S34, T80N, R7W, Johnson Co.) to confluence with unnamed creek (S29, T80N, R8W, Johnson Co.);

Iowa River, south county line (south line, S32, T77N, R5W, Johnson Co.) to Coralville Dam (S22, T80N, R6W, Johnson Co.);

North Branch Old Mans Creek, mouth (S31, T79N, R7W, Johnson Co.) to north line S23, T79N, R8W, Johnson Co.;

JONES COUNTY

Buffalo Creek, mouth (S10, T84N, R4W, Jones Co.) to west county line;

Maquoketa River, east county line to north county line (entire length in county);

Mineral Creek, east county line to west line S29, T85N, R1W, Jones Co.;

Wapsipinicon River, south county line to west county line;

KEOKUK COUNTY

North Skunk River, mouth (S5, T74N, R10W, Keokuk Co.) to west county line;

Skunk River, east county line to confluence with North & South Skunk Rivers (S5, T74N, R10W, Keokuk Co.);

South English River, east county line to confluence with unnamed creek (S6, T77N, R13W, Keokuk Co.);

South Skunk River, mouth (S5, T74N, R10W, Keokuk Co.) to confluence with Olive Branch Creek (S30, T75N, R13W, Keokuk Co.);

KOSSUTH COUNTY

Buffalo Creek, mouth (S20, T97N, R28W, Kossuth Co.) to confluence with North Buffalo Creek (S4, T97N, R27W, Kossuth Co.);

East Fork Des Moines River, south county line to west county line;

LEE COUNTY

Des Moines River, mouth (S34, T65N, R5W, Lee Co.) to west county line (entire length in county);

Skunk River, mouth (S8, T68N, R2W, Lee Co.) to north county line (entire length in county);

LINN COUNTY

Bear Creek, mouth (S21, T84N, R8W, Linn Co.) to west county line;

Buffalo Creek, east county line to Highway 13 (S10, T86N, R6W, Linn Co.);

Cedar River, south county line to west county line;

East Otter Creek, confluence with Otter Creek (S7, T84N, R7W, Linn Co.) to confluence with unnamed creek (S 1/2, S28, T85N, R7W, Linn Co.);

Wapsipinicon River, east county line to north county line;

LOUISA COUNTY

Cedar River, mouth (S20, T75N, R4W, Louisa Co.) to north county line;

Iowa River, mouth to north county line (NW 1/4, S6, T76N, R5W, Louisa Co.) (entire length in county);

Long Creek, mouth (S1, T74N, R4W, Louisa Co.) to west county line;

LUCAS COUNTY

Chariton River, Rathbun Lake (S34, T71N, R20W, Lucas Co.) to Highway 14 (S31, T72N, R21W, Lucas Co.);

White Breast Creek, north county line to confluence with unnamed creek (W 1/2, NW 1/4, S6, T71N, R23W, Lucas Co.);

Wolf Creek, mouth (S15, T71N, R21W, Lucas Co.) to confluence with unnamed creek (NE 1/4, S36, T71N, R22W, Lucas Co.);

LYON COUNTY

Big Sioux River, south county line to north county line;

Little Rock River, mouth (S35, T98N, R46W, Lyon Co.) to confluence with unnamed creek (S10, T98N, R44W, Lyon Co.);

Otter Creek, mouth (S21, T98N, R44W, Lyon Co.) to south county line;

Rock River, south county line to north county line;

MADISON COUNTY

Middle River, east county line to west county line;

Thompson River, south county line to confluence with unnamed creek (NW 1/4, S7, T74N, R29W, Madison Co.);

MAHASKA COUNTY

Des Moines River, south county line to west county line (entire length in county);

North Skunk River, east county line to north county line;

MARION COUNTY

Des Moines River, east county line to west county line (entire length in county);

White Breast Creek, mouth to west county line;

MARSHALL COUNTY

Iowa River, east county line to Marshalltown Center St. Dam (S26, T84N, R18W, Marshall Co.);

Iowa River, confluence with Dowd Creek (S2, T85N, R19W, Marshall Co.) to north county line;

Minerva Creek, mouth (S2, T84N, R19W, Marshall Co.) to confluence with major unnamed creek (NW 1/4, S9, T85N, R20W, Marshall Co.);

Wolf Creek, north county line to north county line (S2, T85N, R17W, Marshall Co.) (entire length in county);

MITCHELL COUNTY

Beaver Creek, mouth to north line of S19, T99N, R15W;

Burr Oak Creek, mouth (S12, T98N, R16W, Mitchell Co.) to north line of S5, T98N, R16W, Mitchell Co.;

Cedar River, south county line to north county line;

Deer Creek, mouth (S23, T99N, R18W, Mitchell Co.) to west county line;

Little Cedar River, south county line to north county line;

Rock Creek, south county line (S14, T97N, R17W, Mitchell Co.) to north line of S26, T98N, R18W, Mitchell Co. (entire length in county between south line of S14, T97N, R17W and north line of S26, T98N, R18W);

Spring Creek, mouth to north line of S8, T97N, R16W;

Turtle Creek, mouth to east line of S7, T99N, R17W;

Wapsipinicon River, east county line to north line of S20, T100N, R15W;

MONONA COUNTY

Maple River, south line (S34, T85N, R43W, Monona Co.) to north county line;

MONROE COUNTY

Des Moines River, east county line to north county line (entire length in county);

MUSCATINE COUNTY

Cedar River, south county line to north county line;

Pine Creek, mouth (S21, T77N, R1E, Muscatine Co.) to confluence with unnamed creek (S26, T78N, R1W, Muscatine Co.);

Sugar Creek, mouth (S17, T78N, R2W, Muscatine Co.) to north county line;

O'BRIEN COUNTY

Little Sioux River, south county line to east county line;

Mill Creek, south county line to confluence with unnamed creek (NE 1/4, S9, T95N, R41W, O'Brien Co.);

PLYMOUTH COUNTY

Big Sioux River, south county line to north county line;

POLK COUNTY

Big Creek, upper extent of Big Creek Lake (S9, T81N, R25W, Polk Co.) to north county line;

Des Moines River, east county line to west county line (entire length in county);

Raccoon River, mouth (S10, T78N, R24W, Polk Co.) to west county line;

RINGGOLD COUNTY

Thompson River, east county line to north county line;

SAC COUNTY

Boyer River, south county line to confluence with unnamed creek (S6, T89N, R37W, Sac Co.);

Indian Creek, mouth (S24, T87N, R36W, Sac Co.) to north line (S20, T87N, R36W, Sac Co.);

North Raccoon River, east county line to north county line;

SCOTT COUNTY

Lost Creek, mouth (S15, T80N, R5E, Scott Co.) to confluence with unnamed creek (NW 1/4, S7, T79N, R5E, Scott Co.);

Wapsipinicon River, mouth (S13, T80N, R5E, Scott Co.) to north county line (NE 1/4, S1, T80N, R1E, Scott Co.) (entire length in county);

SIOUX COUNTY

Big Sioux River, south county line to north county line;

Rock River, mouth (S1, T95N, R48W, Sioux Co.) to north county line;

STORY COUNTY

South Skunk River, confluence with Squaw Creek (S12, T83N, R24W, Story Co.) to north county line;

TAMA COUNTY

Iowa River, east county line to west county line;

Raven Creek, mouth (S25, T83N, R16W, Tama Co.) to confluence with unnamed creek (S6, T82N, R16W, Tama Co.);

Salt Creek, east county line to confluence with South Branch Salt Creek (S29, T84N, R13W, Tama Co.);

UNION COUNTY

Thompson River, south county line to north county line;

Twelve Mile Creek, mouth (S36, T71N, R28W, Union Co.) to Twelve Mile Lake Dam (S12, T72N, R30W, Union Co.);

VAN BUREN COUNTY

Cedar Creek, east county line (SE 1/4, S12, T70N, R8W) to east county line (NE 1/4, S12, T70N, R8W);

Des Moines River, south county line to west county line (entire length in county);

WAPELLO COUNTY

Des Moines River, south county line to west county line (entire length in county);

South Avery Creek, mouth (S31, T73N, R14W, Wapello Co.) to west county line;

WARREN COUNTY

Des Moines River, east county line to north county line (entire length in county);

Middle River, confluence with Clanton Creek (S28, T76N, R25W, Warren Co.) to west county line;

White Breast Creek, east county line to south county line;

WASHINGTON COUNTY

Crooked Creek, south county line to confluence with East and West Fork Crooked Creeks (S24, T74N, R7W, Washington Co.);

English River, mouth (S11, T77N, R6W, Washington Co.) to confluence with South English River (S6, T77N, R9W, Washington Co.);

Iowa River, east county line (east line, S36, T77N, R6W, Washington Co.) to north county line (north line, S2, T77N, R6W, Washington Co.) (entire length in Washington Co.);

Long Creek, east county line to confluence with South Fork Long Creek (S26, T75N, R6W, Washington Co.);

Skunk River, south county line (SE 1/4, S36, T74N, R8W, Washington Co.) to west county line (SW 1/4, S6, T74N, R9W, Washington Co.) (entire length in county);

South English River, mouth (S6, T77N, R9W, Washington Co.) to west county line;

WEBSTER COUNTY

Boone River, mouth (S36, T87N, R27W, Webster Co.) to east county line;

Brushy Creek, west line (S16, T88N, R27W, Webster Co.) to confluence with unnamed creek (S8, T88N, R27W, Webster Co.);

Brushy Creek, mouth (S15, T87N, R27W, Webster Co.) to south line S34, T88N, R27W, Webster Co.;

Deer Creek, mouth (S24, T90N, R29W, Webster Co.) to north line S16, T90N, R29W, Webster Co.;

Des Moines River, south county line to north county line (entire length in county);

Lizard Creek, mouth (S19, T89N, R28W, Webster Co.) to confluence with D.D. #3 (S35, T90N, R30W, Webster Co.);

South Branch Lizard Creek, mouth (S23, T89N, R29W, Webster Co.) to west line S32, T89N, R29W, Webster Co.;

WINNEBAGO COUNTY

Winnebago River, south county line to north county line;

WINNESHIEK COUNTY

Bear Creek (a.k.a. South Bear Creek), east county line to source (a.k.a. Mestad Springs, S29, T100N, R7W);

Bohemian Creek, mouth to west county line;

Canoe Creek, mouth (S25, T99N, R7W, Winneshiek Co.) to west line of S8, T99N, R8W, Winneshiek Co.;

Coon Creek, mouth to road crossing in NW 1/4, S13, T98N, R7W;

Dry Run, mouth to west line of S36, T98N, R9W;

East Pine Creek, mouth (S28, T100N, R9W) to north county line (S10, T100N, R9W);

Martha Creek, mouth to west line of S13, T99N, R10W;

Middle Bear Creek, mouth to north line of S16, T100N, R7W;

Nichols Creek (a.k.a. Bigalk Creek), mouth to west county line;

North Bear Creek, mouth to north county line;

North Canoe Creek, mouth to north line of S2, T99N, R8W;

Paint Creek (a.k.a. Pine Creek), east county line to confluence with unnamed creek (SE 1/4, S11, T99N, R7W, Winneshiek Co.);

Pine Creek, mouth (S10, T99N, R9W) to north county line;

Pine Creek, mouth (S26, T99N, R7W) to north line of S21, T99N, R7W;

Silver Creek, mouth to north line of S26, T100N, R9W;

Smith Creek (a.k.a. Trout River), mouth (S21, T98N, R7W) to south line of S33, T98N, R7W;

Ten Mile Creek, mouth to confluence with Walnut Creek (S18, T98N, R9W);

Trout Creek, mouth (S9, T98N, R7W) to confluence with Smith Creek (S21, T98N, R7W);

Trout Creek, mouth (S23, T98N, R8W) to confluence with unnamed tributary (a.k.a. Trout Run) in S27, T98N, R8W;

Turkey River, south county line to west county line;

Twin Springs creek, mouth (S17, T98N, R8W) through one half mile reach;

Unnamed creek, mouth (SE 1/4, S11, T99N, R7W, Winneshiek Co.) to north line S12, T99N, R7W, Winneshiek Co.;

Unnamed tributary to Trout Creek (a.k.a. Trout Run), mouth (S27, T98N, R8W, Winneshiek Co.) to south line of S27, T98N, R8W;

Unnamed tributary to Upper Iowa River (a.k.a. Casey Springs Creek), mouth (S25, T99N, R9W) to west line of S26, T99N, R9W;

Unnamed tributary to Upper Iowa River (a.k.a. Coldwater Creek), mouth (S32, T100N, R9W) to north county line;

Upper Iowa River, east county line to west county line;

Yellow River, east county line to confluence with North Fork Yellow River (S13, T96N, R7W);

WOODBURY COUNTY

Little Sioux River, confluence with Parnell Creek (S25, T86N, R44W, Woodbury Co.) to east county line;

Maple River, south county line to east county line;

WORTH COUNTY

Deer Creek, east county line to confluence with unnamed creek (east line, S28, T100N, R19W, Worth Co.);

Elk Creek, mouth (S27, T99N, R20W, Worth Co.) to Highway 105 (S5, T99N, R22W, Worth Co.);

Shell Rock River, south county line to north county line;

Winans Creek, mouth (S36, T98N, R22W, Worth Co.) to N/S road crossing (S 1/2, S25, T98N, R22W, Worth Co.);

Winnebago River, south county line (S32, T98N, R21W, Worth Co.) to south county line (S34, T98N, R22W, Worth Co.) (entire length in county);

WRIGHT COUNTY

Boone River, south county line to confluence with Middle Branch Boone River (S2, T93N, R26W, Wright Co.);

Eagle Creek, south county line to confluence with Drainage Ditch No. 9 (S30, T91N, R25W, Wright Co.);

East Fork Iowa River, mouth (S19, T93N, R23W, Wright Co.) to north county line;

Iowa River, east county line (S13, T90N, R23W, Wright Co.) to confluence with East and West Fork Iowa Rivers (S19, T93N, R23W, Wright Co.) (entire length in county);

West Fork Iowa River, mouth (S19, T93N, R23W, Wright Co.) to north county line;

White Fox Creek, south county line to confluence with unnamed creek (E 1/2, SE 1/4, S36, T91N, R25W, Wright Co.).

**567—72.51(455B) Protected stream designation procedure.**

**72.51(1)** *Eligible petitioners.* Any state agency, governmental subdivision, association or interested person may petition the commission, according to the rules of this division, to designate a stream as a protected stream. However, if the stream had been the subject of a similar petition filed within the past two years, the commission shall not accept a petition except upon a majority vote.

**72.51(2)** *Content of petition.* The petition for protected stream designation shall contain the following: (1) names, addresses, and the telephone numbers of the petitioners; (2) location of the stream nominated for designation; (3) reasons why the stream is nominated, each reason being stated in a separate numbered paragraph; and (4) adequate evidence supporting the reasons for nomination. Eleven copies of the petition shall be filed with the department.

**72.51(3)** *Department review of petition.* Upon receipt of a petition for designation of a stream as a protected stream, the department shall make an initial determination as to whether the petition complies with 72.51(2) and whether the stream has a sufficient number of environmental amenities listed in 72.51(7) that further investigation is warranted. If the department finds the petition not in compliance with 72.51(7) or that further investigation is not warranted, agency proceedings to designate the nominated stream as protected shall cease and the petitioner shall be notified of the reasons for refusing to accept and act upon the petition. A petitioner aggrieved by the department's decision may appeal the decision within 30 days to an executive committee of at least three commission members.

**72.51(4)** *Notice of initiation of protected stream designation proceedings.* Upon department acceptance of a petition nominating a stream for protected stream designation, the department shall do the following:

*a. Notice of intended action.* Publish a notice of intended action in the Iowa Administrative Bulletin, the content of which identifies the nominated stream and requests public input into the protected stream designation procedure.

*b. Commission notification.* Notify the commission at the next meeting of the filing of a petition for protected stream designation.

*c. Interested agency notification.* Notify regional planning commissions, county boards of supervisors, city councils, soil conservation districts through which the nominated stream runs, the fish and wildlife bureaus of the department, the soil conservation and water quality division of the department of agriculture and land stewardship, the department of agriculture and land stewardship and the Iowa geological survey.

*d. Countywide notification.* Publish notice of the filing of the petition in a newspaper of general circulation for two consecutive weeks in each county in which the nominated stream is located.

**72.51(5)** *Department investigation report.* Upon department acceptance of a petition nominating a stream for protected stream designation, the department shall do the following:

*a. Investigation.* Supervise a field staff investigation of the stream nominated for protected stream status for the purpose of assessing the effect that extending department floodplain regulation would have on the factors listed in 72.51(7);

*b. Report.* File a report with the commission at a monthly commission meeting held within one year after the notice of intended action was published; the report shall specifically state findings of fact or each reason alleged in the petition in support of a protected stream designation and convey a staff recommendation, including any minority recommendations and recommendations of other governmental bodies and interested persons on whether or not the stream should be regulated;

*c. Interagency coordination.* Invite the fish and wildlife bureaus of the department, the Iowa geological survey, and any other agency or governmental subdivision expressing an interest in the proceeding to participate in the field investigation and preparation of the report, and request their assessment of whether extension of department jurisdiction over the nominated stream would have either an adverse or beneficial impact on their agency's water resource programs.

**72.51(6)** *Commission determination.* After receipt of the director's report and the public has had an opportunity to submit written comments and make an oral presentation, the commission shall make a determination in writing whether or not to designate the stream identified in the petition as a protected stream, except that the commission may continue the proceeding as needed to collect or analyze additional data. The commission's determination shall be based on the factors listed in 72.51(7), as applied to the nominated stream and its floodplain, and to other relevant streams and floodplains located in the same watershed as the nominated stream, as well as any underground water system hydrologically connected to the nominated stream.

**72.51(7)** *Basis for protected stream designation.* Commission determination of whether or not to classify a stream as a protected stream shall be based on the balancing of the costs and benefits of possible floodplain development as it would affect the following factors: (1) maintenance of stream fishery capacity; (2) water quality preservation; (3) wildlife habitat preservation; (4) flood control; (5) floodplain management; (6) existing floodplain developments; (7) soil erosion control; (8) the needs of agriculture and industry; (9) the maintenance and enhancement of public recreational opportunities; (10) the public's health, welfare and safety; (11) compatibility with the state water plan; (12) property and water rights of landowners; (13) other factors relevant to the control, development, protection, allocation, and utilization of the nominated stream and water hydrologically connected to it.

**567—72.52(455B) Protected stream declassification procedure.** The procedure for removing a stream from the list of protected streams in 72.50(2) shall be the same as the rules for designation of a stream as a protected stream, except that all notices, investigations and reports shall be addressed to the issue of declassification.

These rules are intended to implement Iowa Code sections 455B.262, 455B.264, 455B.270, 455B.275, 455B.277, 459.102 and 459.301.

# ARC 8636C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

## Notice of Intended Action

### Proposing rulemaking related to dams and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 73, "Approval, Construction, Use, Maintenance, Removal, Inspections, and Safety of Dams," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.263(8) and 455B.276(1).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 455B, subchapter III, part 4.

*Purpose and Summary*

Proposed Chapter 73 regulates dams in the state, including construction, inspections, and owner responsibilities. A state dam safety program reduces the risks of dam failures that can lead to loss of life and property damage. Iowa's dam safety rules closely follow the current best practices and national standards. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Jonathan Garton
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jonathan.garton@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held by conference call as follows:

| | |
|---|---|
| January 28, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| January 29, 2025<br>1 to 2 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking for meeting information.

Persons who wish to attend a conference call should contact Jonathan Garton at jonathan.garton@dnr.iowa.gov. A conference call number will be provided prior to the hearing.

Persons who wish to make oral comments at a conference call public hearing must submit a request to Mr. Garton prior to the hearing to facilitate an orderly hearing.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at jonathan.garton@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.201.1018 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.201.1018 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 73 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 73
## APPROVAL, CONSTRUCTION, USE, MAINTENANCE, REMOVAL, INSPECTIONS, AND SAFETY OF DAMS

### DIVISION I
### SCOPE AND DEFINITIONS

**567—73.1(455B) Scope and applicability.** The department regulates the storage of water and the construction and maintenance of dams. Any person who desires to construct, repair, modify, abandon, or remove a dam has a responsibility to determine whether approval is required from the department prior to undertaking any such work.

**567—73.2(455B) Definitions.** The following definitions apply to this chapter:

*"Abandonment"* means to render a dam nonimpounding by dewatering and filling the reservoir created by that dam with solid materials and by diverting the natural drainage around the site.

*"Acre-foot"* means a volume of water that would cover one acre of land one foot deep, equal to 43,560 cubic feet of water.

*"Adverse consequences"* means negative impacts that may occur upstream, downstream, or at locations remote from the dam. The primary concerns are loss of human life, economic loss including but not limited to property damage, public damages, disruption of public utilities, and environmental impact.

*"Appurtenant structures"* means structures such as spillways, either in the dam or separate therefrom; the reservoir and its rim; low-level outlet works; and water conduits such as tunnels, pipelines, or penstocks, occurring through either the dam or its abutments.

*"Auxiliary spillway"* means any secondary spillway that is designed to be operated infrequently.

*"Dam owner"* means any person who owns, controls, operates, maintains, or manages a dam.

*"Hazard potential"* means a classification based on the possible incremental adverse consequences that result from the release of water or stored contents due to a failure or misoperation of the dam or appurtenances. The hazard potential classification of a dam does not reflect in any way on the current condition of the dam and its appurtenant structures (e.g., safety, structural integrity, or flood routing capacity).

*"Height of dam"* means the vertical distance from the top of the dam to the natural bed of the stream or water source measured at the downstream toe of the dam or to the lowest elevation of the outside limit of the dam if it is not across a water source.

*"Incremental consequence"* means the difference, under the same conditions (e.g., flood, earthquake, or other event), between the consequences that are likely to occur from the failure or misoperation of the dam and appurtenances as compared to the consequences that are likely to occur without such failure or misoperation.

*"Permanent storage"* means the volume of water expressed in acre-feet that is stored upstream from a dam or in an impoundment up the level of the principal outlet works of the structure.

*"Probable"* means more likely than not to occur; reasonably expected; realistic.

*"Probable maximum flood"* means the flood that may be expected from the most severe combination of critical meteorological and hydrologic conditions that are reasonably possible in the region, and is derived from probable maximum precipitation, the theoretical greatest depth of precipitation for a given duration that is physically possible over a particular drainage area at a certain time of year. The probable maximum precipitation within designated zones in Iowa has been determined by the National Weather Service. The probable maximum flood for any location within Iowa is determined by the department.

*"Temporary storage"* means the volume of water expressed in acre-feet that may be stored upstream from a dam or in an impoundment above the level of the principal outlet works.

**567—73.3(455B) Regulated dams.**

**73.3(1)** *Thresholds.* Dams meeting any of the following thresholds shall be regulated by the department:

*a.* A dam with a height of at least 25 feet and a storage of 15 acre-feet or more at the top of the dam elevation; or

*b.* A dam with a storage of 50 acre-feet or more at the top of the dam elevation and a height of at least 6 feet; or

*c.* A dam that is assigned a hazard potential of high hazard.

**73.3(2)** *Exceptions.* Road embankments or driveways with culverts are exempt unless such structure serves, either primarily or secondarily, a purpose commonly associated with dams, such as the temporary storage of water for flood control.

**73.3(3)** *New construction.* Before construction begins, department approval is required for construction of any dam meeting the thresholds of a regulated dam. The proposed dam must meet the criteria outlined in this chapter.

**73.3(4)** *Existing dams.*

*a.* Department approval is required for:

(1) Modification, repair, alteration, breach, abandonment, or removal of any existing dam or appurtenant structure beyond the scope of ordinary maintenance if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

(2) Any change in operating procedures if the height of the dam or storage of the dam exceeds the applicable thresholds in this rule.

*b.* Spillway reconstruction, changes in normal water level, and modification of the dam embankment or spillway are examples of modifications that require approval. The dam must meet the criteria outlined in this chapter. Dams found to be unsafe according to 567—73.33(455B) shall be repaired or removed.

**73.3(5)** *Required upgrades.* Improvements may be required for existing dams in order to reduce the risk of a dam failure.

*a.* Existing dams assigned a high hazard potential or significant hazard potential that have been inspected or analyzed and found not to meet the criteria in this chapter will be required to meet the requirements outlined in this chapter for the appropriate hazard potential.

*b.* Existing dams assigned a low hazard potential that have been inspected or analyzed and found to have a significant hazard potential or high hazard potential shall be required to be upgraded to meet the requirements outlined in this chapter for the appropriate hazard potential.

**567—73.4(455B) Assignment of hazard potential.** All existing and proposed dams reviewed by the department shall be assigned a hazard potential. Anticipated future land and impoundment use shall be considered in the determination of hazard potential. The hazard potential shall be determined using the following criteria:

**73.4(1)** *Low hazard.* A dam shall be classified as "low hazard" if failure of the dam would result in no probable loss of human life, low economic losses, and low public damages.

**73.4(2)** *Significant hazard.* A dam shall be classified as "significant hazard" if failure of the dam would result in no probable loss of human life but may damage residential structures or industrial, commercial, or public buildings; may negatively impact important public utilities or moderately traveled roads or railroads; or may result in significant economic losses or significant public damages.

**73.4(3)** *High hazard.* A dam shall be classified as "high hazard" if located in an area where failure would result in probable loss of human life.

**73.4(4)** *Consideration of changes affecting hazard potential.* In locating the site of a dam and in obtaining easements and rights-of-way, the applicant shall consider the impacts to the hazard potential of a dam from anticipated changes in land use downstream or adjacent to the impoundment, the operation of the dam, and the potential liability of the dam owner.

**73.4(5)** *Changes in hazard potential.* Any future changes in downstream land use, development, impoundment use, or critical hydraulic structures shall require a reevaluation of the hazard potential of the dam. If the hazard potential of the dam changes, the dam shall be required to meet all applicable criteria for that hazard potential. This may require additional increases in spillway capacity for the dam. The owner and any other persons responsible for the construction and operation of the dam shall assume all risks for future costs to upgrade a dam in the event there is a change in hazard potential.

**567—73.5** to **73.9** Reserved.

DIVISION II
APPROVAL PROCESS

**567—73.10(455B) Review and approval process for dam construction, modification, abandonment, or removal.**

**73.10(1)** *Application process.* Application materials are provided by the department. The application shall be submitted by or on behalf of the person or persons who will be the future dam owner or owners. The application shall be signed by the applicant or a duly authorized agent. Completed

applications along with supporting information shall be submitted to the department through an online application system or mailed to Iowa Department of Natural Resources, Attn: Joint Application, 502 East 9th Street, Des Moines, Iowa 50319. For dam repairs, abandonment, or removal, the department may waive the requirements of the application process outlined in this rule if the requirements are unnecessary for the application approval or if the dam has been designated as unsafe and immediate temporary emergency stabilization repairs are required to prevent failure of the dam. Permanent repairs or modifications will require review and approval.

**73.10(2)** *Preliminary application packet.* The preliminary application packet includes the joint application form and requires submittal of preliminary design data prepared by or under supervision of a professional engineer licensed in the state of Iowa or by an engineer working for the United States government. The preliminary design data packet shall contain a report summarizing the preliminary design, hydrologic data and reservoir routing, a hazard potential analysis, preliminary design drawings, the soils and geotechnical engineering analysis, and a list of the engineering references used as the basis for design and construction.

**73.10(3)** *Project review.* The department shall review a preliminary application packet and provide feedback or concurrence on the initial design and assumptions. After concurrence with the preliminary application packet and upon reception of the final submittal as required by 73.10(4), the department will review the final submittal and issue a decision based on whether the project meets criteria for approval outlined in this chapter.

**73.10(4)** *Final submittal.* After the department's review of and concurrence with the preliminary submittal, the engineering plans and other engineering information shall be certified by a professional engineer licensed in the state of Iowa, unless prepared by an engineer working for the United States government, and submitted with the following information:

*a.* One complete set of certified construction plans;

*b.* One complete set of construction specifications;

*c.* An operating plan, if required;

*d.* Easements, if required;

*e.* For high hazard dams, an emergency action plan; and

*f.* An engineering design report documenting all aspects of the design of the dam and how the design of the dam meets the criteria outlined in this chapter. The engineering design report shall include the following: hazard potential analysis; hydrology and hydraulic calculations; embankment design and foundation analysis; and structural calculations, where applicable.

**73.10(5)** *Public notice.* Public notice shall be issued by the department to inform persons who may experience adverse consequences by the permitted project. Adverse consequences may occur through maintenance of the dam and appurtenant structures, spillway discharges, temporary ponding of floodwater behind the dam, or failure of the dam. It is the applicant's responsibility to submit sufficient information with the preliminary application packet and on request to enable the department to accurately identify the owners, occupants, and addresses of affected lands.

**73.10(6)** *Project approval or disapproval.*

*a. Approval.* Issuance of a dam construction permit shall constitute approval of a project. The permit may include one or more special conditions when reasonably necessary to implement relevant criteria.

*b. Disapproval.* A letter to the applicant denying the application shall constitute disapproval of a project.

*c. Notice of decision.* Copies of the decision shall be mailed or electronically transmitted to the applicant and any person who commented.

**73.10(7)** *Appeal of decision.* Any person aggrieved by a decision issued under this chapter may file a notice of appeal as governed by 567—Chapter 7.

**73.10(8)** *General conditions.* Department approvals of a project shall be subject to the following conditions:

*a. Change in ownership.* The dam owner and any successor in interest to the real estate on which the project or activity is located shall be responsible for notifying the department of change in ownership.

*b. Maintenance.* The dam owner has a responsibility to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping the spillway free of obstructions, repairing deteriorated structural elements, and performing required maintenance on mechanical appurtenances such as gates.

*c. Responsibility.* No legal or financial responsibility arising from the construction or maintenance of the approved works shall attach to the state of Iowa or the department due to the issuance of an approval or administrative waiver.

*d. Lands.* The applicant shall be responsible for obtaining such government licenses, permits, and approvals, and lands, easements, and rights-of-way which are required for the construction, operation, and maintenance of the authorized work.

*e. Change in plans.* No material change from the plans and specifications approved by the department shall be made unless authorized in writing by the department.

*f. Revocation of permit.* A department permit may be revoked if construction is not completed within the period of time specified in the department permit.

*g. Performance bond.* A performance bond may be required when necessary to secure the construction, operation, and maintenance of approved projects and activities in a manner that does not create a hazard to the public's health, welfare, and safety. The amount and conditions of the bond shall be specified as special conditions in the department permit.

*h. Construction inspection.* For high hazard and significant hazard dams, construction shall be inspected by or under the supervision of a professional licensed engineer in the state of Iowa. The engineer shall prepare and certify as-built plans after completion and a report documenting that the dam was constructed in general conformance with the approved plans (or approved changes) and outlining unusual circumstances encountered during construction. The water storage permit shall not be issued until the department accepts the as-built plans and report.

*i. Postconstruction department inspections.* A department approval that authorizes construction or modification, operation, and maintenance of a dam for which ongoing inspections are required by these rules shall include a condition stating that the department shall have access to the dam site for such inspections at a reasonable time after notification of the dam owner.

*j. Owner inspections.* For high hazard and significant hazard dams, the owner is responsible for annual inspections and submission of written inspection reports to the department as required in subrule 73.30(4).

**567—73.11(455B) Water storage permits.**

**73.11(1)** A water storage permit shall be required for all regulated dams in order to legally impound water. No water shall be impounded by a dam or reservoir prior to issuance of a water storage permit.

**73.11(2)** Application for a dam construction permit shall constitute application for a water storage permit if the appropriate fee (as stated in 567—subrule 50.4(2)) is received with the application.

**73.11(3)** A water storage permit shall be issued upon a finding by the department that the dam and reservoir are safe to impound water within the conditions prescribed in the dam construction permit and the project meets the following conditions:

*a.* The proposed storage is for a specified beneficial use such as human or livestock water supply, flood control, water quality, recreation, aesthetic value, erosion control, or low-flow augmentation.

*b.* The impounding structure can be operated in a manner that will not adversely affect any applicable protected flow in the impounded stream. Protected flows are listed in 567—Chapter 52.

*c.* For high hazard and significant hazard dams, the water storage permit will not be issued until as-built plans and a construction report have been submitted documenting that the dam has been

constructed in general conformance with the approved plans and conditions of the dam construction permit and until the department has conducted an inspection of the dam.

**73.11(4)** A water storage permit may be modified, canceled, or suspended pursuant to Iowa Code section 455B.271. Conditions of cancellation or suspension of water storage permits shall include draining the lake with any available low-level drain and may include dewatering with other methods or breaching of the dam.

**567—73.12** to **73.14** Reserved.

DIVISION III
CRITERIA FOR APPROVAL

**567—73.15(455B) General criteria.**

**73.15(1)** *Required findings.* The department shall approve the construction, repair, modification, abandonment, or removal of a dam only after finding that the project is designed in accordance with accepted engineering practice and methods, and in a manner consistent with the applicable department criteria in this rule.

**73.15(2)** *Waiver.* A request for a waiver to this chapter shall be submitted in writing pursuant to 561—Chapter 10. The contents of a petition for waiver shall include information pursuant to 561—10.9(17A,455A).

**567—73.16(455B) Lands, easements, and rights-of-way.** An application for approval of a dam project shall include information showing the nature and extent of lands, easements, and rights-of-way that the applicant has acquired or proposes to acquire to satisfy the following criteria:

**73.16(1)** Ownership or perpetual easements shall be obtained for the area to be occupied by the dam embankment, spillways, and appurtenant structures, and the permanent or maximum normal pool.

**73.16(2)** Ownership or easements shall be obtained for temporary flooding of areas that would be inundated by the flood pool up to the top of dam elevation and for spillway discharge areas.

**73.16(3)** Easements covering areas affected by temporary flooding or spillway discharges shall include provisions prohibiting the erection and usage of structures for human habitation or commercial purposes without prior approval by the department.

**73.16(4)** As a condition of granting approval of a dam rated less than high hazard, the applicant may be required to acquire control over lands downstream from the dam as necessary to prevent downstream development that would affect the hazard classification of the dam.

**567—73.17(455B) Emergency action plans for high hazard dams.**

**73.17(1)** *Emergency action plan required.* All high hazard dams shall be required to have an approved emergency action plan on file with the department. The plan shall include the following:

*a.* A statement of purpose;
*b.* A project description;
*c.* An emergency response process;
*d.* An emergency notification plan with flowchart;
*e.* Responsibilities of all parties;
*f.* A list of emergency preparedness and plan maintenance activities; and
*g.* Inundation maps or another acceptable description of the inundated area.

**73.17(2)** *Emergency action plan maintenance.* The owner of the dam shall keep the emergency action plan up to date. Contact information shall be verified in the plan at least once a year, and an exercise shall be performed at least every five years. The owner of the dam shall keep an up-to-date copy of the emergency action plan on file with the department and with the local county emergency manager.

**567—73.18(455B) Encroachment on a confinement feeding operation structure.** A dam shall not be constructed or modified so that the ordinary high water of the lake, pond, or reservoir created by the dam

is closer than the following distances from a confinement feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the confinement feeding operation structure to the water edge of the lake, pond, or reservoir for a pool level at the elevation of the crest of the auxiliary spillway or at the top of dam elevation if the dam does not have an auxiliary spillway.

**73.18(1)** The minimum separation between a water source other than a major water source and a confinement feeding operation structure is 500 feet.

**73.18(2)** The minimum separation between a major water source and a confinement feeding operation structure is 1,000 feet or such distance that the structure is not located on land that would be inundated by Q100, whichever is greater.

**567—73.19(455B) Hydrologic and hydraulic criteria.**

**73.19(1)** *Hydrology and hydraulic calculations.* Hydrology and hydraulic calculations shall be submitted in the design report documenting the methods and analysis followed in modeling software selection, inflow design hydrograph determination, and reservoir routing. The hydrology and hydraulics section of the design report shall include design references, inflow hydrograph, reservoir stage storage, and stage discharge curves and clearly identify peak inflows, peak discharges, and reservoir elevations for the design floods.

**73.19(2)** *Design floods.* The specified freeboard design floods in the table below shall be passed without overtopping of the dam or the dam shall be designed to withstand such overflow. The specified spillway design flood in the table below shall be passed by the principal spillway without need for operation of an auxiliary spillway unless the auxiliary spillway is designed such that erosion is not expected during operation.

| Hazard Potential | Freeboard Design Flood | Spillway Design Flood |
|---|---|---|
| Low Hazard | Q100 | Q10 |
| Significant Hazard | Q1000 | Q50 |
| High Hazard | Probable Maximum Flood | Q100 |

**73.19(3)** *Precipitation amounts.* The National Oceanic and Atmospheric Administration's NOAA Atlas 14, Precipitation-Frequency Atlas of the United States, Volume 8, Version 2.0, dated 2013, shall be used for the Q10–Q1000 frequency storm events. NOAA Hydrometeorological Report No. 51, Probable Maximum Precipitation Estimates, United States, East of the 105th Meridian, dated 1978, shall be used for the probable maximum precipitation.

**73.19(4)** *Spatial and temporal rainfall distributions and storm durations.* The design report shall document the sources and methodologies for inflow hydrograph development. Distributions and durations that produce the highest impoundment water level shall be used for design.

**73.19(5)** *Spillway discharge capacity.* The spillway discharge capacity shall be sufficient to evacuate at least 80 percent of the volume of water temporarily stored during the principal spillway design flood within ten days. If this cannot be accomplished, the auxiliary spillway and freeboard design flood routings shall be made beginning with the impoundment level at the ten-day drawdown elevation.

**73.19(6)** *Incremental consequence analysis.* An inflow design flood based on an incremental consequence analysis may be developed and submitted to the department for review as an alternative to the design floods stated in 73.19(2). The design flood selected using incremental consequence analysis is the flood above which there is a negligible increase in downstream water surface elevation, velocity, and consequences due to failure of the dam when compared to the same flood without failure. If the department concurs with the analysis, the freeboard design storm may be reduced. The minimum design flood for a high hazard dam shall be Q500. The minimum design flood for low hazard and significant hazard dams shall be Q100.

**567—73.20(455B) Spillway design requirements.**

**73.20(1)** Spillways shall be designed to operate safely for the life of the structure and at the discharges and pressures that would be experienced under all flow conditions, including the freeboard design flood.

**73.20(2)** Spillways shall be provided with a means of piping and seepage control (e.g., drainage diaphragms), antivortex devices, trash racks, or other inlet debris control measures, and stable outlets capable of handling design exit flow velocities.

**73.20(3)** When a conduit is proposed to be used in a high hazard or significant hazard dam, detailed hydraulic, hydrologic, and structural computations supporting selection of the size and type of pipe to be used shall be provided by the applicant.

**73.20(4)** Detailed drawings and specifications relating to the installation of the pipe shall include, but not be limited to, construction measures that adequately address critical load bedding, backfill, compaction, joints, and seepage precautions related to installation of the pipe.

**73.20(5)** Structural computations and drawings shall be submitted for all proposed concrete structures. Drawing details, as necessary, shall be provided showing reinforcement, cutoffs, underdrains/filters, waterstops, construction joints, control joints, and any other details necessary to construct.

**73.20(6)** If an auxiliary spillway is proposed, it shall be analyzed, designed, and constructed adequately to establish and maintain stability during the passage of design flows without blockage or breaching. Open-channel auxiliary spillways shall have a minimum depth of 2 feet and minimum width of 10 feet and be designed with appropriate curvature and slopes to prevent excessive erosion.

**73.20(7)** A gated low-level outlet shall be provided for high hazard and significant hazard dams. The gated low-level outlet shall be capable of draining at least 50 percent of the permanent storage behind the dam within ten days. The pipe conduit shall be designed so that negative pressures will not occur at any point.

**567—73.21(455B) Embankment design requirements.**

**73.21(1)** The applicant shall document the engineering standards and design references used for dam embankment design. Drawing details, as necessary, shall be provided showing embankment slopes, required additional fill for anticipated settlement, top width, foundation preparation, core trench or cutoff wall, fill materials and methodology, internal seepage controls, and embankment erosion protection.

**73.21(2)** A geotechnical report shall be submitted for high hazard and significant hazard dams documenting the evaluation of slope stability requirements, anticipated vertical settlement and horizontal elongation, seepage and underseepage potential, whether cathodic protection is needed for metal pipes, and proper construction practices for the soil types and conditions encountered. A stability evaluation shall include end-of-construction, steady-state seepage and sudden-drawdown conditions.

**567—73.22(455B) Operating plan.** A written operating plan shall be prepared for any dam with gates or other movable structures that must operate or be operated during times of flood or to provide a minimum downstream release rate. Development of the operating plan is considered part of the design process. An operating plan shall include, at a minimum, the following items:

**73.22(1)** *Responsibility.* The operating plan shall outline and identify the necessary personnel who will be present to operate the equipment or, in the case of automatic equipment, to monitor it and ensure it is functioning properly.

**73.22(2)** *Operating circumstances.* The circumstances under which operation must occur shall be clearly defined, and a means shall be provided to ensure that operating personnel are present when necessary.

**73.22(3)** *Method of operation.* The means and methods by which operation is to be conducted shall be clearly defined and shall include, at a minimum, the following items: rates and sequences for opening or closure of gates, target water levels, and target flow rates.

**73.22(4)** *Flood capacity.* The operating plan shall allow for safe passage of all floods up to and including the freeboard design flood. Flood discharges through the dam greater than the design peak flood inflows into the impoundment shall not be permitted.

**73.22(5)** *Low flow.* The operating plan shall address low flow situations and shall specify a minimum release rate if required by the department and how the minimum release will be provided and maintained.

**73.22(6)** *Equipment.* Consideration shall be given to and allowance made for the possible failure of or malfunctioning of the equipment.

**73.22(7)** *Discharge measurement.* A means shall be provided to determine the discharge through the control structures, especially where operation is to maintain a minimum downstream flow. Stage discharge tables, streamflow gages or other means of obtaining discharge readings shall be provided. The settings of control structures shall be easily read.

**567—73.23(455B) Removal and abandonment of dams.** Removal is the draining of the impoundment and removal of all or a significant portion of the embankment. A dam may be abandoned by rendering a dam nonimpounding by dewatering and filling the reservoir with solid materials and by diverting the natural drainage around the site.

**73.23(1)** *Removal requirements.* A dam removal project shall meet all of the following requirements:

*a.* The dam removal plan shall clearly show removal limits and will demonstrate how the proposed construction will render the dam height and storage below thresholds in rule 567—73.3(455B);

*b.* An impoundment dewatering plan shall be submitted that documents how the water will be released in a controlled manner and not cause upstream erosion or pose a flooding risk downstream;

*c.* A dam breach plan shall be submitted that demonstrates how the breach process will not pose an increased risk compared to the existing structure; and

*d.* A sediment disposition plan shall be submitted that provides for stabilization, release, or removal of stored sediment and shall demonstrate no significant adverse consequences on fish and wildlife habitat downstream from the proposed construction.

**73.23(2)** *Abandonment requirements.* An abandonment plan shall be submitted documenting the final site stabilization, evidence that the structure will no longer impound water or waterborne materials that would be released in the event of a dam failure, and evidence that the structure will not store water above the thresholds outlined in this chapter.

**567—73.24** to **73.29** Reserved.

DIVISION IV
DAM OWNERSHIP, INSPECTIONS, AND ENFORCEMENT

**567—73.30(455B) Dam owner responsibilities.**

**73.30(1)** *Operation and maintenance required.* The intent to permanently cease or cause to cease all acts of construction, operation, and maintenance of a dam is prohibited. If any person wishes to be relieved of the responsibilities inherent in the ownership or control of a dam structure, those responsibilities shall be undertaken by another person through sale, transfer, or other means or the dam shall be removed.

**73.30(2)** *Dam maintenance.* The dam owner shall be required to maintain the dam and appurtenant structures in a safe condition. Maintenance shall include, but not be limited to, keeping earthen portions of the dam well vegetated, keeping trees and brush off the dam, preventing and repairing erosion, keeping spillways and drains free of obstructions, repairing structural deterioration, and performing required maintenance on mechanical appurtenances such as gates. The dam owner shall perform regular inspections to identify potential maintenance problems.

**73.30(3)** *Dam repairs.* The dam owner shall arrange for performance of engineering investigations when needed to evaluate potential safety problems. The dam owner shall perform any required repairs. When the department determines the need for follow-up inspections, the dam owner may be required to have a qualified person make inspections and prepare written inspection reports at specified intervals.

**73.30(4)** *Maintenance inspections by dam owner.* The dam owner of a high hazard or significant hazard structure shall be responsible for annual inspections and submission of written inspection reports. Annual inspection reports are due to the department on or before December 1. Inspection reports shall include:

*a.* Maintenance work done since the previous annual report;

*b.* Observed deficiencies on the dam or appurtenant structures;

*c.* Remedial measures necessary and the method and schedule the dam owner proposes to correct the deficiencies found; and

*d.* Changes in land use downstream of the dam.

**567—73.31(455B) Dam safety inspection program.**

**73.31(1)** *Scope of dam safety inspection program.* Dams subject to inspection under these rules are regulated dams as defined in this chapter. The scope of department staff field inspections normally is limited to visually observable features of dams and their appurtenant structures.

**73.31(2)** *Purpose of dam safety inspection program.* The general purposes of inspections are as follows: to evaluate the construction, operation, and maintenance of dams; to identify observable deficiencies in dams or appurtenant structures; and to identify other floodplain structures or uses that may affect the hazard potential of a dam or use of an associated impoundment. Inspection reports shall be used by the department in determining whether a proposed dam project complies with applicable criteria and to determine whether any of the following conditions exist:

*a.* A permit violation;

*b.* A violation of law which requires that a permit be obtained; or

*c.* A condition that constitutes a public nuisance by causing unacceptable risk of injury to the public health, safety or welfare.

**73.31(3)** *Inspections of significant hazard and high hazard dam structures.*

*a. Inspection prior to construction.* A field inspection may be made by the department to determine the hazard potential of the dam and verify the location and plan information upon receipt of an application for approval of construction or modification of a dam.

*b. Inspection during construction.* Construction or modification of a dam structure shall be inspected by an engineer licensed in the state of Iowa or by a trained inspector under the supervision of the engineer. After completion of construction or modification of a dam structure, the engineer shall prepare and submit a construction report, as-built plans, and a statement that in the engineer's professional opinion the work was conducted in general conformance with the approved plans and specifications.

*c. Acceptance inspections.* When construction of a dam or modifications thereto is completed, and as-built plans and a construction report have been submitted, the department shall make a field inspection to determine whether visually observable features of the dam and appurtenant structures are consistent with the approved plans and the conditions of the dam construction permit. The department shall thereafter issue the water storage permit or a letter stating that additional work is required for acceptance of construction. Closure of the low-level outlet gate shall not begin until the department has issued the water storage permit.

*d. Periodic inspections after acceptance.* High hazard structures shall be inspected at least once every two years by the department. Significant hazard structures shall be inspected at least once every five years by the department. Structures poorly maintained or those that require repairs identified by the department shall be inspected more frequently until required maintenance and repairs are completed. The department shall notify the dam owner or agent before each inspection. Each inspection shall assess the condition of the dam and appurtenant structures and the adequacy of operation and maintenance practices. The inspection may include reevaluation of the ability of the dam and appurtenant structures to adequately withstand the hydraulic loadings and pass the appropriate design floods.

**73.31(4)** *Inspections of low hazard dams.*

*a. Preliminary site evaluation.* The department may evaluate the site of a proposed dam from maps and aerial photographs in lieu of a field inspection.

*b. Inspection during construction.* The applicant shall be responsible for providing supervision of construction by a person experienced in the type of construction involved.

*c. Inspection of dams with operating plans.* Low hazard dams with operating plans shall be inspected by the department at least once every five years. Any problems noted shall be reported to the dam owner in writing.

*d. General inspections of low hazard dams.* Low hazard dams may be periodically inspected by the department to determine their condition. Any serious problems noted shall be reported to the dam owner in writing.

**73.31(5)** *Special inspections and investigations.* Special inspections and investigations shall be made by department personnel in the following instances:

*a.* Upon notice or evidence of unauthorized construction;

*b.* Upon notice or evidence that a dam has failed or is in a condition where failure appears likely, and public damages would result from such failure; or

*c.* Upon notice or evidence that the hazard classification of a dam may no longer be valid due to changes in downstream conditions.

**73.31(6)** *Inspections by others.* At the discretion of the department, an inspection report submitted by a qualified individual may be accepted in lieu of an inspection and report by the department.

**73.31(7)** *Inspection reports.* The department shall prepare a report of each inspection and provide a copy to the dam owner. The report shall state the deficiencies observed during the inspection. If appropriate, the report shall detail the actions required to address the noted deficiencies.

**567—73.32(455B) Raising or lowering of impoundment levels.**

**73.32(1)** *When approval is required.* A separate approval is required to temporarily or permanently raise or lower the normal level of water impounded by a regulated dam unless the raising and lowering has been authorized as part of an approved operating plan. Such approval shall be in the form of a letter authorizing the lowering or raising and may be conditioned upon various requirements.

**73.32(2)** *Information required for approval.* The applicant shall submit the following information:

*a.* The date when the raising or lowering will be initiated, the level to which the impoundment will be raised or lowered and, if the raising or lowering is temporary, the anticipated date when the normal water level will be restored; and

*b.* Evidence that the discharge rate during lowering will not exceed the capacity of the stream channel below the dam.

**73.32(3)** *Criteria for approval.* The department's review of the raising or lowering of the impoundment includes determining the effects on flooding or flood control for any proposed works and adjacent lands and property; on the wise use and protection of water resources; on the quality of water; on fish, wildlife, and recreational facilities or uses; and on all other public rights and requirements.

**73.32(4)** *Conditions.* Conditions of approving the temporary or permanent raising or lowering of water levels may include:

*a.* Giving prior notice to the director of the local county conservation board or local enforcement officer for the department;

*b.* Publicizing the lowering locally in order to notify downstream users, persons who have boats or docks on the impoundment and other persons whose use of the impoundment might be affected; and

*c.* Maintaining a minimum release rate as determined by the department during refilling.

**567—73.33(455B) Unsafe dams.**

**73.33(1)** *Procedures for designation of a dam as unsafe.*

*a. Department report.* If after inspection or other investigation the department determines that a dam is unsafe, a report shall be prepared. Copies of the report shall be provided to the dam owner and any other person whom the report identifies as responsible for the unsafe condition of the dam. The report shall identify the problems that cause the dam to be unsafe and recommend action to remedy the unsafe condition.

*b.* *Opportunity for comment.* The department shall provide the dam owner or other responsible person with a reasonable opportunity to comment on the department report considering the degree and imminence of hazard identified in the department report.

**73.33(2)** *Criteria for designating a dam as unsafe.* Designation of a dam as unsafe shall be based on one or more of the following findings:

*a.* The dam has serious deficiencies in its design, construction, use, maintenance, or physical condition that would contribute to failure or otherwise increase flood damages;

*b.* A high hazard or significant hazard dam has inadequate spillway capacity for the size and hazard potential of the dam.

**73.33(3)** *Department action concerning an unsafe dam.* After completion of the procedures for designating an unsafe dam, the department shall issue an initial decision that may order remedial work depending on the degree and imminence of hazard caused by the unsafe condition. Remedial work may include draining of the impoundment or removal of any structure determined to constitute a public nuisance. Procedures for appealing an initial decision are the procedures in 567—Chapter 7. If the initial decision requires emergency remedial work to abate an imminent danger of failure that would cause significant public damages, the director of the department may request the assistance of the attorney general to seek an appropriate judicial order compelling performance of emergency remedial work.

These rules are intended to implement Iowa Code chapter 455B, subchapter III, part 4.

## ARC 8600C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to public water supply systems and wastewater treatment systems operator certification and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 81, "Operator Certification: Public Water Supply Systems and Wastewater Treatment Systems," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.222.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.211 through 455B.213, 455B.216 through 455B.219, and 455B.221 through 455B.224; 42 U.S.C. Section 300g-8; and 40 CFR Section 141.130(c).

*Purpose and Summary*

Proposed Chapter 81 establishes the requirements for public water supplies, distribution systems, and wastewater supplies to have a properly certified operator in charge consistent with Iowa Code section 455B.211. It also fulfills the requirement of the Safe Drinking Water Act that states must adopt to implement a program that meets the U.S. Environmental Protection Agency's (EPA's) standards for the classification of public water supplies and distribution systems and to train, certify, and recertify the operators in charge of those systems. Ultimately, proposed Chapter 81 ensures consistent safe drinking water, public health protection, and the preservation of Iowa's water resources by ensuring competent management, operation, and maintenance of both drinking water and wastewater systems. This chapter has been reviewed and edited consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Laurie Sharp
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: laurie.sharp@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at laurie.sharp@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al laurie.sharp@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 4, 2025<br>8:30 to 9:30 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| February 5, 2025<br>2 to 3 p.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: If you need assistance in a language other than English, contact the Department at laurie.sharp@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.664.8553 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: Si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al laurie.sharp@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.664.8553 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 81 and adopt the following **new** chapter in lieu thereof:

CHAPTER 81
OPERATOR CERTIFICATION: PUBLIC WATER SUPPLY SYSTEMS
AND WASTEWATER TREATMENT SYSTEMS

**567—81.1(455B) Definitions.**

**81.1(1)** The following definitions shall apply to this chapter.

*"Activated sludge system"* means a biological wastewater treatment process in which a mixture of wastewater and sludge floc, produced in a raw or settled wastewater by the growth of microorganisms, is agitated and aerated in the presence of a sufficient concentration of dissolved oxygen, followed by sedimentation. Examples include but are not limited to conventional activated sludge systems, extended aeration activated sludge systems, oxidation ditches, and sequencing batch reactors.

*"Advanced aerated lagoon system"* means an aerated lagoon system that has been augmented by adding other treatment processes. Examples include but are not limited to covered lagoon systems with enhanced aeration and mixing, the addition of fixed film processes to the lagoon process, or the utilization of algal-based treatment processes.

*"Aerated lagoon system"* means a lagoon system that utilizes aeration to enhance oxygen transfer and mixing in the cell.

*"Aeration"* means the process of initiating contact between air and water. Examples include but are not limited to spraying the water in the air, bubbling air through the water, or forcing the air into the water by pressure.

*"Average daily pumpage"* means the total quantity of water pumped during the most recent one-year period of record divided by 365 days.

*"Chlorination"* means the addition of a chlorine compound or chlorine gas to water to inactivate pathogenic organisms.

*"Classification"* means the type of plant or distribution system: wastewater treatment plants, water treatment plants, or water distribution systems.

*"Continuing education unit"* or *"CEU"* means ten contact hours of participation in an organized education experience approved by an accredited college, university, technical institute, or the department, and must be directly related to the subject matter of the particular certificate to which the credit is being applied.

*"Directly related post-high school education"* means post-high school education in chemistry, microbiology, biology, math, engineering, water, wastewater, or other curriculum pertaining to plant or distribution system operation.

*"Direct responsible charge"* or *"DRC"* means, where shift operation is not required, accountability for and performance of active, daily on-site operation of a plant or distribution system, or of a major segment of a plant or distribution system. Where shift operation is required, DRC means accountability for and performance of active, daily on-site operation of an operating shift, or a major segment of a plant or distribution system. A city manager, superintendent of public works, city clerk, council member,

business manager, or other administrative official shall not be deemed to have DRC of a plant or distribution system unless that person's duties include the active, daily on-site operation of a plant or distribution system. On-site operation may not necessarily mean full-time attendance at a plant or distribution system.

*"Direct surface water filtration"* means a water treatment system that applies surface water and influenced groundwater (as defined in rule 567—40.2(455B)) directly to the filters after chemical treatment consisting of both coagulation and flocculation or chemical treatment consisting of coagulation. This type of system eliminates the sedimentation unit process.

*"Electrodialysis"* means the demineralization of water by the removal of ions through special membranes under the influence of a direct-current electric field.

*"Fixed film biological treatment"* means a treatment process in which wastewater is passed over a media onto which are attached biological organisms capable of oxidizing the organic matter, normally followed by sedimentation. Examples include but are not limited to trickling filters, rotating biological contactors, packed towers and activated filters.

*"Fluoridation"* means the addition of fluoride to produce the optimum fluoride concentration in water.

*"Grade"* means one of seven operator certification levels, designated as A, W, I, IL, II, III, or IV.

*"Ion exchange"* means the process of using ion exchange materials such as resin or zeolites to remove undesirable ions from water and substituting acceptable ions (e.g., ion exchange for nitrate removal or ion exchange for softening).

*"Military service"* means honorably serving on federal active duty, state active duty, or national guard duty as defined in Iowa Code section 29A.1; in the military services of other states as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States as provided in 10 U.S.C. Section 10101.

*"Military service applicant"* means an individual requesting credit toward certification for military education, training, or service obtained or completed in military service.

*"Operating shift"* means a specified period of time when an operator is present to conduct testing or evaluation to control operations of a plant or distribution system, to make process control changes, and to be responsible for the repair or maintenance of a plant or distribution system. An operating shift may include on-call shifts.

*"Operator-in-charge"* or *"OIC"* means a person or persons on site in direct responsible charge of a plant or distribution system. A city manager, superintendent of public works, city clerk, council member, business manager, or other administrative official shall not be deemed to be the OIC of a plant or distribution system unless that person's duties include the active, daily on-site operation of the plant or distribution system. On-site operation may not necessarily mean full-time attendance at the plant or distribution system.

*"Plant"* means those facilities identified as either a water treatment plant or a wastewater treatment plant.

*"Post-high school education"* means credit received for completion of courses given or co-sponsored by an accredited college, university, or technical institute. Courses offered by regulatory agencies may also be recognized as post-high school education. One year of post-high school education is 30 semester hours, 45 quarter hours, or 45 CEUs of credit.

*"Primary treatment"* means a treatment process designed to remove organic and inorganic settleable solids from wastewater by the physical process of sedimentation.

*"Public water supply system certificate"* or *"PWS certificate"* means a certificate issued by the department certifying that an operator has successfully completed the certification requirements of this chapter for a water treatment plant or water distribution system. A PWS certificate specifies the grades and classifications for which the certificate is valid.

*"Reverse osmosis"* means the process in which external pressure is applied to mineralized water against a semipermeable membrane to effectively reduce total dissolved solids and radionuclides content as the water is forced through the membrane.

*"Rural water district"* means a water supply incorporated and organized as such pursuant to Iowa Code chapter 357, 357A or 358.

*"Shift operator"* means the operator on site who has responsibility for making process control changes and adjustments to the operation, repair, and maintenance of a plant or distribution system during any operating shift. Duties include testing or evaluation to control operations of the plant or distribution system.

*"Stabilization"* means the addition of chemical compounds to water to maintain an ionic equilibrium whereby the water is not in a depository or corrosive state.

*"Veteran"* means an individual who meets the definition of "veteran" in Iowa Code section 35.1(2).

*"Waste stabilization lagoon"* means an excavation designed and constructed to receive raw or pretreated wastewater in which stabilization is accomplished by several natural self-purification processes. This definition includes both anaerobic and aerobic lagoons.

*"Water distribution system"* or *"distribution system"* is defined in Iowa Code section 455B.211. For the purposes of this chapter, a water distribution system includes storage facilities and pumping stations and does not include individual service lines to the premises of the consumer that are not under the control of the system.

**81.1(2)** The following terms applicable to this chapter are defined in the referenced locations:

*a.* Iowa Code section 455B.101: "commission," "department," and "director."

*b.* Iowa Code section 455B.211: "certificate," "operator," "wastewater treatment plant," "water supply system," and "water treatment plant."

*c.* Rule 567—40.2(455B): "coagulation," "community water system" or "CWS," "disinfection," "nontransient noncommunity water system" or "NTNC," and "transient noncommunity water system" or "TNC."

*d.* 567—subrule 60.2(1): "PE" or "population equivalent."

**567—81.2(455B) General.**

**81.2(1)** *Plant classifications.*

*a. Plants with multiple treatment processes.* A water treatment plant or wastewater treatment plant (hereafter noted as "plant") having a combination of treatment processes that are in different classifications shall be assigned the highest numerical plant classification of that combination.

*b. Increase in classification for complex systems.* The director may increase a plant or water distribution system classification above that indicated in 567—81.3(455B) through 567—81.6(455B) for those systems that, in the director's judgment, include unusually complex treatment processes, complex distribution systems, or present unusual operation or maintenance conditions.

**81.2(2)** *Operator certification.*

*a. Operator-in-charge (OIC).* An OIC shall hold a certificate of the same classification of any plant or water distribution system under the OIC's control and of equal or higher grade than the grade designated for that plant or distribution system.

*b. Shift operator.* Any person who is responsible during an operating shift of a plant or distribution system or for major segment of a plant or distribution system and is under the supervision of the OIC identified in paragraph *"a"* of this subrule shall be certified in a grade no less than a Grade II for Grade III and IV plants and distribution systems and Grade I for Grade I and II plants and distribution systems.

**81.2(3)** *Public water supply system (PWS) certificates.* A PWS certificate shall be issued as follows:

*a.* An operator successfully completing the water treatment certification shall be issued a PWS certificate valid for water treatment.

*b.* An operator successfully completing the water distribution certification shall be issued a PWS certificate valid for water distribution.

*c.* An operator successfully completing the requirements for both water treatment and water distribution certification shall be issued a dual PWS certificate valid for both classifications. For purposes of renewal of a dual certificate, all renewal fees and CEU requirements shall be applied as one

certification. The number of CEUs required for renewal shall be determined by the highest certification grade on the dual PWS certificate.

**81.2(4)** *Owner notification and reporting.*

*a.* A plant or distribution system owner shall notify the department of a change in the OIC(s) within 30 days after the change.

*b.* When requested by the department, a plant or distribution system owner shall report the method of treatment provided, the average daily pumpage, and the name(s) of the OIC(s).

**81.2(5)** *Operator notification.* Certified operators shall notify the department of a change in address or employment within 30 days after the change.

**81.2(6)** *Compliance plan.* When the director allows the owner of a plant or distribution system required to have a certified operator time to obtain an operator, the owner shall submit a compliance plan to the department indicating what action will be taken to obtain a certified operator. The plan shall be on a form provided by the department and shall be submitted within 30 days of the owner's receipt of a notice of violation for not having a properly certified operator.

**567—81.3(455B) Wastewater treatment plant classifications and operator certification grades.**

**81.3(1)** *Wastewater classifications.* The wastewater treatment plant classifications and grades are listed in the following table:

**Wastewater Treatment Plant Classifications and Grades**

| Treatment Type | Certification Grade | | | | |
|---|---|---|---|---|---|
| | Based on Design Pounds of $BOD_5$/day | | | | |
| | less than 334 | 334-835 | 836-2,505 | 2,506-8,350 | more than 8,350 |
| | Based on Design Population Equivalent | | | | |
| | less than 2,000 | 2,000-5,000 | 5,001-15,000 | 15,001-50,000 | more than 50,000 |
| 1. Onsite Treatment System | W | Not Applicable | Not Applicable | Not Applicable | Not Applicable |
| 2. Waste Stabilization Lagoon System | IL | IL | IL | IL | IL |
| 3. Aerated Lagoon System | IL | IL | I | I | I |
| 4. Advanced Aerated Lagoon System | II | II | II | II | II |
| 5. Fixed Film Biological Treatment System | II | II | III | III | IV |
| 6. Activated Sludge System | II | III | III | IV | IV |

**81.3(2)** *Unknown design $BOD_5$ loading.* When the design $BOD_5$ loading is unknown, the plant $BOD_5$ loading shall be determined by using the average pounds of $BOD_5$ of the 24-hour composite influent samples taken in the last 12 months. If 24-hour composite influent samples are not available, then grab samples shall be used.

**81.3(3)** *Grade IL wastewater operator.* A Grade I, II, III, or IV wastewater treatment certificate will satisfy the certification requirements for a Grade IL plant.

**81.3(4)** *Grade W onsite classification.* Any wastewater treatment plant that discharges to a water of the state and that utilizes onsite wastewater treatment technologies, such as those specified in 567—Chapter 69, shall be classified as an onsite treatment system (Grade W).

**567—81.4(455B) Water treatment plant classifications and operator certification grades.**

**81.4(1)** *Water treatment classifications.* The water treatment plant classifications and grades are listed in the following table:

**Water Treatment Plant Classifications and Grades**

| Treatment Type | Certification Grade* | | | |
|---|---|---|---|---|
| | Average Daily Pumpage in MGD | | | |
| | 0-0.1 | >0.1-0.5 | >0.5-1.5 | >1.5 |
| 1. Iron or manganese removal; aeration; chlorination; fluoridation; stabilization; any other chemical addition; or any combination of these processes | I | II | II | III |

| Treatment Type | Certification Grade* | | | |
|---|---|---|---|---|
| | Average Daily Pumpage in MGD | | | |
| | 0-0.1 | >0.1-0.5 | >0.5-1.5 | >1.5 |
| 2. Ion exchange | II | II | III | III |
| 3. Direct surface water filtration | II | II | III | III |
| 4. Utilization of lime, soda ash or other chemical addition for pH adjustment in the precipitation and coagulation of iron or manganese | II | II | III | III |
| 5. Complete surface water clarification or lime softening of surface water or groundwater | III | III | III | IV |
| 6. Reverse osmosis and electrodialysis | II | II | III | IV |
| 7. Activated carbon for THM or synthetic organics removal | III | III | III | IV |

*For Grade A PWS classification, see 81.5(3).

**81.4(2)** *Average daily pumpage.* When the average daily pumpage is unknown, the plant grade will be determined from the population in the most recent census and an evaluation of commercial, industrial, and other users.

**567—81.5(455B) Water distribution system classifications and operator certification grades.**

**81.5(1)** *Water distribution classifications.* The water distribution system classifications and grades are listed in the following table:

**Water Distribution System Classifications and Grades***

| Distribution System Type | Certification Grade** | | | |
|---|---|---|---|---|
| | Average Daily Pumpage in MGD | | | |
| | 0-0.1 | >0.1-1.5 | >1.5-5 | >5 |
| All municipal water systems | I | II | III | IV |
| CWS not classified as a Grade A water system | I | II | III | IV |
| NTNC not classified as a Grade A water system | I | II | III | IV |
| TNC not classified as a Grade A water system | I | II | III | IV |
| Rural water districts | Miles of Pipe | | | |
| | 0-100 | >100-1,000 | >1,000-2,500 | >2,500 |
| | II | II | III | IV |

*Note: A PWS with a well, storage, and a distribution system shall be classified as a water distribution system if no treatment is provided.

**For Grade A water distribution system classification, see 81.5(3).

**81.5(2)** *Average daily pumpage.* When the average daily pumpage is unknown, the system grade will be determined using the most recent census population and an evaluation of commercial, industrial, or other users.

**81.5(3)** *Grade A water distribution system classification.*

*a. Grade A classification.* A PWS that provides either no treatment other than hypochlorination or treatment that does not require any chemical addition, process adjustment, backwashing, or media regeneration by an operator shall be classified as a Grade A water distribution system, based on the following service populations:

(1) Community water system. A CWS, other than a municipal or rural water system, serving a population of 250 persons or less.

(2) Nontransient noncommunity water system. An NTNC serving a population of 500 persons or less.

(3) Transient noncommunity water system. A TNC serving a population of 500 persons or less.

*b. Grade A certification.* Any grade of water treatment or distribution certification will satisfy the certification requirements for a Grade A water distribution system with or without hypochlorination.

**567—81.6(455B) Certified operator education and experience qualifications.**

**81.6(1)** *Education and experience qualifications—general.*

*a.* All certified operator applicants shall meet the education and operating experience qualifications for the certificate grade shown in the table below prior to being allowed to take the certified operator examination.

*b.* Operating experience shall be in the same classification for which the applicant is applying unless partial credit is given in accordance with 81.6(2) and 81.6(3).

*c.* Directly related post-high school education shall be in the same subject matter as the classification for which the applicant is applying. The director will determine which courses qualify as "directly related" in cases that are not clearly defined.

*d.* A military applicant may apply for education or experience credit pursuant to 81.6(4).

*e.* Education and experience qualifications table.

**Certified Operator Education and Experience Qualifications**

| Grade | Education | Substitution for Education | Operating Experience | Substitution for Operating Experience |
|---|---|---|---|---|
| A | High school diploma or GED | None | Completion of a department-approved training course | None |
| W | High school diploma or GED | None | Completion of a department-approved training course | None |
| I | High school diploma or GED | None | 1 year | See 81.6(3)*"b"* |
| IL | High school diploma or GED | None | 1 year | See 81.6(3)*"b"* |
| II | High school diploma or GED | None | 3 years | See 81.6(3)*"b"* |
| III | High school diploma or GED and 2 years of post-high school education (1 year must be directly related) | See 81.6(3)*"a"* | 4 years of experience in a Grade I or higher | See 81.6(3)*"b"* |
| IV | High school diploma or GED and 4 years of post-high school education (2 years must be directly related) | See 81.6(3)*"a"* | 4 years of experience, including 2 years of DRC in a Grade III or higher | See 81.6(3)*"b"* and *"c"* |

**81.6(2)** *Related work experience substitutions for operating experience.* The following substitutions of related work experience for operating experience requirements may be accepted by the director.

*a. Personnel.* The following personnel may be allowed 50 percent credit for work experience toward meeting the operating experience requirements as noted:

(1) Laboratory personnel employed in water or wastewater treatment plants; Grades I and II certification only. Laboratory experience must be in the same classification for which the applicant is applying.

(2) Personnel with experience in on-site operation review and evaluation of plants and distribution systems; Grades I and II certification only. On-site experience must be in the same classification for which the applicant is applying.

(3) Maintenance personnel employed in water or wastewater treatment plants; Grades I and II certification only. Maintenance experience may be applied to either the water or wastewater experience requirements.

*b. Certified operators.* The following types of certified operators may be allowed 50 percent credit for work experience toward meeting the operating experience requirements as noted:

(1) Certified water treatment operators; Grades I and II wastewater treatment certification only, or Grades I and II water distribution certification only.

(2) Certified wastewater treatment operators; Grades I and II water treatment certification only.

(3) Certified water distribution operators; Grades I and II water treatment certification only.

*c. Limitation.* The portion of related work experience that is substituted for operating experience cannot also be used to substitute for education.

**81.6(3)** *Operating experience and education substitutions.* The following experience or education substitutions may be accepted by the director.

*a. Substitution of operating experience for education.*

(1) One year of operating experience may be substituted for one year of post-high school education, up to one-half of the post-high school education requirement, as follows:

1. Experience in a Grade II or higher position may substitute as education for a Grade III certification, or

2. Experience in a Grade III or higher position may substitute as education for Grade IV certification.

(2) Two years of DRC experience in a Grade III or higher position may be substituted for one year of directly related post-high school education for Grade IV certification up to three-fourths of the post-high school education requirement.

(3) That portion of operating experience that is applied toward substitution for education cannot also be used for experience.

*b. Substitutions of education for operating experience.*

(1) Two semester hours, three quarter hours, or three CEUs of directly related post-high school education may be substituted for one-half the operating experience requirement for Grades I and IL.

(2) Thirty semester hours, 45 quarter hours, or 45 CEUs of directly related post-high school education may be substituted for one year of experience up to a maximum of one-half the operating experience requirement for Grades II, III and IV.

(3) That portion of education that is applied toward substitution for operating experience cannot also be used for education.

(4) Class hours involving closely supervised on-the-job type training in a pilot or full-scale facility where there are clearly defined educational objectives may be applied to the on-the-job operating experience requirement. The substitution value of such training shall be applicable for Grade I and Grade II certification only and shall not exceed one-half year of on-the-job experience.

1. One hour of on-the-job training is equivalent to three hours of on-the-job operating experience.

2. One month of on-the-job training consists of 20 eight-hour days.

3. Credit for on-the-job training may be applied only to the examination for the type of plant or system in which the experience was obtained.

4. That portion of on-the-job training courses that is applied toward substitution for the on-the-job experience requirement cannot also be used for education.

*c. Substitution of education for DRC operating experience.* Thirty semester hours, 45 quarter hours, or 45 CEUs of directly related post-high school education may be substituted for one year of DRC operating experience up to one-half the requirement for Grade IV certification.

**81.6(4)** *Military education, training, or service credit.*

*a.* An applicant who is serving or has served in the military shall identify the education or experience certification qualification for which the credit is requested.

*b.* As part of an examination application pursuant to 81.8(1), an applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, as applicable, the applicant's Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

**567—81.7(455B) Certification and examination fees.**

**81.7(1)** *Examination fee.* Fee for each examination: $30.

**81.7(2)** *Certification fees.*

*a.* Certification fee for each one-half year of a two-year period from the date of issuance to June 30 of odd-numbered years: $20.

*b.* Late certification penalty fee: $18.

*c.* Certification renewal fee: $60.

*d.* Late certification renewal penalty fee: $18.

**81.7(3)** *Fee adjustments.* The department may adjust the fees annually by up to plus or minus 20 percent to cover costs of administering and enforcing these rules and reimbursement for other expenses relating to operator certification. The commission must approve any fee increases above those listed in

this rule. All fees collected shall be retained by the department for administration of the operator certification program.

**567—81.8(455B) Operator certification examinations.**

**81.8(1)** *Examination application.*

*a.* All persons wishing to take the examination to become a certified operator of a wastewater or water treatment plant or a water distribution system shall complete an examination application on a form provided by the department.

*b.* All examination applications shall be accompanied by the examination fee.

**81.8(2)** *Application evaluation.* After evaluating an application, the department will notify the applicant of examination eligibility or noneligibility. The director will further review applications when it is indicated that the applicant has falsified information or when questions arise concerning an applicant's qualifications or eligibility for examination or certification.

**81.8(3)** *Application expiration.* An approved examination application shall be valid for one year from the approval date.

**81.8(4)** *Examination fee refund.* An applicant who does not qualify for examination at the time of application will have the examination fee refunded if the applicant cannot qualify for examination within one year. If an applicant will qualify for a scheduled examination within one year, the fee will not be refunded.

**81.8(5)** *Reexamination.*

*a.* Upon failure of the first examination, an applicant may apply for reexamination.

*b.* Upon each reexamination when a valid application is on file, an applicant shall submit the examination fee to the department.

**81.8(6)** *Application invalidation.* Failure to successfully complete the examination within one year from the application approval date shall invalidate the application.

**81.8(7)** *Reasonable accommodation.* Upon an applicant's request, the director will consider reasonable accommodation to allow administration of the examination without discrimination on the basis of disability. An applicant shall request an accommodation 30 days prior to the examination date. An applicant shall provide documentation of eligibility for an accommodation with the examination application form.

**567—81.9(455B) Operator certification.**

**81.9(1)** *Examination requirement.* All applicants not certified by reciprocity pursuant to 81.9(3) shall successfully pass an operator certification examination prior to receiving certification.

**81.9(2)** *Certification.*

*a.* In order to receive a certificate, an applicant who passes an examination shall submit the certification fee to the department within 60 days of the date the applicant receives notification from the department of passing the examination. Payment may either be digitally submitted in accordance with the instructions on the department's website at www.iowadnr.gov, mailed, or hand delivered. All certification fee payments that are mailed or hand delivered shall be submitted with the applicant's notification of passing the examination.

*b.* Any certification payment digitally submitted, postmarked, or hand delivered to the department more than 30 days but less than 60 days after the date the applicant received notification of passing the examination shall be accompanied by the certification fee and the late certification penalty fee.

*c.* An applicant who does not submit the certification fee within 60 days' notice of passing the examination will not be certified on the basis of that examination.

**81.9(3)** *Certification by reciprocity.*

*a. Other states' mandatory certification programs.* Applicants who have been certified under other states' mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, shall be certified in an appropriate classification and grade without examination. The applicant must have passed an examination generally equivalent to the Iowa examination and must meet the education and experience qualifications established in this chapter.

*b. Other states' voluntary certification programs.* For applicants who have been certified under voluntary certification programs in other states, certification in an appropriate class will be considered. The applicant must have passed an examination generally equivalent to the Iowa examination and must meet the education and experience qualifications established in this chapter. The director may require the applicant to pass the Iowa examination.

*c. Reciprocity application.*

(1) Applicants seeking reciprocal Iowa certification shall submit a reciprocity application form provided by the department and the certification fee. The applicant shall be certified at the appropriate grade pursuant to 81.6(1).

(2) An applicant who is a veteran shall submit a reciprocity application form provided by the department and the certification fee and shall provide documentation to verify their status as a veteran as defined in Iowa Code section 35.1(2).

*d. Lapse of certification obtained through reciprocity.* An applicant who obtains certification in Iowa through reciprocity and subsequently allows their Iowa certification to lapse will be required to reapply for certification in accordance with 81.9(5)*"e."*

**81.9(4)** *Restricted certification.* Upon written request by a certified operator, the director may determine that the education qualifications can be waived prior to an examination when a plant or distribution system classification is increased and the operator has been in DRC of the existing plant or distribution system. An operator passing an examination will be restricted to that plant or distribution system until the education qualifications are met.

**81.9(5)** *Certification renewal.*

*a. Renewal period.* All certificates shall expire on June 30 of odd-numbered years and shall be renewed every two years in order to maintain certification.

*b. Continuing education requirements for renewal.* The CEU credits detailed in 567—81.10(455B,272C) shall be obtained prior to any certificate renewal.

*c. Renewal application and fee.*

(1) Certification renewal applications shall be made available to certified operators on the department's website at www.iowadnr.gov prior to the certificate expiration date.

(2) All renewal applications shall be digitally submitted, postmarked, or hand delivered to the department prior to certificate expiration and shall be accompanied by the certification renewal fee.

*d. Late renewal.* Any certification renewal application digitally submitted, postmarked, or hand delivered to the department after certificate expiration shall be accompanied by the certification renewal fee and the late certification renewal penalty fee.

*e. Failure to renew.* If a certified operator fails to renew within 60 days following certificate expiration, the right to renew the certificate is automatically terminated. Certification may be allowed at any time following such termination, provided that the applicant meets all education and experience eligibility requirements of 567—81.6(455B), successfully passes an examination, and submits the certification fee in accordance with 81.9(2).

*f. Expired certificate.* An operator may not continue as the OIC of a plant, distribution system, operating shift, or major segment of a plant or distribution system after certificate expiration unless the certificate is renewed.

**81.9(6)** *Certificate upgrade.* An operator holding an unexpired certificate may upgrade the certificate by examination to a higher grade in the same classification in accordance with this rule and 567—81.6(455B) and 567—81.8(455B). The expiration date of the upgraded certificate shall be the same as the unexpired certificate. An operator who upgrades a certificate during a biennium must also renew the upgraded certificate in accordance with 81.9(5) to maintain certification.

**567—81.10(455B,272C) Continuing education.**

**81.10(1)** *Continuing education unit (CEU) general requirements.*

*a.* Only those operators fulfilling the CEU requirements before the end of each two-year period (March 31) will be allowed to renew their certificate(s). All certificates of operators who did not fulfill

the CEU requirements as of April 1 of the second year shall expire on June 30 of each odd-numbered year.

*b.* CEUs must be earned during two-year periods between April 1 and March 31 of odd-numbered years.

*c.* A Grade III or IV certified operator must earn two CEUs or 20 contact hours per certificate during each two-year period.

*d.* All other certified operators must earn one CEU or 10 contact hours per certificate during each two-year period.

*e.* For those certified operators holding both a water treatment and a water distribution certification, no less than 25 percent of the required CEUs may be earned in any one area.

**81.10(2)** *CEU approval.* All activities for which CEU credit will be granted must be approved by an accredited college, university, technical institute, or the department, and must be directly related to the subject matter of the particular certificate to which the credit is being applied. Any entity holding courses in Iowa for which CEU credit is offered for operator certification must provide, at no cost to the department, the opportunity for one staff member to audit the training and receive all training materials.

**81.10(3)** *Exceptions.* The following exceptions apply to the requirements of this rule.

*a.* The director may, in individual cases involving hardship or extenuating circumstances, allow a certified operator up to three additional months to fulfill the minimum CEU requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the certified operator's control that prevent attendance at the required activities. All extension requests must be made prior to March 31 of each biennium.

*b.* Newly certified operators (previously uncertified) who become certified after April 1 of the second year of a two-year period will not be required to earn CEUs until the next two-year period.

*c.* If an operator upgrades a certificate after April 1 of the second year of a two-year period and that upgrade increases the CEU requirement, the operator will not be required to meet the higher CEU requirement until the next two-year period, but must fulfill the lower CEU requirement for that period.

**81.10(4)** *CEU reporting.* It is the certified operator's personal responsibility to maintain a written record of the CEUs earned during each renewal period and to report the credits to the department by following the instructions on the department's website at www.iowadnr.gov.

**567—81.11(455B) Operator by affidavit.**

**81.11(1)** *Affidavit allowance.* The owner of a plant or distribution system required to have a Grade A, I, IL, or II certified operator may sign an affidavit with a certified operator of the required classification and grade.

**81.11(2)** *Affidavit requirements.*

*a.* An affidavit will verify that the certified operator is the OIC and has direct responsibility for a plant or distribution system that does not have first rights on the services of that operator.

*b.* The department shall provide an affidavit form that requires the certified operator's name and signature, the operator's certification number, classification and grade, and the date of last renewal of the operator's certificate. The affidavit form shall be proof that the certified operator has agreed to be directly responsible for the operation and maintenance of the plant or distribution system.

*c.* The affidavit must be returned to and approved by the local regional field office of the department, based upon the ability of the certified operator to properly operate and maintain additional facilities. Upon affidavit approval, the department may specify additional operational and maintenance requirements based on the complexity and size of the plant or distribution system.

*d.* In the event of affidavit disapproval, the plant or distribution system owner must terminate the agreement with the certified operator and seek the services of another certified operator.

*e.* Both the plant or distribution system owner and the certified operator shall notify the director at least 30 days before the termination of an affidavit.

**567—81.12(455B,272C) Disciplinary actions.**

**81.12(1)** *Reasons for disciplinary action.* Disciplinary action may be taken against a certified operator on any of the grounds specified in Iowa Code section 455B.219 and chapter 272C and the following more specific grounds:

*a.* Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator.

(1) Examples of wastewater operator duties are specified in the Water Environment Federation Manual of Practice #11, 1996; California State University—Sacramento (CSUS) Operation of Wastewater Treatment Plants, Vol. I, 4th edition, 1998; CSUS Operation of Wastewater Treatment Plants, Vol. II, 4th edition, 1998; CSUS Advanced Waste Treatment, 3rd edition, 1998; and 567—Chapters 60 through 63, 67, and 83.

(2) Examples of water treatment or distribution system operator duties are specified in the American Water Works Association (AWWA) Manuals of Water Supply Practice (Volumes 1, 3-7, 9, 11-12, 14, 17, 19-38, 41-42, 44-48); AWWA Water Supply Operations Series, 2nd edition: Vol. 1, 1995; Vol. 2, 1995; Vol. 3, 1996; Vol. 4, 1995; and Vol. 5, 1995; AWWA Water Distribution Operator Handbook, 2nd edition, 1976; California State University—Sacramento (CSUS) Water Treatment Plant Operation, Vol. I, 4th edition, 1999; CSUS Water Treatment Plant Operation, Vol. II, 3rd edition, 1998; CSUS Small Water System Operation and Maintenance, 4th edition, 1999; CSUS Water Distribution System Operation and Maintenance, 4th edition, 2000; and 567—Chapters 40 through 43 and 83.

*b.* Failure to submit records of operation or other reports required under applicable permits or department rules, including failure to submit complete records or reports.

*c.* Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or department rule.

**81.12(2)** *Disciplinary sanctions.* Disciplinary sanctions may include those specified in Iowa Code section 272C.3(2) and the following:

*a. Certificate revocation.* Revocation may be permanent without chance of recertification or for a specified period of time.

*b. Partial revocation or suspension.* Revocation or suspension of the practice of a particular aspect of the operation of a plant or distribution system, including the restriction of operation to a particular plant or distribution system, or a particular classification of plant or distribution system.

*c. Probation.* Probation under specified conditions relevant to the specific grounds for disciplinary action.

*d. Additional requirements.* Additional education, training, or reexamination may be required as a condition of certificate reinstatement.

*e. Penalties.* Civil penalties not to exceed $1,000 may be assessed for the reasons identified in 81.12(1).

**81.12(3)** *Procedure.*

*a. General.* All disciplinary action taken under this rule shall comply with the procedures of rule 561—7.19(17A,455A) and all other applicable rules governing contested cases. At any time, the licensee and the department may enter into a settlement agreement, subject to approval by the director, which provides for a disciplinary sanction.

*b. Appeal and review of proposed decision.* After a contested case hearing conducted in accordance with 561—Chapter 7, the director shall review the presiding officer's proposed decision. The proposed decision shall constitute a final decision of the director and the department.

*c. Emergency disciplinary action.* The director may initiate an emergency suspension or other disciplinary action upon such grounds and following the procedures provided in rule 561—7.18(17A,455A). The terms of the emergency order shall be effective upon service as provided in rule 561—7.18(17A,455A). The department shall promptly give notice of an opportunity to appeal and request a contested case hearing following the procedures specified above.

*d. Reinstatement of revoked certificates.* Upon revocation of a certificate in accordance with the authority provided in Iowa Code section 455B.219 and chapter 272C, application for certification may

be allowed after two years from the date of revocation unless otherwise specified in 81.12(2). Any such applicant shall meet all education and experience eligibility requirements, pass an examination, and be certified in the same manner as a new applicant in accordance with the requirements of this chapter.

**81.12(4)** *Procedures for noncompliance with child support order.* Upon receipt of a certification of noncompliance with a child support obligation as provided in Iowa Code section 252J.7, the department will initiate procedures to deny an application for operator certification or renewal or to suspend a certification in accordance with Iowa Code section 252J.8(4). The department shall issue to the person by certified mail a notice of its intent to deny or suspend operator certification based on receipt of a certificate of noncompliance. The suspension or denial shall be effective 30 days after receipt of the notice unless the person provides the department with a withdrawal of the certificate of noncompliance from the child support recovery unit as provided in Iowa Code section 252J.8(4)*"c."* Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action under this subrule but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

These rules are intended to implement Iowa Code sections 455B.211 through 455B.224 and chapter 272C.

## ARC 8599C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to well contractor certification and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 82, "Well Contractor Certification," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.187(1), 455B.190A(2), 455B.190A(4), 455B.190A(5), 455B.173(9), 455B.103(2) and 455B.105(3).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.187 and 455B.190A.

*Purpose and Summary*

Proposed Chapter 82 establishes rules for a well contractor certification program in Iowa. The well contractor certification program includes specification of certification requirements, including minimum work experience levels, successful completion of an examination, continuing education requirements, and collection of associated fees. The proposed rules also include provisions regarding well contractor obligations and provisions for the revocation of a well contractor's certification. This chapter has been reviewed and edited consistent with Executive Order 10 (January 10, 2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Erik Day
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: erik.day@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at erik.day@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al erik.day@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 3, 2025 | Virtual meeting |
| 10 to 11 a.m. | A meeting registration link will be provided prior to the hearing |
| February 4, 2025 | Virtual meeting |
| 2 to 3 p.m. | A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: If you need assistance in a language other than English, contact the Department at erik.day@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.402.7981 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al erik.day@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.402.7981 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 82 and adopt the following **new** chapter in lieu thereof:

CHAPTER 82
WELL CONTRACTOR CERTIFICATION

**567—82.1(455B) Definitions.** In addition to the definitions in 567—Chapter 39, 567—Chapter 40, 567—Chapter 49, and Iowa Code sections 455B.171, 455B.190, and 455B.190A, which are hereby adopted by reference, the following definitions shall apply to this chapter:

*"Pump installer"* means a person certified by the department to perform pump services.

*"Pump services"* means the same as defined in Iowa Code section 455B.190A. The term also includes modification of the upper terminus of a well; well plugging; well rehabilitation; or the construction of Class 3 wells.

*"Well driller"* means a person certified by the department to perform well drilling services.

*"Well drilling services"* means the same as "well services" as defined in Iowa Code section 455B.190A. The term includes well rehabilitation.

*"Well plugging contractor"* means a well contractor certified to plug only Class 1 or Class 3 wells but not certified to abandon Class 2 wells or perform any other well services.

**567—82.2(455B) General.**

**82.2(1)** *Certified well contractor requirement.*

*a.* All well services shall be performed pursuant to this chapter by a certified well contractor who is on site and in direct charge of the well services, except that a person may perform well services on their own property without being certified.

*b.* Prior to performing well drilling services, a certified well contractor shall notify:

(1) The department or the county, if a well does not have the required construction permits; or

(2) The department, if the use of the water requires a water use allocation and the owner has not applied for or been issued a water use allocation.

**82.2(2)** *Applicability exception.* These rules shall not apply to a water operator certified pursuant to Iowa Code section 455B.213, when the water operator is performing pump services on any well owned by a PWS as defined in Iowa Code section 455B.171. These rules shall not apply to a wastewater operator certified pursuant to Iowa Code section 455B.213, when the wastewater operator is performing pump services on a groundwater monitoring well, groundwater dewatering well, or other well not used to provide drinking water, owned by a sewer system as defined in Iowa Code section 455B.171. Pump installer certification requirements shall not apply to monitoring wells.

**82.2(3)** *Address change.* Certified well contractors shall report address changes to the department within 30 days after the change.

**567—82.3(455B) Classification of well contractors.**

**82.3(1)** *Classifications.* The three classifications of certified well contractors are:

*a.* Certified well contractor, including:

(1) Well driller, and

(2) Pump installer.

*b.* Provisionally certified well contractor, including:

(1) Well driller, and

(2) Pump installer.

*c.* Well plugging contractor.

**82.3(2)** *Certified well contractor.* In order to be a certified well contractor, an applicant shall have met the experience requirements, successfully completed the well contractor examination for well drilling services or pump services, or both, been issued a certificate by the department, and renewed the certification in accordance with this chapter.

**82.3(3)** *Provisionally certified well contractor.* The requirements and conditions for provisional well contractor certification are described in Iowa Code section 455B.190A. A provisionally certified well contractor will become a certified well contractor after the submission of an application showing all certification requirements have been met and submission of appropriate fees to the department. The certificate for a provisionally certified well contractor will be issued for one year. The department shall issue a certified well contractor certificate after the one-year period and the receipt of appropriate fees.

**82.3(4)** *Well plugging contractor.* In order to be certified as a well plugging contractor, an applicant shall take a four-hour training course designated by the department, successfully complete a well plugging test, be issued a certificate by the department, and renew the certification in accordance with this chapter.

**567—82.4(455B) Experience requirements.** All applicants shall meet the experience requirements shown below. Educational programming approved by the department may be substituted for up to one half of any experience requirement at the rate of one continuing education unit (CEU) for each 100 hours of required experience.

| CLASSIFICATION | EXPERIENCE |
|---|---|
| Certified Well Contractor (well driller) | Two years' employment and 2000 hours work experience in Class 1 and Class 2 well construction |
| Certified Well Contractor (pump installer) | Two years' employment and 1000 hours work experience in the installation, repair, and maintenance of water systems |
| Provisionally Certified Well Contractor | One half of the employment and experience required for full certification |
| Well Plugging Contractor | None |

**567—82.5(455B) Certification and examination fees.** The following fees are nonrefundable.

**82.5(1)** *Examination fee.* Fee for each examination: $50.

**82.5(2)** *Oral examination fee.* Fee for each oral examination: $100.

**82.5(3)** *Certification fees.*

*a. Well drilling contractors.*

(1) Initial certification fee for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year: $75.

(2) Certification renewal fee: $300.

*b. Pump installation contractors and well plugging contractors.*

(1) Initial certification fee:

1. For each one-half year of the first year of certification: $75.
2. For each additional one-half year period to June 30 of the next even-numbered year: $50.

(2) Certification renewal fee: $200.

**82.5(4)** *Provisionally certified well contractor fee.* Provisionally certified well contractor fee: $150.

**82.5(5)** *Late certification penalty fee.* Penalty fee for late payment of the initial certification fee or renewal fee: $100.

**82.5(6)** *Duplicate certificate fee.* A currently certified well contractor may obtain a duplicate certificate upon payment of a $20 fee.

**82.5(7)** *Recertification fee.* Contractors who have not earned sufficient CEUs for certification renewal and who wish to recertify within two years after expiration of their certification must retake and pass the examination(s) and pay a certification fee of $1,000.

**567—82.6(455B) Examinations.**

**82.6(1)** *Examination types.* There are four well contractor examinations available:

*a.* General fundamentals examination - well drilling and pump installation contractors.

*b.* Specialty examination - well drillers.

*c.* Specialty examination - pump installers.

*d.* Specialty examination - well plugging contractors.

**82.6(2)** *Required examinations.*

*a.* Well drilling contractors and pump installers must take and pass the general fundamentals examination and at least one of the specialty examinations. Examinations may be taken at the same time and place or at different times. Work shall be limited to the specialty in which proficiency has been demonstrated by written examination.

*b.* Well plugging contractors must take and pass the well plugging examination only.

**82.6(3)** *Examination application.*

*a.* A person wishing to take the examination(s) to become a certified well contractor shall complete and submit an examination application form provided by the department.

*b.* All examination applications shall be accompanied by the examination fee.

*c.* The department may allow local county environmental health officials to take an examination, even if they do not meet the work experience or training requirements, provided they pay the examination fee. If an official receives a passing score on the examination, they will receive a letter of acknowledgement; however, they will not be certified and will not be allowed to perform any well services.

**82.6(4)** *Application evaluation.* After evaluating an application, the department will notify an applicant of examination eligibility or noneligibility.

**82.6(5)** *Application expiration.* An approved examination application shall be valid for one year from the approval date. All required examinations shall be completed within one year of application.

**82.6(6)** *Examination fee refund.* The department may refund a portion of the examination or reexamination fee for an applicant who does not qualify for examination within one year of application approval. If an applicant will qualify for a scheduled examination within one year, the fee will not be refunded.

**82.6(7)** *Reexamination.*

*a.* Upon failure of the first examination, an applicant may apply for reexamination. Upon failure of the second examination, the applicant must wait a period of 180 days between each subsequent reexamination.

*b.* Upon each reexamination while a valid application is on file, an applicant shall submit the examination fee to the department.

**82.6(8)** *Application invalidation.* Failure to successfully complete the necessary examinations within one year from the application approval date shall invalidate an application.

**82.6(9)** *Oral examination.* Upon written request by an applicant, the director will consider administering an oral examination on an individual basis when: the applicant has failed the written examination at least twice; the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning; the applicant is capable of communicating in writing with regard to departmental requirements and inquiries; and the director has received a written recommendation for an oral examination from a department staff member attesting to the operational and performance capabilities of the applicant.

**82.6(10)** *Reasonable accommodation.* Upon an applicant's request, the director will consider reasonable accommodation to allow administration of an examination without discrimination on the basis of disability. An applicant shall request accommodation 30 days prior to the examination date. An applicant shall provide documentation of eligibility for the accommodation with the examination application form. Accommodations based on documentation may include site accessibility, oral examination, extended time, separate testing area, or other concerns. If an oral examination is considered a reasonable accommodation, the oral examination fee shall apply.

**567—82.7(455B) Contractor certification.**

**82.7(1)** *Examination requirement.* All applicants for well contractor certification shall pass the relevant examinations prior to receiving certification.

**82.7(2)** *Certification.*

*a.* To receive certification, an applicant who passes the examination(s) shall submit the appropriate certification fee to the department within 30 days of receiving notification from the department of passing the examination(s). Payment may be digitally submitted in accordance with the instructions on the department's website at www.iowadnr.gov, mailed, or hand delivered. All certification fee payments that are mailed or hand delivered shall be submitted with the applicant's notification of passing the examination(s).

*b.* Any certification payment digitally submitted, postmarked, or hand delivered to the department more than 30 days but less than 60 days after the date the applicant received notification passing the examination(s) shall be accompanied by the appropriate certification fee and the late certification penalty fee.

*c.* Applicants who do not submit the appropriate certification fee within 60 days' notice of passing the examinations will not be certified on the basis of that examination(s).

**82.7(3)** *Denial appeal.* Applicants may appeal a denial of certification within 30 days of receiving notification pursuant to 567—Chapter 7.

**82.7(4)** *Certificate renewal.*

*a. Renewal period.* All certificates shall expire on June 30 of even-numbered years and shall be renewed every two years in order to maintain certification.

*b. Continuing education requirements for renewal.* The CEU credits detailed in 567—82.8(455B) shall be obtained prior to any certificate renewal.

*c. Renewal applications and fee.*

(1) Certification renewal applications shall be made available to certified well contractors on the department's website at www.iowadnr.gov 60 days prior to the certificate expiration date.

(2) All renewal applications shall be digitally submitted, postmarked, or hand delivered to the department prior to certificate expiration, and shall be accompanied by the appropriate certification renewal fee.

*d. Late renewal.* Any certification renewal application digitally submitted, postmarked, or hand delivered to the department after certificate expiration shall be accompanied by the appropriate certification renewal fee and the late certification renewal penalty fee.

*e. Failure to renew.* If a certified well contractor fails to renew within 60 days following certificate expiration, the right to renew the certificate is automatically terminated. Certification may be allowed at any time following such termination, provided that the applicant passes the appropriate examinations and submits the appropriate certification fee in accordance with this rule.

*f. Expired certificate.* A certified well contractor may not continue to provide well services after certificate expiration without renewal thereof.

**567—82.8(455B) Continuing education.**

**82.8(1)** *CEU requirements.* CEUs must be earned during two-year periods between April 1 and March 31 of even-numbered years.

*a.* A certified well contractor holding well driller certification or both well driller and pump installer certifications must earn 1.6 CEUs or 16 contact hours during each two-year period.

*b.* A certified well contractor holding only pump installer certification must earn 1.0 CEU or 10 contact hours during each two-year period.

*c.* A well plugging contractor may be required to earn 0.2 CEUs or 2 contact hours during each two-year period as determined by the department, provided the well plugging contractor is notified of the requirement at the beginning of the renewal period.

*d.* Newly certified (previously uncertified) well contractors who are certified after April 1 of even-numbered years will not be required to earn CEUs until the next two-year period.

**82.8(2)** *Certificate renewal.* Only those certified well contractors fulfilling the CEU requirements before the end of each two-year period (March 31) will be allowed to renew their certificate(s). All certificates of certified well contractors not fulfilling the CEU requirements shall expire on June 30 of every even-numbered year.

**82.8(3)** *CEU approval.* All activities for which CEU credit will be granted must be approved by an accredited college or university, technical institute, or the department, and shall be related to well services, relevant aspects of Iowa groundwater law, well construction, well maintenance, well abandonment practices, well contractor safety (no more than 0.2 CEU per renewal), water system maintenance, or Iowa hydrogeologic conditions that protect groundwater and water supplies.

**82.8(4)** *CEU exceptions.* The director may, in individual cases involving hardship or extenuating circumstances, grant a certified well contractor six additional months to fulfill the minimum CEU requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the contractor that prevent attendance at the required activities. All extension requests must be made prior to March 31 of each even-numbered year.

**82.8(5)** *CEU reporting.* It is the certified well contractor's personal responsibility to maintain a written record of the CEUs earned during each renewal period and report the credits to the department by following the instructions on the department's website at www.iowadnr.gov.

**82.8(6)** *Alternative CEU requirements.* A certified well contractor shall be deemed to have complied with the CEU requirements of this rule during periods that they serve honorably on active duty in the military services, for periods of government employment working as a well contractor and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the director.

**567—82.9(455B) Certified well contractor obligations.**

**82.9(1)** *Record and sample submission.* Within 30 days of completion of any water well, each certified well contractor shall submit the following:

*a.* A well record form to the authority who issued the well construction permit (the department or the local county health department), in accordance with 82.9(2); and

*b.* Drill cutting samples to the Iowa Geological Survey (IGS) for any water well used as part of a public water supply, a well used for water withdrawal for which a permit is required by 567—50.1(455B), or a department-required well used to monitor groundwater quantity or quality, as required by 82.9(3).

*c.* Prior to constructing a water well to be used as part of a nonpublic water supply or other water well used to access groundwater, a certified well contractor shall contact the local health department in the county in which the water well is to be located to determine if submittal of drill cutting samples is required.

**82.9(2)** *Well record form.* Well drilling records shall be submitted on the well record form, or, for all nonpublic water supply wells, into the department's Iowa Well Information System database. Both the form and the database are available on the department's website at www.iowadnr.gov. The well record form shall include the following:

*a.* Well location and legal description (quarter section, section number, township, range, and county);

*b.* Reference point for all depth measurements;

*c.* Depth at which each significant change of formation occurs;

*d.* Depth at which pump is set, the non-pumping and pumping water levels in the well measured from the land surface, and the rate and duration the well was pumped;

*e.* Identification of the material of which each significant stratum is composed;

*f.* Depth at which hole diameters (bit sizes) change;

*g.* Normal hole diameter of the well bore;

*h.* Total depth of the completed hole;

*i.* Depth or location of any lost drilling fluids, drilling materials, or tools;

*j.* Casing depth, grouting schedule, including materials used and method of placement, and description of the well casing and liner pipe;

*k.* A description of well screens, including diameter, length, material slot sizes, amount of open area, and location in well; and

*l.* A description of physical and chemical well development activities.

**82.9(3)** *Cutting samples.* Drill cutting samples shall be collected at intervals of five feet and at each pronounced change in geological formation. The IGS will provide drill cutting bags.

**82.9(4)** *Test pumping.* Certified well contractors shall provide, as requested, test pumping data for water wells used as part of a public water supply and for water wells used as part of a regulated water use pursuant to 567—subrule 50.6(1).

**567—82.10(455B) Disciplinary actions.**

**82.10(1)** *Reasons for disciplinary action.* Disciplinary action may be taken against a certified well contractor or well plugging contractor on any of the grounds specified in Iowa Code section 455B.190A and the following more specific grounds:

*a.* Knowingly making any false statement, representation, or certification on any application, record, report, or document required to be maintained or submitted under any applicable permit or rule of the department.

*b.* Failure to renew certification.

*c.* Failure to obtain required CEUs.

*d.* Failure to submit, within the time required, drill cutting samples, records, or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

*e.* Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified well contractor or well plugging contractor.

*f.* Violation of well construction, plugging or pump installation standards or other requirements in 567—Chapters 39, 43, 49 and 110.

*g.* Failure to advise a person for whom well services are being provided that a hazardous or potentially hazardous condition, as defined in Iowa Code section 455B.381(2), has been encountered.

*h.* Knowingly causing or allowing a hazardous or potentially hazardous condition due to well construction to exist.

*i.* Drilling or reconstructing a well without a construction permit.

**82.10(2)** *Disciplinary sanctions.*

*a. Certificate revocation.* Revocation of a certificate may be permanent without chance of recertification or for a specified period of time.

*b. Partial revocation or suspension.* Revocation or suspension of the practice of a particular aspect of the contractor's responsibility.

*c. Probation.* Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation. Reexamination may include written and oral examinations.

*d. Fees.* The department shall determine which fees in 567—82.5(455B) apply.

*e. Penalties.* Civil penalties may be assessed in accordance with Iowa Code section 455B.109.

**82.10(3)** *Procedure.*

*a.* The director shall initiate disciplinary action. The director may investigate any alleged factual situation that may be grounds for disciplinary action under 82.10(1) and report the results of the investigation to the commission.

*b.* The director may issue an administrative order that may assess a penalty or refer a case to the attorney general for prosecution for any disciplinary action.

*c.* Written notice by certified mail shall be provided to a certified well or well plugging contractor against whom disciplinary action is being considered. The certified well or well plugging contractor will be given 20 days' advance notice that an informal hearing has been scheduled before the commission. The notice will provide the specific date, time, and place, at which time the commission will hold the informal hearing to determine whether a formal hearing is warranted or whether informal resolution can be reached. The certified well or well plugging contractor may present any relevant facts and indicate their position in the matter.

*d.* A certified well or well plugging contractor who receives notice of an informal hearing shall communicate orally or in writing with the director, and efforts shall be made to clarify the respective

positions of the certified well or well plugging contractor and the director. Department staff may present a recommendation concerning disciplinary sanctions to the commission at the informal hearing.

*e.* Failure to attend the informal hearing or otherwise to communicate facts and position relevant to the matter by the scheduled date will be considered by the commission when determining whether a formal hearing is warranted.

*f.* If agreement as to appropriate disciplinary sanction, if any, can be reached with the certified well or well plugging contractor and the commission concurs, a written stipulation and settlement between the department and the certified well or well plugging contractor shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts presented by the certified well or well plugging contractor, and the reasons for the particular sanctions imposed.

*g.* If the commission determines that no disciplinary action is warranted on the facts asserted, the certified well or well plugging contractor shall be notified of the decision in writing.

*h.* If the commission determines that an opportunity for formal hearing is required to impose any disciplinary sanction specified in 82.10(2), the director shall proceed in accordance with 567—Chapter 7.

**567—82.11(455B,272C) Certificate revocation.** Upon certificate revocation in accordance with Iowa Code section 455B.190A, application for certification may be allowed after two years from the revocation date. Any such applicant shall pass an examination and be certified in the same manner as other applicants. The department shall determine which fees in 567—82.5(455B) apply.

These rules are intended to implement Iowa Code sections 455B.187 and 455B.190A.

## ARC 8601C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Notice of Intended Action**

**Proposing rulemaking related to laboratory certification and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 83, "Laboratory Certification," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3) and 455B.113 through 455B.115.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455B.113 through 455B.115 and 40 CFR §141.10(b)(3)(i).

*Purpose and Summary*

Proposed Chapter 83 establishes the procedures for laboratory certification, fees, and criteria for downgrading a certification for a laboratory. A laboratory certification program for drinking water is required by 40 CFR §141.10(b)(3)(i) for the state to receive primacy for federal drinking water regulations. This chapter has been reviewed and edited consistent with Executive Order 10 (January 10, 2023).

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025.

Kathy Lee
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: kathy.lee@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at kathy.lee@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al kathy.lee@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| January 31, 2025<br>10:30 to 11:30 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at kathy.lee@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.725.0343 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al kathy.lee@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.725.0343 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 83 and adopt the following **new** chapter in lieu thereof:

# CHAPTER 83
# LABORATORY CERTIFICATION

## PART A
## GENERAL

### 567—83.1(455B) Authority, purpose, and applicability.

**83.1(1)** *Authority.* Pursuant to Iowa Code section 455B.113, a laboratory certification program is required for laboratories performing analyses of samples that are required to be submitted to the department as a result of Iowa Code provisions, rules, operation permits, or administrative orders. Pursuant to Iowa Code section 455B.114, the department may suspend or revoke the certification of a laboratory upon its determination that the laboratory no longer fulfills one or more of the requirements for certification.

**83.1(2)** *Purpose.* The purpose of these rules is to provide the procedures for laboratories to use to apply for and maintain certification, to establish laboratory certification fees, and to provide the appropriate methods and references for evaluating laboratory competence including the requirements for laboratories to become certified.

**83.1(3)** *Applicability to environmental program areas.* This chapter applies to the following laboratories:

*a. Water supply (drinking water).* All laboratories conducting drinking water analyses pursuant to 567—Chapters 40, 41, 42, and 43.

*b. Underground storage tanks.* All laboratories conducting underground storage tank (UST) analyses for petroleum constituents pursuant to 567—Chapter 135. Routine on-site monitoring conducted by or for UST owners for leak detection or a nonregulatory purpose is excluded from this requirement.

*c. Wastewater (nonpotable water).* All laboratories conducting analyses of wastewater, groundwater or sewage sludge (municipal biosolids), or manure pursuant to 567—Chapters 63, 65, 67, and 69.

*d. Solid waste and contaminated sites.* All laboratories conducting analyses of solid waste parameters pursuant to 567—Chapters 100 through 129, contaminated site parameters pursuant to 567—Chapters 133 and 137, and regulated substances other than petroleum parameters regulated under 567—Chapter 135.

**83.1(4)** *Exclusions.* Any parameter that must be analyzed immediately upon sample collection is excluded from the requirements of this chapter. Any samples collected or testing conducted that is not part of the specific monitoring required by the department for regulatory purposes are also excluded from the requirements of this chapter.

### 567—83.2(455B) Definitions.

*"Batch"* means environmental samples that are prepared, analyzed, or both together with the same process and personnel, using the same lot(s) of reagents. A preparation batch is composed of 1 to 20 environmental samples of the same quality systems matrix (water supply, wastewater, etc.), meeting the above-mentioned criteria and with a maximum time between the start of processing of the first and last sample in the batch to be 24 hours. An analytical batch is composed of prepared environmental samples (extracts, digestates or concentrates) that are analyzed together as a group. An analytical batch can include prepared samples originating from various quality system matrices and can exceed 20 samples. If

there is a conflict between this definition and the requirements of an approved method, the more stringent requirements shall apply.

*"Certified"* means a laboratory demonstrates to the satisfaction of the department its ability to consistently produce valid data within the acceptance limits as specified within the department's requirements for certification and meets the minimum requirements of this chapter and all applicable regulatory requirements. A laboratory may be certified for an analyte, an analytical series, or an environmental program area, except in the UST program area, where certification for individual analytes is not allowed.

*"Corrective action report"* or *"CAR"* means documentation that demonstrates a laboratory has satisfied cited deficiencies or deviations.

*"Critical staff"* means an analyst who is the only person at a laboratory performing a particular function or analysis (no backup analyst).

*"Demonstration of capability"* or *"DOC"* means a procedure used to demonstrate the ability of an analyst to generate acceptable accuracy for each method the analyst performs.

*"Discharge monitoring report-quality assurance"* or *"DMRQA"* means an effluent performance test study regulated by the National Pollutant Discharge Elimination System (NPDES) program and administered by the EPA.

*"Environmental program area"* means the water supply (drinking water) program, underground storage tank program, wastewater program (nonpotable water), or solid waste and contaminated site program pursuant to 83.1(3).

*"Essential staff"* means an analyst who is primarily responsible for a particular analysis/program and handles the administrative or technical tasks associated with the analysis or program.

*"Holding time"* means the maximum time a sample may be held before beginning of an associated analysis.

*"Level of quantitation"* or *"LOQ"* means the analyte concentration that produces a signal sufficiently stronger than the blank, such that it can be detected with a specified level of uncertainty during routine operations.

*"Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources"* is incorporated by reference in this chapter.

Chapter 1 pertains to certification of laboratories analyzing samples of drinking water and incorporates by reference the Manual for the Certification of Laboratories Analyzing Drinking Water, 5th edition, January 2005, EPA document 815-R-05-004; Supplement 1, June 2008, EPA 815-F-08-006; and Supplement 2, November 2012, EPA 815-F-12-006.

Chapter 2 (2020), pertains to laboratories analyzing samples for the UST program.

Chapter 3 (2017), pertains to laboratories analyzing samples for wastewater and sewage sludge disposal programs.

Chapter 4 (2017), pertains to laboratories analyzing samples for the solid waste and contaminated site programs.

*"Method detection limit"* or *"MDL"* means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

*"National environmental laboratory accreditation program"* or *"NELAP"* means the third-party accreditation program that is managed by the NELAC Institute (TNI), a 501(c)(3) nonprofit organization, and that is based on consensus standards representing the best professional practices for laboratories.

*"Quality assurance plan"* or *"QA plan"* means a document that describes the key elements of laboratory functions that provide quality testing results to the client. The key elements include but are not limited to a description of the laboratory organizational structure and lines of responsibility; sampling requirements, procedures, and locations; sampling handling procedures; calibration procedures and frequencies; procedures for data reduction, validation, and reporting; quality control procedures including type, frequency and acceptance criteria; procedure(s) used to determine data precision and accuracy; corrective action contingencies; and preventative maintenance and schedules.

*"Proficiency test sample"* or *"PT sample"* means a reference sample provided to a laboratory for the purpose of demonstrating that a laboratory can successfully analyze the sample within limits of performance specified by the department. The true value of the concentration of the reference material is unknown to the laboratory at the time of analysis.

*"Provisional certification"* or *"provisional status"* means a laboratory has deficiencies, which must be corrected within the specified time frames in 83.6(3)*"d,"* but demonstrates to the satisfaction of the department its ability to consistently produce valid data within the acceptance limits as specified within the department's certification requirements.

*"Revoked certification"* means a laboratory no longer fulfills the requirements of this chapter, and certification is revoked by the director upon determination of the director that the laboratory no longer fulfills the requirements for certification (Iowa Code section 455B.114).

*"Signature authority"* means the person with the managerial, educational, and technical experience authorized to sign analytical reports on behalf of the laboratory.

*"Standard operating procedure"* or *"SOP"* is a set of written instructions that describe, in detail, how to perform a laboratory method or process safely, consistently, and effectively.

*"SHL"* means the State Hygienic Laboratory at the University of Iowa.

*"Suspended certification"* means a temporary suspension of certification for a laboratory, conditional upon meeting the time frames in 83.6(5)*"d"* for the correction of the deficiency.

*"Temporary certification"* or *"temporary status"* means short-term transitional certification granted to a new laboratory that has no history of generating compliance data.

*"Traceability"* means the unbroken chain of events in the process of a sample being collected, received at the laboratory, prepared for analysis, analyzed, data reviewed and reported, and final disposal of the sample.

PART B
CERTIFICATION PROCESS

**567—83.3(455B) Application for laboratory certification.**

**83.3(1)** *Application forms.* Application for laboratory certification shall be made on department form 542-0492 (July 2021) and shall be accompanied by the nonrefundable fee specified in 83.3(2). The application for certification renewal shall be made at least 60 days prior to the certification expiration date. The department may require submission of additional information necessary to evaluate the application. All documentation and fees must be submitted to the department prior to the on-site audit. Failure to submit a complete application may result in denial of the renewal or certificate update.

**83.3(2)** *Fees and expenses.*

*a.* A nonrefundable fee for the administration, completion of on-site laboratory surveys and assessments, and enforcement of laboratory certification requirements shall be paid with the certification application.

(1) The on-site audit will not be conducted and certification will not be issued until the fees and expenses are paid and all other certification requirements are met. The fee for certification will not be refunded if an on-site audit is not performed.

(2) Out-of-state laboratories will be responsible for paying the expenses of an on-site audit, in addition to the standard certification fee if required, and the department or its agent will bill the out-of-state laboratory directly for the expenses.

(3) When a laboratory's certification status is changed to provisional or suspended and the period for correcting deficiencies extends beyond the certification period, the laboratory must continue to pay the required fees in order to maintain its certification status.

(4) Additional fees will be assessed for the following, and the department or its agent will bill the laboratory directly.

1. The laboratory is responsible for paying for any additional on-site audits, at a fee of $300 per audit. An example of this is when an additional on-site audit is required when a laboratory seeks certification for an entirely new set of parameters for which it had previously not been certified.

2. When an on-site audit is required to inspect for deficiencies that the laboratory must correct, the fee is $500 per audit.

*b.* Where a laboratory is certified for the same analyte in more than one environmental program area, the laboratory must meet all the applicable certification requirements in addition to the payment of the fees.

*c.* In general, the department does not certify calculations. However, it is acceptable to report calculated results to clients and for regulatory reporting purposes.

*d.* Applicable fees shall be based on the type of analytical service provided as follows:

| ANALYTICAL GROUP | REGULATORY PROGRAM & PARAMETERS[1] | FEE |
|---|---|---|
| Asbestos | SDWA | $400 |
| Basic Drinking Water | SDWA (includes total coliform bacteria, *E. coli*, heterotrophic plate count, nitrate, nitrite, & fluoride) | $800 |
| Basic Wastewater | CWA (includes $BOD_5$, $CBOD_5$, TSS, & ammonia) | $400 |
| Bacteria | CWA (includes total coliform, fecal coliform, and *E. coli*) | $800 |
| | SDWA (basic drinking water) & CWA combined | $1,300 |
| Dioxin | SDWA | $800 |
| Effluent Toxicity Testing | CWA | $800 |
| Inorganics, including metals | CWA metals, inorganic compounds, and physical characteristics ($400 per analyte up to a maximum of $1,600) | $400 to 1,600 |
| | SDWA (includes metals, ammonia, cyanide, fluoride, bromate, bromide, chlorite, total organic carbon & other inorganic chemicals) | $1,600 |
| | SW/CS | $1,600 |
| | CWA & SDWA combined | $2,400 |
| | CWA & SW/CS combined | $2,400 |
| | SDWA & SW/CS combined | $2,400 |
| | CWA, SDWA, and SW/CS combined | $2,800 |
| Radionuclides | CWA | $400 |
| | SDWA (includes gross alpha, gross beta, photon emitters, radium, strontium, tritium, & uranium) | $400 |
| | SDWA & CWA combined | $650 |
| Synthetic Organic Chemicals (SOC) | CWA | $1,600 |
| | SDWA | $1,600 |
| | SW/CS | $1,600 |
| | CWA & SDWA combined | $2,400 |
| | CWA & SW/CS combined | $2,400 |
| | SDWA & SW/CS combined | $2,400 |
| | CWA, SDWA, and SW/CS combined | $2,800 |
| Volatile Organic Chemicals (VOC) | CWA | $1,600 |
| | SDWA | $1,600 |
| | SW/CS | $1,600 |
| | CWA & SDWA combined | $2,400 |
| | CWA & SW/CS combined | $2,400 |
| | SDWA & SW/CS combined | $2,400 |
| | CWA, SDWA, & SW/CS combined | $2,800 |
| Underground Storage Tank Program Methods (UST) | OA1 & OA2 for USTCWA & SW/CS programs | $1,600 |
| | OA1, OA2, & Air Gas for UST CWA, & SW/CS programs | $2,000 |
| Other analytes not included in the above categories | SDWA, CWA, UST, or SW/CS | $400 per analyte |

[1]CWA: Analysis of wastewater samples for the federal Clean Water Act.
SDWA: Analysis of drinking water samples for the federal Safe Drinking Water Act.

SW/CS: Analysis of water, soil, or solid samples for the solid waste or contaminated sites programs.
UST: Analysis of water and soil samples for the underground storage tank program.

*e.* Fees shall be paid by cashier's check, check, money order, credit card, electronic payment, or other means acceptable to the department, made payable to the Iowa department of natural resources laboratory certification program. Credit card or electronic payment may incur an additional fee. Purchase orders are not an acceptable form of payment. The fee shall be paid at least 60 days prior to the expiration date of any certification held by a laboratory. If a laboratory does not submit the application and fee by the expiration date, the laboratory is prohibited from conducting certified analytical tests until the application and fee are received by the department.

**83.3(3)** *Reciprocity.* Reciprocal certification of out-of-state laboratories by Iowa, and of Iowa laboratories by other states, is allowed. If the reciprocal state has a certification program for the area the lab is applying for in Iowa, the laboratory is required to obtain certification from their reciprocal state prior to receiving certification from Iowa. A laboratory must meet all Iowa certification criteria and pay all applicable fees as listed in this chapter. Any laboratory that is granted reciprocal certification in Iowa using primary certification from another state or provider is required to report any change in certification status from the accrediting state or provider to the department within 15 days of notification. A copy of the assessment report including the laboratory's approved corrective actions must be submitted to the department within 15 days after it is approved by the resident state or third-party accreditation provider. A laboratory that loses primary certification, either in its resident state program or third-party accreditation program, will also immediately lose certification for the same program area and parameters in Iowa, pursuant to 83.6(6)*"a"*(8).

*a. Out-of-state laboratories.* Where an out-of-state laboratory has received an on-site audit within its own state, the fee for certification shall not be reduced if an on-site audit is not performed by Iowa.

*b. Third-party accreditation.* The department will accept third-party accreditation from a state NELAP accreditation authority. The laboratory must provide the most recent on-site assessment and approved corrective action report.

**567—83.4(455B) Procedures for new laboratory certification or changes in certification.** Laboratories that wish to become certified to conduct testing for an analyte or a method after the deadline for initial certification has passed, and any laboratory seeking initial certification, shall follow the procedures specified in rule 567—83.5(455B) for laboratory recertification. For changes in certification, the relevant fee must accompany the application where appropriate. New laboratories with no history of generating compliance data in any program area will be issued a temporary certification for a period of up to six months after the initial on-site audit. The laboratory may be re-audited in person or a document review may be conducted at the discretion of the SHL auditor(s).

**567—83.5(455B) Laboratory recertification.** Laboratories shall be recertified every two years after initial certification. Applications for recertification must be on department form 542-0492 (June 2021) and must be submitted at least 60 days prior to the renewal date. Applications shall be accompanied by the nonrefundable fee specified in 83.3(2). To be recertified, laboratories must meet the following requirements.

**83.5(1)** *Approved methodology.* Laboratories must use methods promulgated or approved by the EPA or by the department. Notwithstanding an approval by the EPA, the department may use discretion in determining which methods may be used in Iowa. A laboratory may not analyze and report data from samples collected for an environmental program area until certified in that area. The laboratory shall submit supporting documentation such as calibration curves, MDL studies, LOQs, or other information upon request. The following are adopted by reference:

*a. Drinking Water* – 40 CFR Part 141 Subpart C (Monitoring and Analytical Requirements) as amended February 5, 2024; 40 CFR §141.74 (Filtration and Disinfection) as amended February 13, 2013; 40 CFR §141.89 (Control of Lead and Copper) as amended January 15, 2021; 40 CFR §141.131 (Disinfection By-Products) as amended February 13, 2013; 40 CFR §141.402 (Groundwater Rule) as amended February 13, 2013; 40 CFR §141.704 (Enhanced Treatment for Cryptosporidium) as amended June 29, 2009; 40 CFR §141.852 (Revised TCR) as amended February 26, 2014; 40 CFR Part 901

(PFAS) as amended through June 25, 2024; 40 CFR §143.4 (Secondary Regulations) as amended June 29, 2009.

*b. Wastewater (nonpotable water)* – 40 CFR Part 136, June 17, 2024.

*c. Municipal biosolids (sewage sludge)* – 40 CFR Part 136, as amended June 17, 2024, and Test Methods for Evaluating Solid Waste: Physical/Chemical Methods (SW-846 Update VII) as amended July 30, 2021.

*d. Solid waste and contaminated sites* – Test Methods for Evaluating Solid Waste: Physical/Chemical Methods (SW-846 Update VII) as amended July 30, 2021.

*e. Underground storage tanks* – Iowa Methods OA-1 and OA-2, December 10, 2019, and EPA method 8260 – Test Methods for Evaluating Solid Waste: Physical/Chemical Methods (SW-846 Update VII) as amended July 30, 2021.

**83.5(2)** *Proficiency testing samples.* Certified laboratories must satisfactorily analyze PTs at least once every 12 months for each analyte by each method in each program area for which the laboratory intends to retain certification unless a PT sample is not available for the particular analyte, method, or program area. Results must be submitted electronically by the PT provider to the department at labcert@dnr.iowa.gov along with a statement of the method used once the study is published. The laboratory must maintain records of all PT samples including summary pages, explanations and footnotes, pursuant to the recordkeeping requirements in 83.5(8)*"b."*

*a. Test requirements.*

(1) PT samples shall be analyzed in accordance with the laboratory's routine standard operating procedures using the same quality control, acceptance criteria, and staff as used for the analysis of routine environmental samples. PT samples may not be analyzed multiple times for the purpose of averaging results to be reported to the PT provider.

(2) The PT sample shall be analyzed one time by a single analyst or single analytical team, and then reported to the PT provider. The PT sample shall be analyzed by a different analyst(s) or analytical team in following years, if there are multiple analysts in the laboratory.

(3) Once the results of a PT sample are submitted to the PT provider, remaining PT samples may be used as check samples or for demonstration of capability of analysts.

(4) Laboratories that receive unacceptable PT result(s) shall notify the department within 10 days of the unacceptable result(s).

*b. Performance testing providers and acceptance limits.* All PT samples must be obtained from a NELAP accredited provider. Performance test results shall be evaluated using criteria from NELAP field of proficiency tables except where noted otherwise. If there is a difference between the NELAP field of proficiency tables and federal rules, the rules shall prevail. Approved PT vendors and fields of proficiency tables may be found at nelac-institute.org.

**83.5(3)** *Notification of major changes.* Laboratories must notify the department, in writing, of major changes in critical or essential personnel, equipment, laboratory location, or other major change that might alter or impair analytical capability. The department may issue a notice of violation based on cause.

*a. Major equipment.* Laboratories must notify the department 90 days, whenever possible, prior to installation of major equipment when the technology is not currently being utilized by the laboratory. This includes, but is not limited to, inductively coupled plasma spectrophotometers, mass spectrometers, gas chromatographs, liquid chromatographs, and continuous spectrophotometers. The installation of a new water bath or incubator does not need to be reported. If requested, the laboratory must submit the DOC to the department for review and approval prior to reporting compliance data using the new equipment.

*b. Laboratory relocation.* Laboratories must notify the department 90 days prior to a laboratory relocation. Laboratories must complete a DOC for each major piece of equipment once it has been relocated to the new laboratory. If requested, the laboratory must submit the DOC to the department for review and approval prior to reporting compliance data.

*c. Personnel changes.* Laboratories must notify the department 30 days prior to, whenever possible, but in no circumstance later than ten days after, the departure of critical or essential personnel.

If requested, a DOC must be submitted to the department before the laboratory may report environmental data. DOC records for all staff must be maintained on file for review by an auditor. The loss of a critical staff person means the lab will not be able to analyze samples and must subcontract samples for a specific method(s) or program area(s) until another person is hired to perform the particular function or analysis and has completed an initial DOC. The loss of an essential staff person means that existing staff must undergo additional training before they can assume the role.

*d. Laboratory shutdown.* Laboratories must notify the department within five days if the laboratory has shut down due to a natural or man-made disaster, a cybersecurity incident, or other occurrence that renders the laboratory unable to perform analyses for Iowa clients.

*e. Data quality issues.* If a laboratory becomes aware that there are data quality issues that affect the result(s) for one or more analytes, the laboratory must notify the department within five days. The laboratory must resolve the issues, submit a corrective action report, and submit an amended analytical report to the client and the department within 30 days.

**83.5(4)** *Annual requirements.* Laboratories are required to perform the following updates on an annual basis. Documentation of these updates must be maintained in paper or electronic form, or a combination thereof, pursuant to the recordkeeping requirements in 83.5(8)*"b"* and shall be made available during the on-site audit, or if requested by the department.

*a.* Balance maintenance and weight verification;

*b.* Working thermometer verification;

*c.* Review the QA plan and document the date, reviewer, and any changes;

*d.* Review SOPs, and document the review and any changes to the SOPs. Confirm that QC requirements are performed with each analysis and that additional QC requirements are conducted monthly, quarterly, or annually as needed;

*e.* Review sample handling, preservation and storage requirements if they are not addressed in the SOP;

*f.* Conduct a continuing DOC for analysts;

*g.* Run and document calibration curves;

*h.* Perform annual PTs;

*i.* Review equipment maintenance schedules, perform scheduled maintenance, and document the maintenance performed;

*j.* Replace and document the source of reference cultures used for microbiological analyses; and

*k.* Check spreadsheet calculations manually.

In addition to the above requirements, it is recommended that the laboratory review the safety plan with all employees and conduct an internal audit annually.

**83.5(5)** *Site audits.*

*a. SHL certification.* The department has designated the SHL as its appraisal authority for laboratory certification. The SHL is responsible for attaining and maintaining laboratory certification for the SDWA program that is acceptable to the EPA. The SHL shall obtain accreditation from a state NELAP accreditation authority in all department program areas specified in 83.1(3), where available. The SHL shall forward audit reports to the department according to the time frame in 83.3(3). The SHL is not required to pay the fees for laboratory certification.

*b. On-site audits.* Laboratories must consent to a periodic site audit by the department or its designee, at least every two years. However, on-site audits may be conducted more frequently if the laboratory undergoes a major change that may alter or impair analytical capability, fails a PE sample analysis, or if the department questions an aspect of data submitted that is not satisfactorily resolved. Laboratories certified by reciprocity generally are not required to have an on-site audit conducted by the SHL. However, the department and the SHL reserve the right to conduct an on-site audit.

**83.5(6)** *Period of validity.*

*a.* Certification shall be valid for a period not to exceed two years from the date of issuance. Certification shall remain in effect until certification is either renewed or revoked, provided a laboratory has submitted a timely and complete application, and paid the appropriate fee.

*b.* Laboratories that have not submitted a timely and complete application and have not paid the appropriate fee may not report compliance data if their certification has expired.

**83.5(7)** *Reporting requirements.* Laboratories may not analyze or report sample results for any analyte, analytical series, or environmental program area until an initial certification status of certified or temporary has been granted by the department. Any data generated before certification status is granted will be considered invalid for compliance purposes. A laboratory with provisional status may analyze and report analyses for compliance purposes. A certified laboratory may contract analyses to another certified laboratory. The responsibility lies with the primary certified laboratory contracting for services to verify that the secondary contracting laboratory is certified by the department and to ensure that reporting requirements and deadlines are met.

*a. All program areas.* Laboratories that generate data for clients must list all of the following elements on paper or electronic reports provided to clients.

(1) Iowa certified laboratory number;
(2) Laboratory name, address, and phone number;
(3) Laboratory sample ID;
(4) Client sample location ID;
(5) Regulatory ID number, such as a permit number;
(6) Date and time of sample collection;
(7) Date and time of sample receipt and temperature (may be recorded on chain of custody, receiving sheet, or comments);
(8) Sample collector name;
(9) Date and time of analysis;
(10) Analyst name;
(11) Matrix;
(12) Analyte;
(13) Analytical method used;
(14) The LOQ;
(15) Analysis result;
(16) Units of measure;
(17) Subcontracting laboratory or laboratories, if used;
(18) Signature of signatory authorized to sign analytical reports; and
(19) Chain of custody records.

*b. Additional reporting for all program areas.*

(1) The use of whiteout to correct errors is strictly prohibited.
(2) Laboratory records and final reports shall be recorded in ink or electronically signed.
(3) A laboratory shall not express an analytical result as either:
1. Less than the MDL; or
2. As zero, unless specifically required by rule.
(4) Laboratories reporting data for the purpose of a monthly operation report (MOR) or discharge monitoring report (DMR) must follow the instructions and use the templates specified by the program area(s).

*c. Water supply program.*

(1) Certified laboratories must report all analytical test results for all public water supply systems (PWS) using the electronic reporting system provided by the department. New laboratories shall be fully compliant with electronic data reporting requirements no later than 45 days after the laboratory begins analysis of compliance samples. If a PWS is required by the department to collect and analyze a sample for an analyte not normally required by 567—Chapters 41 and 43, the laboratory testing for that analyte must also be certified and report the results of that analyte to the department. A PWS may request that a laboratory add additional analytes for analysis after samples are received by the laboratory, but may not remove an analyte originally requested after the laboratory has initiated analysis of those analytes without written department approval. It is the laboratory's responsibility to correctly assign and track the sample identification number, the facility ID, and source/entry point data for all reported samples.

1. The following are examples of sample types for which data results must be reported:

- Routine: a regular sample that includes samples collected for compliance purposes at various sampling frequencies;
- Repeat: a sample that must be collected after a positive result from a routine or previous repeat total coliform sample, per 567—paragraph 41.2(1)*"j."* Repeat samples must be analyzed by the same laboratory that analyzed the associated original routine sample;
- Confirmation: a sample that verifies a routine sample, normally used to determine compliance with a health-based standard;
- Special: a nonroutine sample, such as raw, plant, and troubleshooting samples, which cannot be used to comply with monitoring requirements assigned by the department;
- Maximum residence time: a sample collected at the maximum residence time location in the distribution system, usually for disinfection byproduct measurement; and
- Replacement: a sample that replaces a missed sample from a prior monitoring period resulting in a monitoring violation.

2. The following additional types of data must be reported to the department:

- MOR data that is required by the department to demonstrate compliance with public health standards; and
- Raw water sampling results specifically covered by 567—Chapters 40 to 43 for new surface water or groundwater sources, or reconstruction of groundwater sources.

3. The following are examples of data results that are not required to be reported by a laboratory to the department:

- Routine MOR data; or
- Distribution samples for the Total Coliform Rule 567—subrule 41.2(1) for water main repair or installation.

4. The sample type cannot be changed after submittal to the laboratory, without written department approval. The prescreening, splitting, or selective reporting of compliance samples is not allowed.

(2) Certified laboratories must report all analytical results to the PWS for which the analyses were performed.

(3) Analytical results must be reported to and received by the department by the seventh day of the month following the month in which the samples were analyzed.

(4) In addition to the monthly reporting of analytical results, the following results must be reported within 24 hours of the completion of the analysis, including data reduction, to the department by email or other acceptable method acceptable to the department, and to the PWS for which the analyses were conducted:

1. Results of positive routine coliform bacteria samples, and all repeat and follow-up samples; and
2. Results of any contaminant that exceeds public drinking water standards (maximum contaminant level, treatment technique, action level, or health advisory), and any subsequent confirmation samples.

Results available outside of routine business hours must be reported to the department's Environmental Emergency Reporting Hotline at 515.725.8694.

(5) If requested by the department, certified laboratories shall report their MDLs, LOQs, and any other pertinent information when reporting results for PWSs.

*d. UST program.* No additional information.

*e. Wastewater program.* No additional information.

*f. Solid waste and contaminated site programs.* No additional information.

**83.5(8)** *Recordkeeping.*

*a. Appraisal authority.* The laboratory certification program appraisal authority must retain the records for on-site laboratory audits and certification program reviews. The records must be maintained in an easily accessible manner for a period of six years, including the last two on-site audits. The records include correspondence used to determine compliance with the laboratory certification program requirements, and may include checklists, corrective action reports, final reports, certificates, PT study results, and any other related documents.

*b. Laboratories.* Laboratories shall retain laboratory records in paper or electronic form or a combination of both. Laboratory records include, but are not limited to, calibration curves; raw data; calculations and supporting data such as chromatographs; analytical results; lists of chemicals and equipment used; QA plans; SOPs; and PT results. Laboratory records shall be retained according to the following schedule:

(1) Drinking water: microbiology and turbidity, five years; chemical, ten years; lead and copper rule, twelve years.

(2) Wastewater: all analytes, three years. Federal DMRQA reports, three years.

(3) Sewage sludge (municipal biosolids): all analytes, five years.

(4) Solid waste and contaminated sites: all analytes, five years.

(5) Underground storage tanks: all analytes, five years.

**567—83.6(455B) Criteria and procedure for provisional, suspended, and revoked laboratory certification.**

**83.6(1)** *Voluntary withdrawal of certification.* A laboratory may voluntarily withdraw certification for an analyte, a related analytical series, an environmental program area, or the entire laboratory at any time in lieu of receiving a downgraded certificate with a provisional, suspended, or revoked status.

**83.6(2)** *Provisional certification criteria.*

*a.* The department may downgrade certification to provisional status based on cause. The reasons for which a laboratory may be downgraded to provisionally certified status include, but are not limited to, the following list.

(1) Failure to analyze a performance evaluation (PT) sample annually within acceptance limits;

(2) Failure to notify the department within the time period specified in 83.5(3) of changes in essential personnel, equipment, laboratory facilities, or other major changes that might impair analytical capability;

(3) Failure to satisfy the department that the laboratory is maintaining the required standard of quality based on an on-site audit;

(4) Failure to report compliance data in a timely manner to the department or the client, thereby preventing timely compliance with environmental program regulations.

*b.* The department may assess an administrative penalty for a laboratory's failure to comply with the laboratory certification or reporting requirements.

**83.6(3)** *Provisional certification procedure.*

*a. Laboratory notification.* If a laboratory is subject to a downgrade to provisional status on the basis of 83.6(2), the department will notify the laboratory or owner in writing of the downgraded status. Certification may be downgraded to provisional for an analyte, a related analytical series, an environmental program area, or the entire laboratory.

*b. Reporting.* A provisionally certified laboratory may continue to analyze samples for compliance purposes.

*c. Right to appeal.* There is no appeal for this process, as it does not affect a laboratory's ability to analyze compliance samples and report to the department.

*d. Correction of deficiencies.*

(1) Once the department notifies a laboratory in writing that it has been downgraded to provisionally certified status, the laboratory must correct the problem within the following time frames, unless a written extension is obtained from the department. If the problem is not corrected, the laboratory is subject to suspension for that analyte, related analytical series, environmental program area, or the entire laboratory.

1. Unacceptable PT sample result within two months of notification.
2. Procedural deficiency within three months of notification.
3. Administrative deficiency within three months of notification.
4. Equipment deficiency within three months of notification.

(2) The laboratory shall submit a corrective action report(s), including documentation that demonstrates the laboratory has complied with the required corrective actions.

*e. Reinstatement.* Certification will be reinstated when the laboratory can demonstrate that all conditions for laboratory certification have been met to the department's satisfaction and that the deficiencies that caused provisional certification status have been corrected. The SHL may conduct an on-site audit to verify that corrective actions have been implemented.

**83.6(4)** *Suspended certification criteria.*

*a.* The department may downgrade certification to suspended status based on cause. The reasons for which a laboratory may be downgraded to suspended status include, but are not limited to, the following:

(1) Failure to analyze a PT sample annually within acceptance limits;

(2) Failure to correct previously identified deficiencies, which resulted in provisional certification status, within the prescribed time frames of 83.6(3)*"d"*(1);

(3) Failure to satisfy the department that the laboratory is producing accurate data;

(4) Failure to use required analytical methodology for analyses submitted to the department; or

(5) Repeated failure to report compliance data in a timely manner.

*b.* Administrative penalty. The department may assess an administrative penalty for a laboratory's failure to comply with the laboratory certification or reporting requirements.

*c.* Emergency certification suspension. The department may suspend certification without providing notice and opportunity to the laboratory to be heard if the department finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its administrative order, pursuant to 561—Chapter 7.

**83.6(5)** *Suspended certification procedure.*

*a. Laboratory notification.* If a laboratory is subject to downgrading to suspended status on the basis of 83.6(4), the department will notify the laboratory or owner in writing of its intent to suspend certification in accordance with 561—Chapter 7. Certification may be suspended for an analyte, a related analytical series, an environmental program area, or the entire laboratory.

*b. Reporting.* Once the suspension is effective, a laboratory must immediately discontinue analysis and reporting of compliance samples, may not analyze or report samples for compliance with departmental standards, and must notify the laboratory's Iowa regulated clientele and other state certifying agencies of the change of the laboratory certification status within three days. Any results generated during the period of suspension may not be used for compliance purposes by the department.

*c. Right to appeal.*

(1) The laboratory may appeal this decision by filing a written notice of appeal and request an administrative hearing with the department director within 30 days of receipt of the notice of suspension of certification. Contested case procedures under 561—Chapter 7 shall govern administration of the appeal. The appeal must identify the specific portion(s) of the department action being appealed, be supported with a statement of the reason(s) for the challenge, and be signed by a responsible official from the laboratory.

(2) If no timely notice of appeal is filed, suspension is effective 30 days after receipt of the notice of suspension unless an emergency suspension order is in effect.

*d. Correction of deficiencies.*

(1) Once the department notifies a laboratory in writing that it has been downgraded to suspended status, the laboratory must correct the problem within the following timetable, unless a written extension is obtained from the department. If the problem is not corrected, the laboratory is subject to revocation for that analyte, related analytical series, environmental program area, or the entire laboratory.

1. Unacceptable PT sample result within two months of notification.
2. Procedural deficiency within three months of notification.
3. Administrative deficiency within three months of notification.
4. Equipment deficiency within three months of notification.

(2) The laboratory shall review the problems cited and, within the time period designated by the department, submit a corrective action report(s) including documentation that demonstrates the laboratory has complied with the required corrective actions. The department shall consider the

adequacy of the response and notify the laboratory of its certification status and may follow up to ensure that corrective actions have been taken.

*e. Reinstatement.*

(1) Fee.

1. The laboratory will not be required to pay an additional fee if recertification affects an analyte or related analytical series, provided that:

- The laboratory is currently certified for other analytes, or
- A fee was paid within the two-year certification period for that related analytical series and the laboratory is certified for other parameters within that related analytical series.

2. A fee is required when suspension affects a related analytical series, effectively deleting that fee group from certification (such as all microbiological parameters in SDWA-MICRO), an environmental program area, or the entire laboratory. A fee is also required if an additional on-site audit is required.

(2) Certification will be reinstated when the laboratory can demonstrate that all conditions for laboratory certification have been met and that the deficiencies that caused the suspension have been corrected. This may include an on-site audit, successful analysis of unknown samples, or any other measure that the department deems appropriate.

**83.6(6)** *Revoked certification criteria.*

*a.* The department may revoke certification for cause. The reasons for which a laboratory's certification may be revoked include, but are not limited to, the following:

(1) Failure to correct deficiencies according to the time period specified in 83.6(5)*"d"*(1);

(2) Submission of a PT sample to another laboratory for analysis and reporting the data as its own;

(3) Falsification of data or other deceptive practices;

(4) Failure to use required analytical methodology for analyses submitted to the department;

(5) Failure to satisfy the department that the laboratory is maintaining the required standard of quality based on the on-site audit;

(6) Persistent failure to report compliance data to the regulated client or the department in a timely manner, thereby preventing compliance with state regulations and endangering public health;

(7) Subverting compliance with state regulations by actions such as changing the sample type for a noncompliance sample to a compliance sample after its submission to the laboratory, allowing compliance samples to be changed to other noncompliance sample types, or selective reporting of split sample results; or

(8) For laboratories certified through a reciprocal agreement with another state or third-party accreditation program, loss of certification in either the resident state or third-party accreditation program is cause for immediate revocation of certification in Iowa for the same parameters or program areas for which certification was lost.

*b.* The department may assess an administrative penalty for a laboratory's failure to comply with the laboratory certification or reporting requirements.

*c.* Emergency revocation. The department may revoke certification without providing notice and opportunity to the laboratory to be heard if the department finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its administrative order, pursuant to 561—Chapter 7.

*d.* Laboratory-requested revocation (withdrawal of certification). The department may revoke certification upon receipt of a written request by the certified laboratory for removal from the certification program.

**83.6(7)** *Revoked certification procedure.*

*a. Laboratory notification.* Except for the instance when the laboratory voluntarily requests revocation in 83.6(6)*"d,"* if a laboratory is subject to revocation on the basis of 83.6(6), the department will notify the party in writing of its intent to revoke certification in accordance with 561—Chapter 7. Certification may be revoked for an analyte, a related analytical series, an environmental program area, or the entire laboratory.

*b. Reporting.* Once revocation is effective, a laboratory must immediately discontinue analysis and reporting of compliance samples, shall not analyze or report samples for compliance with departmental

standards, and must notify the laboratory's Iowa-regulated clientele and other state certifying agencies of the change of the laboratory certification status within three business days of receipt of the final notice. Any results generated after revocation may not be used for compliance purposes by the department.

*c. Right to appeal.* When a laboratory requests revocation pursuant to 83.6(6)*"d,"* the revocation will be issued promptly and will be effective immediately with no appeal process.

(1) The laboratory may appeal this decision by filing a written notice of appeal and request for an administrative hearing with the department director within 30 days of receipt of the notice of revocation of certification. Contested case procedures under 561—Chapter 7 shall govern further administration of the appeal. The appeal must identify the specific portion(s) of the department action being appealed, be supported with a statement of the reason(s) for the challenge, and be signed by a responsible official.

(2) If no timely notice of appeal is filed within the 30-day time period, revocation is effective 30 days after receipt of the notice of revocation.

*d. Reinstatement.* A laboratory that has had its certification revoked may apply for certification in accordance with rule 567—83.3(455B) once the deficiencies have been corrected.

These rules are intended to implement Iowa Code sections 455B.113 through 455B.115.

## ARC 8637C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

### Proposing rulemaking related to clean water state revolving fund and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 90, "Scope of Title—Definitions—Forms"; to adopt new Chapter 90, "Clean Water State Revolving Fund"; and to rescind Chapter 91, "Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund," Chapter 92, "Clean Water State Revolving Fund," and Chapter 93, "Nonpoint Source Pollution Control Set-Aside Programs," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 455B.299.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 455B.299 and the Clean Water Act (33 U.S.C. §1251 et seq.).

*Purpose and Summary*

Proposed Chapter 90 combines four existing chapters (specifically, Chapters 90, 91, 92, and 93) that govern the Clean Water State Revolving Fund (CWSRF) into one. Chapters 91, 92, and 93 are proposed to be rescinded.

Proposed Chapter 90 now provides the definitions, forms, general project and program administration rules, criteria for Intended Use Plan content and publication, criteria for ranking water pollution control projects for all CWSRF programs, and criteria for nonpoint source project program eligibility.

These four chapters were reviewed and edited consistent with Executive Order 10. Combining them will (1) consolidate and clarify redundant information provided in the statutory authority, purpose, scope of title and general policy sections of each chapter; (2) delete unused definitions; (3) update or delete out-of-date process descriptions; and (4) consolidate all rules and administrative processes associated with the CWSRF nonpoint program into one chapter.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Theresa Enright
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: theresa.enright@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge, contact the Department at SRF-pc@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al SRF-pc@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 5, 2025<br>9 to 10 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |
| February 6, 2025<br>10 to 11 a.m. | Virtual meeting<br>A meeting registration link will be provided prior to the hearing |

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: If you need assistance in a language other than English, contact the Department at SRF-pc@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.725.0498 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: Si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al SRF-pc@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.725.0498 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 90 and adopt the following **new** chapter in lieu thereof:

TITLE VII
*WATER POLLUTION CONTROL STATE REVOLVING FUND*

CHAPTER 90
CLEAN WATER STATE REVOLVING FUND

**567—90.1(455B) Statutory authority, purpose, and general policy.**

**90.1(1)** *Statutory authority.* The department of natural resources and the Iowa finance authority are jointly designated to administer the clean water state revolving fund (CWSRF). Authority to administer this fund is provided by Iowa Code sections 455B.291 through 455B.299 and the federal CWA. Section 603(c) of Title VI of the CWA allows the use of state revolving funds to assist in the construction of POTWs and WPC projects.

**90.1(2)** *Purpose.* This chapter provides the definitions, forms, general project and program administration rules, criteria for loan eligibility, and criteria for rating and ranking WPC projects for the CWSRF point source and NPS pollution control programs. The selection criteria, methods for selecting projects or programs for loans, and the extent to which these policies must be described in the IUP are required by 40 CFR §35.3150.

**90.1(3)** *Administration.* The department, in conjunction with the authority, has been delegated the responsibility of administering the CWSRF program described in this chapter and the DWSRF program described in 567—Chapter 44. The director may coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

**90.1(4)** *Program funding.* The commission shall set funding targets for point source and NPS activities and adjust the fundable project list to ensure that the short- and long-term goals of the IUP are achieved. It is the intent of the commission to reserve a portion of the CWSRF funds to provide for the purpose of making low-interest loans for NPS WPC projects. The amount for each NPS program will be determined in the IUP. Loans of up to 100 percent of the eligible costs of WPC projects will be made available pursuant to these rules, rules established by the authority, and Title VI of the CWA.

**90.1(5)** *State capitalization grant.* The CWA authorizes the EPA to offer capitalization grants to states for use in a revolving fund loan program. A portion of the capitalization grant, as allowed by Title VI of the CWA, will be used to administer the CWSRF program.

**90.1(6)** *Federal funding coordination.* Projects may use CWSRF funds to complete the financing of projects partially funded by other federal programs.

**90.1(7)** *Project determination.* A project must comply with this chapter to be eligible for a CWSRF loan. The department shall use a priority rating system to rate eligible projects for funding. An eligible project may be either a point source project or an NPS project or activity. CWSRF assistance will be available to projects in priority order. Additional rating criteria for NPS activities will be established in the IUP and circumstances for use are described in 90.14(1). Projects or activities qualifying for CWSRF assistance shall be identified in the IUP on the state PPL, developed pursuant to this chapter, and only

those projects or activities may be considered fundable. WPC projects that provide the best water quality improvements or protection based on the rating system and are ready to proceed are to be funded.

**90.1(8)** *Decisions.* Department decisions are final unless the recipient files a written petition for review with the director. The petition must be addressed to the director and clearly state the decision in question and the basis for the requested review. The recipient has the right to appeal a decision to the commission pursuant to Iowa Code chapter 17A or to the state court.

**90.1(9)** *Public participation.* The public has an opportunity annually, and quarterly as needed, to comment on both the fundable list and the short- and long-term goals of the IUP.

**567—90.2(455B) Definitions, abbreviations, and forms.**

**90.2(1)** *Definitions.* In addition to the definitions and references in 567—Chapter 40, the following definitions are applicable to this chapter:

*"Comprehensive Nutrient Management Plan"* or *"CNMP"* means a conservation system that is unique to an AFO. A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as beneficial resources. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-products and their potential impacts on all natural resources including water and air quality, which may derive from an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, tribal, state, and federal water quality goals or regulations. For nutrient-impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, tribal, state, or federal water quality goals or regulations.

*"CWA"* or *"Clean Water Act"* means the federal Water Pollution Control Act effective July 1, 2024, 33 U.S.C. §1251 et seq.

*"CWSRF"* means the clean water state revolving fund, also known as the water pollution control works revolving loan fund as defined in Iowa Code section 455B.291.

*"Eligible entity"* means a person eligible under the provisions of the CWA, the SDWA, and the commission rules to receive loans for projects from either of the revolving loan funds.

*"Eligible project"* means, in the context of WPC facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the CWA, and including construction and undertaking of NPS WPC projects and related development activities authorized under the CWA. Projects for the primary purpose of speculative growth are considered ineligible.

*"Energy conservation"* means renewable energy construction projects such as wind, solar, etc.

*"Facility plan"* means a report certified by a professional engineer licensed to practice in Iowa and prepared in conformance with Chapter 1 of the IWFDS. This report shall include an evaluation of the facility, identify problems, provide alternatives and a recommended solution, outline financing options and project timeline, and address other applicable issues ensuring the viability of the project and the facility to meet project goals and discharge requirements.

*"Fiscal year"* means the state fiscal year starting July 1 and ending June 30.

*"Intended use plan"* or *"IUP"* means a plan identifying the intended uses of funds available for loans in the WPC state revolving fund for each fiscal year as described in Section 606(c) of the CWA.

*"IWFDS"* means the Iowa Wastewater Facilities Design Standards, effective [month] 2025, located on the department's website at www.iowadnr.gov.

*"Municipality"* means the city, county, sanitary district, state agency, or other governmental corporation or body empowered to provide sewage collection and treatment services, or any combination of two or more such governmental bodies, or corporations acting jointly, in connection with a project.

*"New AFO"* means an animal feeding operation that meets at least one of the following criteria:

1. It was constructed after January 1, 2006.
2. Animal production at the site was resumed after being discontinued for at least 12 months.

3. Production facilities were altered in order to house a different animal species than was produced previously.

*"Nontraditional project"* means a project whose primary purpose is not to protect or improve water quality. A secondary purpose of the project does include water quality improvement or protection.

*"NPS"* means nonpoint source pollution which does not have a single point of origin and/or is not introduced into a receiving stream from a specific outlet. NPS pollution sources are diffuse and may be a result of runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrological modification.

*"POTW"* means publicly owned treatment works as defined in Section 212 of the CWA.

*"Private sewage disposal system"* or *"PSDS"* is defined in 567—subrule 69.1(2). For the purposes of this chapter, "PSDS" means the same as "onsite wastewater treatment system" or "onsite system."

*"Project category"* means identified categories of projects that comprise mutually exclusive classes of facilities. Each category and the types of projects included in the category are listed below.

1. Category I. Secondary treatment—wastewater treatment costs necessary to meet the minimum level of treatment defined by the CWA.

2. Category II. Advanced treatment—wastewater treatment costs necessary to attain a level of treatment that is more stringent than standard secondary treatment or to produce a significant reduction in nonconventional or toxic pollutants present in the treated wastewater.

3. Category III–A. Infiltration/inflow (I/I) correction—costs for correction of sewer system I/I problems. Infiltration includes controlling the penetration of water into a sanitary or combined sewer system from the ground through defective pipes or manholes. Inflow includes controlling the penetration of water into the system from drains, storm sewers, and other improper entries. This category also includes costs for preliminary sewer system analysis and detailed sewer system evaluation surveys.

4. Category III–B. Sewer replacement/rehabilitation—costs for the reinforcement or reconstruction of structurally deteriorating sanitary or combined sewers. The corrective actions must be necessary to maintain the structural integrity of the system. Rehabilitation is considered to be extensive repair of existing sewers (collector and interceptor) beyond the scope of normal maintenance programs, when sewers are collapsing or structurally unsound. "Replacement" is the construction of parallel sewer or sewers that perform the function of existing sewers where existing sewers are to be abandoned. Sewer work associated with I/I elimination is considered a Category III–A need. Relief sewers do not fall within this category since they are newly constructed sewers with a function beyond that of existing sewers.

5. Category IV–A. New collector sewers and appurtenances—costs of new pipes used to collect and carry wastewater from a sanitary or industrial wastewater source to an interceptor sewer that will convey the wastewater to a treatment facility. The collection system is considered as those public sewers which have a principal purpose of providing service for individual users in existing residential and commercially developed areas to enable collection of wastewater in a centralized system. Pumping stations, force mains, and other related appurtenant structures are considered part of the collection system if their primary mechanical function relates to the collection system.

6. Category IV–B. New interceptor sewers and appurtenances—costs for constructing new interceptor sewers and pumping stations to convey wastewater from collection sewer systems to a treatment facility or to another interceptor sewer. Relief sewers are included in this category where additional sewer capacity is required to accommodate all wastewater in a separate sewer system to ensure that it is transported to a wastewater treatment plant for adequate treatment, and to prevent public health hazards within the service area. Relief sewers may include parallel sewers. Pumping stations and force mains and other related appurtenant structures are considered in this category if their primary mechanical function relates to the interceptor's principal purpose. Equalization basins are included in this category.

7. Category V. Combined sewer overflow (CSO) correction—costs to prevent or control the periodic discharges of mixed stormwater and untreated wastewater (CSOs) that occur when the capacity of a sewer system is exceeded during a wet weather event. This category does not include costs for overflow control allocated to flood control, drainage improvement, or the treatment or control of stormwater in separate storm systems.

8. Stormwater management program categories. The following categories include costs to address the described stormwater management program activities:

- Category VI. Gray infrastructure—costs to plan and implement structural and nonstructural measures to control the runoff of water resulting from precipitation (stormwater) with the purpose of improving and protecting water quality. This category includes controlling stormwater pollution from diffuse sources by reducing pollutants in runoff from commercial and residential areas served by the storm sewer, detecting and removing illicit discharges and improper disposal into storm sewers, monitoring pollutants in runoff from industrial facilities that flow into municipal separate storm sewer systems, and reducing pollutants in construction site runoff discharged to municipal separate storm sewers.
- Category VI–A. Stormwater conveyance infrastructure—planning, design, and construction costs associated with stormwater conveyances including pipes, inlets, roadside ditches, and other similar mechanisms. These costs will be eligible if they are combined with practices described in Category VI–B or VI–C in order to achieve water quality protection or improvement.
- Category VI–B. Stormwater treatment systems—planning, design, and construction costs associated with stormwater treatment including wet ponds, dry ponds, manufactured devices, and other similar means. These costs will be eligible if these activities are implemented in order to achieve water quality protection or improvement.
- Category VI–C. Green infrastructure—planning, design, and construction costs associated with low-impact development and green infrastructure, such as bioretention, constructed wetlands, permeable pavement, rain gardens, green roofs, cisterns, rain barrels, vegetated swales, or restoration of riparian buffers and flood plains. Projects in this category can be both publicly owned and privately owned.
- Category VI–D. General stormwater management—costs associated with implementing a stormwater management program, such as geographic information systems or tracking systems, equipment such as street sweepers and vacuum trucks, stormwater education program startup costs, and stormwater management plan development.

9. NPS project categories. The following categories include costs to address NPS project categories with certain activities, as described:

- Category VII–A. NPS control: agriculture (cropland)—costs associated with agricultural activities related to croplands, such as plowing, pesticide spraying, irrigation, fertilizing, planting, and harvesting.
- Category VII–B. NPS control: agriculture (animals)—costs associated with agricultural activities related to animal production, such as confined animal facilities, open feedlots, and grazing.
- Category VII–C. NPS control: silviculture—costs associated with forestry activities such as removal of streamside vegetation, road construction and use, timber harvesting, and mechanical preparation for tree planting.
- Category VII–E. NPS control: groundwater protection (unknown source)—costs associated with groundwater protection needs such as wellhead and recharge protection activities.
- Category VII–F. NPS control: marinas—costs associated with boating and marinas, such as poorly flushed waterways, boat maintenance activities, sewage discharge from boats, and the physical alteration of shoreline, wetlands, and aquatic habitat during the construction and operation of marinas.
- Category VII–G. NPS control: resource extraction—costs associated with mining and quarrying activities.
- Category VII–H. NPS control: brownfields—costs associated with abandoned industrial sites that might have residual contamination (brownfields).
- Category VII–I. NPS control: storage tanks—costs associated with tanks designed to hold gasoline, other petroleum products, or chemicals. The tanks may be located above or below ground level.
- Category VII–J. NPS control: landfills—costs associated with sanitary landfills.
- Category VII–K. NPS control: hydromodification—costs to address the degradation of water resources as a result of altering the hydrological characteristics of noncoastal waters, including channelization and channel modification, dam, and streambank and shoreline erosion. Work involving wetland or riparian area protection or restoration is included in this category.

10. Category X. Recycled water distribution—costs associated with conveyance of treated wastewater that is being reused (recycled water), including associated rehabilitation/replacement needs.

11. Category XII. Decentralized sewage treatment—costs associated with the rehabilitation or replacement of PSDSs or clustered (community) systems. This category also includes the treatment portion of other decentralized sewage disposal technologies.

*"Project completion"* means the date the final loan certificate is signed by the recipient.

*"Sponsor project"* is defined in Iowa Code section 455B.199.

*"State project priority list"* or *"PPL"* means the list of projects in priority order that may qualify for CWSRF loan assistance.

**90.2(2)** *Abbreviations.* In addition to the abbreviations in 567—Chapter 40, the following abbreviations are applicable to this chapter.

| Abbreviation | Meaning |
|---|---|
| AFO | animal feeding operation |
| BMP | best management practice |
| EPA | U.S. Environmental Protection Agency |
| GNS | general nonpoint source |
| LWQP | livestock water quality linked-deposit program |
| LWWP | local water protection project linked-deposit program |
| MMP | manure management plan |
| NRCS | USDA Natural Resource Conservation Service |
| NMP | nutrient management plan |
| OSWAP | onsite wastewater assistance linked-deposit program |
| SWCD | soil and water conservation district |
| USDA | U.S. Department of Agriculture |
| WPC | water pollution control |

**90.2(3)** *Forms.* All CWSRF forms may be obtained from the department's state revolving fund section and may be downloaded from www.iowasrf.com. Recipients of assistance shall comply with the applicable department rules.

**567—90.3(455B) IUP preparation.**

**90.3(1)** *Development.* The department shall prepare an IUP at least annually and on a quarterly basis as needed. The IUP will be subject to public participation and approved by the commission.

**90.3(2)** *Notification.* A public hearing process is included in the IUP adoption process to provide opportunity for public participation. A notice is published that explains the purpose of the IUP and how additional information may be obtained. All materials relating to the IUP will be posted at www.iowasrf.com.

**90.3(3)** *Comments.* Comments regarding the proposed IUP will be accepted during the notice period, at the public hearing, and in writing. After evaluation of all pertinent comments, the IUP will be revised, if necessary, and recommended for commission approval. Subsequent approval by the commission will establish the IUP to be used for loan assistance.

**567—90.4(455B) IUP contents.** The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include the following information:

**90.4(1)** *State PPL.* The state PPL contains the projects eligible for CWSRF direct loans. The PPL includes projects scheduled for loans from funds available during the fiscal year. Projects will be considered in priority order for placement on the fundable list.

*a.* The department will consider the following in developing the list of fundable projects for the IUP:

(1) How the project conforms to the short- and long-term goals of the CWSRF;

(2) The priority rating of the POTW project;

(3) Whether a POTW project will be ready to proceed on a schedule consistent with time requirements for outlay of funds;

(4) Whether the proposed project addresses the need upon which the eligible entity's priority is based;

(5) The funds available, department priorities, and the department's administrative capacity; and

(6) The applicant's conformance to process guidelines provided by the department.

*b.* The PPL will be reviewed at least annually or quarterly as needed to update schedules and project cost estimates.

**90.4(2)** *Priority for loan assistance.* A fundable project must be technically and administratively complete. A community is responsible for complying with the technical procedures for facility planning and preparation of plans and specifications, including department approval of those documents.

**90.4(3)** *Notification of revisions.* The department will notify, in writing, all communities that are removed from or placed on an approved fundable list based on revisions.

**90.4(4)** *Special considerations.* Exemptions to the point source rating criteria may be considered by the department, and funding variances may be granted by the commission for projects that have unique or unusual circumstances but that do not logically fit into the criteria. The commission may grant interest rate reductions or other favorable loan incentives to applicants that sponsor a project that improves the quality of the water in the watershed where a city water or wastewater facility is located.

**90.4(5)** *Additional contents.* The IUP will also include:

*a.* The long- and short-term goals of the CWSRF;

*b.* Information on the types of activities to be supported by the CWSRF. The IUP will identify requests for planning and design loans and funds to be directed to NPS programs;

*c.* Assurances and specific proposals on how the state intends to meet the requirements of the operating agreement between the state of Iowa and the EPA;

*d.* Loan interest rates and terms, interest rates and terms for linked deposit programs, and loan origination fees and servicing fees; and

*e.* The method to be used by the department if the IUP is amended.

**567—90.5(455B) Point source project procedures.**

**90.5(1)** *Application forms.* An applicant shall complete the application for placement on the IUP, provide documentation on the project, and submit the application package to the department. Forms may be downloaded from www.iowasrf.com.

**90.5(2)** *General requirements.* The following items must be included in a CWSRF application for point source projects:

*a.* A facility plan that conforms to the IWFDS and is certified by a professional engineer licensed to practice in Iowa;

*b.* A schedule for submission of plans and specifications for the project; and

*c.* A project construction schedule.

**90.5(3)** *Timing.*

*a.* POTW project applications received by the department for eligible projects will be scored using the rating criteria in 567—90.7(455B) and will be placed on the PPL. Applications may be submitted on an ongoing basis and will be reviewed in accordance with the schedule in the IUP.

*b.* Applications received after the IUP is drafted will not be placed on the PPL but will be considered for loan assistance when the next IUP is prepared.

**90.5(4)** *Project initiation conference.* The department may require an applicant or their representative to meet with the department. If required, the eligible applicant's official representative (and usually the applicant's consultant) will meet with the department to discuss:

*a.* CWSRF program policies, procedures, and guidelines;

*b.* Allowable costs;

*c.* Wastewater treatment alternatives and technologies;

*d.* Environmental impacts and review considerations;

*e.* Public participation;

*f.* Scheduling; and

*g.* Other information as needed.

**90.5(5)** *Review criteria for point source projects.* The department shall review CWSRF applications from eligible applicants and verify the following items:

*a.* The project is on the PPL;

*b.* The applicant has prepared an adequate facility plan report;

*c.* The project will be in conformance with any applicable areawide water quality management plans;

*d.* The applicant has adopted or will adopt an acceptable user charge system;

*e.* The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance. If the department has reasonable grounds to believe that an applicant's wastewater treatment facilities are not viable, the department may require the applicant to submit management and financial plans as prescribed in Iowa Code section 455B.174; and

*f.* The applicant has provided an acceptable project schedule for project initiation and completion.

**90.5(6)** *Allowable and unallowable costs.* Allowable costs shall be limited to those eligible costs deemed necessary, reasonable, and directly related to the efficient completion of the project. Unallowable costs include, but are not limited to, the following:

*a.* Cost of service lines and in-house plumbing;

*b.* Administrative costs of the recipient;

*c.* Purchase of vehicles and tools;

*d.* Land purchase and easement or rights-of-way costs, except as authorized under the CWA;

*e.* Pretreatment program development costs, unless required by federal regulations; and

*f.* Operation and maintenance costs.

**90.5(7)** *Audit and inspection.* The recipient shall provide access at all times for the department, the authority, the state auditor, and the EPA Office of the Inspector General to all project records and documents for inspection and audit purposes for a period of three years after the date of last loan payment. The same access to the project site(s) shall be provided for inspection purposes.

**567—90.6(455B) Point source project requirements.** All wastewater treatment system projects receiving assistance from the CWSRF which entered into binding loan commitments on or after October 1, 1994, and did not initiate construction of the projects in whole or in part prior to October 1, 1994, shall meet the following requirements:

**90.6(1)** *Planning.* The planning phase of a project consists of those necessary plans and studies that directly relate to a facility's need to comply with enforceable requirements of the CWA and state statutes. This phase consists of a systematic evaluation of feasible alternatives considering the unique demographic, topographic, hydrologic, and institutional characteristics of the planning area. Facilities planning must support selection of the proposed alternative. The planning phase must include the following:

*a. Facility plan.* The facility plan must contain a description of the proposed project and the complete system of which it is a part. The facility plan must be prepared in accordance with Chapter 1 of the IWFDS and meet the applicable provisions of this subrule.

*b. Environmental review.* Loan recipients shall conduct environmental review of projects using procedures in 40 CFR Part 6, September 19, 2007, as a part of facility planning. An applicant should work with the department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from 40 CFR Part 6 or whether a finding of no significant impact is required. In conjunction with the facility planning process as described in 40 CFR §35.2030(c), December 19, 2014, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, September 19, 2007, pertaining to Procedures for Implementing the Requirements of the Council on Environmental Quality of the National Environmental Policy Act, is hereby adopted by

reference and incorporated herein. However, all references to the EPA as performing acts or reviews shall be substituted with references to the department for the purposes of this chapter.

**90.6(2)** *Point source project design and construction.* The project design and construction phase must include all of the following:

*a. Recipient capability.* The recipient must demonstrate to the department that it has the legal, institutional, managerial, and financial capability to ensure adequate construction, operation and maintenance of treatment works.

*b. Disadvantaged business enterprise (DBE).* The recipient must comply with the requirements of DBE participation found in 40 CFR Part 33, May 19, 2022.

*c. Site.* When it is necessary to acquire real property as part of the project and within the project period, the recipient may be required to submit documentation of the acquisition, including the legal description, the date the property was acquired, and an appraisal report from a qualified appraiser. If required, submittal to the department shall occur prior to contract award.

*d. Project changes.* Prior to the final loan disbursement, the recipient must submit to the department for approval all modifications to the project, including changes to the plans and specifications and changes in the contract (change orders). The recipient is responsible for any costs or actions necessary should the changes be implemented prior to departmental review and subsequently found to be unapprovable.

*e. State inspections.* Department personnel shall have the right to examine all construction aspects of the project, including materials and equipment delivered and stored on site for use on the project.

**567—90.7(455B) Point source project priority rating system.** The rating criteria consider the use and classification of the receiving waters, water quality of the receiving waters, groundwater protection, project category, project purpose, and a tiebreaker. Priority ranking for POTW projects shall be based on the total points awarded for all the categories; the greater the total number of points, the higher the ranking. For POTW projects, the ranking will be done when the IUP is prepared. The tiebreaker category will be used when necessary.

**90.7(1)** *Use classification of receiving waters.* This category addresses the receiving water that is impacted or potentially impacted by the existing situation and that would be improved or protected by the proposed project. Points for sludge stabilization, sewers, and lift station projects are based on the designated use of the waters that receive or could receive the effluent discharge. Points will be awarded and be cumulative for all designated use classifications of the receiving water.

| Use and Classification of Receiving Waters | Points |
|---|---|
| Outstanding Iowa waters | 45 |
| Class A1 | 50 |
| Class A2 | 45 |
| Class A3 | 50 |
| Class C | 40 |
| Class B (CW1) | 50 |
| Class B (CW2) | 30 |
| Class B (WW1) | 30 |
| Class HH | 30 |
| Class B (WW2) | 25 |
| Class B (WW3) | 20 |
| Class B (LW) | 35 |

**90.7(2)** *Water quality of receiving waters.* This category addresses the water quality in the receiving stream and whether or not the water has been designated as impaired for one or more uses. Points will be awarded for both A and B in the table below and then totaled for this category.

*a.* Bodies of water that are impaired by pollutants and probable pollutant source categories for the impairments are identified in Section 303(d) of the CWA list of waters in the integrated report of impaired waters status. Projects primarily impacting these waters will be awarded points if the water body that receives or could receive the wastewater discharge is included on the Section 303(d) list and the probable pollutant source is a point source.

*b.* Waters are also identified in Section 305(b) of the CWA report on their use attainment status. Projects primarily impacting these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the wastewater discharge. If no use impairment is identified, indicating the water was not assessed, the partially supported status points will be awarded.

| **Indication of Water Quality** | **Points** |
|---|---|
| A. Integrated Report overall category (score only overall category) | |
| 4a, 4b, or 5a | 15 |
| 5b or 5p | 10 |
| 4c or 4d | 5 |
| B. Use support level of designated uses (score all applicable uses) Class A, Class B, Class C, Class HH | |
| Fully supported | 5 |
| Not supported | 15 |
| Not assessed | 7 |

**90.7(3)** *Protection of groundwater resources.* This category considers the use of the aquifer affected by the project.

| **Groundwater Category** | Points |
|---|---|
| Wellhead protection area for public water supply | 40 |
| Unconfined aquifer that serves as a drinking water source | 20 |
| Other groundwater protection | 10 |

**90.7(4)** *Project category.* For this category, points are based on the project's type and its relative impact on public health and the environment. Points will be awarded for the primary project category.

| **Centralized Wastewater Treatment Project Category** | **Points** |
|---|---|
| Category I. Secondary treatment | 40 |
| Category II. Advanced treatment | 50 |
| Category III–A. Infiltration/inflow correction | 30 |
| Category III–B. Sewer replacement/rehabilitation | 30 |
| Category IV–A. New collector sewers and appurtenances | 10 |
| Category IV–B. New interceptor sewers and appurtenances | 20 |
| Category V. CSO correction | 40 |
| **Stormwater Project Category** | |
| Category VI–A. Gray infrastructure—only projects where sanitary sewer or treatment require it | 30 |
| **Conservation Project Category** | |
| Category X. Water conservation (water reuse) | 10 |
| **Other Category** | |
| Energy conservation (renewable energy)—solar, wind, etc. | 10 |
| Refinance of existing projects that meet CWSRF eligibility criteria | 5 |

**90.7(5)** *Project purpose.* For this category, points are based on the project's purpose and expected outcome. Points will be awarded only for the primary purpose.

| Project Purpose | Points |
|---|---|
| Allows facility to meet new water quality standards | 50 |
| Protects or restores the physical, chemical, and biological integrity of water resources at a specific site | 50 |
| Reduces the loading of a parameter that has been identified as an impairment to the receiving water or watershed as identified through the total maximum daily load (TMDL) process | 40 |
| Provides regional consolidation in wastewater treatment or system management | 30 |
| Brings facility into compliance with a National Pollution Discharge Elimination System (NPDES) permit or other administrative or judicial enforcement action as may be required by the department or the EPA | 25 |
| Eliminates or remediates a source of groundwater pollution | 20 |
| Meets existing or reasonable future needs of the community in order to maintain compliance with an NPDES permit | 15 |
| Provides operational reliability improvements, apart from projects addressing compliance and enforcement | 10 |

**90.7(6)** *Total points.* Total points are calculated using the following formula: Total Points = Use Classification + Water Quality or Groundwater Protection + Project Category + Project Purpose

**90.7(7)** *Tiebreaker.* Several projects may receive the same total points on the fundable list. If sufficient loan funds are not available to fund the projects, ties will be broken by determining which project has the highest score in each category in the following order:

Use Classification of Receiving Streams — Highest
Water Quality of Receiving Streams (a+b)
Groundwater Protection
Project Category
Project Purpose — Lowest

**567—90.8** and **90.9** Reserved.

**567—90.10(455B) NPS project procedures—onsite wastewater system assistance linked-deposit program (OSWAP).** The purpose of the OSWAP is to assist homeowners to rehabilitate or improve existing PSDSs.

**90.10(1)** *Eligibility conditions and restrictions.* Assistance under the OSWAP shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF.

*a. Location restrictions.* Assistance is available for the improvement or rehabilitation of PSDSs serving homes that are not connected to a POTW.

*b. County eligibility.* Assistance shall be provided only for systems located in counties that have an environmental health program that meets the requirements of 567—Chapter 69 for PSDSs. At a minimum, counties shall carry out statutory responsibilities as provided in Iowa Code section 455B.172 and provide for:

(1) Site evaluations to determine the appropriate design and size of PSDSs prior to permitting and installation.

(2) Inspection of PSDSs at the time of renovation or construction.

(3) Assurance of regular system maintenance and monitoring for the life of the loan.

*c. Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable, and directly related to the repair, rehabilitation, or replacement of a PSDS.

*d. Applicant eligibility.* Assistance is limited to applicants who meet the applicable provisions of 567—Chapter 69 and all other local provisions for the siting and construction of PSDSs.

*e. Eligible projects.* Assistance can be provided only for the repair, rehabilitation, or replacement of existing PSDSs. Assistance is not available for new housing.

**90.10(2)** *Applying for assistance.*

*a.* Prior to applying for a loan from a participating lending institution, an eligible individual or entity must demonstrate appropriate permitting from the county in which the PSDS is located.

*b.* Application for assistance shall be made on forms provided by the department or its agent. Forms may be downloaded from www.iowasrf.com.

*c.* Applications for assistance shall include:

(1) A description of the type and general specifications of the proposed work;

(2) An estimate of the population and number of households to be served; and

(3) A description of the system maintenance and monitoring program.

**90.10(3)** *County review and approval.*

*a.* The county shall review applications to determine if a project meets the applicable provisions of 567—Chapter 69 and all other relevant local provisions for the siting and construction of PSDSs.

*b.* For projects that meet relevant criteria, the county shall issue a permit or certificate. The county permit or certificate shall be accompanied by a cost estimate.

*c.* A county may deny an application for noncompliance with applicable state and local criteria. Written notification of the denial shall be provided to the applicant and shall state the reason(s) for denial.

**90.10(4)** *Eligible costs.* All costs directly related to the design, permitting, construction, and financing of a PSDS are eligible for loans. Eligible costs include the removal of existing structures, earth moving, or any land purchases directly related to proper wastewater treatment.

**90.10(5)** *Ineligible costs.* Costs for additional earthwork, replanting, or any other aesthetic improvements are not eligible. Maintenance or monitoring costs will not be allowed as part of a loan.

**90.10(6)** *Recipient recordkeeping.* The loan recipient shall:

*a.* Maintain adequate records that document all costs associated with the project;

*b.* Provide access to these records to the department, the state auditor, the EPA SRF project manager, and the EPA Office of the Inspector General; and

*c.* Retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

**90.10(7)** *Site access.* The loan recipient shall:

*a.* Provide the department and the administrative authority access to the construction site to verify that the loan was used for the purpose intended and that the constructed works meet applicable state and local environmental requirements and ordinances for PSDSs; and

*b.* Provide access to the system for periodic monitoring by the department and administrative authority, at times mutually agreed upon with the system owner, for the duration of the loan.

**90.10(8)** *Priority allocation of funds and IUP.* The department shall, in the annual IUP, describe the amount of funding available for loans under the OSWAP for the coming state fiscal year.

**90.10(9)** *Targeted assistance.* The department may budget a portion of the annual available funds identified in the IUP for financing PSDSs in targeted areas. Such targeted areas may include impaired watersheds, high-density housing areas, agricultural drainage areas, or other environmentally sensitive or degraded areas where the repair and rehabilitation of PSDSs are needed to preserve and protect water quality. The annual IUP shall specify the need for targeted assistance, the areas covered, and the estimate of funds needed to address the water quality problems.

**567—90.11(455B) NPS project procedures—livestock water quality linked-deposit program (LWQP).** The purpose of the LWQP is to assist owners of existing AFOs to meet state and federal requirements or to prevent, minimize, or eliminate water pollution.

**90.11(1)** *Eligibility conditions and restrictions.* Assistance shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF.

*a. Eligible project costs.* All costs directly related to the design, permitting, construction, and financing of the WPC facilities are eligible. The amount of assistance available shall be limited to the

total costs deemed necessary, reasonable, and directly related to the facilities required to provide WPC as required by the department or to prevent, minimize, or eliminate water pollution.

*b. Applicant eligibility.* Assistance is limited to livestock producers operating AFOs according to federal law. Concentrated AFOs, as defined in 40 CFR §122.23, are not eligible.

(1) Loans will be made only to livestock producers that are operators of record or have legal control of the property containing the AFO for the duration of the loan.

(2) The department has the discretion to deny applications for producers if:

1. The department has issued an administrative order to the producer pursuant to Iowa Code section 455B.175;

2. The department notifies the producer in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.175; or

3. The attorney general has commenced legal proceedings against the producer pursuant to Iowa Code section 455B.112.

*c. Eligible projects.* The WPC facilities considered eligible for assistance include manure storage structures, solids settling basins, composting facilities and equipment, lagoons (including fencing), portions of feeding floors or loafing areas used for waste collection, water and sediment control basins, vegetative filters or buffers, surface water diversion structures, agitation or transfer pumps, dry bedded confinement feeding operation buildings or structures pursuant to Iowa Code chapter 459B when all or part of an open feedlot is replaced, and other practices shown to improve or protect water quality. Replacement AFOs may be eligible where an existing AFO is eliminated to prevent a water quality impairment or mitigate a documented impairment. Engineering or technical service fees associated with the aforementioned practices are also eligible. A one-time purchase of attachments integral to the manure management system, such as blades, buckets, choppers, or spreaders, may be eligible at the time that an open feedlot is replaced with a dry bedded confinement building.

*d. Funding formula.*

(1) Loans for water quality projects for facilities being expanded by an increase in the animal unit capacity shall be funded according to the following formula:

Existing animal unit capacity/new animal unit capacity × total eligible project cost × 1.5 = maximum linked deposit amount

Example: 450 AUC / 900 AUC × $500,000 × 1.5 = $375,000

Example: 300 AUC / 600 AUC × $300,000 × 1.5 = $225,000

Example: 50 AUC / 900 AUC × $500,000 × 1.5 = $41,666

(2) If existing areas in open feedlots are kept open where some pens are replaced and the operation is expanded through the addition of a dry bedded confinement feeding operation building, the remaining open lot areas must comply with 567—65.101(459A).

**90.11(2)** *Applying for assistance.* Application for project approval shall be made on forms provided by the department or its agent. Forms may be downloaded from www.iowasrf.com.

**90.11(3)** *Project review and approval.*

*a.* Applications shall be submitted to the local SWCD. The local SWCD will evaluate the application, provide an estimated cost, and certify that the practice is eligible and compatible with state water quality goals.

*b.* All practices must comply with 567—Chapter 65 and shall be constructed to applicable USDA NRCS standards. NRCS staff or another technical service provider shall attest that the practice will be constructed to these specifications and standards.

**90.11(4)** *Project duration.* The project is to be maintained, kept in place, or operated as proposed for the life of the loan. If an open lot is closed and replaced with an eligible replacement facility, the department or its agent shall place a restrictive covenant that prohibits the operation of an open feedlot at the replacement site for the life of the loan. The site or portion of the site that may not house animals shall be defined by the local SWCD.

**90.11(5)** *Manure management plan (MMP) required.* The livestock producer shall have an MMP that meets the requirements of 567—65.17(459), a nutrient management plan (NMP) as defined in

567—65.112(459A), or a comprehensive NMP (CNMP), to be eligible for the loan or, as part of the loan, develop an MMP, NMP, or CNMP.

*a.* Costs for development of an MMP, NMP, or CNMP are eligible costs.

*b.* Costs for updating an MMP, NMP, or CNMP are eligible costs if required for the implementation of a water quality project financed through the LWQP.

**90.11(6)** *Ineligible costs.* Costs for development of a new AFO are ineligible. Other ineligible costs include but are not limited to the following:

*a.* Costs for the design, permitting, construction, or financing of WPC facilities that would allow an AFO to expand and become a concentrated AFO;

*b.* Costs for the purchase of land to be used for application of wastewater or manure;

*c.* Operation and maintenance costs; and

*d.* Refinancing costs for WPC facilities constructed prior to approval by the department or its agent.

**90.11(7)** *Recipient recordkeeping.* The loan recipient shall:

*a.* Maintain adequate records that document all costs associated with the project;

*b.* Provide access to these records to the department, the state auditor, the EPA SRF project manager, and the EPA Office of the Inspector General; and

*c.* Retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

**90.11(8)** *Site access.* The livestock producer shall:

*a.* Provide the department and its agent access to the construction site to verify that the loan was used for the purpose intended and that the construction work meets the applicable state and federal requirements for AFOs; and

*b.* Provide the department and its agent periodic access to the AFO, pursuant to the biosecurity requirements in 567—paragraph 65.113(9)*"b,"* for the duration of the loan to ensure that the constructed facility is being operated and maintained as designed.

**567—90.12(455B) NPS project procedures—local water protection project linked-deposit program (LWPP).** The purpose of the LWPP is to assist landowners with local water protection projects that will provide water quality improvement or protection.

**90.12(1)** *Eligibility conditions and restrictions.* Assistance under the CWSRF shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF.

*a. Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable, and directly related to the practices required to provide water quality improvements.

*b. Applicant eligibility.* Assistance is available to any person who is an owner of record or has legal control over land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other NPS pollutants into waters of the state.

*c. Eligible practices.* The LWPP projects that are considered eligible include, but are not limited to, contour buffer strips, diversion, fence, field border, field windbreak, filter strips, grade stabilization structure, grassed waterway, pasture and hayland planting, planned grazing system, pond, riparian forest and vegetative buffers, sediment basin, terrace, underground outlet with secondary water quality treatment, waste management system, water and sediment control basin, stream bank stabilization and restoration, and other practices that are shown to improve or protect water quality.

**90.12(2)** *Applying for assistance.* Application for project approval shall be made on forms provided by the department or its agent. Forms may be downloaded from www.iowasrf.com.

**90.12(3)** *Project review and approval.*

*a.* Applications shall be submitted to the local SWCD. The local SWCD shall evaluate the application, provide an estimated cost, and certify that the practice is compatible with state water quality goals.

*b.* All practices shall be constructed to meet NRCS standards and specifications. The NRCS or another technical service provider shall attest that the practice will be constructed to these specifications and standards.

**90.12(4)** *Project duration.* The project is to be maintained, kept in place, or operated as proposed for the life span of the practice, but in no case for less than the life of the loan.

**90.12(5)** *Eligible costs.* All costs directly related to and necessary for the implementation of LWPPs approved in the memorandum of project approval are eligible costs.

**90.12(6)** *Ineligible costs.* Ineligible costs include costs for overbuilding a practice beyond what is required to maintain or improve water quality and costs for the purchase of land.

**90.12(7)** *Site access.* The applicant shall provide the department or its agent access to the project site to verify that the loan was used for the purpose intended.

**567—90.13(455B) NPS project procedures—stormwater linked-deposit program.** The purpose of this program is to assist private landowners with the construction of stormwater BMPs that will provide water quality improvement or protection.

**90.13(1)** *Eligibility conditions and restrictions.* Assistance under the CWSRF shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF.

*a. Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable, and directly related to the practices required to provide water quality improvements.

*b. Applicant eligibility.* Assistance is available to any person who is an owner of record or has legal control over land that needs stormwater BMPs installed to control runoff of sediments, nutrients, pesticides, or other NPS pollutants.

*c. Eligible practices.* Eligible practices include but are not limited to grade stabilization structure, grassed waterway, stormwater wetland, native landscaping, soil quality restoration, riparian forest and vegetative buffers, sediment basin, underground outlet with water quality treatment, stream bank stabilization, bioretention cell, greenroof, and other practices that are shown to improve or protect water quality.

**90.13(2)** *Applying for assistance.* Application for project approval shall be made on forms provided by the department or its agent. Forms may be downloaded from www.iowasrf.com.

**90.13(3)** *Project review and approval.*

*a.* Applications shall be submitted to the local SWCD. The local SWCD will evaluate the application, provide an estimated cost, and certify that the practice is compatible with state water quality goals.

*b.* It is recommended that all practices be constructed to meet Iowa Stormwater Management Manual or NRCS standards and specifications as posted on the department's website at www.iowadnr.gov and the NRCS website at www.nrcs.usda.gov, respectively, as of September 1, 2024. The NRCS or another technical service provider shall attest that the practice is designed to these specifications and standards, or shall attest that the practice is based on these standards and designed with sound engineering principles.

**90.13(4)** *Project duration.* The project is to be maintained, kept in place or operated as proposed for the life span of the practice, but in no case for less than the life of the loan.

**90.13(5)** *Eligible costs.* All costs directly related to and necessary for the implementation of the stormwater BMP approved in the memorandum of project approval are eligible costs.

**90.13(6)** *Ineligible costs.* Ineligible costs include costs for overbuilding a practice beyond what is required to maintain or improve water quality and costs for the purchase of land.

**90.13(7)** *Site access.* The applicant shall provide the department or its agent access to the project site to verify that the loan was used for the purpose intended.

**567—90.14(455B) NPS project procedures—GNS loan program.** The purpose of this program is to assist projects that will provide water quality improvements or water quality protection. This program allows for funding of the water quality protection portion of nontraditional projects.

**90.14(1)** *Project ranking.* Projects and activities under NPS project categories VI B through D, VII A through K, and XII will all receive a total score of five when placed on the PPL. Once 90 percent of NPS program funds have been allocated, additional NPS project scoring criteria published in the IUP will be used to rank NPS projects for funding and placement on the PPL. Until that time, the loan assistance is based on a first-come, first-funded concept.

**90.14(2)** *Eligibility conditions and restrictions.* Assistance under the CWSRF GNS program shall be in the form of low-interest loans made directly or by participating lending institutions through a participation arrangement with the CWSRF.

*a. Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable, and directly related to the facilities or practices required to provide water quality improvements, restoration, or protection. Participation in nontraditional projects where the primary purpose is not water quality protection or improvement will be limited to the portion of the project that is directly related to water quality improvement, restoration, or protection.

*b. Applicant eligibility.* Assistance is available to projects for which facilities are needed to protect, restore, or improve water quality from NPS pollution. Only applicants that are owners of record of the property or have long-term control of the property where the project is to be implemented are eligible. In applications where the WPC project is a plan or document that will direct water quality protection or improvement efforts, loans will be made to applicants that have the capacity and capability of implementing the plan and repaying the loan.

*c. Eligible projects.* Eligible projects include, but are not limited to, practices to address NPS pollution control needs associated with stormwater treatment and green infrastructure, silviculture, groundwater protection, marinas, resource extraction, brownfield remediation, aboveground and underground storage tanks, sanitary landfills, hydromodification, and watershed planning. Nontraditional NPS projects that may have a water quality protection or improvement component include, but are not limited to, bird sanctuaries and wildlife enhancement projects, vegetative plants, sediment removal and other lake restoration practices, and education programs.

**90.14(3)** *Applying for assistance.* Applications for GNS project approval shall be made on forms provided by the department. Forms may be downloaded from www.iowasrf.com. Applications shall include an explanation of how the water quality will be protected, improved, or restored by the proposed project. Applications may be submitted on an ongoing basis and will be reviewed in accordance with the schedule in the IUP.

**90.14(4)** *Project review and approval.* The department will evaluate eligibility and project design and provide the applicant a memorandum of approval for the proposed WPC project.

**90.14(5)** *Eligible costs.* All costs directly related to the implementation of the project approved in the memorandum of approval are eligible costs.

**90.14(6)** *Ineligible costs.* Costs for livestock water quality facilities are not eligible under this program and are provided for in 567—90.11(455B). Costs for the purchase of land are not eligible costs unless specifically approved by the commission.

**90.14(7)** *Site access.* The recipient shall provide the department and its agent access to the project site to verify that the loan was used for the purpose intended.

These rules are intended to implement Iowa Code sections 455B.199, 455B.291 through 455B.299, 466.8 and 466.9.

ITEM 2. Rescind and reserve **567—Chapter 91**.

ITEM 3. Rescind and reserve **567—Chapter 92**.

ITEM 4. Rescind and reserve **567—Chapter 93**.

# ARC 8712C

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rulemaking related to facility assessments and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 36, "Facility Assessments," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 249A.21, 249L.4 and 249M.4.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 249A, 249L and 249M.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. This proposed chapter outlines the quality assurance assessment fee (QAAF) for nursing facilities, provider taxes for Intermediate Care Facilities for the Intellectually Disabled (ICFs/ID), and health care access assessments for hospitals pursuant to Iowa Code chapters 249A, 249L, and 249M.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 7, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319

Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 36 and adopt the following **new** chapter in lieu thereof:

CHAPTER 36
FACILITY ASSESSMENTS

**441—36.1(249A) Intermediate care facilities for persons with an intellectual disability assessment.** Intermediate care facilities for persons with an intellectual disability (ICFs/ID) licensed in Iowa under 481—Chapter 64, including facilities not certified to participate in the Medicaid program, shall pay a quarterly fee to the department. The fee equals 5.5 percent of actual paid claims, from all sources, for the facility's preceding quarter.

**441—36.2(249A) Determination and payment of fee.** For all ICFs/ID licensed in Iowa under 481—Chapter 64, including facilities not certified to participate in the Medicaid program, the fee shall be determined and paid as follows:

**36.2(1)** Each facility shall pay the assessment to the department on a quarterly basis. The facility shall:

*a.* Use a form prescribed by the department to calculate the quarterly fee due.

*b.* Submit the form and the quarterly fee no later than 30 days following the end of each calendar quarter.

**36.2(2)** The facility shall calculate the amount of the quarterly fee due by multiplying 5.5 percent by the facility's total ICF/ID payments for services received from all sources during the preceding quarter, including but not limited to:

*a.* Medicaid managed care payments.

*b.* Client participation payments.

*c.* Medicaid fee-for-service payments.

*d.* Private pay/insurance payments.

*e.* Ancillary service payments.

**36.2(3)** If the department determines that an ICF/ID has underpaid or overpaid the fee, the department will notify the ICF/ID of the amount of the unpaid fee or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

**36.2(4)** An ICF/ID that fails to pay the fee within 30 days of the issuance of the notice shall pay a penalty in the amount of 1.5 percent of the unpaid fee due for each month or portion of a month that the unpaid fee is overdue.

*a.* If the ICF/ID substantiates good cause beyond the facility's control for failure to make timely payment of the fee, the department will waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" means the same as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*b.* Requests for a good cause waiver must be submitted to the department within 30 days of notice to the facility that the penalty is due.

**441—36.3(249L) Nursing facility assessment.**

**36.3(1)** *Applicability.* All nursing facilities as defined in Iowa Code section 135C.1 that are free-standing facilities or are operated by a hospital licensed pursuant to Iowa Code chapter 135B shall pay a quarterly assessment to the department, as determined under this division, with the exception of:

*a.* Nursing facilities operated by the state.

*b.* Non-state government-owned or government-operated nursing facilities.

*c.* Distinct-part skilled nursing units and swing-bed units operated by a hospital.

**36.3(2)** *Assessment level.*

*a.* Effective April 1, 2023, nursing facilities with 46 or fewer licensed beds are required to pay a quality assurance assessment of $6.51 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2021, the number of licensed beds on file with the department of inspections, appeals, and licensing as of June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

*b.* Effective July 1, 2024, nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the department of insurance and financial services are required to pay a quality assurance assessment of $6.51 per non-Medicare patient day. Effective with the assessment for the state fiscal year beginning July 1, 2021, continuing care retirement center designations as of June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

*c.* Effective April 1, 2023, nursing facilities with annual Iowa Medicaid patient days of 19,000 or more are required to pay a quality assurance assessment of $6.51 per non-Medicare patient day. Effective with assessment for the state fiscal year beginning July 1, 2021, the annual number of Iowa Medicaid patient days reported in the most current cost report submitted to the department as of June 1 of each year shall be used to determine the assessment level for the following state fiscal year.

*d.* Effective April 1, 2023, all other nursing facilities are required to pay a quality assurance assessment of $33.90 per non-Medicare patient day.

**441—36.4(249L) Determination and payment of assessment.** The assessment shall be determined and paid as follows:

**36.4(1)** Each nursing facility shall pay the quality assurance assessment to the department on a quarterly basis. The facility shall:

*a.* Use the form prescribed by the department to calculate the quarterly assessment amount due.

*b.* Submit the form and the quarterly assessment payment no later than 30 days following the end of each calendar quarter.

**36.4(2)** The facility shall calculate the amount of the quarterly assessment due by multiplying the facility's total non-Medicare patient days for the preceding quarter by the applicable assessment level as determined in subrule 36.6(2).

**36.4(3)** If the department determines that a nursing facility has underpaid or overpaid the quality assurance assessment, the department will notify the nursing facility of the amount of the unpaid quality

assurance assessment or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

**36.4(4)** A nursing facility that fails to pay the quality assurance assessment within 30 days of the issuance of the notice will pay a penalty in the amount of 1.5 percent of the quality assurance assessment amount owed for each month or portion of a month that the payment is overdue.

*a.* If the facility substantiates good cause beyond the facility's control for failure to comply with payment of the quality assurance assessment, the department will waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" means the same as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*b.* Requests for a good cause waiver must be submitted to the department within 30 days of notice to the facility that the penalty is due.

**441—36.5(249M) Participating hospital assessment.**

**36.5(1)** *Participating hospitals.* For the purpose of the health care access assessment program, a "participating hospital" is defined as a non-state-owned hospital licensed under Iowa Code chapter 135B that is paid on a prospective payment system basis by Medicare and the medical assistance programs for inpatient and outpatient services.

**36.5(2)** *Assessment.* Participating hospitals are required to pay a quarterly health care access assessment equal to 1.26 percent of net patient revenue as specified in the hospital's fiscal year 2008 Medicare cost report. "Net patient revenue" means all revenue reported for acute patient care and services but does not include:

*a.* Contractual adjustments,

*b.* Charity care,

*c.* Bad debt,

*d.* Medicare revenue, or

*e.* Other revenue derived from sources other than hospital operations, including but not limited to:

(1) Nonoperating revenue,

(2) Other operating revenue,

(3) Skilled nursing facility revenue,

(4) Physician revenue, and

(5) Long-term care revenue.

**441—36.6(249M) Determination and payment of assessment.** The assessment shall be determined and paid as follows:

**36.6(1)** The department will calculate the annual amount of the health care access assessment as 1.26 percent of net patient revenue as specified in the participating hospital's fiscal year 2008 Medicare cost report. The annual amount will be divided by four to calculate the quarterly amount.

**36.6(2)** Each participating hospital shall pay the health care access assessment to the department on a quarterly basis. The hospital shall submit the quarterly assessment payment no later than 30 days following the end of each calendar quarter.

**36.6(3)** A participating hospital shall retain and preserve the Medicare cost report and financial statements used to prepare the cost report in accordance with Iowa Code section 249M.3.

**36.6(4)** If the department determines that a participating hospital has underpaid or overpaid the health care access assessment, the department will notify the hospital of the amount of the unpaid health care access assessment or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

**36.6(5)** A participating hospital that fails to pay the health care access assessment within 30 days of the issuance of the notice will pay a penalty in the amount of 1.5 percent of the health care access assessment amount owed for each month or portion of a month that the payment is overdue.

*a.* If the department determines that good cause is shown for failure to comply with payment of the health care access assessment, the department will waive the penalty or a portion of the penalty.

*b.* Requests for a good cause waiver must be submitted to the department within 30 days of notice to the facility that the penalty is due.

These rules are intended to implement Iowa Code chapters 249A, 249L, and 249M.

## ARC 8708C

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rulemaking related to application for aid and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 40, "Application for Aid," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 239B.4(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 239B.2, 239B.3, 239B.4, 239B.5, 239B.6, 239B.13 and 239B.18.

*Purpose and Summary*

This chapter was reviewed and is proposed to be rescinded and adopted anew as a part of the Red Tape Review process laid out by Executive Order 10. This proposed chapter contains definitions and describes the application process for the Family Investment Program (FIP) and the effective date of the grant, the review process, and investigations.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Joe Campos
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 40 and adopt the following **new** chapter in lieu thereof:

TITLE IV
*FAMILY INVESTMENT PROGRAM*

CHAPTER 40
APPLICATION FOR AID

**441—40.1(239B) Definitions.**

*"Applicant"* means a person for whom assistance is being requested, parent(s) living in the home with the child(ren), and the nonparental relative as defined in 441—subrule 41.2(2) who is requesting assistance for the child(ren).

*"Assistance unit"* includes any person whose income is considered when determining eligibility or the family investment program grant amount.

*"Casino, gambling casino, or gaming establishment"* means an establishment with a primary purpose of accommodating the wagering of money. It does not include:

1. A grocery store that sells groceries including staple foods and that also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or
2. Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

An automated teller machine (ATM) or a point-of-sale (POS) terminal located within those areas of an establishment where individuals are banned due to age restrictions associated with gambling, established by state or federal law or by any other regulatory entity having the authority to do so, is considered to be in a casino, gambling casino, or gaming establishment.

*"Central office"* means the state administrative office of the department of health and human services.

*"Change in income"* means a permanent change in hours worked or rate of pay, any change in the amount of unearned income, or the beginning or ending of any income.

*"Dependent"* means an individual who can be claimed by another individual as a dependent for federal income tax purposes.

*"Dependent child"* or *"dependent children"* means a child or children who meet the nonfinancial eligibility requirements of the family investment program.

*"Electronic benefit transfer transaction"* means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

*"Income in kind"* is any gain or benefit that is not in the form of money payable directly to the eligible group including nonmonetary or in-kind benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments that are paid to a third party and not to the eligible group.

*"Initial two months"* means the first two consecutive months for which assistance is paid. This may include a month for which a partial payment is made.

*"Liquor store"* means any retail establishment that sells exclusively or primarily intoxicating liquor or other alcoholic beverages. Such term does not include a grocery store that sells both intoxicating liquor and groceries including staple foods (within the meaning of Section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. §2012(r)) as amended to December 31, 2024).

Unless exempt as described in this definition, a retail establishment meets the definition of a liquor store when it has a North American Industry Classification System (NAICS) number that categorizes the retail establishment as either a beer, wine and liquor store or as a drinking place (alcoholic beverages). A retail establishment that does not have either type of NAICS code is considered to exclusively or primarily sell intoxicating liquor when 95 percent or more of the retail establishment's gross sales are from intoxicating liquor and it is not a United States Department of Agriculture-certified Supplemental Nutrition Assistance Program (SNAP) retailer.

*"Medical institution,"* as used in this title, means a facility that is organized to provide medical care, including nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility's license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals.
2. Extended care facilities (skilled nursing).
3. Intermediate care facilities.
4. Mental health institutions.
5. Hospital schools.

*"Needy specified relative"* means a nonparental specified relative, listed in 441—subrule 41.2(2), who meets all the eligibility requirements to be included in the family investment program.

*"Parent"* means a legally recognized parent, including an adoptive parent, or a biological father if there is no legally recognized father.

*"Payment month"* means the calendar month for which assistance is paid.

*"Payment standard"* means the total needs of a group as determined by adding need according to the schedule of basic needs, described in 441—subrule 41.9(2), to any allowable special needs, described in 441—subrule 41.9(3).

*"Prospective budgeting"* means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances that will exist in that calendar month.

*"Qualified alien"* means an alien:

1. Who is lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA) as amended to December 31, 2024;

2. Who is granted asylum in the United States under Section 208 of the INA as amended to December 31, 2024;

3. Who is a refugee admitted to the United States under Section 207 of the INA as amended to December 31, 2024;

4. Who is paroled into the United States under Section 212(d)(5) of the INA as amended to December 31, 2024, for a period of at least one year;

5. Whose deportation from the United States is withheld under Section 243(h) of the INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA as amended to December 20, 2010;

6. Who is granted conditional entry to the United States pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;

7. Who is admitted to the United States as an Amerasian as described in 8 U.S.C. §1612(b)(2)(A)(ii)(V) as amended to December 31, 2024;

8. Who is a Cuban/Haitian entrant to the United States as described in 8 U.S.C. §1641(b)(7) as amended to December 31, 2024;

9. Who is a battered alien as described in 8 U.S.C. §1641(c) as amended to December 31, 2024; or

10. Who is certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.

*"Qualifying quarters"* means all of the qualifying quarters of coverage as defined under Title II of the Social Security Act as amended to December 31, 2024, that were worked by a parent of an alien while the alien was under the age of 18 and all of the qualifying quarters that were worked by a spouse of the alien during their marriage if the alien remains married to the spouse or the spouse is deceased. No qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien if the parent or spouse of the alien received any federal means-tested public benefit during the period for which the qualifying quarter is so credited.

*"Recipient"* means a person for whom assistance is paid, parent(s) living in the home with the eligible child(ren) and nonparental relative as defined in 441—subrule 41.3(1) who is receiving assistance for the child(ren). Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.

*"Retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment"* means an establishment that includes live entertainment at locations such as but not limited to strip clubs and gentlemen's clubs. It also includes stores and theaters that exclusively or primarily sell or feature adult-oriented videos and movies such as but not limited to adult book stores and adult movie theaters. A retail establishment meets this definition when the department has confirmed the primary nature of the business through the description on the business's website, phone contact with the establishment, a site visit, or other means such as common local knowledge.

*"Standard of need"* means the total needs of a group as determined by adding need according to the schedule of living costs, described in 441—subrule 41.9(2), to any allowable special needs, described in 441—subrule 41.9(3).

*"Stepparent"* means a person who is not the parent of the dependent child, but is the legal spouse of the dependent child's parent, by ceremonial or common-law marriage.

*"Unborn child"* will include an unborn child during the entire term of the pregnancy.

**441—40.2(239B) Application.** The application for the family investment program shall be submitted on an application form prescribed by the department. The application shall be signed by the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and a stepparent, are in the home and eligibility is determined on a family or household basis, one parent or stepparent may sign the application and attest to the information for the assistance unit.

**40.2(1)** Each individual wishing to do so will have the opportunity to apply for assistance without delay. When the parent is in the home with the child and is not prevented from acting as payee by reason of physical or mental impairment, this parent shall make the application.

**40.2(2)** An applicant may be assisted by other individuals in the application process; the client may be accompanied by such individuals in contact with the department, and when so accompanied, may also be represented by them. When the applicant has a guardian, the guardian shall participate in the application process.

**40.2(3)** The applicant shall immediately be given an application form to complete. When the applicant requests that the form be mailed, the department will send the necessary forms in the next outgoing mail.

**40.2(4)** A new application is not required when adding a new person to the eligible group or when a parent or a stepparent becomes a member of the household.

**40.2(5)** Reinstatement.

*a.* Assistance will be reinstated without a new application when all necessary information is provided before the effective date of cancellation and eligibility can be reestablished, or the family meets the conditions described in 441—subparagraph 41.11(3)*"e"*(7). Exception: The reinstatement provisions of subrule 40.2(5) do not apply when assistance is canceled due to the imposition of a subsequent limited benefit plan as described in 441—subrule 41.5(7), unless the limited benefit plan is stopped as described in 441—paragraph 41.5(7)*"g."*

*b.* When assistance has been canceled for failure to provide requested information, assistance will be reinstated without a new application if all information necessary to establish eligibility, including verification of any changes, is provided within 14 days of the effective date of cancellation and eligibility can be reestablished. If the fourteenth calendar day falls on a weekend or state holiday, the client shall have until the next business day to provide the information. The effective date of assistance will be the date all information required to establish eligibility is provided.

*c.* When assistance has been canceled for failure to return a completed review form pursuant to subrule 40.7(3), assistance will be reinstated without a new application if the completed form is received by the department within 14 days of the effective date of cancellation and eligibility can be reestablished. If the fourteenth calendar day falls on a weekend or state holiday, the client shall have until the next business day to provide the information. The effective date of assistance will be the date the review form prescribed by the department is received.

*d.* When assistance has been canceled for failure to complete a required review interview, assistance will be reinstated without a new application if the interview is completed and all necessary information to determine eligibility, including verification of any changes, is provided within 14 days of the effective date of cancellation and eligibility is reestablished. If the fourteenth calendar day falls on a weekend or state holiday, the client shall have until the next business day to provide the information. The effective date of assistance will be the date the interview is completed.

**441—40.3(239B) Date of application.** The date of application is the date the application form prescribed by the department is received by the department. When an application is delivered to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open.

**40.3(1)** The date of application is also the date an identifiable application is received by a designated worker who is in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. The hospital, health center or other facility will forward the application to the department office that is responsible for the completion of the eligibility determination.

**40.3(2)** An identifiable application is an application containing a legible name and address that has been signed.

**40.3(3)** A new application is not required when adding a person to an existing eligible group. This person is considered to be included in the application that established the existing eligible group. However, in these instances, the date of application to add a person is the date the change is reported. When it is reported that a person is anticipated to enter the home, the date of application to add the person will be the date of the report.

*a.* In those instances where a person previously excluded from the eligible group as described in 441—subrule 41.8(11) is to be added to the eligible group, the date of application to add the person is the date the person indicated willingness to cooperate.

*b.* Exceptions:

(1) When adding a person who was previously excluded from the eligible group for failing to comply with 441—subrule 41.3(11), the date of application to add the person is the date the social security number or proof of application for a social security number is provided.

(2) When adding a person who was previously excluded from the eligible group as described in 441—subrule 41.4(5), 441—subrule 41.6(4), or rule 441—46.7(239B), the date of application to add the person is the first day after the period of ineligibility has ended.

(3) When adding a person who was previously excluded from the eligible group as described in 441—subrule 41.5(7), the date of application to add the person is the date the person signs a family investment agreement.

**40.3(4)** Grace period.

*a.* When an application has been denied for failure to provide requested information, if all necessary information to establish eligibility, including verification of any changes, is provided within 14 days of the date of denial, a new application is not required. If the fourteenth calendar day falls on a weekend or state holiday, the applicant shall have until the next business day to provide the information. If eligibility can be established, the effective date of assistance is the date all of the information is provided.

*b.* When an application has been denied for failure to attend an interview, if the interview is completed and all necessary information to establish eligibility, including verification of any changes, is provided within 14 days of the date of denial, a new application is not required. If the fourteenth calendar day falls on a weekend or state holiday, the applicant shall have until the next business day to provide the information. If eligibility can be established, the effective date of assistance is the date the interview is completed or the date all of the information is provided, whichever is later.

**441—40.4(239B) Procedure with application.**

**40.4(1)** The decision with respect to eligibility will be based primarily on information furnished by the applicant.

*a.* The applicant shall report no later than at the time of the interview any change as defined in paragraph 40.7(4)*"e"* that occurs after the application was signed. Any change that occurs after the interview shall be reported by the applicant within five days from the date the change occurred.

*b.* The department will notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or verification requested or to request assistance and authorize the department to secure the requested information or verification from other sources will serve as a basis for denial of assistance. Signing a general authorization for release of information to the department does not meet this responsibility.

(1) Five working days will be considered as a reasonable period for the applicant to supply the required information or verification. The department will extend the deadline when the applicant requests an extension because the applicant is making every effort to supply the information or verification but is unable to do so.

(2) "Supply" means the requested information is received by the department by the specified due date. Any time taken beyond the required time frame will be considered a delay on the part of the applicant.

*c.* When an individual is added to an existing eligible group, the five-day requirement for reporting changes will be waived. These individuals and eligible groups will be subject to the recipient's ten-day reporting requirement as defined in subrule 40.7(4).

**40.4(2)** The department or the designated worker as described in subrule 40.3(1) will conduct a face-to-face or telephone interview with the applicant before approval of the application for assistance.

*a.* The worker will assist the applicant, when requested, in providing information needed to determine eligibility and the amount of assistance.

*b.* The application process shall include a visit, or visits, to the home of the child and the person with whom the child will live during the time assistance is granted under the following circumstances:

(1) When it is the judgment of the worker or the supervisor that a home visit is required to clarify or verify information pertaining to the eligibility requirements; or

(2) When the applicant requests a home visit for the purpose of completing a pending application.

*c.* When adding an individual to an existing eligible group, the interview requirement may be waived.

**40.4(3)** The decision with respect to eligibility will be based on the applicant's eligibility or ineligibility on the date the department enters all eligibility information into the department's computer system. The applicant shall become a recipient on the date all eligibility information is entered into the department's computer system and the computer system determines the applicant is eligible for aid.

**441—40.5(239B) Time limit for decision.** A determination of approval or denial will be made as soon as possible, but no later than 30 days following the date of filing an application. A written notice of decision will be issued to the applicant the next working day following a determination of eligibility or ineligibility. This time standard shall apply except in unusual circumstances, such as when the department and the applicant have made every reasonable effort to secure necessary information that has not been supplied by the date the time limit expired; or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the department. When eligibility is dependent upon the birth of a child, the time limit may be extended while awaiting the birth of the child. When it becomes evident that due to an error on the part of the department, eligibility will not be established within the 30-day limit, the application will be approved pending a determination of eligibility.

**441—40.6(239B) Effective date of grant.** New approvals will be effective as of the date the applicant becomes eligible for assistance, but in no case will the effective date be earlier than seven days following the date of application. When an individual is added to an existing eligible group, the individual will be added effective as of the date the individual becomes eligible for assistance, but in no case will the effective date be earlier than seven days following the date the change is reported. When it is reported that a person is anticipated to enter the home, the effective date of assistance will be no earlier than the date of entry or seven days following the date of report, whichever is later.

**40.6(1)** When the change is timely reported as described in subrule 40.7(4), a payment adjustment will be made when indicated. When the individual's presence is not timely reported as described in subrule 40.7(4), excess assistance issued is subject to recovery.

**40.6(2)** In those instances where a person previously excluded from the eligible group as described in 441—subrule 41.8(11) is to be added to the eligible group, the effective date of eligibility will be seven days following the date the person indicated willingness to cooperate. However, in no instance will the person be added until cooperation has actually occurred.

Exceptions: When adding a person who was previously excluded from the eligible group for failing to comply with 441—subrule 41.3(11), the effective date of eligibility will be seven days following the date that the social security number or proof of application for a social security number is provided.

**40.6(3)** When adding a person who was previously excluded from the eligible group as described in 441—subrules 41.4(5) and 41.6(4) and rule 441—46.7(239B), the effective date of eligibility will be seven days following the date that the period of ineligibility ended.

**40.6(4)** When adding a person who was previously excluded from the eligible group as described in 441—subrule 41.5(7), the effective date of eligibility will be seven days following the date the person signs a family investment agreement or the date the person is otherwise eligible, whichever is later. In no case will the effective date be within the six-month ineligibility period of a subsequent limited benefit plan as described in 441—paragraph 41.5(7)*"a."*

**441—40.7(239B) Continuing eligibility.**

**40.7(1)** Eligibility factors will be reviewed at least every six months for the family investment program. An interview may be conducted at the time of a review.

**40.7(2)** A redetermination of specific eligibility factors will be made when:

*a.* The recipient reports a change in circumstances.

*b.* A change in the recipient's circumstances comes to the attention of a staff member.

**40.7(3)** Information for semiannual reviews shall be submitted on a review form prescribed by the department.

*a.* The department will supply the review form to the recipient as needed or upon request. The department will pay the cost of postage to return the form.

(1) When the review form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the department by the fifth calendar day of the following month.

(2) When the review form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the department by the seventh day after the date it is mailed by the department.

(3) A copy of a review form received by fax or electronically will have the same effect as an original form.

*b.* When the client has completed the application form prescribed by the department for another purpose, this form may be used as the review document.

*c.* The review form shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf.

**40.7(4)** Responsibilities of recipients. For the purposes of this subrule, recipients shall include persons who received assistance subject to recoupment because the persons were ineligible.

*a.* The recipient shall cooperate by giving complete and accurate information needed to establish eligibility and the amount of the family investment program grant.

*b.* The recipient shall complete the required review form when requested by the department in accordance with subrule 40.7(3). Failure to return a completed form will result in cancellation of assistance. A completed form is a form with all items answered, signed, dated and accompanied by verification as required in 441—paragraphs 41.8(1)*"e"* and 41.8(2)*"g."*

*c.* The recipient has the primary responsibility for providing information and verification needed to establish eligibility and the amount of the family investment program grant. The recipient shall supply, insofar as the recipient is able, information and verification needed within ten working days from the date a written request is mailed by the department to the recipient's current mailing address or given to the recipient. The department will extend the deadline when the recipient requests an extension because the recipient is making every effort to supply the information or verification but is unable to do so.

(1) "Supply" means that the requested information or verification is received by the department by the specified due date.

(2) When the recipient is unable to furnish information or verification needed to establish eligibility and the amount of the family investment program grant, the recipient shall request assistance from the department.

(3) Failure to supply the information or verification requested or to request assistance and authorize the department to secure the requested information or verification from other sources will serve as a basis for cancellation of assistance. Signing a general authorization for release of information to the department does not meet this responsibility.

*d.* The recipient or applicant shall cooperate with the department when the recipient's or applicant's case is selected by quality control for verification of eligibility. The recipient or applicant shall also cooperate with the front end investigations conducted by the department of inspections, appeals, and licensing to determine whether information supplied to the department by the client is complete and correct regarding pertinent public assistance information unless the investigation revolves solely around the circumstances of a person whose income and resources do not affect family investment program eligibility (more information can be found in 481—Chapter 72). Failure to cooperate will serve as a basis for cancellation or denial of the family's assistance. Once denied or canceled for failure to cooperate, the family may reapply but will not be considered for approval until cooperation occurs.

*e.* The recipient, or an individual being added to the existing eligible group, shall timely report any change in the following circumstances:

(1) Beginning or ending income, including receipt of a nonrecurring lump sum.

(2) Resources.

(3) Members of the household.

(4) School attendance of a child.

(5) Mailing or living address.

(6) Receipt of a social security number.

*f.* A report will be considered timely when made within ten days from:

(1) The receipt of resources or income or the date income ended.
(2) The date the address changes.
(3) The date the child is officially dropped from the school rolls.
(4) The date a person enters or leaves the household.
(5) The receipt of a social security number.

*g.* When a change is not timely reported, any excess assistance paid will be subject to recovery.

**40.7(5)** After assistance has been approved, eligibility for continuing assistance and the amount of the grant will be effective as of the first of each month. Any change affecting eligibility or benefits reported during a month will be effective the first day of the next calendar month except as follows:

*a.* When the recipient reports a new person to be added to the eligible group, and that person meets eligibility requirements, a payment adjustment will be made for the month of report, subject to the effective date of grant limitations prescribed in rule 441—40.6(239B).

*b.* When cancellation of assistance occurs later because issuance of a timely notice, as required by rule 441—16.2(17A), requires that the action be delayed until the first day of the second calendar month, any overpayment received in the first calendar month will be recouped.

*c.* When the recipient reports a change in income or circumstances timely, as defined in subrule 40.4(1) or 40.7(4), the department will determine prospective eligibility and the grant amount for the following month based on the change.

(1) A payment adjustment will be made when indicated.

(2) Recoupment will be made for any overpayment, with one exception. When a change in income is timely reported by a recipient and timely acted upon by the department, but the timely notice, as required by rule 441—16.2(17A), requires the action be delayed until the second calendar month following the month of change, and eligibility continues, recoupment will not be made.

*d.* When an individual included in the eligible group becomes ineligible, that individual's needs will be removed prospectively effective the first day of the next calendar month. When the action must be delayed due to administrative requirements, a payment adjustment or recoupment will be made when appropriate.

*e.* When a sanction under 441—paragraph 41.3(4)*"f"* is implemented, the change will be effective:

(1) The first day of the next calendar month after the change has occurred when the income maintenance unit determines noncooperation; or

(2) After the income maintenance unit receives notification from the child support recovery unit when child support services determines noncooperation.

*f.* When a sanction under 441—paragraph 41.3(4)*"f"* is removed, the change will be effective the first day of the next calendar month after the recipient has expressed willingness to cooperate, as described in 441—paragraph 41.3(4)*"f."* However, action to remove the sanction will be delayed until:

(1) Cooperation has actually occurred; or

(2) The income maintenance unit has received notification from child support services that the client has cooperated.

*g.* A different effective date will be applied when specifically indicated in family investment program rules, such as in 441—subrule 41.6(4) and 441—subparagraph 41.8(9)*"c"*(2).

**441—40.8(239B) Referral for investigation.** The department may refer questionable cases to the department of inspections, appeals, and licensing.

**441—40.9(239B) Alternate payees.**

**40.9(1)** *Conservatorship or guardianship.* When application for the family investment program is filed by a person under conservatorship or guardianship, a copy of the court order will be secured by the department. Assistance payments will be made pursuant to Iowa Code section 239B.13.

**40.9(2)** *Emergency payee.* Payments may be made to persons acting for relatives who have been receiving assistance for a child in emergency situations that deprive the child of the relatives' care. These

payments will be made for a temporary period, not to exceed three months, to allow time to make and implement plans for the child's continuing care and support.

These rules are intended to implement Iowa Code sections 239B.2, 239B.3, 239B.4, 239B.5, 239B.6, 239B.13 and 239B.18.

## ARC 8716C

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rulemaking related to granting assistance and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 41, "Granting Assistance," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 239B.4.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 239B.

*Purpose and Summary*

This chapter outlines the requirements for eligibility and granting assistance for the Family Investment Program (FIP).

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Joe Campos
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@idph.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 41 and adopt the following **new** chapter in lieu thereof:

CHAPTER 41
GRANTING ASSISTANCE

**441—41.1(239B) Definition.**

*"PROMISE JOBS program"* means the same as defined in rule 441—93.1(239B).

**441—41.2(239B) Eligibility factors specific to child.**

**41.2(1)** *Age.*

*a.* The family investment program (FIP) will be available to a needy child under the age of 18 years without regard to school attendance.

*b.* A child is eligible for the entire month in which the child's eighteenth birthday occurs, unless the birthday falls on the first day of the month. The FIP will also be available to a needy child of 18 years who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, as defined in paragraph 41.5(2)*"c,"* and who is reasonably expected to complete the program before reaching the age of 19.

**41.2(2)** *Residing with relative.* The child must be living in the home of one of the relatives specified in subrule 41.3(1). When an unwed mother intends to place her child for adoption shortly after birth, the child will be considered as living with the mother until the time custody is actually relinquished.

*a.* Living with relatives implies primarily the existence of a relationship involving an accepted responsibility on the part of the relative for the child's welfare, including the sharing of a common household.

*b.* Home is the family setting maintained or in the process of being established as evidenced by the assumption and continuation of responsibility for the child by the relative.

**441—41.3(239B) Eligibility factors specific to payee.**

**41.3(1)** *Specified relationship.*

*a.* A child may be considered as meeting the requirement of living with a specified relative if the child's home is with one of the relatives listed in Iowa Code section 239B.1(13) or with a spouse of the relative even though the marriage is terminated by death or divorce.

*b.* A relative of the putative father can qualify as a specified relative if the putative father has acknowledged paternity by the type of written evidence on which a prudent person would rely.

*c.* The FIP is available to a child of unmarried parents the same as to a child of married parents when all eligibility factors are met.

*d.* The presence of an able-bodied stepparent in the home will not disqualify a child for assistance, provided that other eligibility factors are met.

**41.3(2)** *Liability of relatives.* All appropriate steps will be taken to secure support from legally liable persons on behalf of all persons in the eligible group, including the establishment of paternity.

*a.* When necessary to establish eligibility, the income maintenance unit will make the initial contact with the absent parent at the time of application. Subsequent contacts will be made by child support services.

*b.* When contact with the FIP family or other sources of information indicate that relatives other than parents and spouses of the eligible children are contributing toward the support of members of the eligible group, have contributed in the past, or are of such financial standing they might reasonably be expected to contribute, the income maintenance unit will contact these persons to verify current contributions or arrange for contributions on a voluntary basis.

**41.3(3)** *Referral to child support services.* The income maintenance unit will provide prompt notice to child support services pursuant to Iowa Code section 239B.2(6).

*a.* A referral to child support services will not be made when a parent's absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States. "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.

*b.* "Prompt notice" means within two working days of the date assistance is approved.

**41.3(4)** *Cooperation in obtaining support.* Each applicant for or recipient of the FIP shall cooperate with the department in establishing paternity and securing support for persons whose needs are included in the assistance grant, except when good cause as defined in subrule 41.3(6) for refusal to cooperate is established.

*a.* The applicant or recipient must cooperate in the following areas:

(1) Identifying and locating the parent of the child for whom aid is claimed.

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed.

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed.

*b.* Cooperation is defined as including the following actions by the applicant or recipient:

(1) Appearing at the office of the income maintenance unit or child support services to provide verbal or written information or documentary evidence known to, possessed by, or reasonably obtained by the applicant or recipient that is relevant to achieving the objectives of the child support recovery program.

(2) Appearing as a witness at judicial or other hearings or proceedings.

(3) Providing information, or attesting to the lack of information, under penalty of perjury.

(4) Paying to the department any cash support payments for a member of the eligible group, except as described in paragraph 41.8(7)*"n,"* received by a recipient after the date of decision as defined in 441—subrule 40.4(3).

(5) Providing the name of the absent parent and additional necessary information.

*c.* The applicant or recipient shall cooperate with the income maintenance unit in supplying information with respect to the absent parent, the receipt of support, and the establishment of paternity, to the extent necessary to establish eligibility for assistance and permit an appropriate referral to child support services.

*d.* The applicant or recipient shall cooperate with child support services to the extent of supplying all known information and documents pertaining to the location of the absent parent and taking action as may be necessary to secure or enforce a support obligation or establish paternity. This includes completing and signing documents determined to be necessary by the state's attorney for any relevant judicial or administrative process.

*e.* In the circumstance as described in subparagraph 41.3(4)*"b"*(4), the income maintenance unit will make the determination of whether or not the applicant or recipient has cooperated. In all other instances, child support services will make the determination of whether the applicant or recipient has cooperated. Child support services delegates the income maintenance unit to make this determination for applicants.

*f.* Failure to cooperate will result in a sanction to the family. The sanction will be a deduction of 25 percent from the net cash assistance grant amount payable to the family before any deduction for recoupment of a prior overpayment.

(1) When the income maintenance unit determines noncooperation, the sanction will be implemented after the noncooperation has occurred. The sanction will remain in effect until the client has expressed willingness to cooperate. However, any action to remove the sanction will be delayed until cooperation has occurred.

(2) When child support services makes the determination, the sanction will be implemented upon notification from child support services to the income maintenance unit that the client has failed to cooperate. The sanction will remain in effect until the client has expressed to either income maintenance or child support services staff willingness to cooperate. However, any action to remove the sanction will be delayed until income maintenance is notified by child support services that the client has cooperated.

**41.3(5)** *Assignment of support payments.*

*a.* Each applicant for or recipient of assistance shall assign to the department any rights to support pursuant to Iowa Code section 239B.6.

*b.* An assignment is effective the same date all eligibility information is entered into the department's computer system and is effective for the entire period for which assistance is paid.

**41.3(6)** *Good cause for refusal to cooperate.* Good cause exists when it is determined that cooperation in establishing paternity and securing support is against the best interests of the child.

*a.* The income maintenance unit will determine that cooperation is against the child's best interest when the applicant's or recipient's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

(1) Physical harm to the child for whom support is to be sought; or

(2) Emotional harm to the child for whom support is to be sought; or

(3) Physical harm to the parent or caretaker relative with whom the child is living that reduces the person's capacity to care for the child adequately; or

(4) Emotional harm to the parent or caretaker relative with whom the child is living of a nature or degree that it reduces the person's capacity to care for the child adequately.

*b.* The income maintenance unit will determine that cooperation is against the child's best interest when at least one of the following circumstances exists, and the income maintenance unit believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

(1) The child for whom support is sought was conceived as a result of incest or forcible rape.

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

(3) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption, and the discussions have not gone on for more than three months.

*c.* Physical harm and emotional harm shall be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm will be based only upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

*d.* When the good cause determination is based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the following will be considered:

(1) The present emotional state of the individual subject to emotional harm.

(2) The emotional health history of the individual subject to emotional harm.

(3) Intensity and probable duration of the emotional impairment.

(4) The degree of cooperation required.

(5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

**41.3(7)** *Claiming good cause.* Each applicant for or recipient of the FIP who is required to cooperate with child support services will have the opportunity to claim good cause for refusing to cooperate in establishing paternity or securing support payments.

*a.* Before requiring cooperation, the income maintenance unit will notify the applicant or recipient using a form prescribed by the department of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination.

*b.* The initial notice advising of the right to refuse to cooperate for good cause will:

(1) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity and securing support.

(2) Advise the applicant or recipient that by law cooperation in establishing paternity and securing support is a condition of eligibility for the FIP.

(3) Advise the applicant or recipient of the sanctions provided for refusal to cooperate without good cause.

(4) Advise the applicant or recipient that good cause for refusal to cooperate may be claimed; and that if the income maintenance unit determines, in accordance with these rules, that there is good cause, the applicant or recipient will be excused from the cooperation requirement.

(5) Advise the applicant or recipient that upon request, or following a claim of good cause, the income maintenance unit will provide further notice with additional details concerning good cause.

*c.* When the applicant or recipient makes a claim of good cause or requests additional information regarding the right to file a claim of good cause, the income maintenance unit will issue a second notice on a form prescribed by the department. To claim good cause, the applicant or recipient shall sign and date this form and return it to the income maintenance unit. This form:

(1) Indicates that the applicant or recipient must provide corroborative evidence of a good cause circumstance and must, when requested, furnish sufficient information to permit the income maintenance unit to investigate the circumstances.

(2) Informs the applicant or recipient that, upon request, the income maintenance unit will provide reasonable assistance in obtaining the corroborative evidence.

(3) Informs the applicant or recipient that on the basis of the corroborative evidence supplied and the department's investigation when necessary, the income maintenance unit will determine whether cooperation would be against the best interest of the child for whom support would be sought.

(4) Lists the circumstances under which cooperation may be determined to be against the best interests of the child.

(5) Informs the applicant or recipient that child support services may review the income maintenance unit's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause.

(6) Informs the applicant or recipient that child support services may attempt to establish paternity and collect support in those cases where the income maintenance unit determines that this can be done without risk to the applicant or recipient if done without the applicant's or recipient's participation.

*d.* The applicant or recipient who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. Failure to meet these requirements will constitute a sufficient basis for the income maintenance unit to determine that good cause does not exist. The applicant or recipient shall:

(1) Specify the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating.

(2) Corroborate the good cause circumstances.

(3) When requested, provide sufficient information to permit an investigation.

**41.3(8)** *Determination of good cause.* The income maintenance unit will determine whether good cause exists for each applicant for or recipient of the FIP who claims to have good cause.

*a.* The applicant or recipient shall be notified by the income maintenance unit of its determination that good cause does or does not exist. The determination will:

(1) Be in writing.

(2) Contain the income maintenance unit's findings and basis for determination.

(3) Be entered in the FIP case record.

*b.* The determination of whether or not good cause exists will be made within 45 days from the day the good cause claim is made. The income maintenance unit may exceed this time standard only when:

(1) The case record documents that the income maintenance unit needs additional time because the information required to verify the claim cannot be obtained within the time standard, or

(2) The case record documents that the claimant did not provide corroborative evidence within the time period set forth in subrule 41.3(9).

*c.* When the income maintenance unit determines that good cause does not exist:

(1) The applicant or recipient will be so notified and afforded an opportunity to cooperate, withdraw the application for assistance, or have the case closed; and

(2) Continued refusal to cooperate will result in the imposition of sanctions.

*d.* The income maintenance unit will make a good cause determination based on the corroborative evidence supplied by the applicant or recipient only after the unit has examined the evidence and found that it actually verifies the good cause claim.

*e.* Before making a final determination of good cause for refusing to cooperate, the income maintenance unit will:

(1) Afford child support services the opportunity to review and comment on the findings and basis for the proposed determination, and

(2) Consider any recommendation from child support services.

*f.* Child support services may participate in any appeal hearing that results from an applicant's or recipient's appeal of an agency action with respect to a decision on a claim of good cause.

*g.* Assistance will not be denied, delayed, or discontinued pending a determination of good cause for refusal to cooperate when the applicant or recipient has specified the circumstances under which good cause can be claimed and provided the corroborative evidence and any additional information needed to establish good cause.

*h.* The income maintenance unit will:

(1) Periodically, but not less frequently than every six months, review those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change.

(2) When it determines that circumstances have changed so that good cause no longer exists, rescind its findings and proceed to enforce the requirements pertaining to cooperation in establishing paternity and securing support.

**41.3(9)** *Proof of good cause.* The applicant or recipient who claims good cause shall provide corroborative evidence within 20 days from the day the claim was made. In exceptional cases where the income maintenance unit determines that the applicant or recipient needs additional time because of the difficulty in obtaining the corroborative evidence, the income maintenance unit will allow a reasonable additional period upon approval by the worker's immediate supervisor.

*a.* A good cause claim may be corroborated with the following types of evidence.

(1) Birth certificates or medical or law enforcement records that indicate that the child was conceived as the result of incest or forcible rape.

(2) Court documents or other records that indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.

(3) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records that indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative.

(4) Medical records that indicate emotional health history and present emotional health status of the caretaker relative or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child for whom support would be sought.

(5) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(6) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances that provide the basis for the good cause claim.

*b.* When, after examining the corroborative evidence submitted by the applicant or recipient, the income maintenance unit wishes to request additional corroborative evidence that is needed to permit a good cause determination, the income maintenance unit will:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed, and

(2) Specify the type of document that is needed.

*c.* When the applicant or recipient requests assistance in securing corroborative evidence, the income maintenance unit will:

(1) Advise the applicant or recipient how to obtain the necessary documents, and

(2) Make a reasonable effort to obtain any specific documents that the applicant or recipient is not reasonably able to obtain without assistance.

*d.* When a claim is based on the applicant's or recipient's anticipation of physical harm and corroborative evidence is not submitted in support of the claim:

(1) The income maintenance unit will investigate the good cause claim when the unit believes that the claim is credible without corroborative evidence and corroborative evidence is not available.

(2) Good cause will be found when the claimant's statement and the investigation that is conducted satisfy the income maintenance unit that the applicant or recipient has good cause for refusing to cooperate.

(3) A determination that good cause exists will be reviewed and approved or disapproved by the worker's immediate supervisor and the findings will be recorded in the case record.

*e.* The income maintenance unit may further verify the good cause claim when the applicant's or recipient's statement of the claim together with the corroborative evidence do not provide sufficient basis for making a determination. When the income maintenance unit determines that it is necessary, the unit may conduct an investigation of good cause claims to determine that good cause does or does not exist.

*f.* When it conducts an investigation of a good cause claim, the income maintenance unit will:

(1) Contact the absent parent or putative father from whom support would be sought when the contact is determined to be necessary to establish the good cause claim.

(2) Prior to making the necessary contact, notify the applicant or recipient so the applicant or recipient may present additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary, withdraw the application for assistance or have the case closed, or have the good cause claim denied.

**41.3(10)** *Enforcement without caretaker's cooperation.* When the income maintenance unit makes a determination that good cause exists, the unit will also make a determination of whether or not child support enforcement can proceed without risk of harm to the child or caretaker relative when the enforcement or collection activities do not involve the participation of the child or caretaker.

*a.* Child support services will have an opportunity to review and comment on the findings and basis for the proposed determination, and the income maintenance unit will consider any recommendation from child support services.

*b.* The determination will:

(1) Be in writing,

(2) Contain the income maintenance unit's findings and basis for determination, and

(3) Be entered into the FIP case record.

*c.* When the income maintenance unit excuses cooperation but determines that child support services may proceed to establish paternity or enforce support, the income maintenance unit will notify the applicant or recipient to enable the individual to withdraw the application for assistance or have the case closed.

**41.3(11)** *Furnishing of social security number.* As a condition of eligibility each applicant for or recipient of and all members of the eligible group must furnish a social security account number or proof

of application for a number if it has not been issued or is not known and provide the number upon its receipt. The requirement will not apply to a payee who is not a member of the eligible group.

*a.* Assistance will not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicant or recipient has complied with the requirements of subrule 41.3(11).

*b.* When the mother of the newborn child is a current recipient, the mother shall have until the second month following the mother's discharge from the hospital to apply for a social security account number for the child.

*c.* When the applicant is a battered alien, as described in subrule 41.4(4), the applicant shall have until the month following the month the person receives employment authorization from the Immigration and Naturalization Service to apply for a social security account number.

**41.3(12)** *Requiring minor parents to live with parent or legal guardian.* A minor parent and the dependent child in the minor parent's care must live in the home of a parent or legal guardian of the minor parent in order to receive FIP benefits unless good cause for not living with the parent or legal guardian is established.

*a.* "Living in the home" includes living in the same apartment, same half of a duplex, same condominium or same row house as the adult parent or legal guardian. It also includes living in an apartment that is located in the home of the adult parent or legal guardian.

*b.* For applicants, determination of whether the minor parent and child are living with a parent or legal guardian or have good cause must be made as of the date of the first application interview as described in 441—subrule 40.4(1).

(1) If, as of the date of this interview, the minor parent and child are living with a parent or legal guardian or are determined to have good cause, the FIP application for the minor parent and child will be approved as early as seven days from receipt of the application provided they are otherwise eligible.

(2) If, as of the date of this interview, the minor parent and child are not living with a parent or legal guardian and do not have good cause, the FIP application for the minor parent and child will be denied.

*c.* For recipients, when changes occur, continuing eligibility will be redetermined according to 441—subrules 40.7(4) and 40.7(5).

*d.* A minor parent determined to have good cause for not living with a parent or legal guardian must attend the family development and self-sufficiency program or other family development as required in 441—subrule 93.4(4).

**41.3(13)** *Good cause for not living in the home of a parent or legal guardian.* Good cause exists when at least one of the following conditions applies:

*a.* The parents or legal guardian of the minor parent is deceased, missing or living in another state.

*b.* The physical or emotional health or safety of the minor parent or child would be jeopardized if the minor parent is required to live with the parent or legal guardian.

(1) Physical or emotional harm shall be of a serious nature in order to justify a finding of good cause.

(2) Physical or emotional harm shall include situations of documented abuse or incest.

(3) When the good cause determination is based in whole or in part upon the anticipation of emotional harm to the minor parent or child, the following will be considered:

1. The present emotional state of the individual subject to emotional harm.
2. The emotional health history of the individual subject to emotional harm.
3. Intensity and probable duration of the emotional impairment.

*c.* The minor parent is in a foster care supervised apartment living arrangement.

*d.* The minor parent is participating in the job corps solo parent program.

*e.* The parents or legal guardian refuses to allow the minor parent and child to return home and the minor parent is living with a specified relative, aged 21 or over, on the day of interview, and the caretaker is the applicant or payee.

*f.* The minor parent and child live in a maternity home or other licensed adult-supervised supportive living arrangement as defined by the department.

*g.* Other circumstances exist that indicate that living with the parents or legal guardian will defeat the goals of self-sufficiency and responsible parenting. Situations that appear to meet this good cause

reason must be referred to the administrator of the division of adult, children and family services, or the administrator's designee, for determination of good cause.

**41.3(14)** *Claiming good cause for not living in the home of a parent or legal guardian.* Each applicant or recipient who is not living with a parent or legal guardian will have the opportunity to claim good cause for not living with a parent or legal guardian.

**41.3(15)** *Determination of good cause for not living in the home of a parent or legal guardian.* The department will determine whether good cause exists for each applicant or recipient who claims good cause.

*a.* The applicant or recipient will be notified by the department of its determination that good cause does or does not exist. The determination will:

(1) Be in writing.

(2) Contain the department's findings and basis for determination.

(3) Be entered in the FIP case record.

*b.* When the department determines that good cause does not exist:

(1) The applicant or recipient will be so notified.

(2) The application will be denied or FIP assistance canceled.

*c.* The department will:

(1) Periodically, but not less frequently than every six months, review those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change.

(2) When it determines that circumstances have changed so that good cause no longer exists, rescind its findings and proceed to enforce the requirements.

**41.3(16)** *Proof of good cause for not living in the home of a parent or legal guardian.* The applicant or recipient who claims good cause shall provide corroborative evidence to prove the good cause claim within the time frames described in 441—subrule 40.4(1) and 441—paragraph 40.7(4)*"c."*

*a.* A good cause claim may be corroborated by one or more of the following types of evidence:

(1) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records that indicate that the parent or legal guardian might inflict physical or emotional harm on the minor parent or child.

(2) Medical records that indicate the emotional health history and present emotional health status of the minor parent or child; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the minor parent or child.

(3) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances that provide the basis for the good cause claim. Written statements from the client's friends or relatives are not sufficient alone to grant good cause based on physical or emotional harm, but may be used to support other evidence.

(4) Notarized statements from the parents or legal guardian or other reliable evidence to verify that the parents or legal guardian refuse to allow the minor parent and child to return home.

(5) Court, criminal, child protective services, social services or other records that verify that the parents or legal guardian of the minor parent is deceased, missing or living in another state, or that the minor parent is in a foster care supervised apartment living arrangement, the job corps solo parent program, maternity home or other licensed adult-supervised supportive living arrangement.

*b.* When, after examining the corroborative evidence submitted by the applicant or recipient, the department wishes to request additional corroborative evidence that is needed to permit a good cause determination, the department will:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed.

(2) Specify the type of document that is needed.

*c.* When the applicant or recipient requests assistance in securing evidence, the department will:

(1) Advise the applicant or recipient how to obtain the necessary documents.

(2) Make a reasonable effort to obtain any specific documents that the applicant or recipient is not reasonably able to obtain without assistance.

**441—41.4(239B) Home, residence, citizenship, and alienage.**

**41.4(1)** *Iowa residence.*

*a.* A resident of Iowa is one:

(1) Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A child is a resident of Iowa when living there on other than a temporary basis. Residence will not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(2) Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed. Under this definition the child is a resident of the state in which the caretaker is a resident.

*b.* Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

**41.4(2)** *Suitability of home.* The home will be deemed suitable until the court has ruled it unsuitable and, as a result of such action, the child has been removed from the home.

**41.4(3)** *Absence from the home.*

*a.* An individual who is absent from the home will not be included in the assistance unit, except as described in paragraph 41.4(3)*"b."*

(1) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(2) A parent whose absence from the home is due solely to a pattern of employment is not considered to be absent.

(3) A parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States is considered absent from the home, notwithstanding the provisions of subrule 41.3(3). "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.

*b.* The needs of an individual who is temporarily out of the home are included in the eligible group, if otherwise eligible. A temporary absence exists in the following circumstances:

(1) An individual is anticipated to be in the medical institution for less than a year, as verified by a physician's statement. Failure to return within one year will result in the individual's needs being removed from the grant.

(2) An individual is out of the home to secure education or training, as described for children in paragraph 41.5(2)*"a"* and for adults in rule 441—93.8(239B), first sentence, as long as the caretaker relative retains supervision of the child.

(3) An individual is out of the home for reasons other than reasons in subparagraphs 41.4(3)*"b"*(1) and (2) and the payee intends that the individual will return to the home within three months. Failure to return within three months will result in the individual's needs being removed from the grant.

**41.4(4)** *Battered aliens.* A person who meets the conditions of eligibility under Iowa Code sections 239B.2 and 239B.2B is eligible for participation in the FIP.

**41.4(5)** *Citizenship and alienage.*

*a. Eligible status.* An FIP assistance grant may include the needs of a citizen or national of the United States or a qualified alien as defined in rule 441—40.1(239B).

(1) A person who is a qualified alien as defined in rule 441—40.1(239B) is not eligible for FIP assistance for a five-year period beginning on the date of the person's entry into the United States with a qualified alien status.

(2) Exceptions: The five-year prohibition from FIP assistance does not apply to:

1. A qualified alien residing in the United States before August 22, 1996.
2. A battered alien as described in subrule 41.4(4).
3. A qualified alien veteran who has an honorable discharge that is not due to alienage.

4. A qualified alien who is on active duty in the Armed Forces of the United States other than active duty for training.

5. A qualified alien who is the spouse or unmarried dependent child of a qualified alien described in numbered paragraph 41.4(5)*"a"*(2)"3" or "4," including a surviving spouse who has not remarried.

6. A refugee admitted under Section 207 of the Immigration and Nationality Act (INA) as amended to December 31, 2024.

7. An alien granted asylum under Section 208 of the INA as amended to December 31, 2024.

8. An alien admitted as an Amerasian as described in 8 U.S.C. Section 1612(a)(2)(A)(ii)(V) as amended to December 31, 2024.

9. A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7) as amended to December 31, 2024.

10. An alien whose deportation is withheld under Section 243(h) or Section 241(b)(3) of the INA as amended to December 31, 2024.

11. An alien certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 31, 2024.

12. An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

*b. Attestation of status.* As a condition of eligibility, an attestation of citizenship or alien status shall be made for all applicants and recipients on an application form, a review form, or another attestation form prescribed by the department. A review form prescribed by the department may be used to attest to the citizenship of dependent children who enter a recipient household. Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligible group. The attestation may be signed by:

(1) The applicant;

(2) Someone acting responsibly on the applicant's or recipient's behalf if the applicant or recipient is incompetent or incapacitated; or

(3) Any adult member of the assistance unit, when eligibility is determined on a family or household basis.

**441—41.5(239B) Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) program.** All persons in an FIP household will be referred to the PROMISE JOBS program and shall enter into a family investment agreement (FIA) as a condition of receiving FIP, unless exempt from referral, except as described in subrule 41.5(2).

**41.5(1)** *FIA-responsible persons.* The following persons are FIA-responsible unless the department determines the person is exempt:

*a.* All persons whose needs are included in a grant under the FIP program.

*b.* Any parent living in the home of a child receiving a grant.

*c.* All FIP applicants unless the department determines that the applicant is exempt or does not meet other FIP eligibility requirements.

*d.* Applicants who have chosen and are in an active limited benefit plan (LBP). FIA-responsible applicants in an active limited benefit plan shall complete significant contact with or action in regard to PROMISE JOBS as described in paragraphs 41.5(7)*"d"* and *"e"* for FIP eligibility to be considered. For two-parent households, both parents must participate as previously stated except when one parent is exempt. Exceptions:

(1) The applicant has become exempt from PROMISE JOBS.

(2) The applicant is in a subsequent limited benefit plan and it is prior to the last day of the six-month period of ineligibility.

**41.5(2)** *Exemptions.* The following persons are exempt from referral:

*a.* A person who is under the age of 16 and is not a parent.

*b.* A person found eligible for supplemental security income (SSI) benefits based on disability or blindness.

*c.* A person who is aged 16 to 19, is not a parent, and attends an elementary, secondary or equivalent level of vocational or technical school full-time. For persons who lose exempt status for not attending school, once the person has signed a family investment agreement, the person will remain referred to PROMISE JOBS and subject to the terms of the agreement.

(1) A person will be considered to be attending school full-time when enrolled or accepted in an elementary school, a secondary school, or the equivalent level of vocational or technical school or training leading to a certificate or diploma, and the school certifies the person's attendance as full-time. Enrollment in a correspondence school that gives instruction courses by mail is not an allowable program of study.

(2) A person will also be considered to be in regular attendance in months when the person is not attending because of an official school or training program vacation, an illness, a convalescence, or a family emergency.

(3) A child meets the definition of regular school attendance until the child has been officially dropped from the school rolls.

*d.* A person who is not a United States citizen and is not a qualified alien as defined in 441—40.1(239B).

**41.5(3)** *Parents aged 19 and under.*

*a.* Unless exempt as described in subrule 41.5(2), parents aged 18 or 19 are referred to PROMISE JOBS as follows:

(1) A parent aged 18 or 19 who has not successfully completed a high school education (or its equivalent) will be required to participate in educational activities, directed toward the attainment of a high school diploma or its equivalent.

(2) The parent will be required to participate in other PROMISE JOBS options if the person fails to make good progress in completing educational activities or if it is determined that participation in educational activities is inappropriate for the parent.

(3) The parent will be required to participate in parenting skills training in accordance with 441—Chapter 93.

*b.* Unless exempt as described in subrule 41.5(2), parents aged 17 or younger are referred to PROMISE JOBS as follows:

(1) A parent aged 17 or younger who has not successfully completed a high school education or its equivalent will be required to participate in high school completion activities, directed toward the attainment of a high school diploma or its equivalent.

(2) The parent will be required to participate in parenting skills training in accordance with 441—Chapter 93.

**41.5(4)** *Method of referral.* The department will refer each FIA-responsible person as defined in subrule 41.5(1) to PROMISE JOBS to sign a family investment agreement.

*a. FIA-responsible applicants.* During the application interview, the department will notify the applicant of the requirement to sign a family investment agreement as a condition of FIP eligibility. The department will refer the applicant by scheduling the applicant for an appointment with the PROMISE JOBS provider agency to develop the family investment agreement.

(1) The appointment will be on the earliest available date but no later than ten calendar days from the date of referral unless the applicant requests an appointment on a day that is beyond ten calendar days. The PROMISE JOBS provider agency shall make sufficient appointment times available to allow the applicant to be scheduled within this time frame.

(2) The applicant will be notified verbally and in writing of the scheduled appointment. If the notice of a scheduled appointment is mailed to the applicant, the department will allow at least five working days from the date the notice is mailed for the applicant to appear for the scheduled appointment. The department may allow less than five working days if the applicant is verbally notified and agrees to the appointment.

(3) If a parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department will deny FIP assistance for the entire family.

(4) If a minor parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department will deny FIP assistance for the minor parent and any child of the minor parent.

(5) If a referred person who is not a parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department will deny FIP assistance only for that person.

*b. Hardship applicants.* While the eligibility decision is pending, unless the applicants are exempt from referral as defined in subrule 41.5(2), the department will refer applicants who must qualify for a hardship exemption before approval of FIP to PROMISE JOBS to sign a family investment agreement as described in paragraph 41.5(4)*"a"* and will treat applicants in accordance with subrule 41.11(3).

*c. Applicants in a limited benefit plan.* The department will refer FIA-responsible applicants to PROMISE JOBS as described in paragraph 41.5(4)*"a"* and inform the applicant of the actions needed to reconsider and end the limited benefit plan as described in subrule 41.5(7). Failure to appear for the appointment without rescheduling or failure to sign a family investment agreement results in denial of the FIP application.

*d. FIP participants who become FIA-responsible.* When a person receiving FIP is no longer exempt, the department will send the FIP participant a notice. The notice will contain information about the requirement to sign a family investment agreement and will instruct the FIP participant to contact PROMISE JOBS within ten calendar days to schedule an appointment with PROMISE JOBS to develop a family investment agreement. If the participant fails to schedule or attend the appointment or fails to sign a family investment agreement, PROMISE JOBS will send a clear written reminder. After one written reminder as described in 441—paragraph 93.3(3)*"b,"* the participant will enter into a limited benefit plan as described in paragraph 41.5(8)*"c."*

**41.5(5)** *Changes in status and redetermination of exempt status.* Any exempt person shall report any change affecting the exempt status to the department within ten days of the change. The department will reevaluate exempt persons when changes in status occur and at the time of six-month or annual review. The participant and the PROMISE JOBS unit will be notified of any change in a participant's exempt status.

**41.5(6)** *Referral to vocational rehabilitation.* The department will make the department of education, division of vocational rehabilitation services, aware of any person who is referred to PROMISE JOBS and who has a medically determined physical or mental disability and a substantial employment limitation resulting from the disability. However, acceptance of vocational rehabilitation services by the client is optional.

**41.5(7)** *LBP.* When a participant responsible for signing and meeting the terms of a family investment agreement chooses not to sign or fulfill the terms of the agreement, the FIP assistance unit or the individual participant will enter into a limited benefit plan. A limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to the participant as defined in rules 441—16.1(17A) and 441—16.2(17A). Once the limited benefit plan is imposed, FIP eligibility no longer exists as of the first of the month after the month in which timely and adequate notice is given to the participant. Upon the issuance of the notice to impose a limited benefit plan, the person who chose the limited benefit plan can reconsider and end the limited benefit plan, but only as described in paragraphs 41.5(8)*"d"* and *"e."*

*a.* A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. From the effective date of a first limited benefit plan, the FIP eligible group or individual participant shall not be eligible until the participant who chose the limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph 41.5(8)*"d."* If a subsequent limited benefit plan is chosen by the same participant, a six-month period of ineligibility applies to the FIP eligible group or individual participant and ineligibility continues after the six-month period is over until the participant who chose the limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph 41.5(8)*"e."* A limited benefit plan imposed in error as described in paragraph 41.5(8)*"g"* shall not be considered a

limited benefit plan and shall not count when determining whether a household is subject to a subsequent limited benefit plan.

*b.* The limited benefit plan shall be applied to participants responsible for the family investment agreement and other members of the participant's family as follows:

(1) When the participant responsible for the family investment agreement is a parent, the limited benefit plan shall apply to the entire FIP eligible group as defined in subrule 41.9(1).

(2) When the participant choosing a limited benefit plan is a needy specified relative or a dependent child's stepparent who is in the FIP eligible group because of incapacity, the limited benefit plan shall apply only to the individual participant choosing the plan. Exception: The limited benefit plan shall apply to the entire FIP eligible group as defined in subrule 41.9(1) when a needy specified relative who assumes the role of parent was responsible for the family investment agreement and chose a limited benefit plan effective October 1, 2005, or earlier.

(3) When the FIP eligible group includes a minor parent living with the minor parent's adult parent or needy specified relative who receives FIP benefits and both the minor parent and the adult parent or needy specified relative are responsible for developing a family investment agreement, each parent or needy specified relative is responsible for a separate family investment agreement, and the limited benefit plan shall be applied as follows:

1. When the adult parent chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the entire eligible group, even though the minor parent has not chosen the limited benefit plan. However, the minor parent may reapply for FIP benefits as a minor parent living with self-supporting parents or as a minor parent living independently and continue in the family investment agreement process.

2. When the minor parent chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the minor parent and any child of the minor parent.

3. When the minor parent is the only eligible child in the adult parent's or needy specified relative's home and the minor parent chooses the limited benefit plan, the adult parent's or needy specified relative's FIP eligibility ceases in accordance with subrule 41.9(1). The adult parent or needy specified relative shall become ineligible beginning with the effective date of the minor parent's limited benefit plan.

4. When the needy specified relative chooses the limited benefit plan, the requirements of the limited benefit plan shall apply as described in subparagraph 41.5(8)*"b"*(2).

(4) When the FIP eligible group includes children who are FIA-responsible, the children shall not have a separate family investment agreement but shall be asked to sign the eligible group's family investment agreement and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

1. When the parent or needy specified relative responsible for a family investment agreement meets those responsibilities but a child who is FIA-responsible chooses an individual limited benefit plan, the limited benefit plan shall apply only to the individual child choosing the plan.

2. When the child who chooses a limited benefit plan under numbered paragraph 41.5(8)*"b"*(4)"1" is the only child in the eligible group, the parents' or needy specified relative's eligibility ceases in accordance with subrule 41.9(1). The parents or needy specified relative shall become ineligible beginning with the effective date of the child's limited benefit plan.

(5) When the FIP eligible group includes parents or needy specified relatives who are exempt from PROMISE JOBS participation and children who are FIA-responsible, the children are responsible for completing a family investment agreement. If a child who is FIA-responsible chooses the limited benefit plan, the limited benefit plan shall be applied in the manner described in subparagraph 41.5(8)*"b"*(4).

(6) When both parents of an FIP child are in the home, a limited benefit plan shall be applied as follows:

1. When only one parent of a child in the eligible group is responsible for a family investment agreement and that parent chooses the limited benefit plan, the limited benefit plan applies to the entire family and cannot be ended by the voluntary participation in a family investment agreement by the exempt parent.

2. When both parents of a child in the eligible group are responsible for a family investment agreement, both are expected to sign the agreement. If either parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the participation of the other parent in a family investment agreement.

3. When the parents from a two-parent family in a limited benefit plan separate, the limited benefit plan shall follow only the parent who chose the limited benefit plan and any children in the home of that parent.

4. A subsequent limited benefit plan applies when either parent in a two-parent family previously chose a limited benefit plan.

*c.* A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

(1) A participant who loses exempt status and is referred to PROMISE JOBS as described in paragraph 41.5(4)*"d"* and who does not schedule or attend an appointment for orientation and development of a family investment agreement with PROMISE JOBS after PROMISE JOBS sends one clear written reminder as described in 441—paragraph 93.3(3)*"b"* shall enter into the limited benefit plan.

(2) A participant who chooses not to sign the family investment agreement shall enter into the limited benefit plan. For an applicant, signing a family investment agreement is an FIP eligibility requirement. If an applicant chooses not to sign the agreement, the limited benefit plan process is not applicable.

(3) A participant who signs a family investment agreement but does not carry out the family investment agreement responsibilities shall enter into a limited benefit plan whether the person signed the agreement as an FIP applicant or as an FIP participant. This includes a participant who fails to respond to the PROMISE JOBS worker's request to renegotiate the family investment agreement when the participant has not attained self-sufficiency by the date established in the family investment agreement. A limited benefit plan shall be imposed regardless of whether the request to renegotiate is made before or after expiration of the family investment agreement.

*d.* Reconsideration of a first limited benefit plan. A person who chooses a first limited benefit plan may reconsider at any time from the date timely and adequate notice is issued establishing the limited benefit plan. To reconsider and end the limited benefit plan, the person must communicate the desire to engage in PROMISE JOBS activities to the department or appropriate PROMISE JOBS office and develop and sign the family investment agreement.

(1) Since a first limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued, the person who chose the limited benefit plan cannot end it by complying with the issue that resulted in its imposition. To end the limited benefit plan, the person must also sign a family investment agreement, even if the person had signed an agreement before choosing the limited benefit plan.

(2) FIP benefits shall be effective the date the family investment agreement is signed or the effective date of the grant as described in rule 441—40.6(239B), whichever date is later. FIP benefits may be reinstated in accordance with 441—subrule 40.2(5) when the family investment agreement is signed before the effective date of a first limited benefit plan.

*e.* Reconsideration of a subsequent limited benefit plan. A person who chooses a subsequent limited benefit plan may reconsider that choice at any time following the required six-month period of ineligibility.

(1) A subsequent limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to establish the limited benefit plan. Therefore, once timely and adequate notice is issued, the person who chose the limited benefit plan cannot end it by complying with the issue that resulted in its imposition.

(2) FIP eligibility no longer exists as of the effective date of the limited benefit plan. Eligibility cannot be reestablished until the six-month period of ineligibility has expired. FIP eligibility does not exist for a person who reapplies for FIP after the notice is issued and before the effective date of the

limited benefit plan because the person is not eligible to sign a family investment agreement until the six-month period of ineligibility has expired.

(3) To reconsider and end the limited benefit plan, the person must:

1. Contact the department or the appropriate PROMISE JOBS office to communicate the desire to engage in PROMISE JOBS activities,

2. Sign a new or updated family investment agreement, and

3. Satisfactorily complete 20 hours of employment or the equivalent in an activity other than work experience or unpaid community service, unless problems as described in rule 441—93.14(239B) or barriers as described in 441—subrule 93.4(5) apply. The 20 hours of employment or other activity must be completed within 30 days of the date that the family investment agreement is signed, unless problems as described in rule 441—93.14(239B) or barriers as described in 441—subrule 93.4(5) apply.

(4) FIP benefits shall not begin until the person who chose the limited benefit plan completes the previously defined significant actions. FIP benefits shall be effective the date the family investment agreement is signed or the effective date of the grant as described in rule 441—40.6(239B), whichever date is later, but in no case shall the effective date be within the six-month period of ineligibility.

*f.* Reconsideration by two-parent family. For a two-parent family when both parents are responsible for a family investment agreement as described in subrule 41.5(1), a first or subsequent limited benefit plan continues until both parents have completed significant contact or action with the PROMISE JOBS program as described in paragraphs 41.5(7)*"d"* and *"e."*

*g.* Limited benefit plan imposed in error. A limited benefit plan imposed in error will not be considered a limited benefit plan. This includes any instance when participation in PROMISE JOBS should not have been required as described in the administrative rules. Examples of instances when an error has occurred are:

(1) The person was exempt from PROMISE JOBS participation at the time the person chose the limited benefit plan.

(2) It is verified that the person considered to have chosen the limited benefit plan moved out of state or requested cancellation of FIP prior to the date that PROMISE JOBS determined the limited benefit plan was chosen.

(3) The final appeal decision under 441—Chapter 7 reverses the decision to impose a limited benefit plan.

(4) It is determined that the entire amount of assistance issued for the person who chose the limited benefit plan is subject to recoupment for the month when the person chose not to fulfill the terms of the family investment agreement.

(5) The person informs PROMISE JOBS of a newly revealed problem as described in rule 441—93.14(239B) or barrier as described in 441—subrule 93.4(5) after the limited benefit plan is imposed, and it is reasonable that the problem or barrier contributed to a failure that resulted in imposition of the limited benefit plan. The person may be required to provide documentation of the problem or barrier as described in 441—subrule 93.10(3).

**41.5(8)** *Notification of services.*

*a.* The department will inform all applicants for and recipients of FIP of the advantages of employment under FIP.

*b.* The department will provide a full explanation of the family rights, responsibilities, and obligations under PROMISE JOBS and the FIA, with information on the time-limited nature of the agreement.

*c.* The department will provide information on the employment, education and training opportunities, and support services to which they are entitled under PROMISE JOBS, as well as the obligations of the department. This information will include explanations of child care assistance and transitional Medicaid.

*d.* The department will inform applicants for and recipients of FIP benefits of the grounds for exemption from FIA responsibility and from participation in the PROMISE JOBS program.

*e.* The department will explain the LBP and the process by which FIA-responsible persons can choose the LBP.

*f.* The department will inform all applicants for and recipients of FIP of their responsibility to cooperate in establishing paternity and enforcing child support obligations.

*g.* The department will inform applicants for FIP benefits that a family investment agreement must be signed before FIP approval as a condition of eligibility, except as described in subrule 41.5(2).

**441—41.6(239B) Uncategorized factors of eligibility.**

**41.6(1)** *Duplication of assistance.* A recipient whose needs are included in an FIP grant shall not concurrently receive a grant under any other public assistance program administered by the department, including IV-E foster care, state-funded foster care or kinship caregiver program payments.

*a.* A recipient shall not concurrently receive the FIP and subsidized adoption unless exclusion of the person from the FIP grant will reduce benefits to the family.

*b.* When an FIP recipient is approved for foster care or subsidized adoption assistance while remaining in the same home, FIP assistance will be canceled effective the first day of the next calendar month following the date approval of the foster care or subsidized adoption payment is successfully entered into the department's computer system. FIP assistance for the month for which the foster care or subsidized adoption payment is approved or any past months for which foster care or subsidized adoption payments are made retroactively will not be subject to recoupment.

*c.* A recipient shall not concurrently receive a grant from a public assistance program in another state.

*d.* When a recipient leaves the home of a specified relative, no payment for a concurrent period will be made for the same recipient in the home of another relative.

**41.6(2)** *Aid from other funds.* Supplemental aid from any other agency or organization is limited to aid for items of need not covered by the department's standards and to the amount of the percentage reduction used in determining the payment level. Any duplicated assistance will be considered unearned income.

**41.6(3)** *Contracts for support.* A person entitled to total support under the terms of an enforceable contract is not eligible to receive the FIP when the other party, obligated to provide the support, is able to fulfill that part of the contract.

**41.6(4)** *Participation in a strike.*

*a.* The family of any parent with whom the child(ren) is living will be ineligible for the FIP for any month in which the parent is participating in a strike on the last day of the month.

*b.* Any individual will be ineligible for the FIP for any month in which the individual is participating in a strike on the last day of that month.

*c.* Definitions:

(1) A strike is a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(2) An individual is not participating in a strike at the individual's place of employment when the individual is not picketing and does not intend to picket during the course of the dispute, does not draw strike pay, and provides a signed statement that the individual is willing and ready to return to work but does not want to cross the picket line solely because of the risk of personal injury or death or trauma from harassment. The income maintenance administrator will determine whether such a risk to the individual's physical or emotional well-being exists.

**41.6(5)** *Graduate students.* The entire assistance unit is ineligible for FIP when a member of the assistance unit is enrolled in an educational program leading to a degree beyond a bachelor's degree.

**41.6(6)** *Fugitive felons, and probation and parole violators.* Assistance will be denied to a person who is (1) convicted of a felony under state or federal law and is fleeing to avoid prosecution, custody or confinement, or (2) violating a condition of probation or parole imposed under state or federal law. The prohibition does not apply to conduct pardoned by the President of the United States, beginning with the month after the pardon is given.

**41.6(7)** *Access to benefits.* As a condition of eligibility, applicants and recipients must agree in writing to not use an electronic access card at prohibited locations. By signing an application or review

form prescribed by the department, the applicant, the applicant's authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf agrees to this condition of eligibility. When both parents, or a parent and a stepparent, are in the home and eligibility is determined on a family or household basis, one parent or stepparent may sign the application and agree to this condition for the assistance unit. Failure to sign a form agreeing to not use the electronic access card at prohibited locations creates ineligibility for the entire eligible group.

*a.* A recipient shall not use the recipient's electronic access card issued pursuant to 441—subrule 45.21(1) to access benefits at any of the following prohibited locations as defined by federal statute or regulation applicable to this prohibition and as further defined in rule 441—40.1(239B):

(1) A liquor store,

(2) A casino, gambling casino, or gaming establishment, or

(3) A retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

*b.* When the department receives a detailed complaint or suspects that a recipient has used the recipient's electronic access card at a prohibited location, the case will be referred to the department of inspections, appeals, and licensing (DIAL) for further investigation.

*c.* When DIAL finds that a recipient has used the recipient's electronic access card at a prohibited location, the household that includes the recipient is:

(1) Considered to have committed a fraudulent act;

(2) Liable for any amounts accessed and any associated fees for accessing the benefits at a prohibited location and required to repay such amount in accordance with 441—Chapter 46;

(3) Ineligible for FIP for a three-month period after the first report by DIAL that includes a finding of misuse;

(4) Ineligible for FIP for a six-month period after each subsequent report by DIAL that includes a finding of misuse.

*d.* When parents from a two-parent family separate during an ineligibility period, if:

(1) DIAL identifies the recipient who used the electronic access card at a prohibited location, the ineligibility period will follow that recipient.

(2) DIAL does not identify the recipient who used the electronic access card at a prohibited location, the ineligibility period will follow the recipient who is the case name when the violation occurred.

*e.* A new period of ineligibility will be established when:

(1) A recipient files an appeal either:

1. Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the ineligibility period, or

2. Within ten days from the date on which a notice establishing the beginning date of the ineligibility period is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period;

(2) Assistance is continued pending the final decision of the appeal; and

(3) The department's action is affirmed.

Assistance issued pending the final decision of an appeal is not subject to recovery pursuant to rule 441—7.17(17A).

**441—41.7(239B) Resources.**

**41.7(1)** *Limitation.* An applicant or recipient may have the following resources and be eligible for the FIP. Any resource not specifically exempted will be counted toward resource limitations.

*a.* A homestead without regard to its value. A mobile home or similar shelter will be considered as a homestead when it is occupied by the recipient. Temporary absence from the homestead with a defined purpose for the absence and with intent to return when the purpose of the absence has been accomplished will not be considered to have altered the exempt status of the homestead. Except as described in

paragraph 41.7(1)*"n"* or *"o"* and paragraph 41.7(6)*"c,"* the net market value of any other real property will be considered with personal property.

*b.* Household goods and personal effects without regard to their value. Personal effects are personal or intimate tangible belongings of an individual, especially those that are worn or carried on the person, that are maintained in one's home, and include clothing, books, grooming aids, jewelry, hobby equipment, and similar items.

*c.* Life insurance that has no cash surrender value. The owner of the life insurance policy is the individual paying the premium on the policy with the right to change the policy as the individual sees fit.

*d.* Motor vehicles.

(1) One motor vehicle without regard to its value.

(2) An equity not to exceed a value of $4,115 in one motor vehicle for each adult and working teenage child whose resources are considered as described in subrule 41.7(2). The disregard will be allowed when the working teenager is temporarily absent from work. The equity value in excess of $4,115 of any vehicle will be counted toward the resource limit in paragraph 41.7(1)*"e."* When a motor vehicle is modified with special equipment for the handicapped, the special equipment will not increase the value of the motor vehicle.

The department will annually increase the motor vehicle equity value to be disregarded by the latest increase in the consumer price index for used vehicles during the previous state fiscal year.

*e.* A reserve of other property, real or personal, not to exceed $2,000 for applicant assistance units and $5,000 for recipient assistance units. Exception: Applicant assistance units with at least one member who was a recipient in Iowa in the month prior to the month of application are subject to the $5,000 limit. The exception includes those persons who did not receive an assistance grant due to the limitations described in rules 441—45.6(239B) and 441—45.7(239B).

Resources of the applicant or the recipient will be determined in accordance with subrule 41.7(2).

*f.* Money that is counted as income in a month, during that same month; and that part of lump sum income defined in subparagraph 41.2(9)*"c"*(2) reserved for the current or future month's income.

*g.* Payments that are exempted for consideration as income and resources under subrule 41.8(6).

*h.* An equity not to exceed $1,500 in one funeral contract or burial trust for each member of the eligible group. Any amount in excess of $1,500 will be counted toward resource limitations unless it is established that the funeral contract or burial trust is irrevocable.

*i.* One burial plot for each member of the eligible group. A burial plot is defined as a conventional gravesite, crypt, mausoleum, urn, or other repository that is customarily and traditionally used for the remains of a deceased person.

*j.* Settlements for payment of medical expenses.

*k.* Life estates.

*l.* Federal or state earned income tax credit payments in the month of receipt and the following month, regardless of whether these payments are received with the regular paychecks or as a lump sum with the federal or state income tax refund.

*m.* The balance in an individual development account (IDA), including interest earned on the IDA.

*n.* An equity not to exceed $10,000 for tools of the trade or capital assets of self-employed households.

When the value of any resource is exempted in part, that portion of the value that exceeds the exemption will be considered in computing whether the eligible group's property is within the reserve defined in paragraph 41.7(1)*"e."*

*o.* Nonhomestead property that produces income consistent with the property's fair market value.

**41.7(2)** *Persons considered.*

*a.* Resources of persons in the eligible group will be considered in establishing property limitations.

*b.* Resources of the parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group will be considered in the same manner as if the parent were included in the eligible group.

*c.* Resources of the stepparent living in the home will not be considered when determining eligibility of the eligible group, with one exception: The resources of a stepparent included in the eligible group will be considered in the same manner as a parent.

*d.* The resources of supplemental security income recipients will not be counted in establishing property limitations.

*e.* The resources of a nonparental relative who elects to be included in the eligible group will be considered in the same manner as a parent.

**41.7(3)** *Homestead defined.* The homestead consists of the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. When within a city plat, it will not exceed ½-acre in area. When outside a city plat it will not contain, in the aggregate, more than 40 acres. When property used as a home exceeds these limitations, the equity value of the excess property will be determined in accordance with subrule 41.7(5).

**41.7(4)** *Liquidation.* When proceeds from the sale of resources or conversion of a resource to cash, together with other nonexempted resources, exceed the property limitations, the recipient is ineligible to receive assistance until the amount in excess of the resource limitation has been expended unless immediately used to purchase a homestead, or reduce the mortgage on a homestead.

*a.* Property settlements. Property settlements that are part of a legal action in a dissolution of marriage or palimony suit are considered as resources upon receipt.

*b.* Property sold under installment contract. Property sold under an installment contract or held as security in exchange for a price consistent with its fair market value is exempt as a resource. If the price is not consistent with the contract's fair market value, the resource value of the installment contract is the gross price for which it can be sold or discounted on the open market, less any legal debts, claims, or liens against the installment contract.

Payments from property sold under an installment contract are exempt as income as specified in paragraphs 41.8(1)*"b"* and 41.8(7)*"z."* The portion of any payment received representing principal is considered a resource upon receipt. The interest portion of the payment is considered a resource the month following the month of receipt.

**41.7(5)** *Net market value defined.* Net market value is the gross price for which property or an item can currently be sold on the open market, less any legal debts, claims, or liens against the property or item.

**41.7(6)** *Availability.*

*a.* A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant/recipient owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

(2) The applicant/recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance.

*b.* When property is owned by more than one person, unless otherwise established, it is assumed that all individuals hold equal shares in the property.

*c.* When the applicant or recipient owns nonhomestead property, the property will be considered exempt for so long as the property is publicly advertised for sale at an asking price that is consistent with its fair market value.

**41.7(7)** *Damage judgments and insurance settlements.*

*a.* Payment resulting from damage to or destruction of an exempt resource will be considered a resource to the applicant/recipient the month following the month the payment was received. When the applicant/recipient signs a legal binding commitment no later than the month after the month the payment was received, the funds will be considered exempt for the duration of the commitment providing the terms of the commitment are met within eight months from the date of commitment.

*b.* Payment resulting from damage to or destruction of a nonexempt resource will be considered a resource in the month following the month in which payment was received.

**41.7(8)** *Trusts.* The department will determine whether assets from a trust or conservatorship, except one established solely for the payment of medical expenses, are available by examining the language of the trust agreement or order establishing a conservatorship.

*a.* Funds clearly conserved and available for care, support, or maintenance will be considered toward resource or income limitations.

*b.* When the department questions whether the funds in a trust or conservatorship are available, the trust or conservatorship will be referred to the central office.

(1) When assets in the trust or conservatorship are not clearly available, central office staff may contact the trustee or conservator and request that the funds in the trust or conservatorship be made available for current support and maintenance. When the trustee or conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments.

(2) Funds in a trust or conservatorship that are not clearly available will be considered unavailable until the trustee, conservator or court actually makes the funds available. Payments received from the trust or conservatorship for basic or special needs are considered income.

**41.7(9)** *Aliens sponsored by individuals.* When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit of support as described in 8 U.S.C. Section 1631(a)(1) (as amended to December 31, 2024) on behalf of the alien, the resources of the alien will be deemed to include the resources of the sponsor (and of the sponsor's spouse if living with the sponsor). The amount of the resources of the sponsor and the sponsor's spouse deemed to the alien will be the total countable resources as described in this rule remaining after a $1,500 deduction is subtracted. The following are exceptions to deeming of a sponsor's resources:

*a.* Deeming of the sponsor's resources does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined in rule 441—40.1(239B); or

(3) The sponsored alien or the sponsor dies.

*b.* An indigent alien is exempt from the deeming of a sponsor's resources for 12 months after indigence is determined. An alien will be considered indigent if:

(1) The alien does not live with the sponsor; and

(2) The alien's gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

*c.* A battered alien as described in 8 U.S.C. Section 1641(c) (as amended to December 31, 2024) is exempt from the deeming of a sponsor's resources for 12 months.

**41.7(10)** *Not considered a resource.* Inventories and supplies, exclusive of capital assets, that are required for self-employment will not be considered a resource. Inventory is defined as all unsold items, whether raised or purchased, that are held for sale or use and may include merchandise, grain held in storage, livestock raised for sale, and other unsold inventory. Supplies are items necessary for the operation of the enterprise, such as lumber, paint and seed. Capital assets are those assets that, if sold at a later date, could be used to claim capital gains or losses for federal income tax purposes. When self-employment is temporarily interrupted due to circumstances beyond the control of the household, such as illness, any inventory or supplies retained by the household will not be considered a resource.

**441—41.8(239B) Income.** All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, will be considered in determining initial and continuing eligibility and the amount of the FIP grant.

1. The determination of initial eligibility is a three-step process. Initial eligibility will be granted only when (1) the countable gross nonexempt unearned and earned income, exclusive of the FIP grant, received by the eligible group and available to meet the current month's needs is no more than 185 percent of the standard of need for the eligible group; (2) the countable net unearned and earned income

is less than the standard of need for the eligible group; and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the payment standard for the eligible group.

2. The determination of continuing eligibility is a two-step process. Continuing eligibility will be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the standard of need for the eligible group; and (2) countable net unearned and earned income is less than the payment standard for the eligible group.

3. The amount of the FIP grant will be determined by subtracting countable net income from the payment standard for the eligible group. Child support assigned to the department in accordance with subrule 41.3(5) and retained by the department as described in subparagraph 41.8(1)*"d"*(2) will be considered as exempt income for the purpose of determining continuing eligibility. Deductions and diversions will be allowed when verification is provided.

**41.8(1)** *Unearned income.* Unearned income is any income in cash that is not gained by labor or service. When taxes are withheld from unearned income, the amount considered will be the net income after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Net unearned income will be determined by deducting reasonable income-producing costs from the gross unearned income. Money left after this deduction will be considered gross income available to meet the needs of the eligible group.

*a.* Social security income is the amount of the entitlement before withholding of a Medicare premium.

*b.* When the applicant or recipient sells property on contract, proceeds from the sale will be considered exempt as income. The portion of any payment that represents principal is considered a resource upon receipt as defined in subrule 41.7(4). The interest portion of the payment is considered a resource the month following the month of receipt.

*c.* Every person in the eligible group and any parent living in the home of a child in the eligible group will take all steps necessary to apply for and, if entitled, accept any financial benefit for which that person may be qualified, even though the benefit may be reduced because of the laws governing a particular benefit. When the person claims a physical or mental disability that is expected to last continuously for 12 months from the time of the claim or to result in death and the person is unable to engage in substantial activity due to the disability, or the person otherwise appears eligible, as the person is aged 65 or older or is blind, the person shall apply for social security benefits and supplemental security income benefits.

(1) Except as described in subparagraph 41.8(1)*"c"*(2), the needs of any person who refuses to take all steps necessary to apply for and, if eligible, to accept other financial benefits will be removed from the eligible group. The person remains eligible for the work incentive disregard described in paragraph 41.8(2)*"b."*

(2) The entire assistance unit is ineligible for FIP when a person refuses to apply for or, if entitled, to accept social security or supplemental security income. For applicants, this subparagraph applies to those who apply on or after July 1, 2002. For FIP recipients, this subparagraph applies at the time of the next six-month or annual review as described in 441—subrule 40.7(1) or when the recipient reports a change that may qualify a person in the eligible group or a parent living in the home for these benefits, whichever occurs earlier.

*d.* Support payments in cash will be considered as unearned income in determining initial and continuing eligibility.

(1) Any nonexempt cash support payment for a member of the eligible group, made while the application is pending, will be treated as unearned income and deducted from the initial assistance grant(s). Any cash support payment for a member of the eligible group, except as described in paragraph 41.8(6)*"p,"* received by the recipient after the date of decision as defined in 441—subrule 40.4(3) will be refunded to child support services.

(2) Assigned support collected in a month and retained by child support recovery will be exempt as income for determining prospective or retrospective eligibility. Participants will have the option of withdrawing from FIP at any time and receiving their child support direct.

*e.* The applicant or recipient shall cooperate in supplying verification of all unearned income, as defined in 441—paragraph 40.4(1)*"b"* and 441—subrule 40.7(4). When the information is available, the department will verify unemployment insurance benefits by using information supplied to the department by the department of workforce development. When the client notifies the department that the amount of unemployment insurance benefits used is incorrect, the client will be allowed to verify the discrepancy. A payment adjustment will be made when indicated. Recoupment will be made for any overpayment. The client must report the discrepancy prior to the payment month or within ten days of the date on the Notice of Decision applicable to the payment month, whichever is later, in order to receive a payment adjustment.

**41.8(2)** *Earned income.* Earned income is defined as income in the form of a salary, wages, tips, bonuses, commissions earned as an employee, income from Job Corps, or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of the expenses of employment. Income will be considered earned income when it is produced as a result of the performance of services by an individual.

*a. Earned income deduction.* Each person in the assistance unit whose gross nonexempt earned income, earned as an employee or net profit from self-employment, is considered in determining eligibility and the amount of the assistance grant is entitled to one 20 percent earned income deduction of nonexempt monthly gross earnings. The deduction is intended to include all work-related expenses other than child care. These expenses will include all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

*b. Work incentive disregard.* After deducting the allowable work-related expenses as defined in paragraph 41.8(2)*"a"* and income diversions as defined in subrules 41.8(4) and 41.8(8), the department will disregard 58 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each person whose income will be considered in determining eligibility and the amount of the assistance grant.

(1) The work incentive disregard is not time-limited.

(2) Initial eligibility is determined without the application of the work incentive disregard as described in subparagraphs 41.8(9)*"a"*(2) and (3).

*c. Self-employment.* A person is considered self-employed when the person:

(1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.

(2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

*d. Self-employment income.* Earned income from self-employment as defined in paragraph 41.8(2)*"c"* means the net profit from self-employment. "Net profit" means gross self-employment income less:

(1) Forty percent of the gross income to cover the costs of producing the income, or

(2) At the request of the applicant or recipient, actual expenses determined in the manner specified in paragraph 41.8(2)*"e."*

*e. Deduction of self-employment expenses.* When the applicant or recipient requests that actual expenses be deducted, the net profit from self-employment income will be determined by deducting only the following expenses that are directly related to the production of the income:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees of the self-employed.

(3) The cost of shelter in the form of rent; the interest on mortgage or contract payments; taxes; and utilities.

(4) The cost of machinery and equipment in the form of rent or the interest on mortgage or contract payments.

(5) Insurance on the real or personal property involved.

(6) The cost of any repairs needed.

(7) The cost of any travel required.

(8) Any other expense directly related to the production of income, except the purchase of capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

*f. Child care income.* Gross income from providing child care in the applicant's or recipient's own home will include the total payment(s) received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children.

*g. Income verification.* The applicant or recipient shall cooperate in supplying verification of all earned income and of any change in income, as defined in 441—paragraph 40.4(1)*"b"* and 441—subrule 40.7(4). A self-employed individual shall keep any records necessary to establish eligibility.

**41.8(3)** *Shared living arrangements.* When an FIP parent shares living arrangements with another family or person, funds combined to meet mutual obligations for shelter and other basic needs are not income. Funds made available to the FIP eligible group, exclusively for their needs, are considered income.

**41.8(4)** *Diversion of income.*

*a.* Nonexempt earned and unearned income of the parent will be diverted to meet the unmet needs, including special needs, of the ineligible child(ren) of the parent living in the family group who meets the age and school attendance requirements specified in subrule 41.2(1). Income of the parent will be diverted to meet the unmet needs of the ineligible child(ren) of the parent and a companion in the home only when the income and resources of the companion and the child(ren) are within FIP standards. The maximum income that will be diverted to meet the needs of the ineligible child(ren) will be the difference between the needs of the eligible group if the ineligible child(ren) were included and the needs of the eligible group with the child(ren) excluded, except as specified in subparagraph 41.8(8)*"a"*(2) and paragraph 41.8(8)*"b."*

*b.* Nonexempt earned and unearned income of the parent will be diverted to permit payment of court-ordered support to children not living with the parent when the payment is actually being made.

**41.8(5)** *Income of unmarried specified relatives under age 19.* Treatment of the income of an unmarried specified relative under the age of 19 is determined by whether the specified relative lives with a parent who receives FIP assistance, lives with a nonparental relative, lives in an independent living arrangement, or lives with a self-supporting parent, as follows.

*a.* Living with a parent on FIP, with a nonparental relative, or in an independent living arrangement.

(1) The income of the unmarried, underage specified relative who is also an eligible child in the grant of the specified relative's parent will be treated in the same manner as that of any other child. The income for the unmarried, underage specified relative who is not an eligible child in the grant of the specified relative's parent will be treated in the same manner as though the specified relative had attained majority.

(2) The income of the unmarried, underage specified relative living with a nonparental relative or in an independent living arrangement will be treated in the same manner as though the specified relative had attained majority.

*b.* Living with a self-supporting parent. The income of an unmarried specified relative under the age of 19 who is living in the same home as one or both of the person's self-supporting parents will be treated in accordance with subparagraphs 41.8(5)*"b"*(1), (2), and (3) below.

(1) When the unmarried specified relative is under the age of 18 and not a parent of the dependent child, the income of the specified relative will be exempt.

(2) When the unmarried specified relative is under the age of 18 and a parent of the dependent child, the income of the specified relative will be treated in the same manner as though the specified relative had attained majority. The income of the specified relative's self-supporting parent(s) will be treated in accordance with paragraph 41.8(8)*"c."*

(3) When the unmarried specified relative is age 18, the income of the specified relative will be treated in the same manner as though the specified relative had attained majority.

**41.8(6)** *Exempt as income and resources.* The following will be exempt as income and resources:

*a.* Food reserves from home-produced garden products, orchards, domestic animals, and the like, when utilized by the household for its own consumption.

*b.* The value of the supplemental nutrition assistance program benefit.

*c.* The value of the United States Department of Agriculture donated foods (surplus commodities).

*d.* The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

*e.* Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

*f.* Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.

*g.* Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

*h.* Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe. When the payment, in all or part, is converted to another type of resource, that resource is also exempt.

*i.* Payments to volunteers participating in the Volunteers in Service to America (VISTA) program, except that this exemption will not be applied when the director of ACTION determines that the value of all VISTA payments, adjusted to reflect the number of hours the volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the state where the volunteers are serving, whichever is greater.

*j.* Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

*k.* Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

*l.* Experimental housing allowance program payments made under annual contribution contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1936 as amended.

*m.* The income of a supplemental security income recipient.

*n.* Income of an ineligible child.

*o.* Income in-kind.

*p.* Family support subsidy program payments.

*q.* Grants obtained and used under conditions that preclude their use for current living costs.

*r.* All earned and unearned educational funds of an undergraduate or graduate student or a person in training. Any extended social security or veterans benefits received by a parent or nonparental relative as defined in subrule 41.3(1), conditional to school attendance, will be exempt. However, any additional amount received for the person's dependents who are in the eligible group will be counted as nonexempt income.

*s.* Any income restricted by law or regulation that is paid to a representative payee, living outside the home, other than a parent who is the applicant or recipient, unless the income is actually made available to the applicant or recipient by the representative payee.

*t.* The first $50 received and retained by an applicant or recipient that represents a current monthly support obligation or a voluntary support payment, paid by a legally responsible individual, but in no case will the total amount exempted exceed $50 per month per eligible group.

*u.* Bona fide loans. Evidence of a bona fide loan may include any of the following:

(1) The loan is obtained from an institution or person engaged in the business of making loans.

(2) There is a written agreement to repay the money within a specified time.

(3) If the loan is obtained from a person not normally engaged in the business of making a loan, there is a borrower's acknowledgment of obligation to repay (with or without interest), or the borrower expresses intent to repay the loan when funds become available in the future, or there is a timetable and plan for repayment.

*v.* Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

*w.* The income of a person ineligible due to receipt of state-funded foster care, IV-E foster care, kinship caregiver program, or subsidized adoption assistance.

*x.* Payments for major disaster and emergency assistance provided under the Disaster Relief Act of 1974 as amended by Public Law 100-707, the Disaster Relief and Emergency Assistance Amendments of 1988.

*y.* Payments made to certain United States citizens of Japanese ancestry and resident Japanese aliens under Section 105 of Public Law 100-383, and payments made to certain eligible Aleuts under Section 206 of Public Law 100-383, entitled "Wartime Relocation of Civilians."

*z.* Payments received from the Radiation Exposure Compensation Act.

*aa.* Deposits into an IDA when determining eligibility and benefit amount. The amount of the deposit is exempt as income and will not be used in the 185 percent eligibility test. The deposit will be deducted from nonexempt earned and unearned income that the client receives in the same budget month in which the deposit is made. To allow a deduction, verification of the deposit shall be provided by the end of the report month or the extended filing date, whichever is later. The client will be allowed a deduction only when the deposit is made from the client's money. The earned income deductions in paragraphs 41.8(2)*"a"* and *"c"* will be applied to nonexempt earnings from employment or net profit from self-employment that remain after deducting the amount deposited into the account. Allowable deductions will be applied to any nonexempt unearned income that remains after deducting the amount of the deposit. If the client has both nonexempt earned and unearned income, the amount deposited into the IDA account will first be deducted from the client's nonexempt unearned income. Deposits will not be deducted from earned or unearned income that is exempt.

*ab.* Assigned support collected in a month and retained by child support recovery as described in subparagraph 41.8(1)*"d"*(2).

**41.8(7)** *Exempt as income.* The following are exempt as income.

*a.* Reimbursements from a third party.

*b.* Reimbursement from the employer for job-related expenses.

*c.* The following nonrecurring lump sum payments:

(1) Income tax refund.

(2) Retroactive supplemental security income benefits.

(3) Settlements for the payment of medical expenses.

(4) Refunds of security deposits on rental property or utilities.

(5) That part of a lump sum received and expended for funeral and burial expenses.

(6) That part of a lump sum both received and expended for the repair or replacement of resources.

*d.* Foster care or kinship caregiver program payments received by the family that is:

(1) Providing foster care to a child or children when the family is operating a licensed foster home, or

(2) Caring for a relative or fictive kin child or children placed in the home by a court order.

*e.* A small monetary nonrecurring gift, such as a Christmas, birthday or graduation gift, not to exceed $30 per person per calendar quarter.

When a monetary gift from any one source is in excess of $30, the total gift is countable as unearned income. When monetary gifts from several sources are each $30 or less, and the total of all gifts exceeds $30, only the amount in excess of $30 is countable as unearned income.

*f.* Federal or state earned income tax credit.

*g.* Supplementation from county funds providing:

(1) The assistance does not duplicate any of the basic needs as recognized by the FIP, or

(2) The assistance, if a duplication of any of the basic needs, is made on an emergency basis, not as ongoing supplementation.

*h.* Any payment received as a result of an urban renewal or low-cost housing project from any governmental agency.

*i.* A retroactive corrective payment.

*j.* The training allowance issued by the division of vocational rehabilitation, department of education.

*k.* Payments from the PROMISE JOBS program.

*l.* The training allowance issued by the department for the blind.

*m.* Payment(s) from a passenger(s) in a car pool.

*n.* Support refunded by child support services for the first month of termination of eligibility and the family does not receive the FIP.

*o.* Income of a nonparental relative as defined in subrule 41.3(1) except when the relative is included in the eligible group.

*p.* Compensation in lieu of wages received by a child funded through an employment and training program of the U.S. Department of Labor.

*q.* Any amount for training expenses included in a payment funded through an employment and training program of the U.S. Department of Labor.

*r.* Earnings of an applicant or recipient aged 19 or younger who is a full-time student as defined in paragraph 41.5(2)*"c."* The exemption applies through the entire month of the person's twentieth birthday.

Exception: When the twentieth birthday falls on the first day of the month, the exemption stops on the first day of that month.

*s.* Income attributed to an unmarried, underage parent in accordance with paragraph 41.8(8)*"c"* effective the first day of the month following the month in which the unmarried, underage parent turns age 18 or reaches majority through marriage. When the unmarried, underage parent turns age 18 on the first day of a month, the income of the self-supporting parent(s) becomes exempt as of the first day of that month.

*t.* Incentive payments received from participation in the adolescent pregnancy prevention programs.

*u.* Payments received from the comprehensive child development program, funded by the Administration for Children, Youth, and Families, provided the payments are considered complimentary assistance by federal regulation.

*v.* Incentive allowance payments received from the work force investment project, provided the payments are considered complimentary assistance by federal regulation.

*w.* Interest and dividend income.

*x.* Welfare reform and regular household honorarium income. All moneys paid to an FIP household in connection with the welfare reform demonstration longitudinal study or focus groups will be exempted.

*y.* Diversion or self-sufficiency grants assistance as described in 441—Chapter 47.

*z.* Payments from property sold under an installment contract as specified in paragraphs 41.7(4)*"b"* and 41.8(1)*"b."*

*aa.* All census earnings received by temporary workers from the Bureau of the Census.

**41.8(8)** *Treatment of income in excluded parent cases, stepparent cases, and underage parent cases.*

*a. Treatment of income in excluded parent cases.*

(1) A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is eligible for the earned income deduction described in paragraph 41.8(2)*"a,"* the work incentive disregard described in paragraph 41.8(2)*"b,"* and diversions described in subrule 41.8(4).

(2) The excluded parent will be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described in subrule 41.8(11).

(3) All remaining income of the excluded parent will be applied against the needs of the eligible group.

*b. Treatment of income in stepparent cases.* The income of a stepparent who is not included in the eligible group, but is living with the parent in the home of the eligible child(ren), will be given the same

consideration and treatment as that of a parent subject to the limitations of subparagraphs 41.8(8)*"b"*(1) through (9).

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, will receive a 20 percent earned income deduction.

(2) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed or could be claimed by the stepparent as dependents for federal income tax purposes, will be deducted from nonexempt monthly earned and unearned income of the stepparent.

(3) The stepparent will also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(4) Except as described in subrule 41.8(11), the nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions in subparagraphs 41.8(8)*"b"*(1) through (4) will be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims or could claim the dependents for federal income tax purposes. These needs will be determined in accordance with the FIP standard of need for a family group of the same composition.

(5) The stepparent will be allowed the work incentive disregard described in paragraph 41.8(2)*"b"* from monthly earnings. The disregard will be applied to earnings that remain after all other deductions in subparagraphs 41.8(8)*"b"*(1) through (5) have been subtracted from the earnings. However, the work incentive disregard is not allowed when determining initial eligibility as described in subparagraphs 41.8(9)*"a"*(2) and (3).

(6) The deductions described in subparagraphs 41.8(8)*"b"*(1) through (6) will first be subtracted from earned income in the same order as they appear above.

When the stepparent has both nonexempt earned and unearned income and earnings are less than the allowable deductions, then any remaining portion of the deductions in subparagraphs 41.8(8)*"b"*(3) through (5) will be subtracted from unearned income. Any remaining income will be applied as unearned income to the needs of the eligible group.

If the stepparent has earned income remaining after allowable deductions, then any nonexempt unearned income will be added to the earnings and the resulting total counted as unearned income to the needs of the eligible group.

(7) A nonexempt nonrecurring lump sum received by a stepparent will be considered as income in the month received. Any portion of the nonrecurring lump sum retained by the stepparent in the month following the month of receipt will be considered a resource to the stepparent.

(8) When the income of the stepparent, not in the eligible group, is insufficient to meet the needs of the stepparent and the stepparent's dependents living in the home who are not eligible for FIP, the income of the parent may be diverted to meet the unmet needs of the child(ren) of the current marriage except as described in subrule 41.8(11).

(9) When the needs of the stepparent, living in the home, are not included in the eligible group, the eligible group and any child(ren) of the parent living in the home who is not eligible for FIP will be considered as one unit, and the stepparent and the stepparent's dependents, other than the spouse, will be considered a separate unit.

*c. Treatment of income in underage parent cases.* In the case of a dependent child whose unmarried parent is under the age of 18 and living in the same home as the unmarried, underage parent's own self-supporting parent(s), the income of each self-supporting parent will be considered available to the eligible group after appropriate deductions. The deductions to be applied are the same as are applied to the income of a stepparent pursuant to subparagraphs 41.8(8)*"b"*(1) through (7). Nonrecurring lump sum income received by the self-supporting parent(s) will be treated in accordance with subparagraph 41.8(8)*"b"*(8).

When the self-supporting spouse of a self-supporting parent is also living in the home, the income of that spouse will be attributable to the self-supporting parent in the same manner as the income of a stepparent is determined pursuant to subparagraphs 41.8(8)*"b"*(1) to (7). Nonrecurring lump sum income received by the spouse of the self-supporting parent will be treated in accordance with

subparagraph 41.8(8)*"b"*(8). The self-supporting parent and any ineligible dependents of that person will be considered as one unit; the self-supporting spouse and the spouse's ineligible dependents, other than the self-supporting parent, will be considered a separate unit.

**41.8(9)** *Budgeting process.* Both initial and ongoing eligibility and benefits will be determined using a projection of income based on the best estimate of future income.

*a.* Initial eligibility.

(1) At time of application, all earned and unearned income received and anticipated to be received by the eligible group during the month the decision is made will be considered to determine eligibility for the FIP, except income that is exempt. All countable earned and unearned income received by the eligible group during the 30 days before the interview will be used to project future income. If the applicant indicates that the 30-day period is not indicative of future income, income from a longer period or verification of anticipated income from the income source may be used to project future income.

When income is prorated in accordance with subparagraph 41.8(9)*"c"*(1) and paragraph 41.8(9)*"i,"* the prorated amount is counted as income received in the month of decision. Allowable work expenses during the month of decision will be deducted from earned income, except when determining eligibility under the 185 percent test defined in rule 441—41.8(239B). The determination of eligibility in the month of decision is a three-step process as described in rule 441—41.8(239B).

(2) When countable gross nonexempt earned and unearned income in the month of decision, or in any other month after assistance is approved, exceeds 185 percent of the standard of need for the eligible group, the application will be rejected or the assistance grant canceled. Countable gross income means nonexempt gross income, as defined in 441—41.8(239B), without application of any disregards, deductions, or diversions. When the countable gross nonexempt earned and unearned income in the month of decision equals or is less than 185 percent of the standard of need for the eligible group, initial eligibility under the standard of need will then be determined. Initial eligibility under the standard of need is determined without application of the work incentive disregard as specified in paragraph 41.8(2)*"b."* All other appropriate exemptions, deductions and diversions are applied. Countable income is then compared to the standard of need for the eligible group. When countable net earned and unearned income in the month of decision equals or exceeds the standard of need for the eligible group, the application will be denied.

(3) When the countable net income in the month of decision is less than the standard of need for the eligible group, the work incentive disregard described in paragraph 41.8(2)*"b"* will be applied when there is eligibility for this disregard. When countable net earned and unearned income in the month of decision, after application of the work incentive disregard and all other appropriate exemptions, deductions, and diversions, equals or exceeds the payment standard for the eligible group, the application will be denied.

When the countable net income in the month of decision is less than the payment standard for the eligible group, the eligible group meets income requirements. The amount of the FIP grant will be determined by subtracting countable net income in the month of decision from the payment standard for the eligible group, except as specified in subparagraph 41.8(9)*"a"*(4).

(4) Eligibility for the FIP for any month or partial month before the month of decision will be determined only when there is eligibility in the month of decision. The family composition for any month or partial month before the month of decision will be considered the same as on the date of decision. In determining eligibility and the amount of the assistance payment for any month or partial month preceding the month of decision, income and all circumstances except family composition in that month will be considered in the same manner as in the month of decision. When the applicant is eligible for some, but not all, months of the application period due to the time limit described in subrule 41.11(1), FIP eligibility will be determined for the month of decision first, then the immediately preceding month, and so on until the time limit has been reached.

*b.* Ongoing eligibility.

(1) The department will prospectively compute eligibility and benefits when review information is submitted as described in 441—subrule 40.7(3). All countable earned and unearned income received by the eligible group during the previous 30 days will be used to project future income. If the participant

indicates that the 30-day period is not indicative of future income, income from a longer period or verification of anticipated income from the income source may be used to project future income.

(2) When a change in eligibility factors occurs, the department will prospectively compute eligibility and benefits based on the change, effective no later than the month following the month the change occurred.

(3) The earned income deduction for each wage earner as defined in paragraph 41.8(2)*"a"* and the work incentive disregard as defined in paragraph 41.8(2)*"b"* will be allowed.

*c.* Lump-sum income.

(1) Recurring lump-sum income. Recurring lump-sum earned and unearned income, except for the income of the self-employed, will be considered as income in the month received. Income received by an individual employed under a contract will be prorated over the period of the contract. Income received at periodic intervals or intermittently will be considered as income in the month received, except periodic or intermittent income from self-employment will be treated as described in paragraph 41.8(9)*"i."* When the income that is subject to proration is earned, appropriate disregards, deductions and diversions will be applied to the monthly prorated income. Income that is subject to proration is prorated when a lump sum is received before the month of decision and is anticipated to recur; or a lump sum is received during the month of decision or at any time during the receipt of assistance.

(2) Nonrecurring lump-sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 41.7(4) and 41.7(7) and paragraphs 41.8(8)*"b"* and 41.8(8)*"c,"* will be treated in accordance with this rule. Nonrecurring lump-sum income will be considered as income in the month received and counted in computing eligibility and the amount of the grant, unless the income is exempt. Nonrecurring lump-sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. When countable income, exclusive of the FIP grant but including countable lump-sum income, exceeds the needs of the eligible group, the case will be canceled or the application rejected. In addition, the eligible group will be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation will be applied as income to the first month following the period of ineligibility and disregarded as income thereafter. The period of ineligibility will begin with the month the lump sum is received.

1. When a nonrecurring lump sum is timely reported as required by 441—paragraph 40.7(4)*"f,"* recoupment will not be made for the month of receipt. When a nonrecurring lump sum is timely reported, but the timely notice as required by 441—16.2(17A) requires that the action be delayed until the second calendar month following the month of change, recoupment will not be made for the first calendar month following the month of change. When a nonrecurring lump sum is not timely reported, recoupment will be made beginning with the month of receipt.

2. The period of ineligibility will be shortened when the schedule of living costs as defined in subrule 41.9(2) increases.

3. The period of ineligibility will be shortened by the amount that is no longer available to the eligible group due to a loss or a theft or because the person controlling the lump sum no longer resides with the eligible group.

4. The period of ineligibility will also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over $25 per incident; cost of replacement of exempt resources as defined in subrule 41.7(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

5. When countable income, including the lump-sum income, is less than the needs of the eligible group, the lump sum will be counted as income for the month received. For purposes of applying the

lump-sum provision, the eligible group is defined as all eligible persons and any other individual whose lump-sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump-sum income was received may be eligible for the FIP as a separate eligible group. Income of this eligible group plus income, excluding the lump-sum income already considered, of the parent or other legally responsible person in the home will be considered as available in determining eligibility and the amount of the grant.

*d.* The third digit to the right of the decimal point in any computation of income and hours of employment will be dropped. This includes the calculation of the amount of a child support sanction as defined in paragraph 41.3(4)*"f."*

*e.* In any month for which an individual is determined eligible to be added to a currently active FIP case, the individual's needs will be included subject to the effective date of grant limitations as prescribed in rule 441—40.6(239B).

(1) When adding an individual to an existing eligible group, any income of that individual will be considered prospectively.

(2) The needs of an individual determined to be ineligible to remain a member of the eligible group will be removed prospectively effective the first of the following month.

*f.* When income received weekly or biweekly (once every two weeks) is projected for future months, it will be projected by adding all income received in the period being used and dividing the result by the number of instances of income received in that period. The result will be multiplied by four if the income is received weekly or by two if the income is received biweekly, regardless of the number of weekly or biweekly payments to be made in future months.

*g.* Income from self-employment received on a regular weekly, biweekly, semimonthly or monthly basis will be budgeted in the same manner as the earnings of an employee. The countable income will be the net income.

*h.* Income from self-employment not received on a regular weekly, biweekly, semimonthly or monthly basis that represents an individual's annual income will be averaged over a 12-month period of time, even if the income is received within a short period of time during that 12-month period. Any change in self-employment will be handled in accordance with subparagraphs 41.8(9)*"i"*(3), (4), and (5).

(1) When a self-employment enterprise that does not produce a regular weekly, biweekly, semimonthly or monthly income has been in existence for less than a year, income will be averaged over the period of time the enterprise has been in existence and the monthly amount projected for the same period of time. If the enterprise has been in existence for such a short time that there is very little income information, the worker will establish, with the cooperation of the client, a reasonable estimate that will be considered accurate and projected for three months, after which the income will be averaged and projected for the same period of time. Any changes in self-employment will be considered in accordance with subparagraphs 41.8(9)*"i"*(3), (4) and (5).

(2) These policies apply when the self-employment income is received before the month of decision and the income is expected to continue, in the month of decision, and after assistance is approved.

(3) A change in the cost of producing self-employment income is defined as an established permanent ongoing change in the operating expenses of a self-employment enterprise. Change in self-employment income is defined as a change in the nature of business.

(4) When a change in operating expenses occurs, the department will recompute the expenses on the basis of the change.

(5) When a change occurs in the nature of the business, the income and expenses will be computed on the basis of the change.

*i.* Special needs.

(1) A special need as defined in subrule 41.9(3) must be documented before payment will be made.

(2) A one-time special need occurs and is considered in determining need for the calendar month in which the special need is entered on the automated benefit calculation system.

(3) An ongoing special need is considered in determining need for the calendar month following the calendar month in which the special need is entered on the automated benefit calculation system.

(4) When the special need continues, payment will be included, prospectively, in each month's FIP grant. When the special need ends, payment will be removed prospectively. Any overpayment for a special need will be recouped.

*j.* When a family's assistance for a month is subject to recoupment because the family was not eligible, individuals applying for assistance during the same month may be eligible for the FIP as a separate eligible group. Income of this new eligible group plus income of the parent or other legally responsible person in the home will be considered as available in determining eligibility and the amount of the grant. The income of an ineligible parent or other legally responsible person will be considered prospectively in accordance with subrules 41.8(4) and 41.8(8).

**41.8(10)** *Aliens sponsored by individuals.* When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit of support as described in 8 U.S.C. Section 1631(a)(1) (as amended to December 31, 2024) on behalf of the alien, the income of the alien will be deemed to include the income of the sponsor (and of the sponsor's spouse if living with the sponsor). The amount of the income of the sponsor and the sponsor's spouse deemed to the alien will be the total gross earned and unearned income remaining after allowing the earned income deduction described in paragraph 41.8(2)*"a,"* the work incentive disregard described in paragraph 41.8(2)*"b,"* and diversions described in subrule 41.8(4). The following are exceptions to deeming of a sponsor's income:

*a.* Deeming of the sponsor's income does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act (as amended to December 31, 2024) or can be credited with 40 qualifying quarters as defined in rule 441—40.1(239B); or

(3) The sponsored alien or the sponsor dies.

*b.* An indigent alien is exempt from the deeming of a sponsor's income for 12 months after indigence is determined. An alien will be considered indigent if:

(1) The alien does not live with the sponsor; and

(2) The alien's gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

*c.* A battered alien as described in 8 U.S.C. Section 1641(c) (as amended to December 31, 2024) is exempt from the deeming of a sponsor's income for 12 months.

**41.8(11)** *Restriction on diversion of income.* No income may be diverted to meet the needs of a person living in the home who has been sanctioned under subrule 41.5(7) or 41.6(4), or who has been disqualified under subrule 41.6(6) or rule 441—46.7(239B), or who is required to be included in the eligible group according to paragraph 41.9(1)*"a"* and has failed to cooperate. This restriction applies to paragraph 41.8(4)*"a"* and subrule 41.8(8).

**441—41.9(239B) Need standards.**

**41.9(1)** *Definition of the eligible group.* The eligible group consists of all eligible people specified below and living together, except when one or more of these people receive supplemental security income under Title XVI of the Social Security Act. There will be at least one child in the eligible group except when the only eligible child is receiving supplemental security income. The unborn child is not considered a member of the eligible group for purposes of establishing the number of people in the eligible group.

*a.* The following persons will be included (except as otherwise provided in these rules), without regard to the person's employment status, income or resources:

(1) All dependent children who are siblings of whole or half blood or adoptive.

(2) Any parent of such children, if the parent is living in the same home as the dependent children.

*b.* The following persons may be included:

(1) The needy specified relative who assumes the role of parent.

(2) The needy specified relative who acts as payee when the parent is in the home, but is unable to act as payee.

(3) An incapacitated stepparent, upon request, when the stepparent is the legal spouse of the parent by ceremonial or common-law marriage and the incapacitated stepparent does not have a child in the eligible group.

1. A stepparent is considered incapacitated when a clearly identifiable physical or mental defect has a demonstrable effect upon earning capacity or the performance of the homemaking duties required to maintain a home for the stepchild. The incapacity shall be expected to last for a period of at least 30 days from the date of application.

2. The determination of incapacity shall be supported by medical or psychological evidence. The evidence may be obtained from either an independent physician or psychologist or the state rehabilitation agency. The evidence may be submitted either by letter from the physician or on a form prescribed by the department. When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on a form prescribed by the department. A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of incapacity.

**41.9(2)** *Schedule of needs.* The schedule of living costs represents 100 percent of basic needs. The schedule of living costs is used to determine the needs of individuals when these needs must be determined in accordance with the standard of need defined in rule 441—40.1(239B). The 185 percent schedule is included for the determination of eligibility in accordance with rule 441—41.8(239B). The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in and are eligible for an FIP grant. The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the assistance grant, when these needs must be determined in accordance with the payment standard defined in rule 441—40.1(239B). The percentage of basic needs paid to one or more persons as compared to the schedule of living costs is shown on the chart below.

SCHEDULE OF NEEDS

| Number of Persons | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | Each Additional Person |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 185% of Living Costs | 675.25 | 1330.15 | 1570.65 | 1824.10 | 2020.20 | 2249.60 | 2469.75 | 2695.45 | 2915.60 | 3189.40 | 320.05 |
| Schedule of Living Costs | 365 | 719 | 849 | 986 | 1092 | 1216 | 1335 | 1457 | 1576 | 1724 | 173 |
| Schedule of Basic Needs | 183 | 361 | 426 | 495 | 548 | 610 | 670 | 731 | 791 | 865 | 87 |
| Ratio of Basic Needs to Living Costs | 50.18 | 50.18 | 50.18 | 50.18 | 50.18 | 50.18 | 50.18 | 50.18 | 50.18 | 50.18 | 50.18 |

CHART OF BASIC NEEDS COMPONENTS

(all figures are on a per person basis)

| Number of Persons | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 or More |
|---|---|---|---|---|---|---|---|---|---|---|
| Shelter | 77.14 | 65.81 | 47.10 | 35.20 | 31.74 | 26.28 | 25.69 | 22.52 | 20.91 | 20.58 |
| Utilities | 19.29 | 16.45 | 11.77 | 8.80 | 7.93 | 6.57 | 6.42 | 5.63 | 5.23 | 5.14 |
| Household Supplies | 4.27 | 5.33 | 4.01 | 3.75 | 3.36 | 3.26 | 3.10 | 3.08 | 2.97 | 2.92 |
| Food | 34.49 | 44.98 | 40.31 | 39.11 | 36.65 | 37.04 | 34.00 | 33.53 | 32.87 | 32.36 |
| Clothing | 11.17 | 11.49 | 8.70 | 8.75 | 6.82 | 6.84 | 6.54 | 6.39 | 6.20 | 6.10 |
| Pers. Care & Supplies | 3.29 | 3.64 | 2.68 | 2.38 | 2.02 | 1.91 | 1.82 | 1.72 | 1.67 | 1.64 |

| Number of Persons | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 or More |
|---|---|---|---|---|---|---|---|---|---|---|
| Med. Chest Supplies | .99 | 1.40 | 1.34 | 1.13 | 1.15 | 1.11 | 1.08 | 1.06 | 1.09 | 1.08 |
| Communi-cations | 7.23 | 6.17 | 3.85 | 3.25 | 2.50 | 2.07 | 1.82 | 1.66 | 1.51 | 1.49 |
| Transpor-tation | 25.13 | 25.23 | 22.24 | 21.38 | 17.43 | 16.59 | 15.24 | 15.79 | 15.44 | 15.19 |

*a.* The definitions of the basic need components are as follows:

(1) Shelter: Rental, taxes, upkeep, insurance, amortization.

(2) Utilities: Fuel, water, lights, water heating, refrigeration, garbage.

(3) Household supplies and replacements: Essentials associated with housekeeping and meal preparation.

(4) Food: Including school lunches.

(5) Clothing: Including layette, laundry, dry cleaning.

(6) Personal care and supplies: Including regular school supplies.

(7) Medicine chest items.

(8) Communications: Telephone, newspapers, magazines.

(9) Transportation: Includes bus fares and other out-of-pocket costs of operating a privately owned vehicle.

*b.* Special situations in determining eligible group:

(1) The needs of a child or children in a nonparental home will be considered a separate eligible group when the relative is receiving the FIP assistance for the relative's own children.

(2) When the unmarried specified relative under age 19 is living in the same home with a parent or parents who receive the FIP, the needs of the specified relative, when eligible, will be included in the same eligible group with the parent(s). When the specified relative is a parent, the needs of the eligible children for whom the unmarried parent is caretaker will be included in the same eligible group. When the specified relative is a nonparental relative, the needs of the eligible children for whom the specified relative is caretaker will be considered a separate eligible group.

When the unmarried specified relative under the age of 19 is living in the same home as a parent(s) who receives the FIP but the specified relative is not an eligible child, need of the specified relative will be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative under the age of 19 is living with a nonparental relative or in an independent living arrangement, need will be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative is under the age of 18 and living in the same home with a parent(s) who does not receive the FIP, the needs of the specified relative, when eligible, will be included in the assistance grant with the children when the specified relative is a parent. When the specified relative is a nonparental relative as defined in subrule 41.3(1), only the needs of the eligible children will be included in the assistance grant. When the unmarried specified relative is aged 18, need will be determined in the same manner as though the specified relative had attained majority.

(3) When a person who would ordinarily be in the eligible group is receiving supplemental security income benefits, the person, income, and resources will not be considered in determining FIP benefits for the rest of the family.

(4) When two individuals, married to each other, are living in a common household and the children of each of them are recipients of assistance, the assistance grant will be computed on the basis of their comprising one eligible group. This rule is not intended to mandate that an application for assistance be made for children who are not the natural or adoptive children of the applicant.

**41.9(3)** *Special needs.* On the basis of demonstrated need the following special needs will be allowed, in addition to the basic needs.

*a. School expenses.* Any specific charge, excluding tuition, for a child's education made by the school, or in accordance with school requirements in connection with a course in the curriculum, will be allowed provided the allowance will not exceed the reasonable cost required to meet the specifications of

the course, and the student is actually participating in the course at the time the expense is claimed. Payment will not be made for ordinary expenses for school supplies.

*b.* *Guardian/conservator fee.* An amount not to exceed $10 per case per month may be allowed for guardian's/conservator's fees when authorized by appropriate court order. No additional payment is permitted for court costs or attorney's fees.

**441—41.10(239B) Composite FIP/SSI cases.** When persons in the FIP household, who would ordinarily be in the eligible group, are receiving supplemental security income benefits, the following subrules will apply:

**41.10(1)** *Pending SSI approval.* When a person who would ordinarily be in the eligible group has applied for supplemental security income benefits, the person's needs may be included in the FIP grant pending approval of supplemental security income.

**41.10(2)** *Ownership of property.* When property is owned by both the supplemental security income beneficiary and the FIP recipient, each will be considered as having a half interest in order to determine the value of the resource, unless the terms of the deed or purchase contract clearly establish ownership on a different proportional basis.

**441—41.11(239B) Time limits.**

**41.11(1)** *Sixty-month limit.* Assistance will not be provided to an FIP applicant or recipient family that includes an adult who has received assistance for 60 calendar months under FIP or under any program in another state that is funded by the federal Temporary Assistance for Needy Families (TANF) block grant unless the applicant or recipient family is eligible for a hardship as defined in subrule 41.11(3). The 60-month period need not be consecutive. In two-parent households or households that include a parent and a stepparent, the 60-month limit is determined when either a parent or stepparent has received assistance for 60 months.

*a.* An "adult" is any person who is a parent of the FIP child in the home, the parent's spouse, or included as an optional member under subparagraph 41.9(1)*"b"*(1) or (2).

*b.* "Assistance," for the purpose of this rule, will include any month for which the adult receives an FIP grant or a payment in another state using federal TANF funds that the other state deems countable toward the 60-month federal limit. Assistance received for a partial month will count as a full month.

**41.11(2)** *Determining number of months.*

*a.* In determining the number of months an adult received assistance, the department will consider toward the 60-month limit:

(1) Assistance received even when the parent is excluded from the grant unless the parent, or both parents in a two-parent household, are SSI recipients.

(2) Assistance received by an optional member of the eligible group as described in subparagraphs 41.9(1)*"b"*(1) and (2). However, once the person has received assistance for 60 months, the person is ineligible but assistance may continue for other persons in the eligible group. The entire family is ineligible for assistance when the optional member who has received assistance for 60 months is the incapacitated stepparent on the grant as described in subparagraph 41.9(1)*"b"*(3).

*b.* When the parent, or both parents in a two-parent household, have received 60 months of FIP assistance and are subsequently approved for supplemental security income, FIP assistance for the children may be granted, if all other eligibility requirements are met.

*c.* When a minor parent and child receive FIP on the adult parent's case and the adult parent is no longer eligible due to the 60-month limit on FIP assistance, the minor parent may reapply for FIP as a minor parent living with a self-supporting parent.

*d.* In determining the number of months an adult received assistance, the department will not consider toward the 60-month limit any month for which FIP assistance was not issued for the family, such as:

(1) A month of suspension.

(2) A month for which no grant is issued due to the limitations described in rules 441—45.6(239B) and 441—45.7(239B).

*e.* The department will not consider toward the 60-month limit months of assistance a parent or pregnant person received as a minor child and not as the head of a household or married to the head of a household. This includes assistance received for a minor parent for any month in which the minor parent was a child on the adult parent's or the specified relative's FIP case.

*f.* The department will not consider toward the 60-month limit months of assistance received by an adult while living in Indian country (as defined in 18 United States Code Section 1151) or a Native Alaskan village where at least 50 percent of the adults were not employed.

**41.11(3)** *Exception to the 60-month limit.* A family may receive FIP assistance for more than 60 months as defined in subrule 41.11(1) if the family qualifies for a hardship exemption as described in this subrule. "Hardship" is defined as a circumstance that is preventing the family from being self-supporting. However, the family's safety will take precedence over the goal of self-sufficiency.

*a.* Eligibility determination. Eligibility for the hardship exemption will be determined on an individual family basis. A hardship exemption will not begin until the adult in the family has received at least 60 months of FIP assistance.

*b.* Hardship exemption criteria. Circumstances that may lead to a hardship exemption may include the following:

(1) Domestic violence. "Domestic violence" means that the family includes someone who has been battered or subjected to extreme cruelty. It includes:

1. Physical acts that resulted in, or threatened to result in, physical injury to the individual.
2. Sexual abuse.
3. Sexual activity involving a dependent child.
4. Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
5. Threats of, or attempts at, physical or sexual abuse.
6. Mental abuse.
7. Neglect or deprivation of medical care.

(2) Lack of employability.

(3) Lack of suitable child care as defined in 441—subrule 93.4(5).

(4) Chronic or recurring medical conditions or mental health issues, or an accident or disease, when verified by a professional. The applicant or recipient will follow a treatment plan to address the condition or issue.

(5) Housing situations that make it difficult or impossible to work.

(6) Substance use disorder. A family requesting a hardship exemption due to substance use disorder will be required to obtain clinical assessment and follow an intensive treatment plan.

(7) Having a child whose circumstances require the parent to be in the home. This may include but is not limited to a child as defined in rule 441—170.1(237A) or a child receiving child welfare, juvenile court or juvenile justice services. The safety of the child will take precedence over the goal of self-sufficiency.

(8) Other circumstances that prevent the family from being self-supporting.

*c.* Eligibility for a hardship exemption.

(1) Families may be eligible for a hardship exemption when circumstances prevent the family from being self-supporting. The hardship condition shall be a result of a past or current experience that is affecting the family's current functioning. Current experience may include fear of an event that is likely to occur in the future. The definition of the hardship barrier relies upon the impact of the circumstances upon the family's ability to leave FIP rather than the type of circumstances.

(2) Families with FIA-responsible persons who are not exempt from referral as defined in subrule 41.5(2) determined eligible for more than 60 months of FIP shall make incremental steps toward overcoming the hardship and participate to their maximum potential in activities reasonably expected to result in self-sufficiency.

(3) Barriers to economic self-sufficiency that an FIA-responsible person who is not exempt as defined in subrule 41.5(2) has that were known and existing before the family reached the 60-month

limit will not be considered as meeting eligibility criteria for hardship unless the individual complied with PROMISE JOBS activities offered to overcome that specific barrier.

*d.* Requesting a hardship exemption.

(1) Families that have or are close to having received 60 months of assistance as defined in subrule 41.11(1) may request a hardship exemption. Requests for the hardship exemption shall be made on a hardship request form prescribed by the department. In addition, families that have received assistance for 60 months and are no longer receiving FIP shall complete an application form prescribed by the department as a condition for regaining FIP eligibility. Failure to provide the required application within ten days from the date of the department's request will result in denial of the hardship request.

(2) In families that request FIP beyond 60 months, all adults as defined in subrule 41.11(1) shall sign the request. When the adult is incompetent or incapacitated, someone acting responsibly on the adult's behalf may sign the request.

(3) Requests for a hardship exemption will not be accepted prior to the first day of the family's fifty-ninth month of assistance. The date of the request will be the date an identifiable hardship request form prescribed by the department is received in any department or PROMISE JOBS office. An identifiable form is one that contains a legible name and address and that has been signed.

(4) To receive more than 60 months of FIP assistance, families must be eligible for a hardship exemption and meet all other FIP eligibility requirements.

(5) When an adult as defined in subrule 41.11(1) who has received assistance for 60 months joins a recipient family that has not received 60 months of assistance, eligibility will continue only if the recipient family submits a hardship request form prescribed by the department and is approved for a hardship exemption as described in subrule 41.11(3) and meets all other FIP eligibility requirements.

(6) When an adult as defined in subrule 41.11(1) joins a recipient family that is in an exemption period, the current exemption period will continue, if the recipient family continues to meet all other eligibility requirements, regardless of whether the joining adult has received FIP for 60 months.

(7) When two parents who are in a hardship exemption period separate, the remainder of the exemption period, if there is a need, will follow the parent who retains the current FIP case.

*e.* Determination of hardship exemption.

(1) A determination on the request will be made as soon as possible, but no later than 30 days following the date an identifiable hardship request form prescribed by the department is received in any department or PROMISE JOBS office. A written notice of decision will be issued to the family the next working day following a determination of eligibility or ineligibility for a hardship exemption. The 30-day time standard will apply except in unusual circumstances, such as when the department and the family have made every reasonable effort to secure necessary information that has not been supplied by the date the time limit expired; or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the department.

(2) When a Financial Support Application is required to regain FIP eligibility, the 30-day time frame in rule 441—40.5(239B) will apply.

(3) Income maintenance will determine eligibility for a hardship exemption.

(4) The family shall provide supporting evidence of the hardship barrier and the impact of the barrier upon the family's ability to leave FIP. The department will advise the applicant or recipient about how to obtain necessary documents. Upon request, the department will provide reasonable assistance in obtaining supporting documents when the family is not reasonably able to obtain the documents. The type of supporting evidence is dependent upon the circumstance that creates the hardship barrier.

(5) Examples of types of supporting evidence may include:

1. Court, medical, criminal, child protective services, social services, psychological, or law enforcement records.

2. Statements from professionals or other individuals with knowledge of the hardship barrier.

3. Statements from vocational rehabilitation or other job training professionals.

4. Statements from individuals other than the applicant or recipient with knowledge of the hardship circumstances. Written statements from friends and relatives alone may not be sufficient to grant hardship status, but may be used to support other evidence.

5. Court, criminal, police records or statements from domestic violence counselors may be used to substantiate hardship. Living in a domestic violence shelter will not automatically qualify an individual for a hardship exemption, but would be considered strong evidence.

6. Actively pursuing verification of a disability through the Social Security Administration may not be sufficient to grant hardship status, but may be used to support other evidence.

(6) The department will notify the family in writing of additional information or verification that is required to verify the barrier and its impact upon the family's ability to leave FIP. The family will be allowed ten days to supply the required information or verification. The ten-day period may be extended under the circumstances described in 441—subrule 40.4(1) or 441—paragraph 40.7(4)*"c."* Failure to supply the required information or verification, or refusal by the family to authorize the department to secure the information or verification from other sources, will result in denial of the family's request for a hardship exemption.

(7) Recipients whose FIP assistance is canceled at the end of the sixtieth month will be eligible for reinstatement as described in 441—subrule 40.2(5) when a hardship request form prescribed by the department is received before the effective date of cancellation even if eligibility for a hardship exemption is not determined until on or after the effective date of cancellation.

(8) When a hardship request form prescribed by the department is not received before the effective date of the FIP cancellation and a Financial Support Application is required for the family to regain FIP eligibility, the effective date of assistance will be no earlier than seven days from the date of application as described in rule 441—40.6(239B).

(9) Eligibility for a hardship exemption will last for six consecutive calendar months. Exception: The six-month hardship exemption ends when FIP for the family is canceled for any reason and a Financial Support Application is required for the family to regain FIP eligibility. In addition, when FIP eligibility depends on receiving a hardship exemption, the family shall submit a new hardship request form prescribed by the department. A new hardship exemption determination will be required prior to FIP approval.

(10) FIP received for a partial month of the six-month hardship exemption period will count as a full month.

(11) There is no limit on the number of hardship exemptions a family may receive over time.

*f.* Six-month FIA. Families who request a hardship exemption shall develop and sign a six-month FIA as defined in 441—93.4(239B) to address the circumstances that are creating the barrier. All adults as defined in subrule 41.11(1) shall sign the six-month FIA unless the adult is a stepparent and is not requesting assistance or is exempt as specified at subrule 41.5(2).

(1) The six-month FIA shall contain specific steps to enable the family to make incremental progress toward overcoming the barrier. Each subsequent hardship exemption will require a new six-month FIA. Failure to develop or sign a six-month FIA will result in denial of the family's hardship exemption request.

(2) Families that request a hardship exemption will be notified verbally and will be hand-issued the notice of a scheduled appointment for orientation and FIA development. If the notice of appointment cannot be hand-issued, at least five working days will be allowed from the date the notice is mailed for a participant to appear for the scheduled appointment for orientation and FIA development unless the participant agrees to an appointment that is scheduled to take place in less than five working days.

(3) Failure to attend a scheduled interview when required, except for reasons beyond the adult's control, will result in a denial of the family's hardship exemption request. In two-parent families, both parents will be required to participate in any scheduled interview. When the adult is incompetent or incapacitated, someone acting responsibly on the adult's behalf may participate in the interview.

(4) PROMISE JOBS staff shall provide necessary supportive services as described in 441—Chapter 93 and shall monitor the six-month FIA. Periodic contacts shall be made with the family to monitor progress. These contacts need not be in person. Time and attendance reports shall be required as specified in 441—subrule 93.10(2).

(5) The six-month FIA shall be renegotiated and amended under the circumstances described in 441—subrule 93.4(8).

(6) Any family that is not exempt from referral as defined in subrule 41.5(2), that has been granted a hardship exemption, and that does not follow the terms of the family's six-month FIA will have chosen a limited benefit plan in accordance with 441—Chapter 41 and 441—Chapter 93.

*g.* Any family that is denied a hardship exemption may appeal the decision as described in 441—Chapter 7.

These rules are intended to implement Iowa Code chapter 239B.

## ARC 8707C

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rulemaking related to alternate payees and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 43, "Alternate Payees," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 239B.4(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 239B.13.

*Purpose and Summary*

This chapter was reviewed and is proposed to be rescinded as a part of the Red Tape Review process laid out by Executive Order 10. Currently, this chapter outlines payments to the conservator, guardian or emergency payee of a child. There are only two rules with content in this chapter (not including reserved rules). These two rules with content have been moved and will continue to exist in 441—Chapter 40. Because the substance of this chapter will continue to remain present in 441—Chapter 40, no impacts were identified.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Joe Campos
Health and Human Services
Lucas State Office Building
321 East 12th Street

Des Moines, Iowa 50319
Phone: 515.304.0963
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **441—Chapter 43**.

## ARC 8714C

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

**Proposing rulemaking related to payment and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 45, "Payment," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 239B.4(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 239B.2, 239B.3 and 239B.7.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. This proposed chapter defines how Family Investment Program (FIP) payments are issued, how to handle underpayments, the limit on payments, and rounding of the standard of need and payment amount.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 45 and adopt the following **new** chapter in lieu thereof:

CHAPTER 45
PAYMENT

**441—45.1(239B) Issuing payment.** The department may issue assistance payments pursuant to Iowa Code section 239B.3(3).

**45.1(1)** *Electronic access card.* The department will make payments available through an electronic access card issued to the payee except when:

*a.* The recipient requests direct deposit; or

*b.* The department determines it is not practicable to issue the payment by electronic access card.

**45.1(2)** *Direct deposit.* The department will issue payments by direct deposit to the recipient's own account in a financial institution if the recipient completes a form prescribed by the department to request direct deposit.

**45.1(3)** *Warrant.* The department will issue payments by warrant when the recipient has not requested direct deposit and the department determines it is not practicable to issue payment by electronic access card. These circumstances include but are not limited to the following:

*a.* A one-time payment is issued.

*b.* The payee is a representative payee, conservator, or guardian who is not part of the family investment program (FIP) assistance unit.

*c.* The payee is unable to provide a social security number or an individual taxpayer identification number.

**441—45.2(239B) Return.** Assistance warrants cannot be forwarded. When warrants cannot be delivered by the post office, they shall be returned to the department.

**441—45.3(239B) Held warrants.** A warrant may be held by the department only in the following instances:

**45.3(1)** The recipient's whereabouts is unknown.

**45.3(2)** The recipient is not in the home due to an emergency and it is not known who will be serving as emergency payee.

**441—45.4(239B) Underpayment.** A corrective payment will be made when the recipient receives a payment in an amount less than that for which the recipient was eligible due to an administrative or client error or the recipient reports the completion of the federal tax return requiring repayment to Internal Revenue Service of excess advance earned income credit payments received in the prior calendar year.

**45.4(1)** Attribution of underpayments.

*a.* An underpayment may be attributed to the department as a result of one of the following circumstances:

(1) Misfiling or loss of forms or documents.

(2) Errors in typing or copying.

(3) Computer input errors.

(4) Mathematical errors.

(5) Failure to certify assistance in the correct amount when all essential information was available to the department.

(6) Failure to make prompt revisions in grants following changes in policies requiring the changes as of a specific date.

*b.* An underpayment may be attributed to the client as a result of one of the following circumstances:

(1) Information reported in error, oral or written, regarding the client's income, resources, or other circumstances that may affect eligibility or the amount of assistance received.

(2) Failure to timely report changes in income, resources, or other circumstances that may affect eligibility or the amount of assistance received.

**45.4(2)** Conditions under which a retroactive corrective payment may be made.

*a.* Retroactive corrective payments will be made for all underpayments.

*b.* Any retroactive corrective payment for which the recipient is eligible will first be applied to any unpaid overpayment before the balance, if any, is paid to the recipient.

*c.* Retroactive corrective payments will be made for underpayments discovered on and after October 1, 1981, regardless of when the underpayment occurred. Recipients and former applicants and recipients are responsible for supplying any information needed to determine the amount of an underpayment.

**45.4(3)** The amount of the corrective payment to the recipient for repayment to Internal Revenue Service of excess advance earned income credit payments will be computed on the basis of the earnings considered in determining the family investment program grant for the prior year.

**45.4(4)** A retroactive corrective payment is:

*a.* Exempt from consideration as income.

*b.* Exempt from consideration as a resource in the month received and the following month.

**441—45.5(239B) Deceased payees.** A retroactive corrective payment will be made for deceased payees only when the payment was approved by the department before the recipient's death. Payment for a special need will be made only when the payment is entered on the automated benefit calculation system before the effective date of cancellation.

**441—45.6(239B) Limitation on payment.** A payment will be made to an eligible recipient only when the amount of the assistance is $10 or more.

**441—45.7(239B) Rounding of need standard and payment amount.** The need standard and monthly payment amount will be rounded down to the next whole dollar when the result of determining the standard of need or the payment amount is not a whole dollar.

These rules are intended to implement Iowa Code sections 239B.2, 239B.3, and 239B.7.

## ARC 8715C

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

### Proposing rulemaking related to overpayment recovery and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to rescind Chapter 46, "Overpayment Recovery," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 239B.4(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 239B.2, 239B.3, 239B.7 and 239B.14.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. The proposed chapter outlines what an overpayment is under the Family Investment Program (FIP), how repayment of an overpayment can be made, and the procedure for recoupments.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 46 and adopt the following **new** chapter in lieu thereof:

CHAPTER 46
OVERPAYMENT RECOVERY

**441—46.1(239B) Definitions.**

*"Agency error"* in overpayments means:

1. The same circumstances as described in 441—subrule 45.4(1) pertaining to underpayments, or
2. Any error that is not a client or procedural error.

*"Client"* means a current or former applicant or recipient of the family investment program.

*"Client error"* means and may result from:

1. False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances that may affect eligibility or the amount of assistance received;
2. Failure to timely report changes in income, resources, or other circumstances as required by rule 441—40.7(239B);
3. Failure to refund to child support services any nonexempt payment from the absent parent received after the date the decision on eligibility was made; or
4. Access of benefits issued via the electronic access card at a prohibited location pursuant to 441—subrule 41.6(7).

*"Overpayment"* means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive or the amount of any payment accessed and any associated fees for accessing the benefits at a prohibited location pursuant to 441—subrule 41.6(7).

*"Procedural error"* means a technical error that does not in and of itself result in an overpayment. Procedural errors include:

1. Failure to secure a properly signed application at the time of initial application or reapplication.
2. Failure to secure a properly signed form prescribed by the department to request FIP beyond 60 months as described in 441—subrule 41.11(3).
3. Failure of the department to conduct the interviews described in 441—subrules 40.4(2) and 40.7(1).
4. Failure to request a review form prescribed by the department at the time of a semiannual or annual review.
5. Failure of department staff to cancel the family investment program benefits when the client submits a review form prescribed by the department that is not complete as defined in 441—paragraph 40.7(4)*"b."* However, overpayments of grants as defined above based on incomplete reports are subject to recoupment.

*"Recoup"* means reimburse, return, or repay an overpayment.

*"Recoupment"* means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance grant or both.

**441—46.2(239B) Monetary standards.**

**46.2(1)** *Amount subject to recoupment.* All family investment program overpayments will be subject to recoupment.

**46.2(2)** *Grant issued.* When recoupment is made by withholding from the family investment program grant, the grant issued will be for no less than $10.

**441—46.3(239B) Notification and appeals.** All clients will be notified by the department of inspections, appeals, and licensing, as described in 441—paragraph 7.4(3)*"i,"* when it is determined that an overpayment exists. Notification will include the amount, date and reason for the overpayment. The department will provide additional information regarding the computation of the overpayment upon the client's request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with 441—paragraph 7.4(3)*"i."*

**441—46.4(239B) Determination of overpayments.** All overpayments due to agency or client error or due to assistance paid pending an appeal decision will be recouped. A procedural error alone does not result in an overpayment.

**46.4(1)** *Agency error.* When an overpayment is due to an agency error, recoupment will be made, including those instances when errors by the department prevent the requirements in 441—subrule 41.3(4) or 41.3(5) from being met or when the client receives a duplicate grant.

*a.* An overpayment of any amount is subject to recoupment with one exception: when the client receives a grant that exceeds the amount on the most recent notice from the department, recoupment will be made only when the amount received exceeds the amount on the notice by $10 or more.

*b.* An overpayment due to agency error will be computed as if the information had been acted upon timely.

**46.4(2)** *Assistance paid pending appeal decision.* Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing will begin no later than the month after the month in which the final decision is issued.

**46.4(3)** *Client error.*

*a.* An overpayment due to client error will be computed as if the information had been reported and acted upon timely.

*b.* Overpayments due to failure to refund payments received from the absent parent will be the total nonexempt support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the eligible group may also be subject to recoupment under provisions in 441—subrule 41.3(4).

*c.* An overpayment due to a recipient's accessing benefits via the electronic access card at a prohibited location will be the total of the transactions and any associated fees for accessing the benefits at the prohibited location pursuant to 441—subrule 41.6(7).

**46.4(4)** *Failure to cooperate.* Failure to cooperate in the investigation of alleged overpayments will result in ineligibility for the months in question and the overpayment will be the total amount of assistance received during those months.

**441—46.5(239B) Source of recoupment.**

**46.5(1)** *Payment.* Recoupment will be made from basic needs. The minimum recoupment amount will be the amount prescribed in subrule 46.5(1). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the department of inspections, appeals, and licensing, or have repayment withheld from the grant. The client shall sign a form prescribed by the department when requested to do so by the department of inspections, appeals, and licensing. When the client fails to make the agreed upon payment, the agency will reduce the grant.

**46.5(2)** *Basic needs.*

*a.* Recoupment by withholding from basic needs for overpayments due to client error or a combination of client and agency errors will be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

*b.* Recoupment by withholding from basic needs for overpayments due to the continuation of benefits pending a decision on an appeal as provided under 441—Chapter 7 or a combination of continued benefits and agency or client errors will be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

*c.* Recoupment by withholding from basic needs for overpayments due to agency error will be 1 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.9(2).

**441—46.6(239B) Procedures for recoupment.**

**46.6(1)** *Referral.* When the department determines that an overpayment exists, the case will be referred to the department of inspections, appeals, and licensing for investigation, recoupment, or referral for possible prosecution.

**46.6(2)** *Change of circumstances.* When financial circumstances change, any agreement to pay a debt is subject to revision.

**46.6(3)** *Collection.* Recoupment for overpayments will be made from the parent or nonparental relative who was the caretaker relative, as defined in 441—subrule 41.3(1), at the time the overpayment occurred. When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

**46.6(4)** *Suspension and waiver.* Recoupment will be suspended on nonfraud overpayments when the case is canceled and the amount of the overpayment is less than $35. If the case is reopened within three years, recoupment is initiated again. Recoupment will be waived on nonfraud overpayments of less than $35 that have been held in suspense for three years.

**441—46.7(239B) Fraudulent misrepresentation of residence.** A person convicted in a state or federal court, or in an administrative hearing, of having made a fraudulent statement or representation of the person's place of residence in order to receive assistance simultaneously from two or more states will be ineligible for assistance for ten years. For the purpose of this rule, the term "assistance" means assistance under Titles IV-A or XIX of the Social Security Act, or the Food Stamp Act of 1977, or benefits in two or more states under the Supplemental Security Income program under Title XVI. The ten-year period begins on the date the person is convicted. The prohibition does not apply to a convicted person who is pardoned by the President of the United States, beginning with the month after the pardon is given.

These rules are intended to implement Iowa Code sections 239B.2, 239B.3, 239B.7, and 239B.14.

## ARC 8717C

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

### Proposing rulemaking related to diversion initiatives and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to rescind Chapter 47, "Diversion Initiatives," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 239B.4(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 234.6 and 239B.11.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. This proposed chapter describes the family self-sufficiency grant (FSSG) program. The purpose of the FSSG program is to provide immediate and short-term assistance to PROMISE JOBS participant families, which will remove barriers related to obtaining or retaining employment. Without this proposed chapter, there would be no way to implement the FSSG program and leave appeal rights intact for participants.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 47 and adopt the following **new** chapter in lieu thereof:

CHAPTER 47
DIVERSION INITIATIVES

**441—47.1(239B) Definitions.**

*"Appropriate responsible administrator"* means the administrator of the department of workforce development's division of workforce development center administration, or the administrator's designee.

*"Candidate"* means anyone expressing an interest in the family self-sufficiency grants program.

*"Family"* means "assistance unit" as defined in rule 441—40.1(239B).

*"Family investment program"* or *"FIP"* means the cash grant program provided by 441—Chapters 40 and 41, designed to sustain Iowa families.

*"Family self-sufficiency grants"* or *"FSSG"* means the payments made to specific PROMISE JOBS participants, to vendors on behalf of specific PROMISE JOBS participants, or for services to specific PROMISE JOBS participants.

*"Immediate, short-term assistance"* means that assistance provided under this chapter will be authorized upon determination of need and that it will not occur on a regular basis.

*"Iowa workforce development"* or *"IWD"* means the agency that develops and administers employment, placement and training services in Iowa and is contracted by the department to administer PROMISE JOBS services statewide.

*"IWD service delivery area"* means the Iowa workforce development service delivery areas designated to provide PROMISE JOBS services.

*"Local plan for family self-sufficiency grants"* means the written policies and procedures for administering the grants for families as set forth in the plan developed by the PROMISE JOBS IWD service delivery area as described in rule 441—47.6(239B).

*"Participant"* means anyone receiving assistance under this chapter.

*"PROMISE JOBS contract"* means the agreement between the department and Iowa workforce development regarding delivery of PROMISE JOBS services.

*"PROMISE JOBS participant"* means any person receiving services through PROMISE JOBS. A PROMISE JOBS participant must be a member of an eligible FIP household.

*"Promoting independence and self-sufficiency through employment, job opportunities, and basic skills (PROMISE JOBS) program"* means the department's work and training program as described in 441—Chapter 93.

**441—47.2(239B) Availability of the family self-sufficiency grants program.** The family self-sufficiency grants program will be available statewide.

**47.2(1)** The program will be available for use by the IWD service delivery areas. Under the PROMISE JOBS contract, IWD shall allocate the funds available for authorization to each of the service delivery areas based on the allocation standards used for PROMISE JOBS service delivery purposes.

**47.2(2)** The department retains the funds that are released through the PROMISE JOBS expense allowance authorization system.

**441—47.3(239B) General criteria.** Family self-sufficiency grants candidates shall be PROMISE JOBS participants. Participation in the family self-sufficiency grants program is voluntary and will be based on an informed decision by the family. Further, candidates must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the assistance offered by family self-sufficiency grants.

**441—47.4(239B) Assistance available in family self-sufficiency grants.** Family self-sufficiency grants will be authorized for removing an identified barrier to self-sufficiency when it can be reasonably anticipated that the assistance will enable PROMISE JOBS participant families to obtain or retain employment in the two full calendar months following the date of authorization of payment. For example, if a payment is authorized on August 20, it should be anticipated that the participant can find employment in September or October.

**47.4(1)** *Employment does not occur.* If employment does not occur in the anticipated two-calendar-month period or if the participant loses employment in spite of the self-sufficiency grant, no penalty is incurred and no overpayment has occurred.

**47.4(2)** *Types of assistance.* The department, in conjunction with IWD, will determine those barriers to self-sufficiency that can be considered for family self-sufficiency grants such as but not limited to auto maintenance or repair, licensing fees, child care, and referral to other resources, including those necessary to address questions of domestic violence. The IWD service delivery areas will have the opportunity to adjust the list of approvable barriers to self-sufficiency based on local resources and circumstances. These adjustments will be approved by the department and the appropriate responsible administrator prior to implementation.

**47.4(3)** *Limit on assistance.* The total payment limit per FIA-responsible person is $1,000 per year. A year for a family will be the 12 fiscal months following the date of authorization of the initial payment for the family. A fiscal month begins and ends in different calendar months.

**47.4(4)** *Frequency of assistance.* Family self-sufficiency grants are intended to provide immediate and short-term assistance and must meet the criteria in this rule. While a family may be a candidate more than once and may receive payments in consecutive months in some circumstances, payments will not be established as regular or ongoing.

**47.4(5)** *Supplanting.* Family self-sufficiency grants will not be used for services already available through the department, PROMISE JOBS, or other local resources at no cost.

**47.4(6)** *Relationship to the family investment agreement.* Family self-sufficiency grants are separate from the PROMISE JOBS family investment agreement process. While the family investment agreement must be honored at all times and renegotiated and amended if family circumstances require it, no family will be considered to be choosing the limited benefit plan if the family chooses not to participate in the family self-sufficiency grant program.

**47.4(7)** *Issuing payments.* Family self-sufficiency grants are PROMISE JOBS benefits and will be authorized through the PROMISE JOBS expense allowance system. Payments may be issued to the participants or to a vendor for support services provided to the family. The department in conjunction with the appropriate responsible administrator will have discretion in determining method of payment. The IWD service delivery area will have the opportunity to adjust these payment options in an individual case based on circumstances and needs of the family with the approval of the department and the appropriate responsible administrator prior to implementation.

**441—47.5(239B) Application, notification, and appeals.**

**47.5(1)** *Application elements.* Each IWD service delivery area shall use the established application form to be completed by the PROMISE JOBS participant and the PROMISE JOBS worker when the participant asks to be a candidate for a family self-sufficiency grant. The application form must contain the following elements:

*a.* An explanation of family self-sufficiency grants and the expectations of the program.

*b.* Identification of the family and the person representing the family.

*c.* A clear description of the barrier to self-sufficiency to be considered.

*d.* Demonstration of how removing the barrier is related to obtaining or retaining employment, meeting the criteria in rule 441—47.4(239B).

*e.* Demonstration of why the department, PROMISE JOBS, or community resources cannot deal with the barrier to self-sufficiency.

*f.* Anticipated cost of removing the barrier to self-sufficiency.

**47.5(2)** *Notification process.* PROMISE JOBS shall use a form prescribed by the department to notify the candidate of the PROMISE JOBS decision regarding the family self-sufficiency grant. Decisions shall be in accordance with policies of this chapter and the local plan.

*a.* On approval, the form shall indicate the amount of the benefit that will be issued to the candidate or paid to a vendor, or the service that will be provided to the family.

*b.* On denial, the form shall indicate the reason for denial.

**47.5(3)** *Appealable actions.* The PROMISE JOBS decisions on family self-sufficiency grants may be appealed pursuant to 441—Chapter 7. Copies of the local plan as described in rule 441—47.6(239B) shall be included with the appeal summary.

**47.5(4)** *Nonappealable actions.* PROMISE JOBS participants will not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance from family self-sufficiency grants is that self-sufficiency grant funds have been reduced, exhausted, eliminated, or otherwise encumbered.

**441—47.6(239B) Approved local plans for family self-sufficiency grants.** Each IWD service delivery area shall create and provide to the department the written policies and procedures for administering family self-sufficiency grants. The plan will be reviewed for required elements and quality of service to ensure that it meets the purpose of the program and approved by the department and the appropriate responsible administrator. The written policies and procedures shall be available to the public at county offices, and PROMISE JOBS offices. At a minimum, these policies and procedures shall contain or address the following:

**47.6(1)** *A plan overview.* The plan overview shall contain a general description detailing:

*a.* Any types of services or assistance that will be excluded from consideration for family self-sufficiency grants by the IWD service delivery area.

*b.* How determinations will be made that the service or assistance requested meets the program's objective of helping the family obtain or retain employment.

*c.* How determinations will be made that the proposed family self-sufficiency grant is not supplanting as required in subrule 47.4(5).

*d.* Services established and any maximum (and minimum, if any) values of payments of the services established by the IWD service delivery area.

*e.* Verification procedures or standards for documenting barriers, using written notification policies found in rule 441—93.10(239B).

*f.* Verification procedures or standards for documenting employment attempts if not already tracked by PROMISE JOBS procedures, using policies found in rule 441—93.10(239B).

*g.* How applications will be processed timely to address barriers to obtaining or retaining employment.

*h.* Follow-up procedures on participant effort.

*i.* Procedures for tracking of family self-sufficiency grant authorizations in order to stay within the amount allocated.

*j.* How staff will be trained to administer the program.

**47.6(2)** *Intake and eligibility determination.* The policies and procedures shall describe:

*a.* How families most likely to benefit from self-sufficiency grant assistance are identified.

*b.* How families can apply for self-sufficiency grant assistance.

*c.* How families will be informed of the availability of self-sufficiency grant assistance, its voluntary nature, and how the program works.

**441—47.7(239B) Evaluation of family self-sufficiency grants.** The department, in conjunction with IWD, will develop an evaluation plan. The evaluation plan will:

1. Describe tracking procedures.
2. Describe the plan for evaluation.
3. Describe how measurable results will be determined.
4. Identify any support needed to conduct an evaluation.

**441—47.8(239B) Recovery of FSSG overpayments.** An overpayment exists when an item(s) for which the funds were awarded was not purchased, a duplicate payment was issued or when, according to receipts, the item(s) purchased costs less than the funds received. For purposes of overpayment and recovery, an FSSG payment is considered a PROMISE JOBS expense payment and is subject to rule 441—93.12(239B), recovery of PROMISE JOBS expense payments.

These rules are intended to implement Iowa Code sections 234.6 and 239B.11.

# ARC 8709C

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rulemaking related to promoting awareness of the benefits of a healthy marriage and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to adopt new Chapter 48, "Promoting Awareness of the Benefits of a Healthy Marriage Program," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 234.6.

*Purpose and Summary*

These proposed rules implement the Iowa promoting awareness of the benefits of a healthy marriage program (program). This program uses federal funds from the Temporary Assistance to Needy Families (TANF) block grant. Eligibility for this program establishes categorical eligibility for the Supplemental Nutrition Assistance Program (SNAP).

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 441—Chapter 48:

CHAPTER 48
PROMOTING AWARENESS OF THE BENEFITS OF A HEALTHY MARRIAGE

**441—48.1(234) Definitions.**

*"Asset"* means the same as defined in Iowa Code section 239.1 to the extent it is consistent with 7 CFR 273.8, as amended to March 1, 2025.

*"SNAP"* means the supplemental nutrition assistance program under 441—Chapter 65.

**441—48.2(234) Eligibility criteria.** Eligibility for the promoting awareness of the benefits of a healthy marriage program is always determined in conjunction with determination of eligibility for SNAP.

**48.2(1)** *Application.* There is no separate application for the program. Eligibility for the program is determined whenever the department determines a household's eligibility for SNAP.

**48.2(2)** *Resources.* The maximum allowed household asset limit for the program is $15,000. Resources shall be counted in accordance with Iowa Code section 239.4(1).

**48.2(3)** *Income.* The household's gross countable monthly income determined according to 441—Chapter 65 must be less than or equal to 160 percent of the current federal poverty guidelines for the household size. The income eligibility limits as described in this subrule are revised each October 1 to reflect the annual adjustment to the federal poverty guidelines.

**48.2(4)** *Otherwise eligible for SNAP.* The household must meet all eligibility criteria for SNAP except as provided in this rule. A household that includes a member who is currently disqualified from SNAP due to an intentional program violation is not eligible for the program.

**48.2(5)** *Minimum SNAP benefit.* The household must be eligible for a monthly SNAP benefit greater than zero. Households with a monthly SNAP benefit of zero are not eligible for the program.

**441—48.3(234) Notice and eligibility period.** A household that meets all of the eligibility criteria in this chapter will receive written notice of its eligibility for the promoting awareness of the benefits of a healthy marriage program.

**48.3(1)** *Written information.* Households determined eligible for the program will receive written information about the benefits of a healthy and stable marriage.

**48.3(2)** *Eligibility period.* A household that is determined eligible for the program will remain eligible for the program until the earlier of the following events:

*a.* The household fails to meet the eligibility criteria under this chapter, or
*b.* The household's SNAP certification period under 441—Chapter 65 ends.

These rules are intended to implement Iowa Code section 234.6.

**ARC 8718C**

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

**Proposing rulemaking related to nursing facilities and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 81, "Nursing Facilities," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code chapter 249A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 42 CFR 483.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. This proposed chapter provides operational and Medicaid reimbursement rules for nursing facilities.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 7, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319

Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 81 and adopt the following **new** chapter in lieu thereof:

CHAPTER 81
NURSING FACILITIES

**441—81.1(249A) Definitions.**

*"Abuse"* means any of the following that occurs as a result of the willful or negligent acts or omissions of a nursing facility employee:

1. Physical injury to, or injury that is at a variance with the history given of the injury, or unreasonable confinement or unreasonable punishment or assault as defined in Iowa Code section 708.1 of a resident.

2. The commission of a sexual offense under Iowa Code chapter 709 or section 726.2 or 728.12(1), or sexual exploitation under Iowa Code chapter 235B, as a result of the acts or omissions of the facility employee responsible for the care of the resident with or against a resident.

3. Exploitation of a resident, which means the act or process of taking unfair advantage of a resident or the resident's physical or financial resources for one's own personal or pecuniary profit without the informed consent of the resident, including theft, by the use of undue influence, harassment, duress, deception, false representation or false pretenses.

4. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a resident's life or health.

*"Advance directive"* means the same as defined in 42 CFR 489.100 (as amended to August 1, 2024).

*"Allowable costs"* means the price a prudent, cost-conscious buyer would pay a willing seller for goods or services in an arm's-length transaction, not to exceed the limitations set out in rules.

*"Beginning eligibility date"* means date of an individual's admission to the facility or date of eligibility for medical assistance, whichever is the later date.

*"Case mix"* means a measure of the intensity of care and services used by similar residents in a facility.

*"Case-mix index"* means a numeric score within a specific range that identifies the relative resources used by similar residents and represents the average resource consumption across a population or sample.

*"Civil penalty"* means a civil money penalty not to exceed the amount authorized under Iowa Code section 135C.36 for health care facility violations.

*"Clinical experience"* means application or learned skills for direct resident care in a nursing facility.

*"Clock hour"* means 60 minutes.

*"CMS"* means the Centers for Medicare and Medicaid Services of the federal Department of Health and Human Services.

*"Complete replacement"* means completed construction on a new nursing facility to replace an existing licensed and certified nursing facility. The replacement facility shall have no more licensed beds than the facility being replaced and shall be located either in the same county as the facility being replaced or within 30 miles from the facility being replaced.

*"Cost normalization"* refers to the process of removing cost variations associated with different levels of resident case mix. Normalized cost is determined by dividing a facility's per diem direct care component costs by the facility cost report period case-mix index.

*"Denial of critical care"* is a pattern of care in which the resident's basic needs are denied or ignored to such an extent that there is imminent or potential danger of the resident suffering injury or death, or is a denial of, or a failure to provide the mental health care necessary to adequately treat the resident's serious social maladjustment, or is a gross failure of the facility employee to meet the emotional needs of the resident necessary for normal functioning, or is a failure of the facility employee to provide for the proper supervision of the resident.

*"Direct care component"* means the portion of the Medicaid reimbursement rates that is attributable to the salaries and benefits of registered nurses, licensed practical nurses, certified nursing assistants, rehabilitation nurses, and contracted nursing services. "Direct care component" also includes costs related to therapy services provided to residents during inpatient stays and not billed as an outpatient service.

*"Discharged resident"* means a resident whose accounts and records have been closed out and whose personal effects have been taken from the facility.

*"Facility"* means a licensed nursing facility certified in accordance with the provisions of 42 CFR 483.5 (as amended to August 1, 2024) to provide health services and includes hospital-based nursing facilities that are Medicare-certified and provide only skilled level of care and swing-bed hospitals unless stated otherwise.

*"Facility-based nurse aide training program"* means a nurse aide training program that is offered by a nursing facility and taught by facility employees or under the control of the licensee.

*"Facility cost report period case-mix index"* is the average of quarterly facilitywide average case-mix indices, carried to four decimal places. The quarters used in this average will be the quarters that most closely coincide with the financial and statistical reporting period. For example, a 01/01/2000-12/31/2000 financial and statistical reporting period would use the facilitywide average case-mix indices for quarters ending 03/31/00, 06/30/00, 09/30/00 and 12/31/00.

*"Facilitywide average case-mix index"* is the simple average, carried to four decimal places, of all resident case-mix indices based on the last day of each calendar quarter.

*"Informed consent"* means a resident's agreement to allow something to happen that is based on a full disclosure of known facts and circumstances needed to make the decision intelligently, i.e., with knowledge of the risks involved or alternatives.

*"Laboratory experience"* means practicing care-giving skills prior to contact in the clinical setting.

*"Level I review"* means screening to identify persons suspected of having mental illness or intellectual disability as defined in 42 CFR 483.102 (as amended to August 1, 2024).

*"Level II review"* means the evaluation of a person identified in a Level I review to determine whether nursing facility services and specialized services are needed.

*"Major renovations"* means new construction or facility improvements to an existing licensed and certified nursing facility in which the total depreciable asset value of the new construction or facility improvements exceeds $750,000. The $750,000 threshold shall be calculated based on the total depreciable asset value of new construction or facility improvements placed into service during a two-year period ending on the date the last asset was placed into service. When the property costs of an asset have been included in a facility's financial and statistical report that has already been used in a biennial rebasing, the costs of that asset shall not be considered in determining whether the facility meets the $750,000 threshold.

*"Managed care organization"* means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

*"Medicaid average case-mix index"* is the simple average, carried to four decimal places, of all resident case-mix indices where Medicaid is known to be the per diem payor source on the last day of the calendar quarter.

*"Minimum data set"* or *"MDS"* refers to a federally required resident assessment tool. Information from the MDS is used by the department to determine the facility's case-mix index for purposes of normalizing per diem allowable direct care costs as provided by paragraph 81.5(16)*"b,"* for determining the Medicaid average case-mix index to adjust the direct care component pursuant to paragraphs 81.5(16)*"c"* and *"e,"* the excess payment allowance pursuant to paragraph 81.5(16)*"d,"* and the limits on reimbursement components pursuant to paragraph 81.5(16)*"f."* MDS is described in subrule 81.12(9).

*"Minimum food, shelter, clothing, supervision, physical or mental health care, or other care"* means that food, shelter, clothing, supervision, physical or mental health care, or other care that, if not provided, would constitute denial of critical care.

*"Mistreatment"* means any intentional act, or threat of an act, coupled with the apparent ability to execute the act, which causes or puts another person in fear of mental anguish, humiliation, deprivation or physical contact that is or will be painful, insulting or offensive. Actions utilized in providing necessary treatment or care in accordance with accepted standards of practice are not considered mistreatment.

*"New construction"* means the construction of a new nursing facility that does not replace an existing licensed and certified facility and that requires the provider to obtain a certificate of need pursuant to Iowa Code chapter 135, division VI.

*"Non-direct care component"* means the portion of Medicaid reimbursement rates attributable to administrative, environmental, property, and support care costs reported on the financial and statistical report.

*"Non-facility-based nurse aide training program"* means a nurse aide training program that is offered by an organization that is not licensed to provide nursing facility services.

*"Non-state government owned nursing facility"* or *"NSGO nursing facility"* is a nursing facility owned by a governmental entity that is not the state.

*"Nurse aide"* means any individual who is not a licensed health professional or volunteer providing nursing or nursing-related services to residents in a nursing facility.

*"Nurse aide registry"* means the nurse aide registry within the department of inspections appeals, and licensing.

*"Nurse aide training and competency evaluation programs"* or *"NATCEP"* means educational programs approved by the department of inspections, appeals, and licensing for nurse aide training as designated in subrule 81.13(3).

*"Nursing facility level of care"* means that the following conditions are met:

1. The presence of a physical or mental impairment that restricts the member's daily ability to perform the essential activities of daily living, bathing, dressing, and personal hygiene, and impedes the member's capacity to live independently.
2. The member's physical or mental impairment is such that self-execution of required nursing care is improbable or impossible.

*"PASRR"* means a Level I screening or a Level II evaluation for mental illness or intellectual disability for all persons who live in or seek entry to a Medicaid-certified nursing facility, as required by 42 CFR Part 483, Subpart C (as amended to August 1, 2024).

*"Patient-day-weighted median cost"* means the per diem cost of the nursing facility that is at the median per diem cost of all nursing facilities based on patient days provided when per diem allowable costs are ranked from low to high. A separate patient-day-weighted median cost amount shall be determined for the direct care and non-direct care components.

*"Physical abuse"* means any nonaccidental physical injury, or injury that is at variance with the history given of it, suffered by a resident as the result of the acts or omissions of a person responsible for the care of the resident.

*"Physical injury"* means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue that results in the death of the person who has sustained the damage.

*"Poor performing facility"* or *"PPF"* is a facility designated by the department of inspections, appeals, and licensing as a PPF based on surveys conducted by the department of inspections, appeals, and licensing pursuant to subrule 81.12(1). A facility shall be designated a PPF if it has been cited for substandard quality of care on the current standard survey and it:

1. Has been cited for substandard quality of care or immediate jeopardy on at least one of the previous two standard surveys;
2. Has a history of substantiated complaints during the last two years;
3. Has a current deficiency for not having a quality assurance program; or
4. Does not have an effective quality assurance program as defined in paragraph 81.12(19)*"o."*

*"Primary instructor"* means a registered nurse responsible for teaching a state-approved nurse aide training course.

*"Program coordinator"* means a registered nurse responsible for administrative aspects of a state-approved nurse aide training course.

*"Rate determination letter"* means the letter that is distributed quarterly by the department to each nursing facility notifying the facility of the facility's Medicaid reimbursement rate calculated in accordance with this rule and of the effective date of the reimbursement rate.

*"Skilled nursing facility level of care"* means that the following conditions are met:

1. The member's medical condition requires skilled nursing services or skilled rehabilitation services as defined in 42 CFR 409.31(a), 409.32, and 409.34 (as amended to August 1, 2024).
2. Services are provided in accordance with the general provisions for all Medicaid providers and services as described in rule 441—79.9(249A).
3. Documentation submitted for review indicates that the member has:

- A physician order for all skilled services.
- Services that require the skills of medical personnel, including registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists, or audiologists.
- An individualized care plan that identifies support needs.
- Confirmation that skilled services are provided to the member.
- Skilled services that are provided by, or under the supervision of, medical personnel as described above.
- Skilled nursing services that are needed and provided seven days a week or skilled rehabilitation services that are needed and provided at least five days a week.

*"Skills performance record"* means a record of major duties and skills taught that consists of, at a minimum:

1. A listing of the duties and skills expected to be learned in the program.
2. Space to record the date when the aide performs the duty or skill.
3. Space to note satisfactory or unsatisfactory performance.
4. The signature of the instructor supervising the performance.

*"Special population nursing facility"* refers to a nursing facility that serves the following populations:

1. One hundred percent of the residents served are aged 30 and under and require the skilled level of care.
2. Seventy percent of the residents served require the skilled level of care for neurological disorders.
3. One hundred percent of the residents require care from a facility licensed by the department of inspections, appeals, and licensing as an intermediate care facility for persons with mental illness.
4. One hundred percent of the residents require care from a facility licensed by the department of inspections, appeals, and licensing as an intermediate care facility for persons with medical complexity.

*"Surgical or other invasive procedure"* means an operative procedure in which skin or mucous membranes and connective tissue are incised or an instrument is introduced through a natural body orifice. Surgical or other invasive procedures include a range of procedures from minimally invasive dermatological procedures (biopsy, excision, and deep cryotherapy for malignant lesions) to extensive multiorgan transplantation. Surgical or other invasive procedures include all procedures described by the codes in the surgery section of the Current Procedural Terminology (CPT) published by the American Medical Association, as amended to August 1, 2024, and other invasive procedures such as percutaneous transluminal angioplasty and cardiac catheterization. Surgical or other invasive procedures include minimally invasive procedures involving biopsies or placement of probes or catheters requiring the entry into a body cavity through a needle or trocar. "Surgical or other invasive procedure" does not include use of instruments such as otoscopes for examinations or very minor procedures such as drawing blood.

*"Terminated from the Medicare or Medicaid program"* means a facility has lost the final appeal to which it is entitled.

*"Testing entity"* means a person, agency, institution, or facility approved by the department of inspections, appeals, and licensing to take responsibility for obtaining, keeping secure and administering the competency test and reporting nurse aide scores to the nurse aide registry.

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.3(2)*"a,"* and 249A.4.

**441—81.2(249A) Initial approval for nursing facility care.**

**81.2(1)** *Need for nursing facility care.* Residents of nursing facilities must be in need of either nursing facility care or skilled nursing care. Payment will be made for nursing facility care residents only upon certification of the need for the level of care by a licensed physician of medicine or osteopathy and approval of the level of care by the department.

*a.* Decisions on level of care, subject to paragraph 81.2(1)*"b,"* will be made by the department within two working days of receipt of medical information. The department determines whether the level of care provided or to be provided should be approved based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

*b.* For residents subject to a Level II PASRR review pursuant to subrule 81.2(3), the level of care determination will be made as part of the Level II PASRR review, based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2).

*c.* Adverse level of care decisions may be appealed to the department pursuant to 441—Chapter 7.

**81.2(2)** *Preadmission review.* The department's contractor for PASRR screening and evaluation shall complete a Level I review for all persons seeking admission to a Medicaid-certified nursing facility, regardless of the source of payment for the person's care. When a Level I review identifies evidence for the presence of mental illness or intellectual disability, the department's contractor for PASRR evaluations shall complete a Level II review before the person is admitted to the facility.

*a.* Exceptions to Level II review. Persons in the following circumstances may be exempted from Level II review based on a categorical determination that, in that circumstance, admission to or residence in a nursing facility is normally needed and the provision of specialized services for mental illness or intellectual disability is normally not needed.

(1) The person's attending physician certifies that the person is terminally ill with death expected within six months, the person requires nursing care or supervision due to the person's physical condition,

and the person is not a danger to self or others. If the person's nursing facility stay exceeds six months, a Level II review must be completed.

(2) The severity of the person's illness results in impairment so severe that the person could not be expected to benefit from specialized services, and the person does not present a danger to self or others. This category includes persons who are comatose, who function at brain-stem level, who are ventilator-dependent, or who have diagnoses such as Parkinson's disease, Huntington's chorea, amyotrophic lateral sclerosis, chronic obstructive pulmonary disease (COPD), or congestive heart failure (CHF).

(3) The person is suffering from delirium. Exemptions made on a basis of delirium are valid until the delirium clears or for seven days, whichever is sooner.

(4) The person is in an emergency situation that requires protective services with placement in the nursing facility. A Level II review must be completed if the admission lasts more than seven days.

(5) The admission is for the purpose of providing respite to the person's caregiver. If the nursing facility stay exceeds 30 days, a Level II review must be completed.

(6) The person has dementia in combination with an intellectual disability.

(7) The person has been approved for specialized services in another facility based on a previous Level II evaluation, the specialized services still meet the person's needs, and the receiving facility agrees to provide the specialized services.

(8) The person is transferring directly from receiving acute hospital inpatient care and requires nursing facility services for the same acute physical illness for which hospital care was received, and the person's attending physician certifies before the admission that the person is likely to require less than 30 days of nursing facility services. If the person is later found to require more than 30 days of nursing facility care, a Level II review must be completed within 40 calendar days of the person's admission date.

(9) The person:

1. Is transferring to a nursing facility directly from receiving acute hospital inpatient care, and

2. Requires nursing facility services for convalescence from the same acute physical illness for which the person received hospital care, and

3. Is clearly sufficiently psychiatrically and behaviorally stable enough for nursing facility admission, and

4. Before entering the facility, has been certified by the attending physician as likely to require less than 60 days of nursing facility services.

*b.* Outcome of Level II review. The Level II review shall determine:

(1) Whether nursing facility care or skilled nursing care is medically necessary and appropriate under 441—subrules 79.9(1) and 79.9(2) for the person seeking admission;

(2) Whether the person seeking admission needs specialized services for mental illness as defined in paragraph 81.12(14)*"b,"* using the procedures set forth in 42 CFR 483.134 (as amended to August 1, 2024); and

(3) Whether the person seeking admission needs specialized services for intellectual disability as defined in paragraph 81.12(14)*"c,"* using the procedures set forth in 42 CFR 483.136 (as amended to August 1, 2024).

*c.* The department or its designee will review each Level II evaluation and plan for obtaining needed specialized services before the person's admission to a nursing facility to determine whether nursing facility care or skilled nursing care is medically necessary and whether the nursing facility is an appropriate placement.

*d.* Nursing facility payment under the Iowa Medicaid program will be made for Medicaid members residing in the nursing facility:

(1) Only if a Level I review was completed prior to admission;

(2) For persons with mental illness or intellectual disability, only if a Level II review has been completed, or an exception under paragraph 81.2(3)*"a"* has been approved, and it is determined by the department that nursing facility care or skilled nursing care is medically necessary and appropriate and that the person's treatment needs related to a mental illness or intellectual disability will be or are being met.

*e.* Adverse PASRR decisions may be appealed to the department pursuant to 441—Chapter 7.

*f.* A nursing facility requesting an administrative hearing regarding a PASRR determination must have the prior, express, signed, written consent of the resident or the resident's lawfully appointed guardian to request such a hearing. Notwithstanding any contrary provision in 441—Chapter 7, no hearing will be granted unless the nursing facility submits a document providing such resident's consent to the request for a state fair hearing. The document must specifically inform the resident that protected health information (PHI) may be discussed at the hearing and may be made public in the course of the hearing and subsequent administrative and judicial proceedings. The document must contain language that indicates the resident's knowledge of the potential for PHI to become public and that the resident knowingly, voluntarily, and intelligently consents to the nursing facility's bringing the state fair hearing on the resident's behalf.

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.3(2)*"a"* and 249A.4.

**441—81.3(249A) Arrangements with residents.**

**81.3(1)** *Financial participation by resident.* A resident's payment for care may include any voluntary payments made by family members toward cost of care of the resident. The resident's client participation and medical payments from a third party shall be paid toward the total cost of care for the month before any state payment is made. The state will pay the balance of the cost of care for the remainder of the month. The facility shall make arrangements directly with the resident for payment of client participation.

**81.3(2)** *Personal needs account.* When a facility manages the personal needs funds of a resident, it shall establish and maintain a system of accounting for expenditures from the resident's personal needs funds. (See paragraph 81.12(5)*"c."*) The funds shall be deposited in a bank within the state of Iowa insured by FDIC. Expense for bank service charges for this account is an allowable expense under rule 441—81.5(249A) if the service cannot be obtained free of charge. The department will charge back to the facility any maintenance item included in the computation of the audit cost that is charged to the resident's personal needs when the charge constitutes double payment. Unverifiable expenditures charged to personal needs accounts may be charged back to the facility. The accounting system is subject to audit by representatives of the department and shall meet the following criteria:

*a.* Upon admittance, a ledger sheet shall be credited with the resident's total incidental money on hand. Thereafter, the ledger shall be kept current on a monthly basis. The facility may combine the accounting with the disbursement section showing the date, amount given the resident, and the resident's signature. A separate ledger shall be maintained for each resident.

*b.* When something is purchased for the resident and is not a direct cash disbursement, each expenditure item in the ledger shall be supported by a signed, dated receipt. The receipt shall indicate the article furnished for the resident's benefit.

*c.* Personal funds shall only be turned over to the resident, the resident's guardian, or other persons selected by the resident. With the consent of the resident, when the resident is able and willing to give consent the administrator may turn over personal funds to a close relative or friend of the resident to purchase a particular item. A signed, dated receipt shall be required to be deposited in the resident's files.

*d.* The ledger and receipts for each resident shall be made available for periodic audits by an accredited department representative. Audit certification will be made by the department's representative at the bottom of the ledger sheet. Supporting receipts may then be destroyed.

*e.* Upon a patient's death, a receipt shall be obtained from the next of kin, the resident's guardian, or the representative handling the funeral before releasing the balance of the personal needs funds. In the event there is no next of kin or guardian available and there are no outstanding funeral expenses, any funds shall revert to the department. In the event that an estate is opened, the department will turn the funds over to the estate.

**81.3(3)** *Safeguarding personal property.* The facility shall safeguard the resident's personal possessions. Safeguarding shall include but is not limited to:

*a.* Providing a method of identification of the resident's suitcases, clothing, and other personal effects, and listing these on an appropriate form attached to the resident's record at the time of

admission. These records shall be kept current. Any personal effects released to a relative of the resident shall be covered by a signed receipt.

*b.* Providing adequate storage facilities for the resident's personal effects.

*c.* Ensuring that all mail is delivered unopened to the resident to whom it is addressed, except in those cases where the resident is too confused, as documented in the person's permanent medical record, to receive it, in which case the mail is held unopened for the resident's conservator or relatives. Mail may be opened by the facility in cases where the resident or relatives or guardian have given permission in writing for mail to be opened and read to the resident.

This rule is intended to implement Iowa Code sections 249A.2, 249A.3(2)*"a,"* and 249A.4.

**441—81.4(249A) Discharge and transfer.** (See paragraph 81.12(6)*"c."*)

**81.4(1)** *Notice.* When a Medicaid member requests transfer or discharge, or another person requests this for the member, the administrator shall promptly notify the department. This shall be done in sufficient time to permit a social service worker or case manager to assist in the planning for the transfer or discharge.

**81.4(2)** *Case activity report.* A Case Activity Report shall be submitted to the department whenever a Medicaid applicant or recipient enters the facility, changes level of care, or is discharged from the facility.

**81.4(3)** *Plan.* The administrator and staff shall assist the resident in planning for transfer or discharge through development of a discharge plan.

**81.4(4)** *Transfer records.* When a resident is transferred to another facility, transfer information shall be summarized from the facility's records in a copy to accompany the resident. This information shall include:

*a.* A transfer form of diagnosis.
*b.* Aid to daily living information.
*c.* Transfer orders.
*d.* Nursing care plan.
*e.* Physician's orders for care.
*f.* The resident's personal records.
*g.* When applicable, the personal needs fund record.
*h.* Resident care review team assessment.

**81.4(5)** *Unused client participation.* When a resident leaves the facility during the month, any unused portion of the resident's client participation shall be refunded.

This rule is intended to implement Iowa Code sections 249A.2, 249A.3(2)*"a,"* and 249A.4.

**441—81.5(249A) Financial and statistical report and determination of payment rate.** With the exception of hospital-based nursing facilities that are Medicare-certified and provide only the skilled level of care, herein referred to as Medicare-certified hospital-based nursing facilities, all facilities in Iowa wishing to participate in the program shall submit a Financial and Statistical Report to the department. All Medicare-certified hospital-based nursing facilities must submit a copy of their Medicare cost report. These reports shall be based on the following rules.

**81.5(1)** *Failure to maintain records.* Failure to adequately maintain fiscal records, including census records, medical charts, ledgers, journals, tax returns, canceled checks, source documents, invoices, and audit reports by or for a facility, may result in the penalties specified in subrule 81.14(1).

**81.5(2)** *Accounting procedures.* Financial information shall be based on that appearing in the audited financial statements of the facility. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting bases.

*a.* Facilities that are a part of a larger health facility extending short-term, intensive, or other health care not generally considered nursing care may submit a cost apportionment schedule prepared in

accordance with recognized methods and procedures. A schedule shall be required when necessary for a fair presentation of expense attributable to nursing facility patients.

*b.* Costs for patient care services shall be divided into the subcategories of "direct patient care costs" and "support care costs." Costs associated with food and dietary wages shall be included in the "support care costs" subcategory.

**81.5(3)** *Submission of reports.* All nursing facilities, except the Iowa Veterans Home, shall submit reports electronically, in a format approved by the department, to the department not later than the last day of the fifth calendar month after the close of the provider's reporting year. The Iowa Veterans Home shall submit the report electronically, in a format approved by the department, no later than three months after the close of each six-month period of the facility's established fiscal year. The annual financial report shall coincide with the fiscal year used by the provider to report federal income taxes for the operation unless the provider requests in writing that a different reporting period be used. Such a request shall be submitted within 60 days after the initial certification of a provider. The option to change the reporting period may be exercised only one time by a provider, and the reporting period shall coincide with the fiscal year end for Medicare cost-reporting purposes. If a reporting period other than the tax year is established, audit trails between the periods are required, including reconciliation statements between the provider's records and the annual financial report.

*a.* Nursing facilities that are certified to provide Medicare-covered skilled nursing facility services are required to submit a copy of their Medicare cost report that covers their most recently completed historical reporting period as submitted to the Medicare fiscal intermediary.

*b.* The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the department to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the nursing facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 81.5(3)*"e."*

*c.* If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report as set forth in subrule 81.5(2).

*d.* For nursing facilities, except the Iowa Veterans Home, an extension of the five-month filing period shall not be granted unless one is granted for the filing of the Medicare cost report. If the Medicare filing deadline for submitting the Medicare cost report is delayed by the Medicare fiscal intermediary, the Medicaid cost report and all required forms shall be submitted on the date Medicare requires submission of its report. Notice of the extension shall be presented to the department within ten days of a decision by Medicare.

*e.* A complete submission shall include all of the items identified in this subrule. Failure to submit a complete report that meets the requirements of this rule within the stated time shall reduce payment to 75 percent of the current rate.

(1) The reduced rate will be effective the first day of the sixth month following the provider's fiscal year end and will remain in effect until the first day of the month after the delinquent report is received by the department.

(2) The reduced rate will be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the department.

*f.* When a nursing facility continues to include in the total costs an item or items that had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the provider may include the cost, but must include sufficient detail so that the department can determine if a similar adjustment is needed

in the current period. The department may, after considering the seriousness of the offense, make the reduction.

*g.* Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the department when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

*h.* A facility may change its fiscal year one time in any two-year period. If the facility changes its fiscal year, the facility shall notify the department 60 days prior to the first date of the change.

**81.5(4)** *Payment at new rate.*

*a.* Except for state-operated nursing facilities and special population nursing facilities, payment rates will be updated July 1, 2001, and every second year thereafter with new cost report data, and adjusted quarterly to account for changes in the Medicaid average case-mix index. For nursing facilities receiving both an ICF and SNF Medicaid rate effective June 30, 2001, the June 30, 2001, Medicaid rate referenced in subparagraphs (1) and (2) below will be the patient-day-weighted average of the ICF and SNF Medicaid rates effective June 30, 2001, excluding the case-mix transition add-on amount.

(1) The Medicaid payment rates for services rendered from July 1, 2001, through June 30, 2002, will be 66.67 percent of the facility's Medicaid rate effective June 30, 2001, excluding the case-mix transition add-on amount, plus an inflation allowance of 6.21 percent, not to exceed $94, and 33.33 percent of the July 1, 2001, modified price-based rate pursuant to subrule 81.5(16). In no case will the July 1, 2001, Medicaid rate be less than the Medicaid rate effective June 30, 2001, excluding the case-mix transition add-on amount, and increased by a 6.21 percent inflation allowance.

(2) Payment rates for services rendered from July 1, 2002, through June 30, 2003, shall be 33.33 percent of the facility's Medicaid rate effective June 30, 2001, excluding the case-mix transition add-on amount, plus an inflation allowance of 6.21 percent, and an additional inflation factor based on the CMS/SNF Total Market Basket Index. However, the current system rate to be used effective July 1, 2002, shall not exceed $94, times an inflation factor pursuant to subrule 81.5(18), and 66.67 percent of the July 1, 2002, modified price-based rate. In no case will the July 1, 2002, Medicaid rate be less than the Medicaid rate effective June 30, 2002, plus an inflation factor pursuant to subrule 81.5(18) projected for the following 12 months.

(3) Payment rates for services rendered from July 1, 2003, and thereafter will be 100 percent of the modified price-based rate.

*b.* The Medicaid payment rate for special population nursing facilities will be updated annually without a quarterly adjustment.

*c.* The Medicaid payment rate for state-operated nursing facilities will be updated annually without a quarterly adjustment.

**81.5(5)** *Accrual basis.* Facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expense.

**81.5(6)** *Census of Medicaid members.* Census figures of Medicaid members shall be obtained on the last day of the month ending the reporting period.

**81.5(7)** *Patient days.* In determining inpatient days, a patient day is that period of service rendered a patient between the census-taking hours on two successive days, the day of discharge being counted only when the patient was admitted that same day.

**81.5(8)** *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

**81.5(9)** *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

*a.* Census information shall be based on a patient's status at midnight at the end of each day.

*b.* When a recipient is on a reserve bed status and the department is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient

and a per diem rate for the bed is charged to any party, the reserved days shall be included in the total census figures for inpatient days.

**81.5(10)** *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

*a.* Routine daily services shall represent the established charge for daily care. Routine daily services include room, board, nursing services, therapies, and such services as supervision, feeding, pharmaceutical consulting, over-the-counter drugs, incontinence, and similar services, for which the associated costs are in nursing service. Routine daily services shall not include:

(1) Laboratory or diagnostic radiology services, unless the service is provided by facility staff using facility equipment, and

(2) Prescription (legend) drugs.

*b.* Revenue from ancillary services provided to patients shall be applied in reduction of the related expense.

*c.* Revenue from the sale of medical supplies, food or services to employees or nonresidents of the facility shall be applied in reduction of the related expense. Revenue from the sale to private pay residents of items or services that are included in the medical assistance per diem will not be offset.

*d.* Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of the interest expense.

*e.* Laundry revenue shall be applied to laundry expense.

*f.* Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

**81.5(11)** *Limitation of expenses.* Certain expenses that are not normally incurred in providing patient care shall be eliminated or limited according to the following:

*a.* Federal and state income taxes are not allowed as reimbursable costs.

*b.* Fees paid directors and nonworking officers' salaries are not allowed as reimbursable costs.

*c.* Bad debts are not an allowable expense.

*d.* Charity allowances and courtesy allowances are not an allowable expense.

*e.* Personal travel and entertainment are not allowable as reimbursable costs. Certain expenses such as rental or depreciation of a vehicle and expenses of travel that include both business and personal costs shall be prorated. Amounts that appear to be excessive may be limited after consideration of the specific circumstances. Records shall be maintained to substantiate the indicated charges.

(1) Commuter travel by the owner(s), owner-administrator(s), administrator, nursing director or any other employee is not an allowable cost (from private residence to facility and return to residence).

(2) The expense of one car or one van or both designated for use in transporting patients shall be an allowable cost. All expenses shall be documented by a sales slip, invoice or other document setting forth the designated vehicle as well as the charges incurred for the expenses to be allowable.

(3) At the time of annual contract renewal with the Iowa department of transportation, each facility that supplies transportation services as defined in Iowa Code section 324A.1 shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code section 324A.5 and 761—Chapter 910 of the Iowa department of transportation's rules. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation shall result in disallowance of vehicle costs and other costs associated with transporting residents.

(4) Expenses related to association business meetings, limited to individual members of the association who are members of a national affiliate, and expenses associated with workshops, symposiums, and meetings that provide administrators or department heads with hourly credits required to comply with continuing education requirements for licensing, are allowable expenses.

(5) Travel of an emergency nature required for supplies, repairs of machinery or equipment, or building is an allowable expense.

(6) Travel for which a patient must pay is not an allowable expense.

(7) Allowable expenses in subparagraphs (2) through (5) above are limited to 6 percent of total administrative expense.

*f.* Entertainment provided by the facility for participation of all residents who are physically and mentally able to participate is an allowable expense except that entertainment for which the patient is required to pay is not an allowable expense.

*g.* Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

*h.* A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother, and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation includes all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including but not limited to salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include but are not limited to costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the department. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the department with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report will be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 81.5(3)*"e."*

(2) Reasonableness requires that the compensation allowance be the same amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) Necessary requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The base maximum allowed compensation for an administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is $3,296 per month plus $35.16 per month per licensed bed capacity for each bed over 60, not to exceed $4,884 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of 5 percent or more.

On an annual basis, the maximum allowed compensation amounts for these administrators shall be increased or decreased by an annual inflation factor as specified by subrule 81.5(18).

(5) The maximum allowed compensation for an assistant administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility in facilities having a licensed capacity of 151 or more beds is 60 percent of the amount allowed for the administrator. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of 5 percent or more.

(6) The maximum allowed compensation for a director of nursing or any employee who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is 60 percent of

the amount allowed for the administrator. Persons involved in ownership or relatives providing professional services shall be limited to rates prevailing in the community not to exceed 60 percent of the allowable rate for the administrator on a semiannual basis. Records shall be maintained in the same manner for an employee involved in ownership or a relative as are maintained for any other employee of the facility. Ownership is defined as an interest of 5 percent or more.

(7) The maximum allowed compensation for anyone working for another entity (e.g., home office) that allocates cost to the nursing facility and is involved in ownership of the facility or allocating entity or who is an immediate relative of an owner of the facility or allocating entity is 60 percent of the amount allowed for the administrator. An employee working for another entity that allocates cost to the nursing facility is considered to be involved in ownership of a facility when that individual has ownership interest of 5 percent or more of the home office or the nursing facility.

(8) The maximum allowed compensation for employees as set forth in subparagraphs 81.5(11)*"h"*(4) through 81.5(11)*"h"*(7) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the nursing facility for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. In the case that an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the nursing facility. In no case shall the amount of salary for one employee allocated to multiple nursing facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

*i.* Management fees paid to a related party shall be limited on the same basis as the owner administrator's salary, but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, the costs are allowed.

*j.* For financial and statistical reports received after March 18, 2020, the depreciation, as limited in this rule, may be included as an allowable patient cost.

(1) Limitation on calculation. Depreciation shall be calculated based on the tax cost using only the straight-line method of computation and recognizing the estimated useful life of the asset as defined in the most recent edition of the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (2023 edition).

(2) Limitation—full depreciation. Once an asset is fully depreciated, no further depreciation shall be claimed on that asset.

(3) Change of ownership. Depreciation is further limited by the limitations in subrule 81.5(12).

*k.* Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) Necessary requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to patient care, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and that are held separate and not commingled with other funds.

(3) Proper requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to the fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to

adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where the deposits are used for other than the purpose for which the fund was established.

*l.* Costs applicable to supplies furnished by a related party or organization are a reimbursable cost when included at the cost to the related party or organization. The cost shall not exceed the price of comparable supplies that could be purchased elsewhere.

(1) Related means that the facility, to a significant extent, is associated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in the facility and the institution or organization serving the provider.

(3) Control exists where an individual or an organization has power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

(4) When the facility demonstrates by convincing evidence that the supplying organization is a bona fide separate organization; that a substantial part of its business activity of the type carried on with the facility is transacted with others and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization; that the services, facilities, or supplies are those that commonly are obtained by similar institutions from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by the institutions; and that the charge to the facility is in line with the charge for the services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for the services, facilities, or supplies, the charges by the supplier shall be allowable costs.

*m.* For financial and statistical reports received after March 18, 2020, the following definitions, calculations, and limitations shall be used to determine allowable rent expense on a cost report.

(1) Landlord's other expenses. Landlord's other expenses are limited to amortization, mortgage interest, property taxes unless claimed as a lessee expense, utilities paid by the landlord unless claimed as a lessee expense, property insurance, and building maintenance and repairs.

(2) Reasonable rate of return. Reasonable rate of return means the historical cost of the facility in the hands of the owner when the facility first entered the Medicaid program multiplied by the 30-year Treasury bond rate as reported by the Federal Reserve Board at the date of lease inception.

(3) Nonrelated party leases. When the operator of a participating facility rents from a party that is not a related party, as defined in paragraph 81.5(11)*"l,"* the allowable cost report rental expense shall be the lesser of:

1. Lessor's annual depreciation as identified in paragraph 81.5(11)*"j"* plus the landlord's other expenses, plus a reasonable rate of return; or

2. Actual rent payments.

(4) Related party leases. When the operator of a participating facility rents from a related party, as defined in paragraph 81.5(11)*"l,"* the allowable cost report rental expense shall be the lesser of:

1. Lessor's annual depreciation as identified in paragraph 81.5(11)*"j"* plus the landlord's other expenses; or

2. Actual rent payments.

*n.* Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are unallowable:

(1) Any fees or portion of fees used or designated for lobbying.

(2) Nonrefundable and unused retainers.

(3) Fees paid by the facility for the benefit of employees.

(4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. However, facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the conditions below are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,
2. The costs are reasonable expenditures for the services obtained,
3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
4. The facility prevails on the disputed issue.

*o.* The nursing facility quality assurance assessment paid pursuant to 441—Chapter 36 shall not be an allowable cost for cost reporting and audit purposes but shall be reimbursed pursuant to paragraph 81.5(21)*"a."*

*p.* Prescription (legend) drug costs are excluded from services covered as part of the nursing facility per diem rate as set forth in paragraph 81.10(5)*"d."* The department will provide direct payment for drugs covered pursuant to 441—subrule 78.1(2) to relieve the facility of payment responsibility. As Medicaid reimburses pharmacy providers only for the cost and dispensation of legend drugs included on the Medicaid preferred drug list, no drug costs will be recognized for other payor sources.

*q.* Inpatient therapy services provided by nursing facilities are included in the established rate as a direct care cost and subject to the normalization process and quarterly case-mix index adjustments.

(1) Under no circumstances shall therapies for Medicaid members residing in a nursing facility be billed to Medicaid through any provider other than the nursing facility. Therapy services for nursing facility residents that are reimbursed by other payment sources shall not be reimbursed by Medicaid.

(2) For purposes of determining allowable therapy costs, the department will adjust each provider's reported cost of therapy services, including any employee benefits prorated based on total salaries and wages, to account for nonfacility patients including patients with costs paid by Medicare. Such adjustments will be applied to each cost report in order to remove reported costs attributable to outpatient therapy services reimbursed for non-inpatient services. When the costs of the services are not determinable, an adjustment shall be calculated based on an allocation of reported therapy revenues and shall be subject to field audit verification.

*r.* Penalties or fines imposed by federal, state or local agencies are not allowable expenses.

*s.* Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

*t.* Laboratory costs are excluded from services covered as part of the nursing facility per diem rate unless the service is provided by facility staff using facility equipment.

*u.* Diagnostic radiology costs are excluded from services covered as part of the nursing facility per diem rate unless the service is provided by facility staff using facility equipment.

**81.5(12)** *Termination or change of owner.*

*a.* A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department with at least 60 days' prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. The new owner shall be responsible for all Medicaid debts incurred by the previous owner, including those incurred due to changes in rates, fines, penalties and quality assurance fees, from the first day of the quarter until the date the change occurs. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

(1) In the case of a partnership that is a party to an agreement to participate in the medical assistance program, the removal, addition, or substitution of an individual for a partner in the association in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership that is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing facility is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A

consolidation of two or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion, but terminates with respect to the leased portion.

*b.* No increase in the value of property is allowed in determining the Medicaid rate for the new owner with any change of ownership (including lease agreements). When filing the first cost report, the new owner shall either continue the schedule of depreciation and interest established by the previous owner, or the new owner may choose to claim the actual rate of interest expense. The results of the actual rate of interest expense shall not be higher than would be allowed under the Medicare principles of reimbursement and shall be applied to the allowed depreciable value established by the previous owner, less any down payment made by the new owner.

*c.* Other acquisition costs of the new owner such as legal fees, accounting and administrative costs, travel costs and the costs of feasibility studies attributable to the negotiation or settlement of the sale or purchase of the property shall not be allowed.

*d.* In general, the provisions of Section 1861(v)(1)(0) of the Social Security Act (as amended to August 1, 2024) regarding payment allowed under Medicare principles of reimbursement at the time of a change of ownership shall be followed, except that no return on equity or recapture of depreciation provisions shall be employed.

*e.* A new owner or lessee wishing to claim a new rate of interest expense must submit documentation that verifies the amount of down payment made, the actual rate of interest, and the number of years required for repayment with the next annual cost report. In the absence of the necessary supportive documentation, interest and other property costs for all facilities that have changed or will change ownership shall continue at the rate allowed the previous owner.

**81.5(13)** *Amended reports.* The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem summary and adjustments following a review of a financial and statistical report. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the department when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

**81.5(14)** *Payment to new facility.* The payment to a new facility will be the sum of the patient-day-weighted median cost for the direct care and non-direct care components pursuant to paragraph 81.5(16)*"c."* After the first full calendar quarter of operation, the patient-day-weighted median cost for the direct care component will be adjusted by the facility's average Medicaid case-mix index pursuant to subrule 81.5(19). A financial and statistical report shall be submitted from the beginning day of operation to the end of the fiscal year. Following the completion of the new facility's first fiscal year, rates will be established in accordance with subrule 81.5(16). Subsequent financial and statistical reports shall be submitted annually for a 12-month period ending with the facility's fiscal year.

**81.5(15)** *Payment to new owner.* An existing facility with a new owner will continue to be reimbursed using the previous owner's per diem rate adjusted quarterly for changes in the Medicaid average case-mix index. The facility shall submit a financial and statistical report for the period from beginning of actual operation under new ownership to the end of the facility's fiscal year. Subsequent financial and statistical reports shall be submitted annually for a 12-month period ending with the facility's fiscal year. The facility shall notify the department of the date the facility's fiscal year will end.

**81.5(16)** *Establishment of the direct care and non-direct care patient-day-weighted medians and modified price-based reimbursement rate.* This subrule provides for the establishment of the modified price-based reimbursement rate.

*a.* Calculation of per diem cost. For purposes of calculating the non-state government owned nursing facility Medicaid reimbursement rate and the Medicare-certified hospital-based nursing facility Medicaid reimbursement rate, the costs will be divided into two components, the direct care component and non-direct care component as defined in rule 441—81.1(249A). Each nursing facility's per diem allowable direct care and non-direct care cost shall be established. Effective July 1, 2001, and every second year thereafter, the per diem allowable cost will be determined by dividing total reported allowable costs by total inpatient days during the reporting period. On July 1, 2001; July 1, 2003; July 1, 2004; July 1, 2005; and every second year thereafter, total reported allowable costs will be adjusted using the inflation factor specified in subrule 81.5(18) from the midpoint of the cost report period to the beginning of the state fiscal year rate period.

(1) Non-state government owned nursing facilities. Effective December 1, 2009, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state government owned nursing facilities will be inpatient days as determined in subrule 81.5(7) or 85 percent of the licensed capacity of the facility, whichever is greater. For the reimbursement period beginning July 1, 2023, and ending June 30, 2025, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state government owned nursing facilities will be inpatient days as determined in subrule 81.5(7)) or 70 percent of the licensed capacity of the facility, whichever is greater. Patient days for purposes of the computation of all other expenses will be inpatient days as determined in subrule 81.5(7).

(2) Medicare-certified hospital-based nursing facilities. Patient days for purposes of the computation of all expenses shall be inpatient days as determined by subrule 81.5(7).

*b.* Cost normalization. The per diem allowable direct care costs are normalized by dividing a facility's per diem direct care costs by the facility's cost report period case-mix index as defined in rule 441—81.1(249A) and subrule 81.5(19).

*c.* Calculation of patient-day-weighted medians. For each of the rate components, a patient-day-weighted median will be established for both the non-state government owned nursing facilities and the Medicare-certified hospital-based nursing facilities, hereinafter referred to as the non-state government owned nursing facility patient-day-weighted medians and the Medicare-certified hospital-based nursing facility patient-day-weighted medians.

The per diem normalized direct care cost for each facility is arrayed from low to high to determine the direct care component patient-day-weighted median cost based on the number of patient days provided by facilities. The per diem non-direct care cost for each facility is also arrayed from low to high to determine the non-direct care component patient-day-weighted median cost based on the number of patient days provided by facilities. An array and patient-day-weighted median for each cost component is determined separately for both non-state government owned nursing facilities and the Medicare-certified hospital-based nursing facilities.

(1) For the fiscal period beginning July 1, 2001, and ending June 30, 2003, the non-state government owned nursing facility direct care and non-direct care patient-day-weighted medians and the Medicare-certified hospital-based nursing facility direct care and non-direct care patient-day-weighted medians will be calculated using the latest financial and statistical report with a fiscal year end of December 31, 2000, or earlier, inflated from the midpoint of the cost report period to July 1, 2001, using the inflation factor specified in subrule 81.5(18).

(2) Effective July 1, 2003, and each second year thereafter, the patient-day-weighted medians used in rate setting will be recalculated. The non-state government owned nursing facility direct care and non-direct care patient-day-weighted medians and the Medicare-certified hospital-based nursing facility direct care and non-direct care patient-day-weighted medians will be calculated using the latest completed cost report with a fiscal year end of the preceding December 31 or earlier. When patient-day-weighted medians are recalculated, inflation is applied from the midpoint of the cost report period to the first day of the state fiscal year rate period using the inflation factor specified in subrule 81.5(18).

(3) For the fiscal period beginning July 1, 2004, and ending June 30, 2005, the non-state-owned and Medicare-certified hospital-based nursing facility direct care and the non-direct care patient-day-

weighted medians calculated July 1, 2003, will be inflated to July 1, 2004, using the inflation factor specified in subrule 81.5(18).

*d.* Excess payment allowance.

(1) For non-state government owned nursing facilities not located in a Metropolitan Statistical Area as defined by CMS, not including Medicare-certified hospital-based nursing facilities, the excess payment allowance is calculated as follows:

1. For the direct care component, subject to the limit provided below, the excess payment allowance is equal to the percentage specified in 441—subrule 79.1(2) times the difference (if greater than zero) of the following: the direct care non-state government owned nursing facility patient-day-weighted median times the percentage specified in 441—subrule 79.1(2) times the Medicaid average case-mix index pursuant to subrule 81.5(19), minus a provider's allowable normalized per patient day direct care costs pursuant to 81.5(16)*"b"* times the Medicaid average case-mix index pursuant to subrule 81.5(19). In no case will the excess payment allowance exceed the percentage specified in 441—subrule 79.1(2) times the direct care non-state government owned nursing facility patient-day-weighted median.

2. For the non-direct care component, subject to the limit provided below, the excess payment allowance is equal to the percentage specified in 441—subrule 79.1(2) times the difference (if greater than zero) of the following: the non-direct care non-state government owned nursing facility patient-day-weighted median times the percentage specified in 441—subrule 79.1(2), minus a provider's allowable per patient day non-direct care cost pursuant to paragraph 81.5(16)*"a."* In no case will the excess payment allowance exceed the percentage specified in 441—subrule 79.1(2) times the non-direct care non-state government owned nursing facility patient-day-weighted median.

(2) For non-state government owned nursing facilities located in a Metropolitan Statistical Area as defined by CMS (not including Medicare-certified hospital-based nursing facilities), the excess payment allowance is calculated as follows:

1. For the direct care component, subject to the limit provided below, the excess payment allowance is equal to the percentage specified in 441—subrule 79.1(2) times the difference (if greater than zero) of the following: the direct care non-state government owned nursing facility patient-day-weighted median times the percentage specified in 441—subrule 79.1(2) times the wage index factor specified below times the Medicaid average case-mix index pursuant to subrule 81.5(19), minus a provider's allowable normalized per patient day direct care costs pursuant to paragraph 81.5(16)*"b"* times the Medicaid average case-mix index pursuant to subrule 81.5(19). In no case will the excess payment allowance exceed the percentage specified in 441—subrule 79.1(2) times the direct care non-state government owned nursing facility patient-day-weighted median.

The wage index factor will be determined annually by calculating the average difference between the Iowa hospital-based rural wage index and all Iowa hospital-based Metropolitan Statistical Area wage indices as published by CMS each July. The geographic wage index adjustment will not exceed $8 per patient day.

A nursing facility may request an exception to application of the geographic wage index based upon a reasonable demonstration of wages, locations, and total cost. The nursing facility shall request the exception within 30 days of receipt of notification to the nursing facility of the new reimbursement rate using the department's procedures for requesting exceptions at rule 441—1.8(17A,217).

2. For the non-direct care component, subject to the limit provided below, the excess payment allowance is equal to the percentage specified in 441—subrule 79.1(2) times the difference (if greater than zero) of the following: the non-direct care non-state government owned nursing facility patient-day-weighted median times the percentage specified in 441—subrule 79.1(2), minus a provider's allowable per patient day non-direct care cost pursuant to paragraph 81.5(16)*"a."* In no case will the excess payment allowance exceed the percentage specified in 441—subrule 79.1(2) times the non-direct care non-state government owned nursing facility patient-day-weighted median.

(3) For Medicare-certified hospital-based nursing facilities, the excess payment allowance is calculated as follows:

1. For the direct care component, subject to the limit provided below, the excess payment allowance is equal to the percentage specified in 441—subrule 79.1(2) times the difference (if greater than zero) of the following: the direct care Medicare-certified hospital-based nursing facility patient-day-weighted median times the percentage specified in 441—subrule 79.1(2) times the Medicaid average case-mix index pursuant to subrule 81.5(19), minus a provider's normalized allowable per patient day direct care costs pursuant to paragraph 81.5(16)*"b"* times the Medicaid average case-mix index pursuant to subrule 81.5(19). In no case will the excess payment allowance exceed the percentage specified in 441—subrule 79.1(2) times the direct care Medicare-certified hospital-based nursing facility patient-day-weighted median.

2. For the non-direct care component, subject to the limit provided below, the excess payment allowance is equal to the percentage specified in 441—subrule 79.1(2) times the difference (if greater than zero) of the following: the non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median times the percentage specified in 441—subrule 79.1(2), minus a provider's allowable per patient day non-direct care cost pursuant to paragraph 81.5(16)*"a."* In no case will the excess payment allowance exceed the percentage specified in 441—subrule 79.1(2) times the non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median.

*e.* Reimbursement rate. The Medicaid reimbursement rate is based on allowable costs, updated July 1, 2001, and every second year thereafter, as specified in subparagraphs (1) and (2) below, plus a potential excess payment allowance determined by the methodology in paragraph *"d,"* not to exceed the rate component limits determined by the methodology in paragraph *"f."*

(1) For non-state government owned nursing facilities and Medicare-certified hospital-based nursing facilities, direct care and non-direct care rate components are calculated as follows:

1. The direct care component is equal to the provider's normalized allowable per patient day costs times the Medicaid average case-mix index pursuant to subrule 81.5(19), plus the allowed excess payment allowance as determined by the methodology in paragraph *"d."*

2. The non-direct care component is equal to the provider's allowable per patient day costs, plus the allowed excess payment allowance as determined by the methodology in paragraph *"d"* and the allowable capital cost per diem instant relief add-on as determined by the methodology in paragraph *"h."*

(2) The reimbursement rate for state-operated nursing facilities and special population nursing facilities will be the facility's average allowable per diem costs, adjusted for inflation pursuant to subrule 81.5(18), based on the most current financial and statistical report.

*f.* Notwithstanding paragraphs *"d"* and *"e,"* in no instance will a rate component exceed the rate component limit defined as follows:

(1) For non-state government owned nursing facilities not located in a Metropolitan Statistical Area (not including Medicare-certified hospital-based nursing facilities), the direct care and non-direct care rate component limits are calculated as follows:

1. The direct care rate component limit is the direct care non-state government owned nursing facility patient-day-weighted median times the percentage of the median specified in 441—subrule 79.1(2) times the Medicaid average case-mix index pursuant to subrule 81.5(19).

2. The non-direct care rate component limit is the non-direct care non-state government owned nursing facility patient-day-weighted median multiplied by the percentage of the median specified in 441—subrule 79.1(2) or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph *"h."*

(2) For non-state government owned nursing facilities located in a Metropolitan Statistical Area (not including Medicare-certified hospital-based nursing facilities), the direct care and non-direct care rate component limits are calculated as follows:

1. The direct care rate component limit is the direct care non-state government owned nursing facility patient-day-weighted median times the percentage of the median specified in 441—subrule 79.1(2) times the wage factor specified in paragraph *"d"* times the Medicaid average case-mix index pursuant to subrule 81.5(19).

2. The non-direct care rate component limit is the non-direct care non-state government owned nursing facility patient-day-weighted median multiplied by the percentage of the median specified in 441—subrule 79.1(2) or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph *"h."*

(3) For Medicare-certified hospital-based nursing facilities, the direct care and non-direct care rate component limits are calculated as follows:

1. The direct care rate component limit is the direct care Medicare-certified hospital-based nursing facility patient-day-weighted median times the percentage of the median specified in 441—subrule 79.1(2) times the Medicaid average case-mix index pursuant to subrule 81.5(19).

2. The non-direct care rate component limit is the non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median multiplied by the percentage of the median specified in 441—subrule 79.1(2) or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph *"h."*

(4) For special population nursing facilities enrolled on or after June 1, 1993, the upper limit on their rate is equal to the sum of the following:

1. The direct care Medicare-certified hospital-based nursing facility patient-day-weighted median times the percentage of the median specified in 441—subrule 79.1(2).

2. The non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median multiplied by the percentage of the median specified in 441—subrule 79.1(2) or 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph *"h."*

*g.* Pay-for-performance program. Additional reimbursement based on the nursing facility pay-for-performance program is available for non-state government owned nursing facilities as provided in this paragraph in state fiscal years for which funding is appropriated by the legislature. The pay-for-performance program provides additional reimbursement based upon a nursing facility's achievement of multiple favorable outcomes as determined by established benchmarks. The reimbursement is issued as an add-on payment after the end of any state fiscal year (which is referred to in this paragraph as the "payment period") for which there is funding appropriated by the legislature.

(1) Scope. Additional reimbursement for the nursing facility pay-for-performance program is not available to Medicare-certified hospital-based nursing facilities, state-operated nursing facilities, or special population nursing facilities. Therefore, data from these facility types will not be used when determining eligibility for or the amount of additional reimbursement based on the nursing facility pay-for-performance program.

(2) Benchmarks. The pay-for-performance benchmarks include characteristics in four domains: quality of life, quality of care, access, and efficiency. These characteristics are objective and measurable and when considered in combination with each other are deemed to have a correlation to a resident's quality of life and care. While any single measure does not ensure the delivery of quality care, a nursing facility's achievement of multiple measures suggests that quality is an essential element in the facility's delivery of resident care.

(3) Definition of direct care. For the purposes of the nursing facility pay-for-performance program, "direct care staff" is defined to include registered nurses (RNs), licensed practical nurses (LPNs), certified nurse assistants (CNAs), rehabilitation nursing, and other contracted nursing services. "Direct care staff" does not include the director of nursing (DON) or minimum data set (MDS) coordinator.

(4) Qualifying for additional reimbursement. The department will annually award points based on the measures achieved in each of the four domains, as described in subparagraphs (5) through (8). The maximum available points are 100. To qualify for additional Medicaid reimbursement under the nursing facility pay-for-performance program, a facility must achieve a minimum score of 51 points. The relationship of the score achieved to additional payments is described in subparagraph (10). Payments are subject to reduction or forfeiture as described in subparagraphs (12) and (13).

(5) Domain 1: Quality of life.

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| Subcategory: Person-Directed Care | | | |

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| Enhanced Dining A:<br>The facility makes available menu options and alternative selections for all meals. | Payment period | 1 point | Self-certification |
| Enhanced Dining B:<br>The facility provides residents with access to food and beverages 24 hours per day and 7 days per week and empowers staff to honor resident choices. | Payment period | 1 point | Self-certification |
| Enhanced Dining C:<br>The facility offers at least one meal per day for an extended period to give residents the choice of what time to eat. | Payment period | 2 points | Self-certification |
| Resident Activities A:<br>The facility employs a certified activity coordinator for at least 38 minutes per week per licensed bed. | Payment period | 1 point | Self-certification |
| Resident Activities B:<br>The facility either has activity staff that exceed the required minimum set by law or has direct care staff who are trained to plan and conduct activities and carry out both planned and spontaneous activities on a daily basis. | Payment period | 1 point | Self-certification |
| Resident Activities C:<br>The facility's residents report that activities meet their social, emotional and spiritual needs. | July through March of payment period | 2 points | Self-certification |
| Resident Choice A:<br>The facility allows residents to set their own schedules, including what time to get up and what time to go to bed. | Payment period | 1 point | Self-certification |
| Resident Choice B:<br>The facility allows residents to have a choice of whether to take a bath or shower and on which days and at what time the bath or shower will be taken. | Payment period | 1 point | Self-certification |
| Consistent Staffing:<br>The facility has all direct care staff members caring for the same residents at least 70% of their shifts. | Payment period | 3 points | Self-certification |
| National Accreditation:<br>The facility has CARF or another nationally recognized accreditation for the provision of person-directed care. | Payment period | 13 points<br>NOTE: A facility that receives points for this measure does not receive points for any other measures in this subcategory. | Self-certification |
| Subcategory: Resident Satisfaction | | | |
| Resident/Family Satisfaction Survey:<br>The facility administers an anonymous resident/family satisfaction survey annually. The survey tool must be developed, recognized, and standardized by an entity external to the facility. Results must be tabulated by an entity external to the facility.<br><br>To qualify for the measure, the facility must have a response rate of at least 35%. A summary report of the aggregate results and point scale must be made publicly available and be posted prominently along | Survey completed between October 1 and March 31 of the payment period | 5 points | Nursing Facility Opinion Survey Transmittal, submitted by independent entity that compiled results |

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| with the facility's state survey results until the next satisfaction survey is completed. | | | |
| Long-Term Care Ombudsman:<br>The facility has resolved 70% or more of complaints received and investigated by the local or state ombudsman. | Calendar year ending December 31 of the payment period | 5 points if resolution 70% to 74%<br><br>7 points if resolution 75% or greater | LTC ombudsman's list of facilities meeting the standard |

(6) Domain 2: Quality of care.

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| Subcategory: Survey | | | |
| Deficiency-Free Survey:<br>The facility is deficiency-free on the latest annual state and federal licensing and certification survey and any subsequent surveys, complaint investigations, or revisit investigations.<br><br>If a facility's only scope and severity deficiencies are an A level pursuant to 42 CFR Part 483, Subparts B and C, as amended to August 1, 2024, the facility is deemed to have a deficiency-free survey for purposes of this measure. Surveys are considered complete when all appeal rights have been exhausted. | Calendar year ending December 31 of the payment period, including any subsequent surveys, revisit, or complaint investigations | 10 points | DIAL list of facilities meeting the standard |
| Regulatory Compliance with Survey:<br>No on-site revisit to the facility is required for recertification surveys or for any substantiated complaint investigations during the measurement period. | Calendar year ending December 31 of the payment period, including any subsequent surveys, revisits, or complaint investigations | 5 points. A facility that receives points for a deficiency-free survey does not receive points for this measure. | DIAL list of facilities meeting the standard |
| Subcategory: Staffing | | | |
| Nursing Hours Provided:<br>The facility's per-resident-day nursing hours are at or above one-half standard deviation above the mean of per-resident-day nursing hours for all facilities.<br><br>Nursing hours include those of RNs, LPNs, CNAs, rehabilitation nurses, and other contracted nursing services. Nursing hours will be normalized to remove variations in staff hours associated with different levels of resident case mix. | Facility fiscal year ending on or before December 31 of the payment period | 5 points if case-mix adjusted nursing hours are above mean plus one-half standard deviation<br><br>10 points if case-mix adjusted nursing hours are greater than mean plus one standard deviation | Financial and Statistical Report, as analyzed by the department. The facility cost report period case-mix index shall be used to normalize nursing hours. |
| Employee Turnover:<br>The facility has overall employee turnover of 50% or less and CNA turnover of 55% or less. | Facility fiscal year ending on or before December 31 of the payment period | 5 points if overall turnover is between 40% and 50% and CNA turnover is between 45% and 55%<br><br>10 points if overall turnover is less than or equal to 40% and CNA turnover is less than or equal to 45% | Financial and Statistical Report, as analyzed by the department |
| Staff Education, Training and Development:<br>The facility provides staff education, training, and development at 25% above the basic requirements for each position that requires continuing education. The | Calendar year ending December 31 of the payment period | 5 points | Self-certification |

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| number of hours for these programs must apply to at least 75% of all staff of the facility, based upon administrator or officer certification. | | | |
| Staff Satisfaction Survey:<br>The facility annually administers an anonymous staff satisfaction survey. The survey tool must be developed, recognized, and standardized by an entity external to the facility and must identify worker job classification. Results must be tabulated by an entity external to the facility.<br>To qualify for this measure, the facility must have a response rate of at least 35%. A summary report of the aggregate results and point scale must be made publicly available and be posted prominently along with the facility's state survey results until the next satisfaction survey is completed. | Survey completed between October 1 and March 31 of the payment period | 5 points | Nursing Facility Opinion Survey Transmittal, submitted by independent entity that compiled results |
| Subcategory: Nationally Reported Quality Measures | | | |
| High-Risk Pressure Ulcer:<br>The facility has occurrences of high-risk pressure ulcers at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures. | 12-month period ending September 30 of the payment period | 3 points if one-half to one standard deviation below the mean percentage of occurrences<br>5 points if one standard deviation or more below the mean percentage of occurrences | Department report based on MDS data as reported by CMS |
| Physical Restraints:<br>The facility has a physical restraint rate of 0% based on MDS data as applied to the nationally reported quality measures. | 12-month period ending September 30 of the payment period | 5 points | Department report based on MDS data as reported by CMS |
| Chronic Care Pain:<br>The facility has occurrences of chronic care pain at rates one-half standard deviation or more below the mean rate of occurrences for all facilities based on MDS data as applied to the nationally reported quality measures. | 12-month period ending September 30 of the payment period | 3 points if one-half to one standard deviation below the mean rate of occurrences<br>5 points if one standard deviation or more below the mean rate of occurrences | Department report based on MDS data as reported by CMS |
| High Achievement of Nationally Reported Quality Measures:<br>The facility received at least 9 points from a combination of the measures listed in this subcategory. | 12-month period ending September 30 of the payment period | 2 points if the facility receives 9 to 12 points in the subcategory of nationally reported quality measures<br>4 points if the facility receives 13 to 15 points in this subcategory | Department report based on MDS data as reported by CMS |

(7) Domain 3: Access.

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| Special Licensure Classification: | Status on December 31 of the payment period | 4 points | DIAL list of facilities meeting the standard |

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| The facility has a unit licensed for the care of residents with chronic confusion or a dementing illness (CCDI unit). | | | |
| High Medicaid Utilization:<br>The facility has Medicaid utilization at or above the statewide median plus 10%. Medicaid utilization is determined by dividing total nursing facility Medicaid days by total nursing facility patient days. | Facility fiscal year ending on or before December 31 of the payment period | 3 points if Medicaid utilization is more than the median plus 10%<br>4 points if Medicaid utilization is more than the median plus 20% | Financial and Statistical Report, as analyzed by the department |

(8) Domain 4: Efficiency.

| Standard | Measurement Period | Value | Source |
|---|---|---|---|
| High Occupancy Rate:<br>The facility has an occupancy rate at or above 95%. "Occupancy rate" is defined as the percentage derived when dividing total patient days based on census logs by total bed days available based on the number of authorized licensed beds within the facility. | Facility fiscal year ending on or before December 31 of the payment period | 4 points | Financial and Statistical Report, as analyzed by the department |
| Low Administrative Costs:<br>The facility's percentage of administrative costs to total allowable costs is one-half standard deviation or more below the mean percentage of administrative costs for all Iowa facilities. | Facility fiscal year ending on or before December 31 of the payment period | 3 points if administrative costs percentage is less than the mean less one-half standard deviation<br>4 points if administrative costs percentage is less than the mean less one standard deviation | Financial and Statistical Report, as analyzed by the department |

(9) Source of measurements. Source reports are due to the department by May 1 of each year. For those measures whose source is self-certification, the data will be drawn from a report submitted by the facility to the department. The independent party that collects and compiles the results of the resident/family survey shall communicate the results to the department on the Nursing Facility Opinion Survey Transmittal. The department will request required source reports from the long-term care ombudsman and the department of inspections, appeals, and licensing.

(10) Calculation of potential add-on payment. The number of points awarded will be determined annually, for each state fiscal year for which funding is appropriated by the legislature. A determination is made on whether a facility qualifies for an add-on payment at the end of the payment period. Based upon the number of points awarded, a retroactive add-on payment is made effective beginning the first day of the payment period as follows, contingent upon legislative funding for the state fiscal year, and subject to subparagraph (11):

| Score | Amount of Add-on Payment |
|---|---|
| 0-50 points | No additional reimbursement |
| 51-60 points | 1 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |
| 61-70 points | 2 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |

| | |
|---|---|
| 71-80 points | 3 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |
| 81-90 points | 4 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |
| 91-100 points | 5 percent of the direct care plus nondirect care cost component patient-day-weighted medians, subject to reduction as provided in subparagraph (13) |

(11) Monitoring for reduction or forfeiture of reimbursement. The department will request the department of inspections, appeals, and licensing to furnish by September 1, December 1, March 1, and August 1 of each year a list of nursing facilities subject to a reduction or forfeiture of the additional reimbursement pursuant to the criteria in subparagraph (12) or (13).

(12) Forfeiture of additional reimbursement. A nursing facility shall not be eligible for any additional reimbursement under this program if during the payment period the nursing facility is cited for a deficiency resulting in actual harm or immediate jeopardy pursuant to the federal certification guidelines at a scope and severity level of H or higher, regardless of the amount of fines assessed.

(13) Reduction of additional reimbursement. The additional reimbursement for the nursing facility pay-for-performance program calculated according to subparagraph (10) shall be subject to reduction based on survey compliance as follows:

1. The add-on payment shall be suspended for any month in which the nursing facility has received denial of payment for new admission status that was enforced by CMS.

2. A facility's add-on payment shall be reduced by 25 percent for each citation received during the year for a deficiency resulting in actual harm at a scope and severity level of G pursuant to the federal certification guidelines.

3. If the facility fails to cure a cited level G deficiency within the time allowed by the department of inspections, appeals, and licensing, the add-on payment shall be forfeited, and the facility shall not receive any nursing facility pay-for-performance program payment for the payment period.

(14) Application of additional payments. The additional reimbursement for the nursing facility pay-for-performance program will be paid to qualifying facilities at the end of the state fiscal year. At the end of each state fiscal year, the department will:

1. Retroactively adjust each qualifying facility's quarterly rates from the first day of the state fiscal year to include the amount of additional reimbursement for the nursing facility pay-for-performance program calculated according to paragraph 81.5(16)*"g"*; and

2. Reprice all facility claims with dates of service during the period in which an additional reimbursement for the nursing facility pay-for-performance program is effective to reflect the adjusted reimbursement rate.

(15) Use of additional payments. As a condition of eligibility for such payments, any additional payments received by a nursing facility for the pay-for-performance program must be:

1. Used to support direct care staff through increased wages, enhanced benefits, and expanded training opportunities; and

2. Used in a manner that improves and enhances quality of care for residents.

(16) Monitoring facility compliance on the use of payments. Each nursing facility shall complete the Nursing Facility Medicaid Enhanced Payment Report to report the use of any additional payments received for the nursing facility pay-for-performance program. The report is due to the department each year by May 1. Failure to submit the report by the due date shall result in disqualification for add-on payment for the next pay-for-performance payment period.

(17) Reporting results of the program. The department will publish the results of the nursing facility pay-for-performance program annually.

*h.* Capital cost per diem instant relief add-on and enhanced non-direct care rate component limit. Contingent upon approval from the CMS and to the extent that funding is appropriated by the Iowa

general assembly, additional reimbursement is available for nursing facilities that have completed a complete replacement, new construction, or major renovations. Additional reimbursement under this paragraph is available for services rendered beginning on October 1, 2007, or beginning on the effective date of CMS approval if CMS approval is effective on a later date.

(1) Types of additional reimbursement. Two types of additional reimbursement are available:

1. The capital cost per diem instant relief add-on is an amount per patient day to be added to the non-direct care component of the reimbursement rate and is subject to the non-direct care rate component limit as determined in paragraph *"f."*

2. The enhanced non-direct care rate component limit provides an increase in the percentage of the median that is applied when calculating the non-direct care rate component limit as defined in paragraph *"f."* The percentage of the median is increased to 120 percent when the enhanced non-direct care rate component limit is granted.

(2) Eligible projects. To qualify for either the capital cost per diem instant relief add-on or the enhanced non-direct care rate component limit, a facility must have undertaken a complete replacement, new construction, or major renovations for the purpose of:

1. Rectification of a violation of Life Safety Code requirements; or

2. Development of home- and community-based waiver program services; or

3. Improving infection control by replacing or enhancing an HVAC system, as defined in Iowa Code section 105.2.

(3) Additional requirements for all requests. To qualify for additional reimbursement, a facility with an eligible project must also meet the following requirements:

1. The facility has Medicaid utilization at or above 40 percent. Medicaid patient day utilization for this purpose is calculated as total nursing facility Medicaid patient days divided by total patient days as reported on the facility's most current financial and statistical report. Medicaid hospice patient days will be counted toward the total nursing facility Medicaid patient days.

2. The facility meets the accountability measure criteria set forth in paragraph *"g,"* subparagraph (1), deficiency-free survey, or subparagraph (2), regulatory compliance with survey, based on the most current information available when the request for additional reimbursement is submitted.

3. The facility has documented active participation in a quality of care program.

4. The facility has documented plans to facilitate person-directed care, dementia units, or specialty post-acute services.

(4) Additional requirements for waiver services. To qualify for additional reimbursement for the development of home- and community-based waiver services, the facility shall also meet the following requirements:

1. Services shall be provided in an underserved area, which may include a rural area.

2. Services shall be provided on the direct site of the facility but not as a nursing facility service.

3. Services shall meet all federal and state requirements for Medicaid reimbursement.

4. Services shall include one or more of the following: adult day care as defined by 441—subrule 78.37(1), consumer-directed attendant care as defined by 441—subrule 78.37(15) provided in an assisted living setting, day habilitation as defined by 441—subrule 78.41(14), home-delivered meals as defined by 441—subrule 78.37(8), emergency response system as defined by 441—subrule 78.37(2), and respite care as defined by 441—subrule 78.37(6).

(5) Submission of request. A facility shall submit a written request for the capital cost per diem instant relief add-on, the enhanced non-direct care rate component limit, or a preliminary evaluation of whether a project may qualify for additional reimbursement to the department. A qualifying facility may request one or both types of additional reimbursement.

1. A request for the capital cost per diem instant relief add-on may be submitted no earlier than 30 days before the complete replacement, new construction, or major renovations are placed in service.

2. A request for the enhanced non-direct care rate component limit may be submitted with a request for a capital cost per diem instant relief add-on or within 60 days after the release of a rate determination letter reflecting a change in the non-direct care rate component limit.

3. A request for a preliminary evaluation may be submitted when a facility is preparing a feasibility projection for a construction or renovation project. A preliminary evaluation does not guarantee approval of the capital cost per diem instant relief add-on or enhanced non-direct care rate component limit upon submission of a formal request.

(6) Content of request for add-on. A facility's request for the capital cost per diem instant relief add-on shall include:

1. A description of the project for which the add-on is requested, including a list of goals for the project and a time line of the project that spans the life of the project.

2. Documentation that the facility meets the qualifications in subparagraphs (2) and (3) and, if applicable, in subparagraph (4).

3. The period during which the add-on is requested (no more than two years).

4. Whether the facility is also requesting the enhanced non-direct care rate component limit. (See subparagraph (7) for requirements.)

5. A copy of the facility's most current depreciation schedule that clearly identifies the cost of the project for which the add-on is requested if assets placed in service by that project are included on the schedule. Any removal of assets shall be clearly identifiable either on the depreciation schedule or on a separate detailed schedule, and that schedule shall include the amount of depreciation expense for removed assets that is included in the current reimbursement rate.

6. If the cost of the project is not reported on the submitted depreciation schedule, a detailed schedule of the assets to be placed in service by the project, including:

- The estimated date the assets will be placed into service;
- The total estimated depreciable value of the assets;
- The estimated useful life of the assets based upon existing Medicaid and Medicare provisions; and
- The estimated annual depreciation expense of the assets using the straight-line method in accordance with generally accepted accounting principles.

7. The facility's estimated annual licensed bed capacity and estimated annual total patient days. If this information is not provided, estimated annual total patient days will be determined using the most current submitted financial and statistical report.

8. If interest expense has been or will be incurred and is related to the project for which the add-on is requested, a copy of the general terms of the debt service and the estimated annual amount of interest expense shall be submitted.

9. If any debt service has been retired, a copy of the general terms of the debt service and the amount of interest expense for debt service retired that is included in the current reimbursement rate.

(7) Content of request for enhanced limit. A facility's request for the enhanced non-direct care rate component limit shall include:

1. A description of the project for which the enhanced non-direct care rate component limit is requested, including a list of goals for the project and a time line of the project that spans the life of the project.

2. Documentation that the facility meets the qualifications in subparagraphs (2) and (3) and, if applicable, in subparagraph (4).

3. Identification of any period in which the capital cost per diem instant relief add-on was previously granted and the number of times the capital cost per diem instant relief add-on and the enhanced non-direct care rate component limit have previously been granted.

(8) Content of request for preliminary evaluation. A facility's request for a preliminary evaluation of a proposed project shall include:

1. The estimated completion date of the project.

2. The estimated date when a formal request for an add-on or enhanced limit will be submitted.

3. For a preliminary evaluation for a capital cost per diem instant relief add-on, all information required in subparagraph (6).

4. For a preliminary evaluation for the enhanced non-direct care rate component limit, all information required in subparagraph (7).

(9) Calculation of capital cost per diem instant relief add-on. The capital cost per diem instant relief add-on is calculated by dividing the annual estimated property costs for the complete replacement, new construction, or major renovation project for which the add-on is granted by the facility's estimated annual total patient days.

1. Effective December 1, 2009, total patient days will be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days will be the greater of the estimated annual total patient days or 85 percent of the facility's estimated licensed capacity. For the period beginning July 1, 2023, and ending June 30, 2025, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state government-owned facilities will be inpatient days or the minimum occupancy of 70 percent of the licensed capacity of the facility, whichever is greater.

2. The annual estimated property costs for the project are calculated as the estimated annual depreciation expense for the cost of the project, plus estimated annual interest expense for the cost of the project, less the amount of depreciation expense for assets removed that is included in the current reimbursement rate and the amount of interest expense for debt service retired that is included in the current reimbursement rate.

3. Estimated amounts and actual amounts will be reconciled as described in subparagraph (12).

(10) Effective date of capital cost per diem instant relief add-on. Subject to available funding and previously approved requests for capital cost per diem instant relief add-ons and enhanced non-direct care rate component limits, a capital cost per diem instant relief add-on will be effective the first day of the calendar quarter following the placement in service of the assets associated with the add-on and receipt of all required information. The capital cost per diem instant relief add-on will be added to the non-direct care component of the reimbursement rate, not to exceed the non-direct care rate component limit as determined in paragraph *"f."*

(11) Term of capital cost per diem instant relief add-on. The period for which a facility may be granted the capital cost per diem instant relief add-on shall not exceed two years. The capital cost per diem instant relief add-on shall terminate at the time of the subsequent biennial rebasing. If the facility's submitted annual financial and statistical report used in the subsequent biennial rebasing does not include 12 months of property costs for the assets with which the capital cost per diem instant relief add-on is associated, including interest expense, if applicable, the facility may submit a new request for the capital cost per diem instant relief add-on.

(12) Reconciliation of capital cost per diem instant relief add-on. During the period in which the capital cost per diem instant relief add-on is granted, the department will recalculate the amount of the add-on based on actual allowable costs and patient days reported on the facility's submitted annual financial and statistical report. A separate reconciliation will be performed for each cost report period in which the capital cost per diem instant relief add-on was paid. The facility shall submit with the annual financial and statistical report a separate schedule reporting total patient days per calendar quarter and a current depreciation schedule identifying the assets related to the add-on.

1. For purposes of recalculating the capital cost per diem instant relief add-on, total patient days will be based on the greater of the number of actual patient days during the period in which the add-on was paid or 85 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid. For the period beginning July 1, 2023, and ending June 30, 2025, patient days for purposes of the computation of administrative, environmental, and property expenses for non-state government owned nursing facilities will be inpatient days or the minimum occupancy of 70 percent of the licensed capacity of the facility, whichever is greater.

2. The recalculated capital cost per diem instant relief add-on will be added to the non-direct care component of the reimbursement rate for the relevant period, not to exceed the non-direct care rate component limit as determined in paragraph *"f."* The facility's quarterly rates for the relevant period will be retroactively adjusted to reflect the recalculated non-direct care component of the reimbursement rate. All claims with dates of service during the period the capital cost per diem instant relief add-on is paid will be repriced to reflect the recalculated capital cost per diem instant relief add-on.

(13) Effective date of enhanced non-direct care rate component limit. Subject to available funding and previously approved requests for capital cost per diem instant relief add-ons and enhanced non-direct care rate component limits, an enhanced non-direct care rate component limit will be effective:

1. With a capital cost per diem instant relief add-on (if requested at the same time); or

2. Retroactive to the first day of the quarter in which the revised non-direct care rate component limit amount is effective. All claims with dates of service from the effective date will be repriced.

(14) Term of enhanced non-direct care rate component limit. The period for which a facility may be granted an enhanced non-direct care rate component limit without reapplication shall not exceed two years. The total period for which a facility may be granted enhanced non-direct care rate component limits shall not exceed ten years. If the amount of the non-direct care rate component limit is revised during the period for which a facility is granted the enhanced limit, the approval will be terminated effective the first day of the quarter in which the revised non-direct care rate component limit is effective. The facility may submit a new request for the enhanced non-direct care rate component limit.

(15) Ongoing conditions. Any capital cost per diem instant relief add-on or enhanced non-direct care rate component limit granted by the department is temporary. Additional reimbursement shall be immediately terminated if:

1. The facility does not continue to meet all of the initial qualifications for additional reimbursement; or

2. The facility does not make reasonable progress on any plans required for initial qualification; or

3. The facility's medical assistance program or Medicare certification is revoked. A facility whose certification is revoked is not eligible to submit a subsequent request for a capital cost per diem instant relief add-on or the enhanced non-direct care rate component limit.

(16) Change of ownership. Following a change in nursing facility ownership, any capital cost per diem instant relief add-on or enhanced non-direct care rate component limit that was granted before the change in ownership will continue under the new owner. Future reimbursement rates will be determined pursuant to subrules 81.5(15) and 81.5(16).

*i.* Quality incentive payment program (QIPP). The QIPP add-on rate will be made to a qualified non-state government-owned nursing facility (NSGO nursing facility) to promote, maintain, and improve resident quality of care and health outcomes.

(1) An NSGO nursing facility qualifies for participation in the QIPP if all the following conditions are met:

1. The NSGO nursing facility has executed a participation agreement with the department.

2. The NSGO nursing facility has provided proof that the entity holds the NSGO nursing facility's license and has complete operational responsibility for the NSGO nursing facility.

3. The NSGO nursing facility has filed a certification of eligibility application for the QIPP add-on rate program with the department and has received approval from the department for participation in the program.

4. The NSGO nursing facility is in compliance with all care criteria requirements.

5. The non-state government entity (NSGE) has executed a nursing facility provider contract with an NSGO nursing facility.

6. The NSGE has provided and identified the source of state share dollars for the intergovernmental transfer (IGT).

7. The NSGO nursing facility has provided proof of ownership, if applicable, as the licensed operator of the NSGO nursing facility.

8. The NSGO nursing facility has provided to the department an executed management agreement between the NSGE and the NSGO nursing facility manager if applicable.

(2) If at any time a provider is determined not eligible due to not meeting survey standards, the provider will be disqualified for the remainder of the year.

(3) An NSGO nursing facility will qualify for participation in the QIPP if all the following quality measures are met:

| Quality Measures | Metrics | Tracking/Scoring | Data Resource |
|---|---|---|---|

| | | | |
|---|---|---|---|
| **Staffing** | **Metric 1:** Nursing facility maintains an additional four or more hours of registered nurse (RN) coverage per day beyond the CMS minimum standard (8 hrs/day). Does not include managerial hours.<br>**Metric 2:** Nursing facility's per-resident day certified nursing assistants (CNAs), rehabilitation aid, and other contracted aid services are at or above one-half standard deviation above the statewide mean of per-resident-day CNA hours. CNA hours include those of CNAs, rehabilitation aid, and other contracted aide services. CNA hours will be normalized to remove variations in staff hours associated with different levels of resident case mix.<br>**Metric 3:** Nursing facility's per-resident day total nursing hours are at or above one-half standard deviation above the statewide mean of per-resident-day total nursing hours. Nursing hours include those of RNs and licensed practical nurses (LPNs) including restorative nurses. Nursing hours will be normalized to remove variations in staff hours associated with different levels of resident case mix. | Staffing metrics 1, 2, and 3 must be met for facility to be eligible for per diem rate add-on payment. | Payroll-based journal (PBJ) or cost reports |
| **Infection Control** | **Metric 1:** Nursing facility has an infection control program that includes antibiotic stewardship. The program incorporates policies and training as well as monitoring, documenting, and providing staff with feedback.<br>**Metric 2:** Percentage of residents with urinary tract infections (UTIs) at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on minimum data set (MDS) data as applied to the nationally reported quality measures.<br>**Metric 3:** Percentage of residents with up-to-date pneumonia vaccine measured against a fixed benchmark that is set as the most recently published national average for the related MDS quality metric. | Infection control metrics 1, 2, and 3 must be met for facility to be eligible for per diem rate add-on payment. | Nursing facility will be required to provide its infection control policy and procedure. In addition, facilities will need to provide information regarding training, monitoring, documentation and monitoring of required elements to meet this metric on a periodic basis<br>CASPER Report<br>MDS Assessment<br>Care Compare |
| **Quality Measures** | **Metric 1:** Percentage of high-risk residents with pressure ulcers (for longer-term stay residents) are at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures.<br>**Metric 2:** Percentage of residents who had a fall with major injury (for longer-term stay residents) are at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures.<br>**Metric 3:** Percentage of residents who received antipsychotic medications are at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures.<br>**Metric 4:** Percentage of residents who required increased activities of daily living (ADL) assistance (for longer-term stay residents) are at rates one-half standard deviation or more below the mean percentage of occurrences for all | Quality measures metrics 1, 2, 3, and 4 must be met for the facility to be eligible for per diem rate add-on payment. | CASPER Report<br>MDS Assessment<br>Care Compare |

| | | | |
|---|---|---|---|
| | facilities, based on MDS data as applied to the nationally reported quality measures. | | |
| **State Survey Results** | Number of deficiencies is at or below the state of Iowa average number of nursing facility deficiencies AND the facility has no deficiencies with a scope of F, H, I, J, K, or L. | State survey results must be met for the facility to be eligible for per diem rate add-on payment. | Department of inspections, appeals, and licensing (DIAL) surveys |
| **Quality Assurance Performance Improvement (QAPI) Report** | Nursing facility must submit QAPI reports on quarterly basis. | QAPI results must be submitted for the facility to be eligible for per diem rate add-on payment. | QAPI reports |

(4) A provider must submit the Intent to Participate Agreement on or before September 30 each year and include all necessary documentation related to the quality measures.

1. Upon receipt of the participation agreement, the department will complete a determination of eligibility based on the care criteria defined above.

2. Providers will be notified of their eligibility annually within 60 days of the agreement due date.

(5) The nursing facility QIPP add-on rate provided to a participating NSGO nursing facility under the QIPP will not exceed Medicare payment principles pursuant to 42 CFR 447.272 (as amended to August 1, 2024) and will be calculated pursuant to 42 CFR 438.6 (as amended to August 1, 2024). The QIPP add-on rate will be calculated and paid as follows:

1. The methodology utilized to calculate the upper payment limit will be based on the data available during the calculation period.

2. The eligible amount used in determining the QIPP add-on rate will be the difference between the state Medicaid payment and the Medicare upper payment limit as determined, on an annual basis, using all Medicaid claims, including fee-for-service (FFS) and Medicaid managed care claims.

3. The difference calculated under numbered paragraph "2" will be divided by total patient days pursuant to subrule 81.5(7).

4. The QIPP add-on rate will be paid prospectively.

(6) A participating NSGO nursing facility shall notify the department of any change of ownership that may affect the participating NSGO nursing facility's continued eligibility for the QIPP a minimum of 30 days prior to such change.

1. If a participating NSGO nursing facility changes ownership to a privately owned entity, on or after the first day of the QIPP add-on rate calculation period, the privately owned provider is no longer eligible for the QIPP add-on rate.

2. A participating facility must meet the CMS and department requirements to be classified as an NSGO nursing facility. All changes of ownership must be a fair market value transaction.

3. If it is determined that a provider is not a qualified NSGO nursing facility per CMS and the department, the provider shall repay all QIPP add-on payments to the department.

(7) Providers that do not meet eligibility requirements above will be notified of the metrics that were not met.

(8) A participating NSGO nursing facility shall secure allowable intergovernmental transfer funds from a participating NSGE to provide the state share amount. The process for the intergovernmental transfer shall comply with the following:

1. The department, or the department's designee, will notify the participating NSGO nursing facility of the state share amount to be transferred in the form of an intergovernmental transfer for purposes of seeking federal financial participation for the QIPP add-on rate, within 15 business days after the end of each month. The participating NSGO shall have until the end of the month to remit payment of the state share amount in the form of an intergovernmental transfer to the department or the department's designee.

2. If there is any outstanding intergovernmental transfer amount at the end of the payment period, the provider will not be able to participate in the QIPP the following year.

**81.5(17)** *Cost report documentation.* All nursing facilities, except the Iowa Veterans Home, shall submit an annual cost report based on the closing date of the facility's fiscal year that incorporates documentation as set forth below. The Iowa Veterans Home shall submit semiannual cost reports based on the closing date of the facility's fiscal year and the midpoint of the facility's fiscal year that

incorporate documentation as set forth below. The documentation incorporated in all cost reports shall include all of the following information:

*a.* Information on staffing costs, including the number of hours of the following provided per resident per day by all the following: nursing services provided by registered nurses, licensed practical nurses, certified nurse aides, restorative aides, certified medication aides, and contracted nursing services; other care services; administrative functions; housekeeping and maintenance; and dietary services.

*b.* The starting and average hourly wage for each class of employees for the period of the report.

*c.* An itemization of expenses attributable to the home or principal office or headquarters of the nursing facility included in the administrative cost line item.

**81.5(18)** *Inflation factor.* The department will consider an inflation factor in determining the reimbursement rate. The inflation factor will be based on the CMS Total Skilled Nursing Facility (CMS/SNF) Market Basket Index published by Data Resources, Inc. The CMS/SNF index listed in the latest available quarterly publication prior to the July 1 rate setting will be used to determine the inflation factor.

**81.5(19)** *Case-mix index calculation.*

*a.* The RUG-III Version 5.12b, 34 group, index maximizer model will be used as the resident classification system to determine all case-mix indices, using data from the minimum data set (MDS) submitted by each facility pursuant to subrule 81.12(9). Standard Version 5.12b case-mix indices developed by CMS will be the basis for calculating the average case-mix index and will be used to adjust the direct care costs in the determination of the direct care patient-day-weighted median and the reimbursement rate pursuant to subrule 81.5(16).

*b.* Each resident in the facility on the last day of each calendar quarter with a completed and submitted assessment will be assigned a RUG-III 34 group calculated on the resident's most current assessment available on the last day of each calendar quarter. This RUG-III group will be translated to the appropriate case-mix index referenced in paragraph *"a."* From the individual resident case-mix indices, two average case-mix indices for each Medicaid nursing facility will be determined four times per year based on the last day of each calendar quarter.

The facilitywide average case-mix index is the simple average, carried to four decimal places, of all resident case-mix indices. The Medicaid average case-mix index is the simple average, carried to four decimal places, of all indices for residents where Medicaid is known to be the per diem payor source on the last day of the calendar quarter. Assessments that cannot be classified to a RUG-III group due to errors will be excluded from both average case-mix index calculations.

**81.5(20)** *Medicare crossover claims for nursing facility services.*

*a. Definitions.* For purposes of this subrule:

*"Crossover claim"* means a claim for Medicaid payment for Medicare-covered nursing facility services rendered to a Medicare beneficiary who is also eligible for Medicaid. Crossover claims include claims for services rendered to beneficiaries who are eligible for Medicaid in any category, including but not limited to qualified Medicare beneficiaries and beneficiaries who are eligible for full Medicaid coverage.

*"Medicaid-allowed amount"* means the Medicaid reimbursement rate for the services rendered (including any portion to be paid by the Medicaid beneficiary as client participation) multiplied by the number of Medicaid units of service included in a crossover claim, as determined under state and federal law and policies.

*"Medicaid reimbursement"* includes any amount to be paid by the Medicaid beneficiary as Medicaid client participation and any amount to be paid by the department after application of any applicable Medicaid client participation.

*"Medicare payment amount"* means the Medicare reimbursement rate for the services rendered multiplied by the number of Medicare units of service included in a crossover claim, excluding any Medicare coinsurance or deductible amounts to be paid by the Medicare beneficiary.

*b. Crossover claims.* Crossover claims for services covered under Medicare Part A and under Medicaid are reimbursed as set out in this paragraph.

(1) If the Medicare payment amount for a crossover claim exceeds or equals the Medicaid-allowed amount for that claim, Medicaid reimbursement for the crossover claim will be zero.

(2) If the Medicaid-allowed amount for a crossover claim exceeds the Medicare payment amount for that claim, Medicaid reimbursement for the crossover claim is the lesser of:

1. The Medicaid-allowed amount minus the Medicare payment amount; or
2. The Medicare coinsurance and deductible amounts applicable to the claim.

**81.5(21)** *Nursing facility quality assurance payments.*

*a. Quality assurance assessment pass-through.* Effective with the implementation of the quality assurance assessment paid pursuant to 441—Chapter 36, a quality assurance assessment pass-through will be added to the Medicaid per diem reimbursement rate as otherwise calculated pursuant to this rule. The quality assurance assessment pass-through will equal the per-patient-day assessment determined pursuant to 441—subrule 36.6(2).

*b. Quality assurance assessment rate add-on.* Effective with the implementation of the quality assurance assessment paid pursuant to 441—Chapter 36, a quality assurance add-on of $15 per patient day will be added to the Medicaid per diem reimbursement rate as otherwise calculated pursuant to this rule.

*c. Use of the pass-through and add-on.* As a condition for receipt of the pass-through and add-on, each nursing facility shall submit information to the department on the Nursing Facility Medicaid Enhanced Payment Report demonstrating compliance by the nursing facility with the requirements for use of the pass-through and add-on. If the sum of the quality assurance assessment pass-through and the quality assurance assessment rate add-on is greater than the total cost incurred by a nursing facility in payment of the quality assurance assessment:

(1) No less than 35 percent of the difference will be used to increase compensation and costs of employment for direct care workers determined pursuant to Iowa Code section 249L.4.

(2) No less than 60 percent of the difference will be used to increase compensation and costs of employment for all nursing facility staff, with increases in compensation and costs of employment determined pursuant to Iowa Code section 249L.4.

*d. Effective date.* Until federal financial participation to match money collected from the quality assurance assessment pursuant to 441—Chapter 36 has been approved by CMS, none of the nursing facility rate-setting methodologies of this subrule will become effective.

*e. End date.* If CMS determines that federal financial participation to match money collected from the quality assurance assessment pursuant to 441—Chapter 36 is unavailable for any period, or if the department no longer has the authority to collect the assessment, then beginning on the effective date that such federal financial participation is not available or authority to collect the assessment is rescinded, none of the nursing facility rate-setting methodologies of this subrule will be effective. If the period for which federal match money is unavailable or the authority to collect the assessment is rescinded includes a retroactive period, the department will:

(1) Recalculate Medicaid rates in effect during that period without the rate-setting methodologies of this subrule;

(2) Recompute Medicaid payments due based on the recalculated Medicaid rates;

(3) Recoup any previous overpayments; and

(4) Determine for each nursing facility the amount of quality assurance assessment collected during that period and refund that amount to the facility.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.16 and chapters 249K and 249L.

**441—81.6(249A) Continued review.**

**81.6(1)** *Level of care.* The department will review Medicaid members' need for continued care in nursing facilities, pursuant to the standards and subject to the appeals process in subrule 81.2(1). For all members enrolled with a managed care organization, the managed care organization shall review a Medicaid member's need for continued care in a nursing facility at least annually. The managed care organization must submit documentation to the department for all reviews that indicate a change in the

member's level of care. The department will make a final determination for any reviews that indicate a change in the level of care.

**81.6(2)** *PASRR.* As a condition of payment for nursing facility care under the Medicaid program when there is a significant change in a resident's condition, the nursing facility shall, within 24 hours, initiate a PASRR review by the department's contractor for PASRR evaluations. For purposes of this subrule, "significant change in a resident's condition" means any admission or readmission to the facility immediately following an inpatient psychiatric hospitalization or any change that is likely to impact the resident's treatment needs related to a mental illness or intellectual disability. The evaluation shall determine:

*a.* Whether nursing facility care or skilled nursing care is medically necessary and appropriate for the resident under 441—subrules 79.9(1) and 79.9(2);

*b.* Whether nursing facility services continue to be appropriate for the resident, as opposed to care in a more specialized facility or in a community-based setting; and

*c.* Whether the resident needs specialized services for mental illness or intellectual disability, as described in paragraph 81.2(3)*"b."*

This rule is intended to implement Iowa Code sections 249A.2(1), 249A.3(3), and 249A.4.

**441—81.7(249A) Records.**

**81.7(1)** *Content.* The facility shall as a minimum maintain the following records:

*a.* All records required by the department and the department of inspections, appeals, and licensing.

*b.* Records of all treatments, drugs, and services for which vendors' payments have been made or are to be made under the medical assistance program, including the authority for and the date of administration of the treatment, drugs, or services.

*c.* Documentation in each resident's records that will enable the department to verify that each charge is due and proper prior to payment.

*d.* Financial records maintained in the standard, specified form including the facility's most recent audited cost report.

*e.* All other records as may be found necessary by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

*f.* Census records to include the date, number of residents at the beginning of each day, names of residents admitted, and names of residents discharged.

(1) Census information shall be provided for all residents of the facility.

(2) Census figures for each type of care shall be totaled monthly to indicate the number admitted, the number discharged, and the number of patient days.

(3) Failure to maintain acceptable census records shall result in the per diem rate being computed on the basis of 100 percent occupancy and a request for refunds covering indicated recipients of nursing care that have not been properly accounted for.

*g.* Resident accounts.

*h.* In-service education program records.

*i.* Inspection reports pertaining to conformity with federal, state and local laws.

*j.* Residents' personal records.

*k.* Residents' medical records.

*l.* Disaster preparedness reports.

**81.7(2)** *Retention.* Records identified in subrule 81.7(1) shall be retained in the facility for a minimum of five years or until an audit is performed on those records, whichever is longer.

**81.7(3)** *Change of owner.* All records shall be retained within the facility upon change of ownership.

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)*"a."*

**441—81.8(249A) Payment procedures.**

**81.8(1)** *Method of payment.* Except for Medicaid accountability measures payment established in paragraph 81.5(16)*"g,"* facilities will be reimbursed under a modified price-based vendor payment program. A per diem rate will be established based on information submitted according to rule 441—81.5(249A). The per diem rate will include an amount for Medicaid accountability measures.

**81.8(2)** *Authorization of payment.* The department will authorize payment for care in a facility. The authorization shall be obtained prior to admission of the resident, whenever possible. For a nursing facility to be eligible for Medicaid payment for a resident, the facility must, when applicable, exhaust all Medicare benefits.

**81.8(3)** *Periods authorized for payment.*

*a.* Payment will be made on a per diem basis for the portion of the month the resident is in the facility.

*b.* Payment will be authorized as long as the resident is certified as needing care in a nursing facility.

*c.* Payment will be approved for the day of admission but not the day of discharge or death.

*d.* Payment will be approved for periods the resident is absent overnight for purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed 18 days in any calendar year. Additional days shall be based upon a recommendation by the resident's physician in the plan of care that additional days would be rehabilitative.

*e.* Payment will be approved for a period not to exceed 10 days in any calendar month when the resident is absent due to hospitalization. Medicaid payment to the facility may not be initiated while a resident is on reserve bed days unless the person was residing in the facility as a private pay resident prior to the hospitalization and returns to the facility as a resident.

*f.* Payment for periods when residents are absent for a visit, vacation, or hospitalization will be made at zero percent of the nursing facility's rate, except for special population facilities and state-operated nursing facilities, which will be paid for such periods at 42 percent of the facility's rate.

*g.* Payment for residents determined by utilization review to require the residential level of care will be made at the maximum state supplementary assistance rate. This rate is effective as of the date of final notice by utilization review that the lower level of care is required.

*h.* Ventilator patients.

(1) Definition. For purposes of this paragraph only, "ventilator patients" means Medicaid-eligible patients who, as determined by the quality improvement organization, require a ventilator at least six hours every day, are inappropriate for home care, and have medical needs that require skilled care.

(2) Reimbursement. In-state nursing facilities will receive reimbursement for care of ventilator patients equal to the sum of the Medicare-certified hospital-based nursing facility rate plus the Medicare-certified hospital-based nursing facility non-direct care rate component as defined in subparagraph 81.5(16)*"f"*(3). Facilities may continue to receive this reimbursement at this rate for 30 days after a ventilator patient is weaned from a ventilator if, during the 30 days, the patient continues to reside in the facility and continues to meet skilled care criteria.

*i.* Payment for residents of a special population facility licensed by the department of inspections, appeals, and licensing as an intermediate care facility for persons with mental illness will be made only when the resident is aged 65 or over. If a resident under the age of 65 is admitted with a payment source other than Medicaid, the facility shall notify the resident, or when applicable the resident's guardian or legal representative, that the department may neither make payment to the facility nor make payment for any other services rendered by any provider while the person resides in the facility, until the resident attains the age of 65.

*j.* Nonpayment for provider-preventable conditions. Reimbursement will not be made for patient days attributable to preventable conditions identified pursuant to this rule that develop in a nursing facility. Any patient days attributable to a provider-preventable condition must be billed as noncovered days. A provider-preventable condition is one in which any of the following occur:

(1) The wrong surgical or other invasive procedure is performed on a resident; or

(2) A surgical or other invasive procedure is performed on the wrong body part; or

(3) A surgical or other invasive procedure is performed on the wrong resident.

**81.8(4)** *Supplementation.* Only the amount of client participation may be billed to the resident for the cost of care, and the facility must accept the combination of client participation and payment made through the department as payment in full for the care of a resident. No additional charges shall be made to residents or family members for any supplies or services required in the facility-developed plan of care for the resident.

Residents may choose to spend their personal funds on items of personal care such as professional beauty or barber services, but the facility shall not require this expenditure and shall not routinely obligate residents to any use of their personal funds.

*a.* Supplies or services that the facility shall provide:

(1) Nursing services, social work services, activity programs, individual and group therapy, rehabilitation or habilitation programs provided by facility staff in order to carry out the plan of care for the resident.

(2) Services related to the nutrition, comfort, cleanliness and grooming of a resident as required under state licensure and Medicaid survey regulations.

(3) Medical equipment and supplies including wheelchairs except for customized wheelchairs for which separate payment may be made pursuant to 441—paragraph 78.10(2)*"d,"* medical supplies except for those listed in 441—paragraph 78.10(4)*"b,"* oxygen except under circumstances specified in 441—paragraph 78.10(2)*"a,"* and other items required in the facility-developed plan of care.

(4) Nonprescription drugs ordered by the physician.

(5) Fees charged by medical professionals for services requested by the facility that do not meet criteria for direct Medicaid payment.

*b.* The facility shall arrange for nonemergency transportation for members to receive necessary medical services outside the facility.

(1) If a family member, friend, or volunteer is not available to provide the transportation at no charge, the facility shall arrange and pay for the medically necessary transportation within 30 miles of the facility (one way).

(2) For medically necessary transportation beyond 30 miles from the facility (one way), when no family member, friend, or volunteer is available to provide the transportation at no charge, the facility shall arrange for transportation through the broker designated by the department, with the cost to be paid by the broker pursuant to rule 441—78.13(249A).

*c.* The department will provide direct payment to relieve the facility of payment responsibility for certain medical equipment and services that meet the Medicare definition of medical necessity and are provided by providers enrolled in the Medicaid programs including:

(1) Physician services.

(2) Ambulance services.

(3) Hospital services.

(4) Hearing aids, braces and prosthetic devices.

(5) Customized wheelchairs for which separate payment may be made pursuant to 441—subparagraph 78.10(2)*"a"*(4).

*d.* Other supplies or services for which direct Medicaid payment may be available include:

(1) Drugs covered pursuant to 441—subrule 78.1(2).

(2) Dental services.

(3) Optician and optometrist services.

(4) Repair of medical equipment and appliances that belong to the resident.

(5) Transportation to receive medical services beyond 30 miles from the facility (one way), through the broker designated by the department pursuant to a contract between the department and the broker.

(6) Other medical services specified in 441—Chapter 78.

*e.* The following supplementation is permitted:

(1) The resident, the resident's family, or friends may pay to hold the resident's bed in cases where a resident who is not discharged from the facility is absent overnight. When the resident is discharged, the facility may handle the holding of the bed in the same manner as for a private paying resident.

(2) Payments made by the resident's family toward cost of care of the resident shall not be considered as supplementation so long as the payments are included in client participation and are not over and above the payment made by the state for care of the resident.

(3) If a physician does not order a nonprescription drug by brand name, the facility may offer a generic. If a resident or family member requests a brand name, the resident or family member may pay for the brand-name nonprescription drug.

(4) Supplementation for provision of a private room not otherwise covered under the medical assistance program, subject to the following conditions, requirements, and limitations:

1. Supplementation for provision of a private room is not permitted for any time period during which the private room is therapeutically required pursuant to 42 CFR 483.10 (as amended to August 1, 2024).

2. Supplementation for provision of a private room is not permitted for a calendar month if no room other than the private room was available as of the first day of the month or as of the resident's subsequent initial occupation of the private room.

3. Supplementation for provision of a private room is not permitted for a calendar month if the facility's occupancy rate was less than 50 percent as of the first day of the month or as of the resident's subsequent initial occupation of the private room.

4. Supplementation for provision of a private room is not permitted if the nursing facility only provides one type of room or all private rooms.

5. If a nursing facility provides for supplementation for provision of a private room, the facility may base the supplementation amount on the difference between the amount paid for a room covered under the medical assistance program and the private pay rate for the private room identified for supplementation. However, the total payment for the private room from all sources for a calendar month shall not be greater than the aggregate average private room rate during that month for the type of rooms covered under the medical assistance program for which the resident would be eligible.

6. If a nursing facility provides for supplementation for provision of a private room, the facility shall notify all residents, prospective residents, and their legal representatives in accordance with Iowa Code section 249A.4(10)*"b"*(1).

7. For a resident for whom the nursing facility receives supplementation, the nursing facility shall indicate in the resident's record the information set forth in Iowa Code section 249A.4(10)*"b"*(2).

*f.* Any medical equipment, supplies, appliances, or devices, personal care items, drugs, or other items of personal property that are paid for directly by the Medicaid program or are paid for by the resident or the resident's family, on a nonrental basis, are the personal property of the resident.

*g.* The facility shall not charge a resident for days that are not covered under Medicaid due to a provider-preventable condition pursuant to paragraph 81.8(3)*"j"* and shall not discharge a resident due to nonpayment for such days.

This rule is intended to implement Iowa Code section 249A.4.

**441—81.9(249A) Billing procedures.** Claims for service must be sent to the department after the month of service and within 365 days of the date of service. Claims must be submitted electronically through the department's electronic clearinghouse. A remittance advice of the claims paid may be obtained through the Iowa Medicaid portal access (IMPA) system. Adjustments to submitted claims may be made electronically as provided for by the department. A request for an adjustment to a paid claim must be received by the department within one year from the date the claim was paid in accordance with rule 441—80.4(249A).

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)*"a."*

**441—81.10(249A) Closing of facility.** When a facility is planning on closing, the department and the department's contracted managed care organizations with which the facility is enrolled shall be notified at least 60 days in advance of the closing. Plans for the transfer of residents receiving medical assistance shall be approved by the resident's managed care organization or by the department for residents not enrolled with a managed care organization.

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)*"a."*

**441—81.11(249A) Conditions of participation for nursing facilities.** All nursing facilities shall enter into a contractual agreement with the department that sets forth the terms under which they will participate in the program.

**81.11(1)** *Procedures for establishing health care facilities as Medicaid facilities.* All survey procedures and certification process shall be in accordance with department of health and human services publication "State Operations Manual" (as amended to August 1, 2024).

**81.11(2)** *Medicaid provider agreements.*

*a.* The health care facility shall be recommended for certification by the department of inspections, appeals, and licensing for participation as a nursing facility before a provider agreement may be issued. All survey procedures and certification process shall be in accordance with department of health and human services publication "Providers Certification State Operations Manual" as amended to August 1, 2024. The effective date of a provider agreement may not be earlier than the date of certification.

*b.* When it becomes necessary for the department to cancel or refuse to renew a Title XIX provider agreement, federal financial participation may continue for 30 days beyond the date of cancellation, if the extension is necessary to ensure the orderly transfer of residents.

**81.11(3)** *Distinct part requirement.* All facilities that provide nursing facility care and also provide other types of care shall set aside a distinct or identifiable part for the provision of the nursing facility care.

*a.* The distinct part shall meet the following conditions:

(1) The distinct part shall meet all requirements for a nursing facility.

(2) The distinct part shall be identifiable as a unit such as a designated group of rooms, an entire ward or contiguous wards, wings, floor, or building. It shall consist of all beds and related facilities in the unit for whom payment is being made for nursing facility services. It shall be clearly identified and licensed by the department of inspections, appeals, and licensing.

(3) The appropriate personnel shall be assigned to the identifiable unit and shall work there regularly. Immediate supervision of staff shall be provided in the unit at all times by qualified personnel as required for licensure.

(4) The distinct part may share such central services and facilities as management services, dietary services, building maintenance and laundry with other units.

(5) When members of the staff share time between units of the facility, written records shall be maintained of the time assigned to each unit.

*b.* Hospitals participating as nursing facilities shall meet all of the same conditions applicable to freestanding nursing facilities.

*c.* Nothing herein shall be construed as requiring transfer of a resident within or between facilities when in the opinion of the attending physician the transfer might be harmful to the physical or mental health of the resident. The opinion of the physician shall be recorded on the resident's medical chart and stands as a continuing order unless the circumstances requiring the exception change.

**81.11(4)** *Civil rights.* The nursing facility shall comply with Title VI of the Civil Rights Act of 1964 (as amended to August 1, 2024) in all areas of administration including admissions, records, services and physical facilities, room assignments and transfers, attending physicians' privileges and referrals. Written statements of compliance shall be available to residents, employees, attending physicians and other members of the public.

**81.11(5)** *Resident rights.* The resident has a right to a dignified existence, self-determination and communication with and access to persons and services inside and outside the facility. A facility shall protect and promote the rights of each resident in accordance with 42 CFR 483.10 (as amended to August 1, 2024).

**81.11(6)** *Admission, transfer and discharge rights.*

*a. Definition.* Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

*b. Transfer or discharge requirements.* The facility shall permit each resident to remain in the facility, and not transfer or discharge the resident, in accordance with 42 CFR 483.15 (as amended to August 1, 2024).

**81.11(7)** *Resident behavior and facility practices.*

*a. Restraints.* The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

*b. Abuse.* The resident has the right to be free from verbal, sexual, physical, or mental abuse, corporal punishment, and involuntary seclusion.

*c. Staff treatment of residents.* The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(1) Facility staff shall not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion of residents. The facility shall not employ persons who have been found guilty by a court of law of abusing, neglecting or mistreating residents or who have had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property.

The facility shall report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the state nurse aide registry or licensing authorities.

(2) The facility shall ensure that all alleged violations involving mistreatment, neglect or abuse including injuries of unknown source and misappropriation of resident property, are reported immediately to the administrator of the facility or to other officials (including the department of inspections, appeals, and licensing) in accordance with state law through established procedures.

(3) The facility shall have evidence that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations conducted by facility staff shall be reported to the administrator or the administrator's designated representative or to other officials (including the department of inspections, appeals, and licensing) in accordance with state law within five working days of the incident and if the alleged violation is verified, take appropriate corrective action.

**81.11(8)** *Quality of life.* A facility shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life in accordance with 42 CFR 483.10 (as amended to August 1, 2024).

*a. Activities.* The facility shall provide for an ongoing program of activities designed to meet, based on the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident in accordance with 42 CFR 483.24(c) (as amended to August 1, 2024).

*b. Social services.*

(1) The facility shall provide medically related social services to attain or maintain the highest practicable physical, mental, or psychosocial well-being of each resident.

(2) A facility with more than 120 beds shall employ a qualified social worker on a full-time basis in accordance with 42 CFR 483.70(p) (as amended to August 1, 2024).

*c. Environment.* The facility shall provide a safe, clean, comfortable and homelike environment in accordance with 42 CFR 483.10(i) (as amended to August 1, 2024).

**81.11(9)** *Resident assessment.* The facility shall conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional ability in accordance with 42 CFR 483.20(a) through (j) (as amended to August 1, 2024).

*a. Use of independent assessors.* If the department or the department of inspections, appeals, and licensing determines, under a survey or otherwise, that there has been a knowing and willful certification of false statements in a resident assessment, the department or the department of inspections, appeals, and licensing may require that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the department or the department of inspections, appeals, and licensing for a period specified by the agency.

*b. Comprehensive care plans.* The facility shall develop a comprehensive care plan for each resident in accordance with 42 CFR 483.21(b) (as amended to August 1, 2024).

*c. Discharge summary.* When the facility anticipates discharges, a resident shall have a discharge summary in accordance with 42 CFR 483.21(c)(2) (as amended to August 1, 2024).

*d. Preadmission resident assessment.* The facility shall conduct prior to admission a resident assessment of all persons seeking nursing facility placement. The assessment information gathered shall be similar to the data in the minimum data set (MDS) resident assessment tool.

**81.11(10)** *Quality of care.* Each resident shall receive and the facility shall provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. A facility shall ensure that residents receive treatment in accordance with 42 CFR 483.24 and 483.25 (as amended to August 1, 2024).

*a. Behavioral health services.* Based on the comprehensive assessment of a resident, the facility shall ensure that residents receive and the facility must provide the necessary behavioral health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with 42 CFR 483.40 (as amended to August 1, 2024).

*b. Unnecessary drugs.* Each resident's drug regimen shall be free from unnecessary drugs in accordance with 42 CFR 483.45(d) and (e) (as amended to August 1, 2024).

*c. Medication errors.* The facility shall ensure that it meets the standards set forth in 42 CFR 483.45(f) (amended to August 1, 2024).

**81.11(11)** *Nursing services.* In accordance with 42 CFR 483.35 (as amended to August 1, 2024), the facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

**81.11(12)** *Dietary services.* In accordance with 42 CFR 483.60 (as amended to August 1, 2024), the facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

**81.11(13)** *Physician services.* In accordance with 42 CFR 483.30 (as amended to August 1, 2024), a physician shall personally approve in writing a recommendation that an individual be admitted to a facility. Each resident shall remain under the care of a physician.

**81.11(14)** *Specialized services.* When indicated, specialized services shall be provided to residents as follows:

*a. Specialized rehabilitative services.* Specialized rehabilitative services shall be provided by qualified personnel under the written order of a physician in accordance with 42 CFR 483.65 (as amended to August 1, 2024).

*b. Specialized services for mental illness.* "Specialized services for mental illness" means services provided in response to an exacerbation of a resident's mental illness that:

(1) Are beyond the normal scope and intensity of nursing facility responsibility;

(2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;

(3) Are provided through a professionally developed plan of care with specific goals and interventions;

(4) May be provided only by a specialized licensed or certified practitioner;

(5) Are expected to result in specific, identified improvements in the resident's psychiatric status to the level before the exacerbation of the resident's mental illness; and

(6) May include:

1. Acute inpatient psychiatric treatment. When inpatient psychiatric treatment may be prevented through specialized services provided in the nursing facility, services provided in the nursing facility are preferred.

2. Initial psychiatric evaluation to determine a resident's diagnosis and to develop a plan of care.

3. Follow-up psychiatric services by a psychiatrist to evaluate resident response to psychotropic medications, to modify medication orders and to evaluate the need for ancillary therapy services.

4. Psychological testing required for a specific differential diagnosis that will result in the adoption of appropriate treatment services.

5. Individual or group psychotherapy as part of a plan of care addressing specific symptoms.

6. Any clinically appropriate service that is available for which the member meets eligibility criteria.

*c. Specialized services for intellectual disability.* "Specialized services for intellectual disability" means services that:

(1) Are beyond the normal scope and intensity of nursing facility responsibility;

(2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;

(3) Are provided through a professionally developed plan of care with specific goals and interventions;

(4) Must be supervised by a qualified intellectual disability professional; and

(5) May include:

1. A functional assessment of maladaptive behaviors.

2. Development and implementation of a behavioral support plan.

3. Community living skills training for members who desire to live in a community setting and for whom community living is appropriate as determined by the Level II evaluation. Training may include adaptive behavior skills, communication skills, social skills, personal care skills, and self-advocacy skills.

**81.11(15)** *Dental services.* In accordance with 42 CFR 483.55 (as amended to August 1, 2024), the facility shall assist residents in obtaining routine and 24-hour emergency dental care.

**81.11(16)** *Pharmacy services.* In accordance with 42 CFR 483.45 (as amended to August 1, 2024), the facility shall provide routine and emergency drugs and biologicals to its residents or obtain them under an agreement. The nursing facility may permit a certified medication aide to administer drugs, but only under the general supervision of a licensed nurse.

**81.11(17)** *Infection control.* In accordance with 42 CFR 483.80 (as amended to August 1, 2024), the facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

**81.11(18)** *Physical environment.* In accordance with 42 CFR 483.90 (as amended to August 1, 2024), the facility shall be designed, constructed, equipped and maintained to protect the health and safety of residents, personnel and the public.

**81.11(19)** *Administration.* In accordance with 42 CFR 483.70(a) through (d) (as amended to August 1, 2024), a facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

*a. Required training of nurse aides.*

(1) Definitions.

*"Licensed health professional"* means a physician; physician assistant; nurse practitioner; physical, speech or occupational therapist; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

*"Nurse aide"* means any person providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide these services without pay.

(2) General rule. A facility shall not use any person working in the facility as a nurse aide for more than four months, on a permanent basis in accordance with the exceptions and provisions specified in 42 CFR 483.25(d) (as amended to August 1, 2024).

*b. Proficiency of nurse aides.* The facility shall ensure that nurse aides are able to demonstrate competency in skills and technique necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

*c. Staff qualifications.* Staff qualifications must be met in accordance with 42 CFR 483.70(f) (as amended to August 1, 2024).

*d. Use of outside resources.* If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility shall have that service furnished to residents by a person or agency outside the facility under an arrangement described in Section 1861(w) of the Omnibus Budget Reconciliation Act of 1987 or an agreement described in 42 CFR 483.70(g) (as amended to August 1, 2024).

*e. Medical director.* The facility shall designate a physician to serve as medical director in accordance with 42 CFR 483.70(h) (as amended to August 1, 2024).

*f. Laboratory, radiology, and other diagnostic services.* The facility shall provide or obtain clinical laboratory, radiology, and other diagnostic services to meet the needs of its residents in accordance with 42 CFR 483.50 (as amended to August 1, 2024).

*g. Clinical records.* The facility shall maintain clinical records on each resident in accordance with 42 CFR 483.70(i) (as amended to August 1, 2024).

*h. Disaster and emergency preparedness.*

(1) The facility shall have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility shall train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills using those procedures.

*i. Transfer agreement.* The facility shall have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs in accordance with 42 CFR 483.70(j) (as amended to August 1, 2024).

*j. Quality assessment and assurance.* A facility shall maintain a quality assessment and assurance committee in accordance with 42 CFR 483.75(g) through (i) (as amended to August 1, 2024).

*k. Disclosure of ownership.*

(1) The facility shall comply with the disclosure requirements of 42 CFR 420.206 and 455.104 (as amended to August 1, 2024).

(2) The facility shall provide written notice to the department of inspections, appeals, and licensure at the time of change, if a change occurs in:

1. Persons with an ownership or control interest.
2. The officers, directors, agents, or managing employees.
3. The corporation, association, or other company responsible for the management of the facility.
4. The facility's administrator or director of nursing.

(3) The notice specified in subparagraph (2) above shall include the identity of each new individual or company.

**441—81.12(249A) Audits.**

**81.12(1)** *Audit of financial and statistical report.* Authorized representatives of the department or the U.S. Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report are reasonable and proper according to the rules set forth in rule 441—81.5(249A). The aforementioned audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agent(s).

*a.* When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department that the indicated per diem should be reduced to 75 percent of the established payment rate for the ensuing six-month period and if the situation is not remedied on the subsequent Financial and Statistical Report, the health facility shall be suspended and eventually canceled from the nursing facility program, or

*b.* When a health facility continues to include as an item of cost an item or items that had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the

department that the per diem be reduced to 75 percent of the current payment rate for the ensuing six-month period. The department may, after considering the seriousness of the exception, make the reduction.

**81.12(2)** *Audit of proper billing and handling of patient funds.*

*a.* The department; the department's contracted managed care organizations; field auditors of the department of inspections, appeals, and licensing; and representatives of the U.S. Department of Health and Human Services, upon proper identification, have the right to audit billings to the department and receipts of client participation, to ensure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

*b.* The department; the department's contracted managed care organizations; field auditors of the department of inspections, appeals, and licensing; and representatives of the U.S. Department of Health and Human Services, upon proper identification, have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 81.3(3).

*c.* The auditor shall recommend and the department shall request repayment by the facility to either the department or the resident(s) involved, any sums inappropriately billed to the department or collected from the resident.

*d.* The facility shall have 60 days to review the audit and repay the requested funds or present supporting documentation indicating that the requested refund amount, or part thereof, is not justified.

*e.* When the facility fails to comply with paragraph *"d,"* the requested refunds may be withheld from future payments to the facility. The withholding shall not be more than 25 percent of the average of the last six monthly payments to the facility. The withholding shall continue until the entire requested refund amount is recovered. If in the event the audit results indicate significant problems, the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

*f.* When exceptions are taken during the scope of an audit that are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to 75 percent of the current payment rate.

This rule is intended to implement Iowa Code sections 249A.2, 249A.3(2)*"a"* and 249A.4.

**441—81.13(249A) Nurse aide requirements and training and testing programs.**

**81.13(1)** *Deemed meeting of requirements.* A nurse aide is deemed to satisfy the requirement of completing a nurse aide training and competency evaluation approved by the department of inspections, appeals, and licensing if:

*a.* The nurse aide successfully completed a nurse aide training and competency evaluation program before July 1, 1989, and

(1) At least 60 clock hours were substituted for 75 clock hours, and the person has made up at least the difference in the number of clock hours in the program the person completed and 75 clock hours in supervised practical nurse aide training or in regular in-service nurse aide education, or

(2) The person was found to be competent (whether or not by the state) after completion of a nurse aide training of at least 100 clock hours' duration, or

(3) The person can demonstrate that the person served as a nurse aide at one or more facilities of the same employer in Iowa for at least 24 consecutive months before December 19, 1989, or

(4) The person completed, before July 1, 1989, a nurse aide training and competency evaluation program that the department of inspections, appeals, and licensing determines would have met the requirements for approval at the time it was offered; or

*b.* The person is a veteran, an active duty service member, or a member of the reserve forces, who has:

(1) Successfully completed a U.S. military training program that includes a curriculum comparable to the nurse aide training program required by this rule and has documented successful completion of that program with either a diploma, certifications, or Form DD 214 showing completion of hospital corpsman or medical service specialist or equivalent training, and

(2) Provided documentation showing that the person has 75 clock hours of practical experience in a nurse aide role, which may include classroom instruction, prior equivalent experience, or a combination of the two, and

(3) Successfully completed the nurse aide training and competency examination.

**81.13(2)** *State review and approval of nurse aide training and competency evaluation programs or competency evaluation programs.*

*a.* The department of inspections, appeals, and licensing will, in the course of all surveys, determine whether the nurse aide training and evaluation requirements of paragraph 81.11(19)*"e"* and subrule 81.14(1) are met.

*b.* Requirements for approval of programs.

(1) Before the department of inspections, appeals, and licensing approves a nurse aide training and competency evaluation program or competency evaluation program, the department of inspections, appeals, and licensing will determine whether:

1. A nurse aide training and competency evaluation program meets the course requirements of 81.14(3).

2. A nurse aide competency evaluation program meets the requirements of 81.14(4).

(2) Except as provided by paragraph 81.14(2)*"f,"* the department of inspections, appeals, and licensing will not approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in a facility that, in the previous two years:

1. Has operated under a nurse staffing waiver for a period in excess of 48 hours per week; or

2. Has been subject to an extended or partial extended survey; or

3. Has been assessed a civil money penalty of not less than $5,000; or

4. Has operated under temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

5. Pursuant to state action, was closed or had its residents transferred; or

6. Has been terminated from participation in the Medicaid or Medicare program; or

7. Has been denied payment.

*c.* Application process. Applications shall be submitted to the department of inspections, appeals, and licensing before a new program begins and every two years thereafter on a form prescribed by the department. The department of inspections, appeals, and licensing will, within 90 days of the date of a request or receipt of additional information from the requester:

(1) Advise the requester whether or not the program has been approved; or

(2) Request additional information from the requesting entity.

*d.* Duration of approval. The department of inspections, appeals, and licensing will not grant approval of a nurse aide training and competency evaluation program for a period longer than two years. A program shall notify the department of inspections, appeals, and licensing and the department of inspections, appeals, and licensing will review that program when there are substantive changes made to that program within the two-year period.

*e.* Withdrawal of approval. The department of inspection, appeals, and licensing will follow the provision of 42 CFR 483.151(e) (as amended to August 1, 2024) regarding withdrawals of approvals.

*f.* An exception to subparagraph 81.14(2)*"b"*(2) may be granted by the department of inspections, appeals, and licensing for 75-hour nurse aide training courses offered in (but not by) a facility under the following conditions:

(1) The facility has submitted a Nurse Aide Education Program Waiver Request, to the department of inspections, appeals, and licensing to request a waiver for each 75-hour nurse aide training course to be offered in (but not by) the facility.

(2) The 75-hour nurse aide training is offered in a facility by an approved NATCEP.

(3) No other NATCEP is offered within ten minutes' travel from the facility, unless the facility can demonstrate the distance or program would create a hardship for program participants.

(4) The facility is in substantial compliance with the federal requirements related to nursing care and services.

(5) The facility is not a poor performing facility.

(6) Employees of the facility do not function as instructors for the program unless specifically approved by the department of inspections, appeals, and licensing.

(7) The NATCEP sponsoring the 75-hour nursing aide training course is responsible for program administration and for ensuring that program requirements are met.

(8) The NATCEP has submitted an evaluation to the department of inspections, appeals, and licensing indicating that an adequate teaching and learning environment exists for conducting the course.

(9) The NATCEP has developed policies for communicating and resolving problems encountered during the course, including notice by the facility to the program instructor and students on how to contact the department of inspections, appeals, and licensing to register any concerns encountered during the course.

(10) The NATCEP shall require the program instructor and students to complete an evaluation of the course. The instructor shall return the completed evaluations to the NATCEP that shall return the evaluations to department of inspections, appeals, and licensing.

**81.13(3)** *Requirements for approval of a nurse aide training and competency evaluation program.* The department has designated the department of inspections, appeals, and licensing to approve required nurse aide training and competency evaluation programs. Policies and procedures governing approval of the programs are set forth in 42 CFR 483.152 (as amended to August 1, 2024).

*a.* If a person who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility no later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program, the facility shall reimburse the nurse aide for costs incurred in completing the program or competency evaluation on a pro rata basis during the period in which the person is employed as a nurse aide. The formula for paying the nurse aides on a pro rata basis shall be as follows:

(1) Add all costs incurred by the nurse aide for the course, books, and competency evaluations.

(2) Divide the total arrived at in subparagraph (1) above by 12 to prorate the costs over a one-year period and establish a monthly rate.

(3) The nurse aide shall be reimbursed the monthly rate each month the nurse aide works at the facility until one year from the time the nurse aide completed the course.

*b.* Setting and equipment. The classroom shall have appropriate equipment, be of adequate size, and not interfere with resident activities.

*c.* Records and reports. Nurse aide education programs approved by the department of inspections, appeals, and licensing shall:

(1) Notify the department of inspections, appeals, and licensing:

1. Of dates of classroom and clinical sessions as well as location of classrooms and clinical practice sites before each course begins and if the course is canceled.

2. When a facility or other training entity will no longer be offering nurse aide training courses.

3. Whenever the person coordinating the training program is hired or terminates employment.

(2) Keep a list of faculty members and their qualifications available for department review.

(3) Provide each nurse aide a record of skills for which the nurse aide has been found competent during the course and which may be performed before completion of the competency evaluation.

(4) Complete a lesson plan for each unit that includes behavioral objectives, a topic outline and student activities and experiences.

(5) Provide the student, within 30 days of the last class period, evidence of having successfully completed the course.

**81.13(4)** *Nurse aide competency evaluation.* Nurse aid competency evaluation program shall be administered in accordance with 42 CFR 483.154 (as amended to August 1, 2024).

*a.* Successful completion of the competency evaluation program.

(1) A score of 70 percent or above is passing for both the written or oral and skills demonstration parts of the test.

(2) A record of successful completion of the competency evaluation shall be included in the nurse aide registry within 30 days of the date the person is found to be competent.

(3) The competency testing entity shall inform the nurse aide of the test score within 30 calendar days of the completion of the test and shall inform the nurse aide registry of the nurse aide's scores within 20 calendar days after the test is administered.

*b.* Unsuccessful completion of the competency evaluation program.

(1) If the person does not complete the evaluation satisfactorily, the person shall be advised in writing within ten working days after the test is scored:

1. Of the areas that the person did not pass.
2. That the person has three opportunities to take the evaluation.

(2) Each person shall have three opportunities to pass each part of the test. If one part of the test is failed, only that part need be taken a second or third time. If either part of the test is failed three times, the 75-hour course shall be taken or retaken before the test can be taken again.

*c.* Storage of evaluation instrument. The person responsible for administering a competency evaluation shall provide secure storage of the evaluation instruments when they are not being administered or processed.

*d.* Application process. Entities wishing to secure approval for a competency evaluation program shall submit a copy of the evaluation plan and procedures to the department of inspections, appeals, and licensing. The department of inspections, appeals, and licensing shall notify the applicant of its decision within 90 days of receipt of the application. The notification shall include the reason for not giving approval if approval is denied and the applicable rule citation.

**81.13(5)** *Registry of nurse aides.*

*a.* Establishment of registry. The department of inspections, appeals, and licensing shall establish and maintain a registry of nurse aides in accordance with 42 CFR 483.156 (as amended to August 1, 2024). In addition, the registry shall contain a record of known convictions by a court of law of a person convicted of abuse, neglect, mistreatment, or misappropriation of resident property.

*b.* Placement of names on nurse aide registry. The facility shall ensure that the name of each person employed as a nurse aide in a Medicare- or Medicaid-certified nursing facility in Iowa is submitted to the registry.

(1) Persons employed as nurse aides shall complete the Nurse Aide Registry Application within the first 30 days of employment. This form shall be submitted to the department of inspections, appeals, and licensing. The application may be obtained by telephone or by electronic request from the nurse aide registry.

(2) A nurse aide who is not employed may apply for inclusion on the registry by submitting a copy of completed application to the nurse aide registry.

(3) When the registry has received a signed application and entered the required training and testing information on the registry, an electronic notification will be sent to the nurse aide that includes the registry ID number for the nurse aide to use when accessing the online registry. A nurse aide may obtain a copy of the information on the registry by accessing the information on the registry database.

**81.13(6)** *Hearing.* When there is an allegation of abuse against a nurse aide, the department of inspections, appeals, and licensing will investigate that allegation. When the investigation makes a finding of an act of abuse, the nurse aide named will be notified of this finding and the right to a hearing. The nurse aide shall have 30 days to request a hearing. The request shall be in writing and shall be sent to the department of inspections, appeals, and licensing. The hearing shall be held pursuant to 481—Chapter 10. After 30 days, if the nurse aide fails to appeal, or when all appeals are exhausted, the nurse aide registry will include a notation that the nurse aide has a founded abuse report on record if the final decision indicates the nurse aide performed an abusive act.

**81.13(7)** *Appeals.* Adverse decisions made by the department of inspections, appeals, and licensing in administering these rules may be appealed pursuant to 481—Chapter 10.

This rule is intended to implement Iowa Code section 249A.4.

**441—81.14(249A) Sanctions.**

**81.14(1)** *Penalty for falsification of a resident assessment.* An individual, who willfully and knowingly certifies a material and false statement in a resident assessment, is subject to a civil money penalty in accordance with 42 CFR 483.20(j) (as amended to August 1, 2024).

*a.* Factors determining the size of fine. In determining the monetary amount of the penalty, the director of the department of inspections, appeals, and licensing or the director's designee may consider evidence of the circumstances surrounding the violation, including but not limited to the following factors:

(1) The number of assessments willingly and knowingly falsified.

(2) The history of the individual relative to previous assessment falsifications.

(3) The intent of the individual who falsifies an assessment or causes an assessment to be falsified.

(4) The areas of assessment falsified or caused to be falsified and the potential for harm to the resident.

(5) The relationship of the falsification of assessment to falsification of other records at the time of the visit.

*b.* Notification of a fine imposed for falsification of assessments or causing another individual to falsify an assessment shall be served upon the individual personally or by certified mail.

*c.* Appeals of fines. Notice of intent to formally contest the fine shall be given to the department of inspections, appeals, and licensing in writing and be postmarked within 20 working days after receipt of the notification of the fine. An administrative hearing will be conducted pursuant to Iowa Code chapter 17A and 481—Chapter 10. An individual who has exhausted all administrative remedies and is aggrieved by the final action of the department of inspections, appeals, and licensing may petition for judicial review in the manner provided by Iowa Code chapter 17A.

**81.14(2)** *Use of independent assessors.* If the department of inspections, appeals, and licensing determines that there has been a knowing and willful certification of false assessments, or the causation of knowing and willful false assessments, the department of inspections, appeals, and licensing may require that resident assessments be conducted and certified by individuals independent of the facility and who are approved by the state.

*a.* Criteria used to determine the need for independent assessors shall include:

(1) The involvement of facility management in the falsification of or causing resident assessments to be falsified.

(2) The facility's response to the falsification of or causing resident assessments to be falsified.

(3) The method used to prepare facility staff to do resident assessments.

(4) The number of individuals involved in the falsification.

(5) The number of falsified resident assessments.

(6) The extent of harm to residents caused by the falsifications.

*b.* The department of inspections, appeals, and licensing will specify the length of time that these independent assessments will be conducted and when they will begin. This determination will be based on the extent of assessments and reassessments needed and the plan submitted by the facility to ensure falsifications will not occur in the future.

*c.* The individuals or agency chosen by the facility to conduct the independent assessments shall be approved by the department of inspections, appeals, and licensing before conducting any assessments. The approval will be based on the ability of the individual or agency to conduct resident assessments in accordance with the applicable rules. Any costs incurred shall be the responsibility of the facility.

*d.* Notice of the requirement to obtain independent assessments will be in writing and sent to the facility by certified mail or personal service. The notice shall include the date independent assessors are to begin assessments, information on how independent assessors are to be approved and the anticipated length of time independent assessors will be needed.

*e.* Criteria for removal of the requirement for independent assessors.

(1) Independent assessors shall be utilized until all residents assessed by the disciplines involved have been reassessed by the independent assessor.

(2) The facility shall submit a plan to the department of inspections, appeals, and licensing for completing its own assessments.

(3) The department of inspections, appeals, and licensing will evaluate the facility's proposal for ensuring assessments will not be falsified in the future.

*f.* Appeal procedures.

(1) A written notice to appeal shall be postmarked or personally served to the department of inspections, appeals, and licensing within five working days after receipt of the notice requiring independent assessors.

(2) An evidentiary hearing shall be held pursuant to 481—Chapter 10 no later than 15 working days after receipt of the appeal.

(3) The written decision shall be rendered no later than ten working days after the hearing.

(4) The decision rendered is a proposed decision that may be appealed to the director of the department of inspections, appeals, and licensing pursuant to 481—Chapter 50.

(5) A notice of appeal stays the effective date of the requirement for independent assessments pending a final agency decision.

(6) Final agency action may be appealed pursuant to Iowa Code chapter 17A.

**81.14(3)** *Penalty for notification of time or date of survey.* Any individual who notifies, or causes to be notified, a nursing facility of the time or date on which a survey is scheduled to be conducted shall be subject to a fine not to exceed $2,000.

This rule is intended to implement Iowa Code section 249A.4.

**441—81.15(249A) Out-of-state facilities.** Payment will be made for care in out-of-state nursing facilities. For members enrolled with a managed care organization, authorization for admission must be obtained from the managed care organization prior to admission. Out-of-state facilities shall abide by the same policies as in-state facilities with the following exceptions:

**81.15(1)** Except for Medicare-certified hospital-based nursing facilities and special population nursing facilities, out-of-state providers shall be reimbursed at the same nursing facility rate they would receive from the Medicaid program in their state of residence or an amount equal to the sum of the Iowa non-state government owned nursing facility direct care rate component limit pursuant to subparagraph 81.5(16)*"f"*(1) plus the non-direct care rate limit pursuant to subparagraph 81.5(16)*"f"*(1), whichever is lower.

*a.* Medicare-certified hospital-based nursing facilities providing skilled care in other states shall be reimbursed at an amount equal to the sum of the Iowa Medicare-certified hospital-based nursing facility direct care rate component limit pursuant to subparagraph 81.5(16)*"f"*(3) plus the non-direct care rate component limit pursuant to subparagraph 81.5(16)*"f"*(3) if one of the following criteria is met:

(1) The placement is recommended because moving the resident back to Iowa would endanger the resident's health, because services are not readily available in Iowa, or because the out-of-state placement is cost-effective.

(2) The placement is temporary until services are available to the resident in Iowa or until the program of treatment is completed.

*b.* Special population nursing facilities shall be reimbursed at the same nursing facility rate they would receive from Medicaid in their state of residence or, if not participating in the Medicaid program in their state, they shall be reimbursed pursuant to subparagraph 81.5(16)*"e"*(2), if one of the following criteria is met:

(1) The placement is recommended because moving the resident back to Iowa would endanger the resident's health, because services are not readily available in Iowa, or because the out-of-state placement is cost-effective.

(2) The placement is temporary until services are available to the resident in Iowa or until the program of treatment is completed.

**81.15(2)** Out-of-state facilities shall not submit financial and statistical reports as required in rule 441—81.5(249A).

**81.15(3)** Payment for periods when residents are absent for visitation or hospitalization will be made to out-of-state facilities at zero percent of the rate paid to the facility by the Iowa Medicaid program.

This rule is intended to implement Iowa Code section 249A.4.

**441—81.16(249A) Outpatient services.** Medicaid outpatient services provided by certified skilled nursing facilities are defined in the same way as the Medicare program.

This rule is intended to implement Iowa Code section 249A.4 and 1991 Iowa Acts, chapter 267, section 132(1)*"i."*

**441—81.17(249A) Rates for Medicaid eligibles.**

**81.17(1)** *Maximum client participation.* A nursing facility may not charge more client participation for Medicaid-eligible clients as determined in rule 441—75.16(249A) than the maximum monthly allowable payment for their facility as determined according to 441—subrule 79.1(9) or rule 441—81.5(249A). When the department makes a retroactive increase in the maximum daily rate, the nursing facility can charge the client the increased amount for the retroactive period.

**81.17(2)** *Beginning date of payment.* When a resident becomes eligible for Medicaid payments for facility care, the facility shall accept Medicaid rates effective when the resident's Medicaid eligibility begins. A nursing facility is required to refund any payment received from a resident or family member for any period of time during which the resident is determined to be eligible for Medicaid.

Any refund owing shall be made no later than 15 days after the nursing facility first receives Medicaid payment for the resident for any period of time. Facilities may deduct the resident's client participation for the month from a refund of the amount paid for a month of Medicaid eligibility.

The beginning and renewal date of eligibility and resident client participation amounts may be obtained through the Iowa Medicaid portal access (IMPA) system. When the beginning Medicaid eligibility date is a future month, the facility shall accept the Medicaid rate effective the first of that future month.

This rule is intended to implement Iowa Code section 249A.4.

**441—81.18(249A) State-funded personal needs supplement.** A Medicaid member living in a nursing facility who has countable income for purposes of rule 441—75.16(249A) of less than $50 per month shall receive a state-funded payment from the department for the difference between that countable income and $50 if the legislature has appropriated funding specifically for this purpose. This payment shall not be considered a benefit under Title XIX of the Social Security Act (as amended to August 1, 2024).

This rule is intended to implement Iowa Code section 249A.30A.

**441—81.19(249A) Enforcement of compliance.** Enforcement of compliance with this chapter shall occur in accordance with 42 CFR 488 (as amended to August 1, 2024).

**441—81.20(249A) Appeal of a determination of noncompliance.**

**81.20(1)** A facility may request a hearing on a determination of noncompliance leading to an enforcement remedy. The affected nursing facility, or its legal representative or other authorized official, shall file the request for hearing in writing to the department of inspections, appeals, and licensing within 60 days from receipt of the notice of the proposed denial, termination, or nonrenewal of participation, or imposition of a civil money penalty or other remedies.

*a.* A request for a hearing shall be made in writing to the department of inspections, appeals, and licensing within 60 days from receipt of the notice.

*b.* Hearings shall be conducted pursuant to 481—Chapter 10 and rule 481—50.6(10A), with an administrative law judge appointed as the presiding officer and with the department of inspections, appeals, and licensing as the final decision maker, with subject matter jurisdiction.

**81.20(2)** A facility may not appeal the choice of remedy, including the factors considered by the department of inspection, appeals, and licensing in selecting the remedy.

**81.20(3)** A facility may not challenge the level of noncompliance found by the department of inspections, appeals, and licensing, except that in the case of a civil money penalty, a facility may challenge the level of noncompliance found by the department of inspections, appeals, and licensing only if a successful challenge on this issue would affect the range of civil money penalty amounts that the department could collect.

**81.20(4)** Except when a civil remedy penalty is imposed, the imposition of a remedy shall not be stayed pending an appeal hearing.

**441—81.21(249A) Civil money penalties—when penalty is collected.** The collection of civil money penalties is made as provided in rule 441—81.24(249A).

**441—81.22(249A) Civil money penalties—settlement authority.** The department of inspections, appeals, and licensing has the authority to settle cases at any time before an evidentiary hearing.

**441—81.23(249A) Civil money penalties—deduction of penalty from amount owed.**

**81.23(1)** The amount of the penalty, when determined, may be deducted from any sum then or later owing by the department to the facility.

**81.23(2)** Interest of 10 percent per year is assessed on the unpaid balance of the penalty, beginning on the due date.

**441—81.24(249A) Use of penalties collected by the department.** Civil money penalties collected by the department will be applied to the protection of the health or property of residents of facilities that the department of inspections, appeals, and licensing finds deficient. Funds may be used for:

1. Time-limited expenses incurred in the process of relocating residents to home- and community-based settings or other facilities when a facility is closed or downsized pursuant to an agreement with the department;
2. Recovery of state costs related to the operation of a facility pending correction of deficiencies or closure;
3. Support and protection of residents of a facility that closes;
4. Funding of projects to improve the quality of life and quality of care of nursing facility residents through quality improvement initiative grants awarded pursuant to 441—Chapter 166;
5. Projects that support resident and family councils and other consumer involvement in ensuring quality care in facilities; and
6. Reasonable expenses incurred by the department to administer, monitor, or evaluate the effectiveness of grants utilizing civil money penalty funds.

These rules are intended to implement Iowa Code section 249A.4.

## ARC 8713C

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

### Proposing rulemaking related to intermediate care facilities for persons with an intellectual disability and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to rescind Chapter 82, "Intermediate Care Facilities for Persons with an Intellectual Disability," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code chapter 249A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 249A and 42 CFR 483.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. This proposed chapter provides operational and reimbursement rules for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/ID). These rules and the underlying federal regulations allow the Department to hold providers accountable and help ensure quality care for resident members on Medicaid.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 7, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 82 and adopt the following **new** chapter in lieu thereof:

CHAPTER 82
INTERMEDIATE CARE FACILITIES FOR PERSONS
WITH AN INTELLECTUAL DISABILITY

**441—82.1(249A) Definitions.**

*"Intermediate care facility for persons with an intellectual disability"* or *"ICF/ID"* means an institution that is primarily for the diagnosis, treatment, or rehabilitation of persons with an intellectual disability or persons with related conditions and that provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination and integration of health or related services to help each person function at the greatest ability and is an approved Medicaid vendor.

*"Intermediate care facility for persons with an intellectual disability level of care"* means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association as amended to August 1, 2024; or has a related condition as defined in 42 CFR 435.1009 as amended to August 1, 2024; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

*"Intermediate care facility for persons with medical complexity"* means an intermediate care facility for persons with an intellectual disability that provides health and rehabilitation services to individuals who require a skilled nursing level of care, have either a multiple organ dysfunction or severe single organ dysfunction, and require daily use of medical resources or technology.

*"Managed care organization"* means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of "health maintenance organization" as defined in Iowa Code section 514B.1.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.2(249A) Licensing and certification.** In order to participate in the program, a facility shall be licensed as an intermediate care facility for persons with an intellectual disability by the department of inspections, appeals, and licensing pursuant to 481—Chapter 64. The facility shall meet the following conditions of participation.

**82.2(1)** *Governing body and management—disclosure of ownership.* The facility shall supply to the licensing agency full and complete information, and promptly report any changes that would affect the current accuracy of the information, as to identify:

*a.* Each person having a direct or indirect ownership interest of 5 percent or more in the facility and the owner in whole or in part of any property or assets (stock, mortgage, deed of trust, note or other obligation) secured in whole or in part by the facility.

*b.* Each officer and director of the corporation if the facility is organized as a corporation.

*c.* Each partner if the facility is organized as a partnership.

**82.2(2)** *Client protections.* The facility shall ensure the rights of all clients in accordance with 42 CFR 483.420 as amended to August 1, 2024.

**82.2(3)** *Facility staffing.* The facility shall provide adequate, qualified professional staffing in accordance with 42 CFR 483.430 as amended to August 1, 2024.

**82.2(4)** *Active treatment services.* Each client shall receive a continuous active treatment program in accordance with 42 CFR 483.440 as amended to August 1, 2024.

**82.2(5)** *Client behavior and facility practices.* Each facility shall establish and maintain standards for client behavior and facility practices in accordance with 42 CFR 483.450 as amended to August 1, 2024.

**82.2(6)** *Health care services.* Each facility shall establish and maintain standards for health care services in accordance with 42 CFR 483.460 as amended to August 1, 2024.

**82.2(7)** *Physical environment.* Each facility shall establish and maintain standards for the physical environment in accordance with 42 CFR 483.470 as amended to August 1, 2024.

**82.2(8)** *Dietetic services.* Each facility shall establish and maintain standards for dietary services in accordance with 42 CFR 483.480 as amended to August 1, 2024.

**441—82.3(249A) Conditions of participation for intermediate care facilities for persons with an intellectual disability.** All intermediate care facilities for persons with an intellectual disability must enter into a contractual agreement with the department that sets forth the terms under which they will participate in the program.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.4(249A) Financial and statistical report.** All facilities wishing to participate in the program shall submit a financial and statistical report to the department. These reports shall be based on the following rules.

**82.4(1)** *Failure to maintain records.* Failure to maintain and submit adequate accounting or statistical records shall result in termination or suspension of participation in the program.

**82.4(2)** *Accounting procedures.* Financial information shall be based on that appearing in the audited financial statement. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting bases. Facilities that are a part of a larger health facility extending short-term, intensive, or other health care not generally considered nursing care may submit a cost apportionment schedule prepared in accordance with recognized methods and procedures. The schedule shall be required when necessary for a fair presentation of expense attributable to intermediate care facility patients.

**82.4(3)** *Submission of reports.* The facility's cost report shall be received by the department no later than September 30 each year except as described in subrule 82.4(14).

*a.* The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the department to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 82.4(3)*"c."*

*b.* If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

*c.* Failure to timely submit the complete report shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective October 1 and shall remain in effect until the first day of the month after the delinquent report is received by the department.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the department.

*d.* Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

*e.* When an intermediate care facility for persons with an intellectual disability continues to include in the total costs an item or items that had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the department can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

*f.* Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the department when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

**82.4(4)** *Payment at new rate.* When a new rate is established, payment at the new rate will be effective with services rendered as of the first day of the month in which the report is postmarked, or if the report was personally delivered, the first day of the month in which the report was received by the department. Adjustments will be included in the payment the third month after the receipt of the report.

**82.4(5)** *Accrual basis.* Facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis. Expenses pertaining to an entire year shall be properly amortized by month in order to be properly recorded for the annual fiscal year report. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expense.

**82.4(6)** *Census of Medicaid members.* Census figures of Medicaid members shall be obtained on the last day of the month ending the reporting period.

**82.4(7)** *Patient days.* In determining inpatient days, a patient day is that period of service rendered a patient between the census-taking hours on two successive days, the day of discharge being counted only when the patient was admitted that same day.

**82.4(8)** *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

**82.4(9)** *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

*a.* Census information shall be based on a patient status at midnight each day. A patient whose status changes from one class to another shall be shown as discharged from the previous status and admitted to the new status on the same day.

*b.* When a member is on a reserve bed status and the department is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient and a per diem rate for the bed is charged to any party, the reserved days shall be included in the total census figures for inpatient days.

**82.4(10)** *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

*a.* Routine daily services shall represent the established charge for daily care. Routine daily services are those services that include room, board, nursing services, and such services as supervision, feeding, incontinence, and similar services, for which the associated costs are in nursing service.

*b.* Revenue from ancillary services provided to patients shall be applied in reduction of the related expense.

*c.* Revenue from the sale of medical supplies, food or services to employees or nonresidents of the facility shall be applied in reduction of the related expense. Revenue from the sale to private-pay residents of items or services that are included in the medical assistance per diem will not be offset.

*d.* Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of the interest expense.

*e.* Laundry revenue shall be applied to laundry expense.

*f.* Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

**82.4(11)** *Limitation of expenses.* Certain expenses that are not normally incurred in providing patient care shall be eliminated or limited according to the following rules.

*a.* Federal and state income taxes are not allowed as reimbursable costs. These taxes are considered in computing the fee for services for proprietary institutions.

*b.* Fees paid directors and nonworking officer's salaries are not allowed as reimbursable costs.

*c.* Personal travel and entertainment are not allowed as reimbursable costs. Certain expenses such as rental or depreciation of a vehicle and expenses of travel that include both business and personal shall be prorated. Amounts that appear excessive may be limited after considering the specific circumstances. Records shall be maintained to substantiate the indicated charges.

*d.* Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

*e.* A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation includes all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including but not limited to salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits include but are not limited to costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the department. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation are unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, are required to be reported to the department with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 82.4(3)*"c."*

(2) Reasonableness—requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions and depends upon the facts and circumstances of each case.

(3) Necessary—requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The base maximum allowed compensation for an administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is $1,926 per month plus $20.53

per month per licensed bed capacity for each bed over 60, not to exceed $2,852 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of 5 percent or more.

On an annual basis, the maximum allowed compensation amounts for these administrators will be increased or decreased by the inflation factor applied to facility rates.

(5) The maximum allowed compensation for an assistant administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility in facilities having a licensed capacity of 151 or more beds is 60 percent of the amount allowed for the administrator. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of 5 percent or more.

(6) The maximum allowed compensation for a director of nursing or any employee who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is 60 percent of the amount allowed for the administrator. Persons involved in ownership or relatives providing professional services shall be limited to rates prevailing in the community not to exceed 60 percent of the allowable rate for the administrator on a semiannual basis. Records shall be maintained in the same manner for an employee involved in ownership as are maintained for any employee of the facility. Ownership is defined as an interest of 5 percent or more.

(7) The maximum allowed compensation for employees as set forth in subparagraphs 82.4(11)*"e"*(4) through 82.4(11)*"e"*(6) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the intermediate care facility for persons with an intellectual disability for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit will be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

*f.* Management fees and home office costs are allowed only to the extent they are related to patient care and replace or enhance but do not duplicate functions otherwise carried out in a facility.

*g.* Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated useful life of the asset as defined in the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (2023 edition), may be included as a patient cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment will be made. For change of ownership, refer to subrule 82.4(12).

*h.* Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) Necessary requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to patient care, and be reduced by investment income except where the income is from gifts and grants, whether restricted or unrestricted, and that are held separate and not commingled with other funds.

(3) Proper requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to the fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where the deposits are used for other than the purpose for which the fund was established.

*i.* Costs applicable to supplies furnished by a related party or organization are a reimbursable cost when included at the cost to the related party or organization. The cost shall not exceed the price of comparable supplies that could be purchased elsewhere.

(1) Related means that the facility, to a significant extent, is associated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in the facility and the institution or organization serving the provider.

(3) Control exists where an individual or an organization has power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

(4) When the facility demonstrates by convincing evidence that the supplying organization is a bona fide separate organization; that a substantial part of its business activity of the type carried on with the facility is transacted with others and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization; that the services, facilities, or supplies are those that commonly are obtained by similar institutions from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by the institutions; and that the charge to the facility is in line with the charge for services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for the services, facilities, or supplies, the charges by the supplier shall be allowable costs.

*j.* A facility entering into a new or renewed rent or lease agreement on or after June 1, 1994, shall be subject to the provisions of this paragraph.

(1) When the operator of a participating facility rents from a nonrelated party, the amount of rent expense allowable on the cost report is the lesser of the actual rent payments made under the terms of the lease or an annual reasonable rate of return applied to the cost of the facility. The cost of the facility shall be determined as the historical cost of the facility in the hands of the owner when the facility first entered the Iowa Medicaid program. Where the facility has previously participated in the program, the cost of the facility shall be determined as the historical cost of the facility, as above, less accumulated depreciation claimed for cost reimbursement under the program. The annual reasonable rate of return is defined as one and one-half times the annualized interest rate of 30-year Treasury bonds as reported by the Federal Reserve Board on a weekly-average basis, at the date the lease was entered into.

(2) When the operator of a participating facility rents the building from a related party, the amount of rent expense allowable on the cost report is limited to the lesser of the actual rent payments made under the terms of the lease or the amount of property costs that would otherwise have been allowable under the Iowa Medicaid program to an owner-provider of that facility.

(3) The lessee shall submit a copy of the lease agreement, documentation of the cost basis used and a schedule demonstrating that the limitations have been met with the first cost report filed for which lease costs are claimed.

*k.* Each facility that supplies transportation services as defined in Iowa Code section 324A.1(1) shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules 761—Chapter 910 at the time of annual contract renewal. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation, public transit division, will result in disallowance of vehicle costs and other costs associated with transporting residents.

*l.* Reserved.

*m.* Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and

other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

(1) Any fees or portion of fees used or designated for lobbying.

(2) Nonrefundable and unused retainers.

(3) Fees paid by the facility for the benefit of employees.

(4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. However, facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,

2. The costs are reasonable expenditures for the services obtained,

3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and

4. The facility prevails on the disputed issue.

*n.* Penalties or fines imposed by federal or state agencies are not allowable expenses.

*o.* Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

**82.4(12)** *Termination or change of owner.*

*a.* A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department with at least 60 days' prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

(1) In the case of a partnership that is a party to an agreement to participate in the medical assistance program, the removal, addition, or substitution of an individual for a partner in the association, in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership that is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing home is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A consolidation of two or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion but terminates with respect to the leased portion.

*b.* No increase in the value of the property is allowed in determining the Medicaid rate for the new owner with any change of ownership (including lease agreements). When filing the first cost report, the new owner shall either continue the schedule of depreciation and interest established by the previous owner, or the new owner may choose to claim the actual rate of interest expense. The results of the actual rate of interest expense shall not be higher than would be allowed under the Medicare principles of reimbursement and shall be applied to the allowed depreciable value established by the previous owner, less any down payment made by the new owner.

*c.* Other acquisition costs of the new owner such as legal fees, accounting and administrative costs, travel costs and the costs of feasibility studies attributable to the negotiation or settlement of the sale or purchase of the property are not allowed.

*d.* In general, the provisions of Section 1861(v)(1)(0) of the Social Security Act (as amended to August 1, 2024) regarding payment allowed under Medicare principles of reimbursement at the time of a change of ownership shall be followed, except that no return on equity or recapture of depreciation provisions shall be employed.

*e.* A new owner or lessee wishing to claim a new rate of interest expense must submit documentation that verifies the amount of down payment made, the actual rate of interest, and the number of years required for repayment with the next semiannual cost report. In the absence of the necessary supportive documentation, interest and other property costs for all facilities that have changed or will change ownership shall continue at the rate allowed the previous owner.

**82.4(13)** *Assessed fee.* The fee assessed pursuant to 441—Chapter 36 is not an allowable cost for cost reporting and audit purposes. In lieu of treating the fee as an allowable cost, a per diem assessment amount is added to the reimbursement rate calculated under subrule 82.4(14), not subject to the maximum allowable base cost or maximum rate set at the eightieth percentile. The per diem assessment amount will be calculated by dividing the annual assessment paid by the reported total patient days.

**82.4(14)** *Payment to new facility.* A facility receiving Medicaid ICF/ID certification on or after July 1, 1992, is subject to the provisions of this subrule.

*a.* A facility receiving initial Medicaid certification for ICF/ID level of care shall submit a budget for six months of operation beginning with the month in which Medicaid certification is given. The budget shall be submitted at least 30 days in advance of the anticipated certification date. The Medicaid per diem rate for a new facility will be based on the submitted budget subject to review by the accounting firm under contract with the department. The rate will be subject to a maximum set at the eightieth percentile of all participating community-based Iowa ICFs/ID with established base rates. The eightieth percentile maximum rate will be adjusted July 1 of each year. The state hospital schools are not to be included in the compilation of facility costs. The beginning rates for a new facility will be effective with the date of Medicaid certification.

*b.* Initial cost report. Following six months of operation as a Medicaid-certified ICF/ID, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

(1) Start-up costs. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, the costs must be capitalized as deferred charges and amortized over a five-year period.

Start-up costs include, for example, administrative and program staff salaries, heat, gas and electricity, taxes, insurance, mortgage and other interest, employee training costs, repairs and maintenance, and housekeeping.

(2) Organization costs. Organization costs are those costs directly related to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges that have a value to the enterprise. The services inherent in organization costs extend over more than one accounting period and affect the costs of future periods of operation. Organization costs must be amortized over a five-year period.

1. Allowable organization costs. Allowable organization costs include but are not limited to legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and bylaws, legal agreements, minutes of organization meetings, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders, and fees paid to states for incorporation.

2. Unallowable organization costs. The following types of costs are not allowable organization costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as

underwriters' fees and commissions, accountant's or lawyer's fees; costs of qualifying the issues with the appropriate state or federal authorities; and stamp taxes.

*c.* Standardization of cost reporting period for new facilities.

(1) Facilities receiving initial certification between July 1 and December 31 (inclusive) shall submit three successive six-month cost reports covering their first 18 months of operation. The fourth six-month cost report shall cover the January 1 through June 30 period. Thereafter, the facility shall submit a cost report on an annual basis of July 1 through June 30.

(2) Facilities receiving initial certification between January 1 and June 30 (inclusive) shall submit two successive six-month cost reports covering the first 12 months of operation. The third six-month cost report shall cover the January 1 through June 30 period. Thereafter, the facility shall submit a cost report on an annual basis of July 1 through June 30.

(3) All facilities shall comply with the requirements of subrule 82.4(3) when submitting reports.

*d.* Completion of 12 months of operation. Following the first 12 months of operation as a Medicaid-certified ICF/ID as described in subrule 82.4(14), the facility shall submit a cost report for the second six months of operation. An on-site audit of facility costs shall be performed by the accounting firm under contract with the department. Based on the audited cost report, a rate will be established for the facility. This rate will be considered the base rate until rebasing of facility costs occurs.

(1) A new maximum allowable base cost will be calculated each year by increasing the prior year's maximum allowable base by the annual percentage increase of the Consumer Price Index.

(2) Each year's maximum allowable base cost represents the maximum amount that can be reimbursed.

*e.* Maximum rate. Facilities will be subject to a maximum rate set at the eightieth percentile of the total per diem cost of all participating community-based ICFs/ID with established base rates. The eightieth percentile maximum rate will be adjusted July 1 of each year using cost reports on file December 31 of the previous year.

*f.* Incentive factor. New facilities that complete the second annual period of operation that have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, as described in 82.4(14)*"d,"* will be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem cost for the annual period just completed is the incentive factor.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the next annual period of operation.

(2) Facilities whose annual per unit cost decreased from the prior year shall be given their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment.

*g.* Reimbursement for first annual period. The reimbursement for the first annual period will be determined by multiplying the per diem rate calculated for the base period by the Consumer Price Index plus one.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, the facility will receive as reimbursement in the following period the maximum allowable base as calculated.

(3) All calculated per diem rates will be subject to the prevailing maximum rate.

**82.4(15)** *Payment to new owner.* An existing facility with a new owner will continue with the previous owner's per diem rate until a new financial and statistical report has been submitted and a new rate established according to subrule 82.4(16). The facility may submit a report for the period of July 1 through June 30 or may submit two cost reports within the fiscal year provided the second report covers a period of at least six months ending on the last day of the fiscal year. The facility shall notify the department of the reporting option selected.

**82.4(16)** *Payment to existing facilities.* The following reimbursement limits apply to all non-state-owned ICFs/ID:

*a.* Each facility shall file a cost report covering the period from January 1, 1992, through June 30, 1992. This cost report will be used to establish a reimbursement rate to be paid to the facility and will be used to establish the base allowable cost per unit to be used in future reimbursement rate calculations. Subsequent cost reports shall be filed annually by each facility covering the 12 months from July 1 through June 30.

*b.* The reimbursement rate established based on the report covering January 1, 1992, through June 30, 1992, will be calculated using the method in place prior to July 1, 1992, including inflation and incentive factors.

*c.* The audited per unit cost from the January 1, 1992, through June 30, 1992, cost report will become the initial allowable base cost. A new maximum allowable base cost will be calculated each year as described in 82.4(14)*"d."*

*d.* Facilities that have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index will be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem costs for the annual period just completed is the incentive factor.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the following annual period.

(2) Facilities whose annual per unit cost decreased from the prior year will receive their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment.

*e.* Administrative costs shall not exceed 18 percent of total facility costs. Administrative costs are comprised of those costs incurred in the general management and administrative functions of the facility. Administrative costs include but are not necessarily limited to the administrative portion of the following:

(1) Administrator wages.
(2) Business office wages.
(3) Advertising and marketing wages.
(4) Employer's taxes (administrative).
(5) Group/life and retirement benefits (administrative staff).
(6) Workers' compensation insurance (administrative staff).
(7) Employment advertising and recruitment (administrative staff).
(8) Criminal record checks (administrative staff).
(9) Education and training (administrative staff).
(10) Office supplies (administrative staff).
(11) Telephone.
(12) Equipment rental.
(13) Home office costs.
(14) Management fees.
(15) Accounting fees.
(16) Professional organization dues.
(17) Licensing fees.
(18) Information technology expenses.
(19) Legal fees—direct patient-care-related.
(20) Legal fees—other.
(21) Working capital interest.
(22) General liability insurance.
(23) Travel, entertainment and auto expenses.
(24) Advertising and public relations.
(25) Other.

*f.* Facility rates will be rebased using the cost report for the year covering state fiscal year 1996 and will subsequently be rebased each four years. The department will consider allowing special rate adjustments between rebasing cycles if:

(1) An increase in the minimum wage occurs.

(2) A change in federal regulations occurs that necessitates additional staff or expenditures for capital improvements, or a change in state or federal law occurs, or a court order with force of law mandates program changes that necessitate the addition of staff or other resources.

(3) A decision is made by a facility to serve a significantly different client population or to otherwise make a dramatic change in program structure (documentation and verification will be required).

(4) A facility increases or decreases licensed bed capacity by 20 percent or more.

*g.* Total patient days for purposes of the computation are inpatient days as determined in subrule 82.4(7) or 80 percent of the licensed capacity of the facility, whichever is greater. The reimbursement rate will be determined by dividing total reported patient expenses by total patient days during the reporting period. This cost per day will be limited by an inflation increase that will not exceed the percentage change in the Consumer Price Index.

*h.* State-owned ICFs/ID shall submit semiannual cost reports and will receive semiannual rate adjustments based on actual costs of operation inflated by the percentage change in the Consumer Price Index.

*i.* The projected reimbursement for the first annual period will be determined by multiplying the per diem rate calculated for the base period by the Consumer Price Index.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, the facility will receive as reimbursement in the following period the maximum allowable base as calculated.

**82.4(17)** *Wage add-on factor.* A wage add-on factor of $8.86 per day for community-based ICFs/ID will be included in rates effective July 1, 2022, and after, not subject to the maximum allowable cost ceiling in paragraph 82.4(14)*"e,"* until rates are established using the cost reports for the period ending June 30, 2023.

*a.* In accordance with 2022 Iowa Acts, House File 2578, section 31, the entire wage add-on factor will be used for wages and associated costs specific to wages, benefits, and required withholding of direct support professionals and frontline management.

*b.* The wage add-on factor of $8.86 per day will be added to the maximum allowable base rate in subparagraph 82.4(14)*"d"*(1) until the next rebase using cost reports for the period ending June 30, 2024.

*c.* The wage add-on factor of $8.86 per day will be added to the maximum allowable cost ceiling, eightieth percentile of costs of all participating facilities in paragraph 82.4(14)*"e,"* until the eightieth percentile maximum is established using the December 31, 2023, compilation for rates effective beginning July 1, 2024.

This rule is intended to implement Iowa Code sections 249A.12 and 249A.16.

**441—82.5(249A) Eligibility for services.**

**82.5(1)** *Interdisciplinary team.* The initial evaluation for admission shall be conducted by an interdisciplinary team. The team shall consist of a physician, a social worker, and other professionals. At least one member of the team shall be a qualified intellectual disability professional.

**82.5(2)** *Evaluation.* The evaluation shall include a comprehensive medical, social, and psychological evaluation. The comprehensive evaluation shall include:

*a.* Diagnoses, summaries of present medical, social and where appropriate, developmental findings, medical and social family history, mental and physical functional capacity, prognoses, range of service needs, and amounts of care required.

*b.* An evaluation of the resources available in the home, family, and community.

*c.* An explicit recommendation with respect to admission or in the case of persons who make application while in the facility, continued care in the facility. Where it is determined that intermediate care facility for persons with an intellectual disability services are required by an individual whose needs might be met through the use of alternative services that are currently unavailable, this fact shall be entered in the record, and plans shall be initiated for the active exploration of alternatives.

*d.* An individual plan for care shall include diagnosis, symptoms, complaints or complications indicating the need for admission, a description of the functional level of the resident; written objective; orders as appropriate for medications, treatments, restorative and rehabilitative services, therapies, diet, activities, social services, and special procedures designed to meet the objectives; and plans for continuing care, including provisions for review and necessary modifications of the plan, and discharge.

*e.* Written reports of the evaluation and the written individual plan of care shall be delivered to the facility and entered in the individual's record at the time of admission or, in the case of individuals already in the facility, immediately upon completion.

**82.5(3)** *Certification statement.* Eligible individuals may be admitted to an intermediate care facility for persons with an intellectual disability upon the certification of a physician that there is a necessity for care at the facility. For clients enrolled with a managed care organization, authorization for admission must be obtained from the managed care organization prior to admission. Eligibility will continue as long as a valid need for the care exists.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.6(249A) Initial approval for ICF/ID care.**

**82.6(1)** *Referral through targeted case management.* Persons seeking ICF/ID placement shall be referred through targeted case management. The case management program will:

*a.* Identify appropriate service alternatives;

*b.* Inform the person of the alternatives; and

*c.* Refer a person without appropriate alternatives to the department.

**82.6(2)** *Approval of placement by department.*

*a.* Within 30 days of receipt of a referral, the department will:

(1) Approve ICF/ID placement;

(2) Offer a home- or community-based alternative; or

(3) Refer the person back to the targeted case management program for further consideration of service needs.

*b.* Once ICF/ID placement is approved, including approval of ICF/ID level of care as described in subrule 82.6(3), the eligible person, or the person's representative, is free to seek placement in the facility of the person's or the person's representative's choice, subject to the provision of ICF/ID services through managed care pursuant to 441—Chapter 73.

**82.6(3)** *Approval of level of care.* Medicaid payment will be made for ICF/ID care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the department.

**82.6(4)** *Appeal rights.* Notice of adverse action and right to appeal will be given in accordance with 441—Chapter 7 and rule 441—16.3(17A).

This rule is intended to implement Iowa Code section 249A.12.

**441—82.7(249A) Determination of need for continued stay.** For clients not enrolled with a managed care organization, certification of need for continued stay will be made according to procedures established by the department. For all clients enrolled with a managed care organization, the managed care organization shall review the Medicaid client's need for continued care in an ICF/ID at least annually. The managed care organization must submit documentation to the department for all reviews that indicate a change in the client's level of care. The department will make a final determination for any reviews that indicate a change in the level of care.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.8(249A) Arrangements with residents.**

**82.8(1)** *Resident care agreement.* The ICF/ID Resident Care Agreement shall be used as a three-party contract among the facility, the resident, and the department to spell out the duties, rights, and obligation of all parties.

**82.8(2)** *Financial participation by resident.* A resident's payment for care may include any voluntary payments made by family members toward cost of care of the resident. The resident's client participation and medical payments from a third party shall be paid toward the total cost of care for the month before any Medicaid payment is made. Medicaid will pay the balance of the cost of care for the remainder of the month. The facility shall make arrangements directly with the resident for payment of client participation.

**82.8(3)** *Personal needs account.* When a facility manages the personal needs funds of a resident, it shall establish and maintain a system of accounting for expenditures from the resident's personal needs funds. The department will charge back to the facility any maintenance item included in the computation of the audit cost that is charged to the resident's personal needs account when the charge constitutes double payment. Unverifiable expenditures charged to personal needs accounts may be charged back to the facility. The accounting system is subject to audit by representatives of the department of inspections, appeals, and licensing and will meet the following criteria:

*a.* Upon admittance, a ledger sheet shall be credited with the resident's total incidental money on hand. Thereafter, the ledger shall be kept current on a monthly basis. The facility may combine the accounting with the disbursement section showing the date, amount given the resident, and the resident's signature. A separate ledger shall be maintained for each resident.

*b.* When something is purchased for the resident and is not a direct cash disbursement, each expenditure item in the ledger shall be supported by a signed, dated receipt. The receipt shall indicate the article furnished for the resident's benefit.

*c.* Personal funds shall only be turned over to the resident, the resident's guardian, or other persons selected by the resident. With the consent of the resident, when the resident is able and willing to give consent, the administrator may turn over personal funds to a close relative or friend of the resident to purchase a particular item. A signed, itemized, dated receipt shall be required to be deposited in the resident's files.

*d.* The receipts for each resident shall be kept until canceled by auditors.

*e.* The ledger and receipts for each resident shall be made available for periodic audits by an accredited department of inspections, appeals, and licensing representative. Audit certification will be made by the department's representative at the bottom of the ledger sheet. Supporting receipts may then be destroyed.

*f.* Upon a member's death, a receipt shall be obtained from the next of kin or the member's guardian before releasing the balance of the personal needs funds. When the member has been receiving a grant from the department for all or part of the personal needs, any funds shall revert to the department. The department will turn the funds over to the member's estate.

**82.8(4)** *Safeguarding personal property.* The facility shall safeguard the resident's personal possessions. Safeguarding shall include but is not limited to:

*a.* Providing a method of identification of the resident's suitcases, clothing, and other personal effects, and listing these on an appropriate form attached to the resident's record at the time of admission. These records shall be kept current. Any personal effects released to a relative of the resident shall be covered by a signed receipt.

*b.* Providing adequate storage facilities for the resident's personal effects.

*c.* Ensuring that the resident is accorded privacy and uncensored communication with others by mail and telephone and with persons of the resident's choice except when therapeutic or security reasons dictate otherwise. Any limitations or restrictions imposed shall be approved by the administrator and the reasons noted shall be made a part of the resident's record.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.9(249A) Discharge and transfer.**

**82.9(1)** *Notice.* When a Medicaid member requests transfer or discharge to a community setting, or another person requests this for the member, the administrator shall promptly notify a targeted case management provider. Names of local providers are available from the department's local office. This shall be done in sufficient time to permit a case manager to assist in the decision and planning for the transfer or discharge.

**82.9(2)** *Case activity report.* A case activity report shall be submitted to the department whenever a Medicaid applicant or member enters the facility, changes level of care, or is discharged from the facility.

**82.9(3)** *Plan.* The administrator and staff shall assist the resident in planning for transfer or discharge through development of a discharge plan.

**82.9(4)** *Transfer records.* When a resident is transferred to another facility, transfer information shall be summarized from the facility's records in a copy to accompany the resident. This information shall include:

*a.* A transfer form of diagnosis.

*b.* Aid to daily living information.

*c.* Transfer orders.

*d.* Nursing care plan.

*e.* Physician's or qualified intellectual disability professional's orders for care.

*f.* The resident's personal records.

*g.* When applicable, the personal needs fund record.

**82.9(5)** *Income refund.* When a resident leaves the facility during the month, any unused portion of the resident's income shall be refunded.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.10(249A) Records.**

**82.10(1)** *Content.* The facility shall at a minimum maintain the following records:

*a.* All records required by the department and the department of inspections, appeals, and licensing.

*b.* Medical records as required by Section 1902(a)(31) of Title XIX of the Social Security Act (as amended to August 1, 2024).

*c.* Records of all treatments, drugs and services for which vendors' payments have been made or are to be made under the medical assistance program, including the authority for and the date of administration of the treatment, drugs, or services.

*d.* Documentation in each resident's records, which will enable the department to verify that each charge is due and proper prior to payment.

*e.* Financial records maintained in the standard, specified form including the facility's most recent audited cost report.

*f.* All other records as may be found necessary by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

*g.* Census records to include the date, number of residents at the beginning of each day, names of residents admitted, and names of residents discharged.

(1) Census information shall be provided for residents in skilled, intermediate, and residential care.

(2) Census figures for each type of care shall be totaled monthly to indicate the number admitted, the number discharged, and the number of patient days.

(3) Failure to maintain acceptable census records shall result in the per diem rate being computed on the basis of 100 percent occupancy and a request for refunds covering indicated recipients of nursing care that have not been properly accounted for.

*h.* Resident accounts.

*i.* Inservice education program records.

*j.* Inspection reports pertaining to conformity with federal, state, and local laws.

*k.* Residents' personal records.

*l.* Residents' medical records.

*m.* Disaster preparedness reports.

**82.10(2)** *Retention.* Records shall be retained in the facility for a minimum of five years or until an audit is performed on those records, whichever is longer.

**82.10(3)** *Change of owner.* All records shall be retained within the facility upon change of ownership.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.11(249A) Payment procedures.**

**82.11(1)** *Method of payment.* Facilities will be reimbursed under a cost-related vendor payment program. A per diem rate will be established based on information submitted according to rule 441—82.4(249A).

**82.11(2)** *Periods authorized for payment.*

*a.* Payment will be made on a per diem basis for the portion of the month the resident is in the facility.

*b.* Payment will be authorized as long as the resident is certified as needing care in an intermediate care facility for persons with an intellectual disability.

*c.* Payment will be approved for the day of admission but not the day of discharge or death.

*d.* Payment will be approved for periods the resident is absent to visit home for a maximum of 30 days annually. Additional days may be approved for special programs of evaluation, treatment or habilitation outside the facility. Documentation as to the appropriateness and therapeutic value of resident visits and outside programming, signed by a physician or qualified intellectual disability professional, shall be maintained at the facility.

*e.* Payment will be approved for a period not to exceed ten days in any calendar month when the resident is absent due to hospitalization. Medicaid payment to the facility may not be initiated while a resident is on reserve bed days unless the person was residing in the facility as a private pay resident prior to the hospitalization and returns to the facility as a resident.

*f.* Payment for periods when residents are absent for visitation or hospitalization from facilities with more than 15 beds will be made at 80 percent of the allowable audited costs for those beds. Facilities with 15 or fewer beds will be reimbursed at 95 percent of the allowable audited costs for those beds.

**82.11(3)** *Supplementation.* Only the amount of client participation may be billed to the resident for the cost of care. No supplementation of the state payment shall be made by any person. However, the resident or the resident's family or friends may pay to hold the resident's bed in cases where a resident spends over 30 days on yearly visitation or spends over ten days on a hospital stay. When the resident is not discharged from the facility, the payments will not exceed 80 percent of the allowable audited costs for the facility, not to exceed the maximum reimbursement rate. When the resident is discharged, the facility may handle the holding of the reserved bed in the same manner as a private paying resident.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.12(249A) Billing procedures.** Claims for service for clients not enrolled with a managed care organization must be sent to the department after the month of service and within 365 days of the date of service. Such claims must be submitted electronically through the department's electronic clearinghouse.

**82.12(1)** A remittance advice of the claims paid may be obtained through the Iowa Medicaid portal access (IMPA) system.

**82.12(2)** Adjustments to claims may be made electronically as provided for by the department.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.13(249A) Closing of facility.** When a facility is planning on closing, the department and the department's contracted managed care organizations with which the facility is enrolled shall be notified at least 60 days in advance of the closing. Plans for the transfer of residents receiving Medicaid shall be approved by the resident's managed care organization or by the department for residents not enrolled with a managed care organization.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.14(249A) Audits.**

**82.14(1)** *Audits of financial and statistical report.* Authorized representatives of the department or the U.S. Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the financial and statistical report are reasonable and proper according to the rules set forth in 441—82.4(249A). These audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agents.

*a.* When a proper per diem rate cannot be determined through generally accepted auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department that the indicated per diem should be reduced to 75 percent of the established payment rate for the ensuing fiscal period and if the situation is not remedied on the subsequent financial and statistical report, the facility shall be suspended and eventually canceled from the intermediate care facility program, or

*b.* When a facility continues to include as an item of cost an item or items that had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the ensuing fiscal period. The department may, after considering the seriousness of the exception, make the reduction.

**82.14(2)** *Auditing of proper billing and handling of patient funds.*

*a.* The department, the department's contracted managed care organizations, field auditors of the department of inspections, appeals and licensing and representatives of the U.S. Department of Health and Human Services, upon proper identification, have the right to audit billings to the department and receipts of client participation, to ensure that the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

*b.* The department, the department's contracted managed care organizations, field auditors of the department of inspections, appeals, and licensing and representatives of the U.S. Department of Health and Human Services, upon proper identification, have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 82.8(3).

*c.* The auditor shall recommend and the department shall request repayment by the facility to either the department or the resident(s) involved, such sums inappropriately billed to the department or collected from the resident.

*d.* The facility shall have 60 days to review the audit and repay the requested funds or present supporting documentation that would indicate that the requested refund amount, or part thereof, is not justified.

*e.* When the facility fails to comply with paragraph *"d,"* the requested refunds may be withheld from future payments to the facility. The withholding will not be more than 25 percent of the average of the last six monthly payments to the facility. The withholding will continue until the entire requested refund amount is recovered. If in the event the audit results indicate significant problems, the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

*f.* When exceptions are taken during the scope of an audit that are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to 75 percent of the current payment rate.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.15(249A) Out-of-state facilities.** Payment will be made for care in out-of-state intermediate care facilities for persons with an intellectual disability. Out-of-state facilities shall abide by the same policies as in-state facilities with the following exceptions:

**82.15(1)** Out-of-state providers will be reimbursed at the same intermediate care facility rate they are receiving for their state of residence.

**82.15(2)** Out-of-state facilities shall not submit financial and statistical reports as required in rule 441—81.56(249A).

**82.15(3)** Payment for periods when residents are absent for visitation or hospitalization will be made to out-of-state facilities at 80 percent of the rate paid to the facility by the Iowa Medicaid program. Out-of-state facilities with 15 or fewer beds will be reimbursed at 95 percent of the rate paid to the facility by the Iowa Medicaid program.

This rule is intended to implement Iowa Code section 249A.12.

**441—82.16(249A) State-funded personal needs supplement.** A Medicaid member living in an intermediate care facility for persons with an intellectual disability who has countable income for purposes of rule 441—75.16(249A) of less than $50 per month will receive a state-funded payment from the department for the difference between that countable income and $50 if the legislature has appropriated funding specifically for this purpose. This payment shall not be considered a benefit under Title XIX of the Social Security Act (as amended to August 1, 2024).

This rule is intended to implement Iowa Code section 249A.30A.

## ARC 8710C

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

**Proposing rulemaking related to early and periodic screening, diagnosis, and treatment and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 84, "Early and Periodic Screening, Diagnosis, and Treatment," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code chapter 249A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 249A.32B and 42 CFR §441.56.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. This proposed chapter defines and structures the early and periodic screening, diagnosis, and treatment services provided under the Medicaid program to eligible children under the age of 21. As further described in these rules, services include physical and mental health screenings (including hearing and vision), laboratory tests, immunizations, and health education. Services are provided in compliance with federal regulations at Title 42, Part 441, Subpart B, as amended to August 1, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 84 and adopt the following **new** chapter in lieu thereof:

CHAPTER 84
EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

**441—84.1(249A) Definitions.**

*"Diagnosis"* is the determination of the nature of physical or mental disease or abnormality.

*"Interperiodic screen"* means a screen that occurs between the times stated in the periodicity schedule in 441—subrule 78.18(3).

*"Screening"* is the use of quick, simple procedures to sort out apparently well persons from those who may have a disease or abnormality and to identify those in need of more definitive study. These services will be provided in accordance with reasonable standards of medical and dental practice.

**441—84.2(249A) Eligibility.** All persons eligible for medical assistance under age 21 are eligible for early and periodic screening, diagnosis, and treatment.

**441—84.3(249A) Screening services.** Screening services shall be provided in accordance with 42 CFR §441.56, as amended to August 1, 2024, and may be done by a screening center or other qualified providers. Other qualified providers are physicians, advanced registered nurse practitioners, rural health centers, federally qualified health centers, clinics, and dentists.

**441—84.4(249A) Referral.**

**84.4(1)** The availability of early and periodic screening will be discussed with the payee for any Medicaid-eligible child under the age of 21 at the time of application and periodically thereafter in compliance with federal regulations at Title 42, Part 441, Subpart B, as amended to March 29, 2022.

**84.4(2)** Screening will be offered to each eligible individual according to the periodicity schedule in 441—subrule 78.18(3) when screening has been accepted, or on at least an annual basis when screening has been rejected. Interperiodic screens may be furnished when medically necessary to determine whether a child has a physical or mental illness or condition that may require further assessment, diagnosis, or treatment.

**441—84.5(249A) Follow up.** Follow-up services will be provided when a referral for screening was accepted, but 60 days have elapsed and no screening examination has been performed, and when a screening examination discloses a possible abnormal condition and a referral was made for further diagnosis or treatment and such diagnosis or treatment has not been received within a period of 60 days from the date of the screening examination.

These rules are intended to implement Iowa Code section 249A.4.

## ARC 8711C

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

### Proposing rulemaking related to the family planning program and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to rescind Chapter 87, "Family Planning Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 217.6 and 217.41B.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 217.41B and 2024 Iowa Acts, Senate File 2251.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. This proposed chapter outlines the details of eligibility criteria, funding, provider criteria, and covered services for the Family Planning Program. This rulemaking also makes conforming changes as a result of 2024 Iowa Acts, Senate File 2251, section 1, enacted May 8, 2024, and effective January 1, 2025.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 441—Chapter 87 and adopt the following **new** chapter in lieu thereof:

CHAPTER 87
FAMILY PLANNING PROGRAM

**441—87.1(217) Definitions.**

*"Applicant"* means a person who applies for assistance under the family planning program described in this chapter.

*"Authorized Title X agency"* means an agency or entity with an executed memorandum of understanding (MOU) with the department authorizing the agency to perform point-of-service eligibility determinations for the family planning program.

*"Citizen"* or *"citizenship"* includes both citizens of the United States and nationals of the United States as defined in 8 U.S.C. Section 1101(a)(22) as amended to August 1, 2024.

*"Family planning services"* means pregnancy prevention and related reproductive health services.

*"Federal poverty level"* means the levels published and updated periodically in the Federal Register by the United States Department of Health and Human Services (DHHS) under the authority of 42 U.S.C. Section 9902(2) as amended to August 1, 2024, and revised annually on April 1.

*"INA"* means the Immigration and Nationality Act of 1952. All references to the INA herein are as amended to August 1, 2024.

*"Member"* means a person who has been determined eligible and is a current or former recipient of family planning program services.

*"Noncitizen"* means the same as the term "alien" as defined at 8 U.S.C. Section 1101(a)(3) as amended to August 1, 2024.

*"Qualified noncitizen"* means the same as the term "qualified alien" as defined at 8 U.S.C. Section 1641(b) and (c), as amended to August 1, 2024, and refers to a person who is:

1. Lawfully admitted for permanent residence in the United States under the INA;
2. Granted asylum in the United States under Section 208 of the INA;
3. A refugee admitted to the United States under Section 207 of the INA;
4. Paroled into the United States under Section 212(d)(5) of the INA for a period of at least one year;
5. A person whose deportation from the United States is withheld under Section 243(h) of the INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA;
6. Granted conditional entry to the United States pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;
7. An Amerasian admitted to the United States as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V) as amended to August 1, 2024;
8. A Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7) as amended to August 1, 2024;
9. A battered noncitizen as described in 8 U.S.C. Section 1641(c) as amended to August 1, 2024;
10. Certified as a victim of trafficking as described in Section 107(b)(1)(A) of PL 106-386 as amended to August 1, 2024;
11. An American Indian born in Canada to whom Section 289 of the INA applies or a member of a federally recognized Indian tribe as defined in 25 U.S.C. Section 450b(e) as amended to August 1, 2024;
12. Under the age of 21 and lawfully residing in the United States as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii) as amended to August 1, 2024; or
13. Lawfully residing in the United States in accordance with a Compact of Free Association with the government of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau as described in 8 U.S.C. Section 1612(b)(2)(G) as amended by Section 208 of Division CC of PL 116-260 as amended to August 1, 2024.

*"Qualifying quarters"* means all of the qualifying quarters of coverage as defined under Title II of the Social Security Act as amended to August 1, 2024, worked by a parent of a noncitizen while the noncitizen was under the age of 18 and all of the qualifying quarters worked by a spouse of the noncitizen during their marriage if the noncitizen remains married to the spouse or the spouse is deceased. No qualifying quarters of coverage that are creditable under Title II of the Social Security Act as amended to August 1, 2024, for any period beginning after December 31, 1996, may be credited to a noncitizen if the parent or spouse of the noncitizen received any federal means-tested public benefit during the period for which the qualifying quarter is credited.

**441—87.2(217) Eligibility.** Eligibility for the family planning program will be determined according to the provisions of this rule.

**87.2(1)** *Persons covered.* Subject to funding as described in subrule 87.7(1) and to the requirements of subrules 87.2(2), 87.2(4), and 87.2(6), assistance for family planning services will be available to the following individuals who are not enrolled in medical assistance pursuant to 441—Chapter 74 or 441—Chapter 75:

*a.* Women who were enrolled in medical assistance when their pregnancy ended and who are capable of bearing children but are not pregnant. Eligibility for these women extends for 12 consecutive months after the month when the postpartum period described in Iowa Code section 249A.3 ends;

*b.* Women who are under the age of 55, who are capable of bearing children but are not pregnant, and who have household income that does not exceed 300 percent of the federal poverty level as determined pursuant to subrule 87.2(3);

*c.* Men who are under the age of 55, who are capable of fathering children, and who have household income that does not exceed 300 percent of the federal poverty level as determined pursuant to subrule 87.2(3).

**87.2(2)** *Furnishing of social security number.* As a condition of eligibility, except as provided by paragraph 87.2(2)*"a,"* an applicant or member must provide to the department or authorized Title X agency, as applicable, all social security numbers issued to each individual (including children) for whom family planning services are sought.

*a.* The requirement of furnishing a social security number does not apply to an individual who:

(1) Is not eligible to receive a social security number;

(2) Does not have a social security number and may only be issued a social security number for a valid nonwork reason in accordance with 20 CFR §422.104 as amended to March 15, 2022; or

(3) Refuses to obtain a social security number because of a well-established religious objection. For this purpose, a well-established religious objection means that the individual:

1. Is a member of a recognized religious sect or division of a sect; and

2. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.

*b.* If a required social security number has not been issued or is not known, the individual seeking coverage under the family planning program must cooperate with the department or authorized Title X agency, as applicable, in applying for a social security number with the Social Security Administration or in requesting the Social Security Administration to furnish the number.

**87.2(3)** *Determination of household income.* The department will determine the countable household income of an individual applying under paragraph 87.2(1)*"b"* or *"c"* as follows:

*a. Household composition.*

(1) The household includes the applicant or member, any dependent children, as defined below, living in the same home as the applicant or member, and any spouse living in the same home as the applicant or member, except when a dependent child or spouse has elected to receive supplemental security income under Title XVI of the Social Security Act as amended to August 1, 2024.

(2) Definition of dependent children. A dependent child is one under the age of 18 years or aged 18 years who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and who is reasonably expected to complete the program before reaching the age of 19.

*b. Earned income.* All earned income that is received by a member of the household shall be counted except for earnings of a child who is a full-time student as defined in subparagraph 87.2(3)*"a"*(1). Earned income, including but not limited to the following, will be counted:

(1) Salary.

(2) Wages.

(3) Tips.

(4) Bonuses.

(5) Commissions.

(6) Income from Job Corps.

(7) Earnings from self-employment defined as gross income less the allowable costs of producing the income.

*c. Unearned income.* The following unearned income of all household members will be counted:

(1) Unemployment insurance benefits.

(2) Child support.

(3) Alimony.

(4) Social security and railroad retirement benefits.

(5) Workers' compensation and disability payments.

(6) Benefits paid by the U.S. Department of Veterans Affairs to disabled members of the armed forces or survivors of deceased veterans.

*d. Deemed income.* Income deeming for a sponsored alien will be determined pursuant to subrule 87.2(5).

*e. Deductions.* Deductions from income will be made for any payments made by household members for the following:

(1) Court-ordered child support, alimony, or spousal support paid to nonhousehold members.

(2) Twenty percent of nonexempt earnings.

(3) Child care expenses or expenses related to care for an incapacitated adult. This deduction cannot exceed $200 per month for each child under the age of two and $175 per month for each adult or child aged two or older.

**87.2(4)** *Citizenship or alienage requirements.*

*a.* To be eligible for the family planning program, a person must be one of the following:

(1) A citizen or national of the United States.

(2) A qualified noncitizen continuously present (as described in Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility, under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) at 62 CFR §61415 dated November 11, 1997, as amended to August 1, 2024) in the United States since August 22, 1996.

(3) A qualified noncitizen under the age of 21.

(4) A refugee admitted to the United States under Section 207 of the INA.

(5) A noncitizen who has been granted asylum under Section 208 of the INA.

(6) A noncitizen whose deportation is withheld under Section 243(h) or 241(b)(3) of the INA.

(7) A qualified noncitizen veteran who has an honorable discharge that is not due to alienage.

(8) A qualified noncitizen who is on active duty in the armed forces of the United States other than active duty for training.

(9) A qualified noncitizen who is the spouse or unmarried dependent child of a qualified noncitizen described in subparagraph 87.2(4)*"a"*(7) or 87.2(4)*"a"*(8), including a surviving spouse who has not remarried.

(10) A qualified noncitizen who has resided in the United States for a period of at least five years beginning on the date of the qualified noncitizen's entry into the United States with a status within the meaning of subparagraph 87.2(4)*"a"*(1), 87.2(4)*"a"*(4), or 87.2(4)*"a"*(9) under the definition of "qualified noncitizen" in rule 441—87.1(217).

(11) An Amerasian admitted as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V) as amended to August 1, 2024.

(12) A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7) as amended to August 1, 2024.

(13) A certified victim of trafficking as described in Section 107(b)(1)(A) of PL 106-386 as amended to August 1, 2024.

(14) An American Indian born in Canada to whom Section 289 of the INA applies or who is a member of a federally recognized Indian tribe as defined in 25 U.S.C. Section 450b(e) as amended to August 1, 2024.

(15) An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of PL 110-181 as amended to August 1, 2024, or to Section 602(b)(8) of PL 111-8 as amended to August 1, 2024.

(16) An Afghan paroled into the United States treated as a refugee pursuant to Section 2502 of PL 117-43 as amended to August 1, 2024.

(17) A qualified noncitizen lawfully residing in the United States in accordance with a Compact of Free Association with the government of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau as described in 8 U.S.C. Section 1612(b)(2)(G) as amended by Section 208 of Division CC of PL 116-260 as amended to August 1, 2024.

(18) A conditional entrant pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980.

*b.* As a condition of eligibility, all applicants for or members of the family planning program shall attest to their citizenship or qualified noncitizen status by signing the application or review form.

*c.* Except as provided in paragraph 87.2(4)*"h,"* applicants or members for whom an attestation of United States citizenship has been made pursuant to paragraph 87.2(4)*"b"* will present satisfactory documentation of citizenship as described in paragraph 87.2(4)*"d"* or *"e."* A reference to a form in paragraph 87.2(4)*"d"* or *"e"* includes any successor form. An applicant or member who attests to citizenship must also verify the applicant's identity. An applicant or member shall have a reasonable period to obtain and provide required documentation of citizenship or nationality.

(1) For the purposes of this requirement, the "reasonable period" begins on the date a written request for documentation is issued to an applicant or member and continues for 90 days.

(2) Family planning services will be approved for new applicants and continue for members not previously required to provide documentation of citizenship or nationality until the end of the reasonable period to obtain and provide required documentation of citizenship or nationality.

*d.* Any one of the following documents must be accepted as satisfactory documentation of citizenship and identity:

(1) A United States passport, including a U.S. passport card issued by the U.S. Department of State, without regard to any expiration date as long as such passport or card was issued without limitation.

(2) A Certificate of Naturalization.

(3) A Certificate of United States Citizenship.

(4) A valid U.S. state-issued driver's license, but only if the state issuing the license does either of the following prior to issuance of the license:

1. Requires proof of United States citizenship; or
2. Obtains a social security number from the applicant and verifies before certification that the number is valid and is assigned to the applicant who is a citizen.

(5) Documentation issued by a federally recognized Indian tribe as described at 42 CFR §435.407 as amended to March 15, 2022, including but not limited to a tribal enrollment card, a Certificate of Degree of Indian Blood, a tribal census document, or a document on tribal letterhead issued under the signature of the appropriate tribal official. Acceptable documentation:

1. Identifies the federally recognized Indian tribe that issued the document;
2. Identifies the individual by name; and
3. Confirms the individual's membership, enrollment, or affiliation with the tribe.

(6) Another document that provides proof of United States citizenship and provides a reliable means of documentation of personal identity, as the Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v) as amended to August 1, 2024.

*e.* Satisfactory documentation of citizenship and identity may also be demonstrated by the combination of any identity document described in paragraph 87.2(4)*"f"* and any one of the following:

(1) A U.S. public birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam, the U.S. Virgin Islands, American Samoa, Swain's Island, or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986 (CNMI local time)). The birth record document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows that the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in this paragraph, the individual may be a collectively naturalized citizen. The following establishes U.S. citizenship for collectively naturalized individuals:

1. Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that the applicant was residing in the U.S., a U.S. possession, or Puerto Rico on or after January 13, 1941.

2. CNMI (formerly part of the Trust Territory of the Pacific Islands (TTPI)): Evidence of birth in the CNMI; evidence of TTPI citizenship and residence in the CNMI, the U.S., or a U.S. territory or possession on or after November 3, 1986 (CNMI local time); and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (CNMI local time); evidence of TTPI citizenship, continuous residence in the CNMI since before November 3, 1981 (CNMI local time); voter registration before January 1, 1975; and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (CNMI local time); evidence of continuous domicile in the CNMI since before January 1, 1974, and the applicant's statement that the applicant did not owe allegiance to a foreign state on November 4, 1986 (CNMI local time).

NOTE: If a person entered the CNMI as a nonimmigrant and lived in the CNMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) A Certification of Report of Birth, issued to U.S. citizens who were born outside the U.S.

(3) A Report of Birth Abroad of a U.S. citizen.

(4) A certificate of birth in the U.S.

(5) A U.S. Citizen I.D. card.

(6) A Northern Marianas Identification Card issued by the U.S. Department of Homeland Security (or predecessor agency).

(7) A final adoption decree showing the child's name and U.S. place of birth or, if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(8) Evidence of U.S. Civil Service employment before June 1, 1976.

(9) A U.S. military record showing a U.S. place of birth.

(10) Documentation that a child meets the requirements of Section 101 of the Child Citizenship Act of 2000 as amended to August 1, 2024 (8 U.S.C. Section 1431).

(11) Medical records, including but not limited to hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(12) A life, health, or other insurance record that indicates a U.S. place of birth.

(13) An official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(14) School records, including preschool, Head Start, and day care, showing the child's name and U.S. place of birth.

(15) Federal or state census records showing U.S. citizenship or a U.S. place of birth.

If the applicant does not have one of the documents listed in paragraph 87.2(4)*"d"* or subparagraphs 87.2(4)*"e"*(1) through 87.2(4)*"e"*(15), the applicant may submit an affidavit using a form prescribed by the department, signed under penalty of perjury by another individual who can reasonably attest to the applicant's citizenship. Such affidavit must contain the applicant's name, date of birth, and place of U.S. birth. The affidavit is not required to be notarized.

*f.* Any of the following documents must be accepted as satisfactory documentation of identity, provided the document has a photograph or other identifying information sufficient to establish identity, including but not limited to name, age, sex, race, height, weight, eye color, or address:

(1) Identity documents listed at 8 CFR §274a.2(b)(1)(v)(B)(1) as amended to March 15, 2022, except a driver's license issued by a Canadian government authority.

(2) A driver's license issued by a state or territory.

(3) A school identification card.

(4) A U.S. military card or draft record.

(5) An identification card issued by the federal, state, or local government.

(6) A military dependent's identification card.

(7) A U.S. Coast Guard Merchant Mariner card.

(8) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(9) Two other documents containing consistent information that corroborates an applicant's identity. Such documents include but are not limited to employer identification cards; high school, high school equivalency, and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(10) A finding of identity from a federal agency or another state agency, including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual.

If the applicant does not have any document specified in subparagraphs 87.2(4)*"f"*(1) through 87.2(4)*"f"*(10), the applicant may submit an affidavit using a form prescribed by the department signed under penalty of perjury by another individual who can reasonably attest to the applicant's identity. Such affidavit must contain the applicant's name and other identifying information establishing identity, as described in paragraph 87.2(4)*"f."* The affidavit is not required to be notarized.

*g.* The department or authorized Title X agency, as applicable, must accept a photocopy, facsimile, scanned, or other copy of a document listed in paragraph 87.2(4)*"d," "e,"* or *"f"* to the same extent as an original document, unless information on the submitted copy is inconsistent with other information available or there is reason to question the validity of, or information in, the document. The department must provide assistance in a timely manner to persons who need assistance in securing satisfactory documentation of citizenship or identity.

*h.* A person for whom an attestation of United States citizenship has been made pursuant to paragraph 87.2(4)*"b"* is not required to present documentation of citizenship and identity for the family planning program if any of the following circumstances apply:

(1) The person is entitled to or enrolled for benefits under any part of Title XVIII of the federal Social Security Act (Medicare) as amended to August 1, 2024.

(2) The person is receiving federal social security disability insurance (SSDI) benefits under Title II of the federal Social Security Act, Section 223 or 202, based on disability (as defined in Section 223(d) of the Act as amended to August 1, 2024).

(3) The person is receiving supplemental security income (SSI) benefits under Title XVI of the federal Social Security Act as amended to August 1, 2024.

(4) The person is or was exempted while assisted by child welfare services funded under Part B of Title IV of the federal Social Security Act as amended to August 1, 2024, on the basis of being a child in foster care as defined in Iowa Code section 232.2(20B). This exemption does not apply, and the person is subject to the citizenship and identity documentation requirements described in paragraph 87.2(4)*"c,"* when services under Part B of Title IV as amended to August 1, 2024, were terminated due to failure to meet citizenship requirements.

(5) The person is or was exempted while assisted by foster care as defined in Iowa Code section 232.2(20B) or adoption assistance funded under Part E of Title IV of the federal Social Security Act as amended to August 1, 2024. This exemption does not apply, and the person is subject to the citizenship and identity documentation requirements described in paragraph 87.2(4)*"c,"* when services under Part E of Title IV as amended to August 1, 2024, were terminated due to failure to meet citizenship requirements.

(6) The person has previously presented satisfactory documentation of citizenship and identity, as specified by the United States Secretary of Health and Human Services.

(7) The person was deemed eligible for medical assistance pursuant to 42 U.S.C. Section 1396a(e)(4) as amended to August 1, 2024, on or after July 1, 2006, as the newborn of a Medicaid-eligible mother.

(8) The person was eligible for medical assistance pursuant to 42 U.S.C. Section 1397ll(e) as amended to August 1, 2024, as the newborn of a mother eligible for assistance under a State Children's Health Insurance Program (SCHIP) pursuant to Title XXI of the Social Security Act as amended to August 1, 2024.

*i.* Except as provided in paragraph 87.2(4)*"h,"* applicants or members for whom an attestation of qualified noncitizen status has been made pursuant to paragraph 87.2(4)*"b"* will present satisfactory documentation of qualified noncitizen status. Satisfactory documentation of qualified noncitizen status is documentation issued by the U.S. Citizenship and Immigration Services (USCIS) (formerly Immigration

and Naturalization Service (INS)) of the Department of Homeland Security that identifies the person's qualified noncitizen status.

**87.2(5)** *Deeming of sponsor's income.*

*a.* When a qualified noncitizen admitted for lawful permanent residence is sponsored by a person who executed an affidavit of support as described in 8 U.S.C. Section 1631(a)(1) as amended to August 1, 2024, on behalf of the qualified noncitizen, the income of the sponsor will be deemed to determine eligibility for the sponsored qualified noncitizen. The amount deemed to the sponsored qualified noncitizen will be the total countable income of the sponsor determined pursuant to paragraphs 87.2(3) *"b"* through *"d."*

*b.* An indigent qualified noncitizen is exempt from the deeming of a sponsor's income for 12 months after indigence is determined. A qualified noncitizen will be considered indigent if:

(1) The qualified noncitizen does not live with the sponsor; and

(2) The qualified noncitizen's gross income, including any income actually received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored qualified noncitizen's household size.

*c.* A battered qualified noncitizen as described in 8 U.S.C. Section 1641(c) as amended to August 1, 2024, is exempt from the deeming of a sponsor's income for 12 months.

*d.* Deeming of the sponsor's income does not apply when:

(1) The sponsored qualified noncitizen attains citizenship through naturalization pursuant to Chapter 2 of Title II of the INA.

(2) The sponsored qualified noncitizen has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act as amended to August 1, 2024, or can be credited with 40 creditable qualifying quarters as defined in rule 441—87.1(217).

(3) The sponsored qualified noncitizen or the sponsor dies.

(4) The sponsored qualified noncitizen is a child under the age of 21 as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii) as amended to August 1, 2024.

**87.2(6)** *Residency requirements.* Residency in Iowa is a condition of eligibility for the family planning program.

*a. Definition of resident.* A resident of Iowa is one:

(1) Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A person is a resident of Iowa when living there on other than a temporary basis. Residence will not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(2) Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed.

*b. Retention of residence.* Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished does not interrupt continuity of residence.

**87.2(7)** *Investigation by quality control or the department of inspections, appeals, and licensing.* As a condition of eligibility, an applicant or member must cooperate with the department when the applicant's or member's case is selected by quality control or the department of inspections, appeals, and licensing for verification of eligibility unless the investigation revolves solely around the circumstances of a person whose income does not affect family planning program eligibility. (More information can be found in 481—Chapter 72.) Failure to cooperate will serve as a basis for denial of an application or cancellation of family planning program eligibility. Once a person's eligibility is denied or canceled for failure to cooperate, the person may reapply but cannot be determined eligible until cooperation occurs.

**87.2(8)** *Funding contingency.* Initial and continuing eligibility for family planning services under this program is subject to the availability of funding appropriated for this purpose.

*a.* When appropriated funding is exhausted, ongoing eligibility will be terminated and new applications will be denied.

*b.* When appropriated funding becomes available, applications submitted thereafter will be considered on a first-come, first-served basis, based on the date of approval.

**441—87.3(217) Enrollment.**

**87.3(1)** *Application.* An individual who requests assistance for family planning services shall file an application on a form prescribed by the department. A woman eligible under paragraph 87.2(1)*"a"* is not required to file an application for assistance under this program. The department will automatically redetermine eligibility upon loss of other Medicaid eligibility within 12 months after the month when the postpartum period described in Iowa Code section 249A.3 ends.

**87.3(2)** *Place of filing.* An application may be filed at any department office or authorized Title X family planning agency.

**87.3(3)** *Information or verification needed to determine eligibility.* The department or authorized Title X agency, as applicable, will notify the applicant or member, authorized representative, or responsible person in writing of the information or verification required to establish eligibility. This notice must be provided to the applicant or member, authorized representative, or responsible person personally or by mail or fax.

*a.* The department or authorized Title X agency, as applicable, will allow the applicant or member, authorized representative, or responsible person ten calendar days to supply the information or verification requested.

*b.* The department or authorized Title X agency, as applicable, may extend the deadline for a reasonable period of time when the applicant or member, authorized representative, or responsible person is making reasonable efforts but is unable to secure the required information or verification.

*c.* If benefits are denied for failure to provide information or verification and the information or verification is provided within 14 calendar days of the effective date of the denial, the department or authorized Title X agency, as applicable, will complete the eligibility determination as though the information or verification were received timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant or member, authorized representative, or responsible person will have until the next business day to provide the information.

**87.3(4)** *Annual review.* An individual who requests that assistance continue for family planning services shall complete a form prescribed by the department. The member must submit the completed review form before the end of the eligibility period to any location specified in subrule 87.3(2).

**87.3(5)** *Time limit for decision.* An application or review form will be processed by the department or authorized Title X agency with which the form was filed. A determination of eligibility will be made within 45 days of receipt of the application or review form.

**87.3(6)** *Notice of decision.* The individual will be notified in writing of the decision regarding eligibility for the family planning program in accordance with 441—Chapter 16.

**441—87.4(217) Effective date of eligibility.** Subject to the availability of funding appropriated for this purpose, assistance for family planning services under this program will be effective on the first day of the month of application or the first day of the month in which all eligibility requirements are met, whichever is later. Assistance will not be available under this program for any months prior to the month of application.

**441—87.5(217) Period of eligibility.** Eligibility for family planning services under this program will be limited to a period of 12 months from the effective date of eligibility, or the duration of appropriated funding, whichever is less. A new application or annual redetermination of eligibility is required for benefits to continue beyond 12 months.

**441—87.6(217) Reporting changes.**

**87.6(1)** *Required changes to report.* An individual applying for or receiving family planning services under this program shall report the following changes within ten days from the date the change is known:

*a.* Change in mailing address;

*b.* No longer a resident of Iowa;

*c.* A woman becomes pregnant;

*d.* No longer capable of bearing or fathering children;

*e.* Becomes Medicaid or Iowa health and wellness plan eligible, except women meeting criteria in paragraph 87.2(1)*"a"*; or

*f.* Turns 55 years of age.

**87.6(2)** *Disregard of changes.* An individual found to be eligible upon application or annual redetermination of eligibility will remain eligible for 12 months or the duration of appropriated funding, whichever is less, regardless of any change in income or household size.

**441—87.7(217) Funding of family planning services program.**

**87.7(1)** *Distribution of funds.* Distribution of family planning services program funds shall be made to eligible, approved, and participating family planning providers subject to rule 441—87.11(217). Eligible family planning providers shall not include any provider that performs abortions or that maintains or operates a facility where abortions are performed and must attest to this fact. Effective July 1, 2018, eligible family planning providers shall be interpreted to include a distinct location of a nonprofit health care delivery system, if the distinct location provides family planning services but does not perform abortions or maintain or operate as a facility where abortions are performed. For the purposes of this subrule, "nonprofit health care delivery system" means an Iowa nonprofit corporation that controls, directly or indirectly, a regional health care network consisting of hospital facilities and various ambulatory and clinic locations that provide a range of primary, secondary, and tertiary inpatient, outpatient, and physician services. For the purposes of this subrule, "abortion" does not include any of the following:

*a.* The treatment of a woman for a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death.

*b.* The treatment of a woman for a spontaneous abortion, commonly known as a miscarriage, when not all of the products of human conception are expelled.

**87.7(2)** *Recovery.* The department will recover from a member all funds incorrectly expended to or on behalf of the member for family planning program services.

**441—87.8(217) Availability of services.** Family planning services are payable for an individual enrolled in this program only when care is received at or authorized by a participating family planning provider.

**87.8(1)** Sterilization is a covered service subject to the limitations in 441—Chapter 78.

**87.8(2)** Covered services cannot include abortion services.

**441—87.9(217) Payment of covered services.** Payment for family planning services covered under this chapter, including services authorized but not provided by a participating family planning provider, can be made only to participating family planning providers on a fee schedule determined by the department. Family planning services program funds distributed in accordance with this rule will not be used for direct or indirect costs, including but not limited to administrative costs or expenses, overhead, employee salaries, rent, and telephone and other utility costs, related to providing abortions as specified in subrule 87.7(1).

**87.9(1)** *Fee schedule.* The fee schedule will include the amount of payment for each service and any limits on the service (e.g., a routine Pap smear is payable once annually).

**87.9(2)** *Third-party payments.* This program is the payer of last resort for services covered in this chapter. Any third-party payment received by the family planning agency or other provider of services plus any payments under this program cannot exceed the fee schedule allowance.

**87.9(3)** *Supplementation.* Payment made under this program is to be considered payment in full.

**441—87.10(217) Submission of claims.**

**87.10(1)** Family planning providers that participate in the program can submit claims to Iowa Medicaid for services rendered no later than 45 days from the last day of the month in which services were provided.

**87.10(2)** Following a successful review of the claim, the Iowa Medicaid enterprise will make payments to the family planning provider subject to the availability of funding and the allocation of available funds under subrule 87.7(1).

**441—87.11(217) Providers eligible to participate.**

**87.11(1)** Providers must be enrolled with the Iowa Medicaid program, subject to 441—Chapter 79, and otherwise qualified to provide family planning services under Medicaid, subject to the limitations related to abortions, as specified above under subrule 87.7(1). Effective July 1, 2018, as a condition of eligibility as a provider under the family planning services program, each distinct location of a nonprofit health care delivery system will enroll in the program as a separate provider, be assigned a distinct provider identification number, and complete an attestation that abortions are not performed at the distinct location. For the purposes of this subrule, "nonprofit health care delivery system" has the same meaning as provided under subrule 87.7(1).

**87.11(2)** Process for enrollment. Providers wishing to enroll under the state family planning program must complete the following steps:

*a.* Must complete enrollment with Iowa Medicaid.

*b.* Must complete a form prescribed by the department regarding nonprovision of abortions, pursuant to requirements referenced above under subrule 87.7(1).

*c.* Forms must be sent to the department at P.O. Box 36450, Des Moines, Iowa 50315.

These rules are intended to implement Iowa Code section 217.41B.

## ARC 8790C

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Notice of Intended Action**

**Proposing rulemaking related to continuing education for massage therapists and providing an opportunity for public comment**

The Department of Inspections, Appeals, and Licensing hereby proposes to amend Chapter 823 "Continuing Education for Massage Therapists," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code chapters 152C and 272C.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 152C and 272C.

*Purpose and Summary*

This proposed rulemaking implements Iowa Code chapter 152C and section 272C.2 as amended by 2024 Iowa Acts, House File 2686. Chapter 823 sets forth continuing education and training requirements for massage therapists. The intended benefit of this chapter is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans. The Board of Massage Therapy reviewed the continuing education requirements in the fall of 2023 pursuant to Executive Order 10. Subrule 823.2(4) is proposed to be amended to comply with the statutory changes from 2024 Iowa Acts, House File 2686, allowing a licensee to carry over up to 50 percent of excess completed continuing education hours from the previous renewal cycle. This rulemaking would grant massage therapists the

ability to carry over up to 8 hours of continuing education earned in excess of the 16 hours required every two years.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024. A public hearing was held on the following date(s):

- November 20, 2024

There were no public comments received with regard to this chapter, and no changes were made as a result.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.6352
Fax: 515.281.7969
Email: jessica.o'brien@dia.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rulemaking may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend subrule 823.2(4) as follows:

**823.2(4)** ~~No hours of continuing education will be carried over into the next renewal period.~~ Licensees who complete continuing education hours in excess of the requirements for renewal

may apply up to 50 percent of the required hours to the following renewal period. Licensees may apply a maximum of eight hours from the previous renewal period. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

## ARC 8775C

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Notice of Intended Action**

**Proposing rulemaking related to continuing education for funeral directors and providing an opportunity for public comment**

The Mortuary Science Board hereby proposes to amend Chapter 902, "Continuing Education for Funeral Directors," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code chapters 156 and 272C.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 156 and 272C.

*Purpose and Summary*

This proposed rulemaking implements Iowa Code chapter 156 and section 272C.2 as amended by 2024 Iowa Acts, House File 2686. The subrule sets continuing education and training requirements for funeral directors and others employed by the funeral home. The intended benefit of this subrule is to ensure that licensees maintain up-to-date practice standards and, as a result, provide high-quality services to Iowans. The Board reviewed the continuing education requirements in the fall of 2023 pursuant to Executive Order 10. The subrule is being amended to comply with the statutory changes from 2024 Iowa Acts, House File 2686, allowing a licensee to carry over up to 50 percent of excess completed continuing education hours from the previous renewal cycle. This rulemaking would allow funeral directors the ability to carry over up to 12 hours of continuing education earned in excess of the 24 hours required every two years.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024. A public hearing was held on the following date(s):

- November 19, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Board no later than 4:30 p.m. on January 28, 2025. Comments should be directed to:

Michele Royer
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.229.3939
Fax: 515.281.7969
Email: michele.royer@dia.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rulemaking may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind subrule 902.2(4) and adopt the following **new** subrule in lieu thereof:

**902.2(4)** Up to 50 percent of continuing education (a maximum of 12 hours) can be carried over into the next biennium if there was an amount of continuing education completed during the prior period that exceeded the minimum requirement. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

## ARC 8596C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to vessel safety and registration and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 36, "Green Valley Lake Special Water Activity Rules," and Chapter 37, "Boating Safety Equipment"; to adopt a new Chapter 37, "Vessel Safety and Registration"; and to rescind Chapter 38, "Boat Registration and Numbering," Chapter 39, "Boating Passenger Capacity," Chapter 40, "Boating Speed and Distance Zoning," Chapter 41, "Boating Navigation Aids," Chapter 42, "Boating Accident Reports," Chapter 43, "Motorboat Noise," and Chapter 45, "Boat Motor Regulations," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 462A.3, 462A.5, 462A.7, 462A.9, 462A.11, 462A.17, 462A.26 and 462A.32.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 462A.3, 462A.5, 462A.7, 462A.9, 462A.11, 462A.17, 462A.26 and 462A.32 and 2024 Iowa Acts, House File 2485.

*Purpose and Summary*

Proposed Chapter 37 contains Iowa's water navigational rules that exist to protect private and public property and the health, safety, and welfare of the public. The chapter ensures uniformity of vessel use, operation, and equipment. This chapter is the consolidation of former Chapters 36 through 43 and 45. This consolidation is the result of the Commission's Executive Order 10 (2023) review of Iowa's boating regulations. Through this merger, the substance of these chapters has been revised to eliminate redundancies, improve efficiency, and implement updates in accordance with federal law changes and U.S. Coast Guard guidance.

Notably, two new provisions were added. First, Coal Creek Marsh in Warren County has been added to the list of artificial marshes in new Chapter 37 with relevant boating restrictions. Second, Lake Panorama-specific regulations were added to comply with 2024 Iowa Acts, House File 2485, which was signed into law during the 2024 Legislative Session.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Susan Stocker
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Fax: 515.725.8201
Email: susan.stocker@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at susan.stocker@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al susan.stocker@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 31, 2025<br>11 a.m. | Via videoconference call |
| February 11, 2025<br>11 a.m. | Via videoconference call |

Persons who wish to make oral comments at a public hearing must submit a request to Susan Stocker prior to the hearings to receive a Google Meet link and conference call number.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at susan.stocker@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al susan.stocker@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 36**.

ITEM 2. Rescind 571—Chapter 37 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 37
## VESSEL SAFETY AND REGISTRATION

**571—37.1(462A) Purpose.** Pursuant to Iowa Code section 462A.3, these rules set forth vessel safety equipment and registration requirements, vessel operation and waterway zoning, and vessel occurrence reporting requirements.

**571—37.2(462A) Definitions.** For the purpose of Divisions I, II, and III of this chapter:

*"A Scale"* or *"A"* means the physical scale marked "A" graduated in decibels on a sound level meter that meets the requirements of the American National Standards Institute, Incorporated, publication S1.4 — 1983 General Purpose Sound Level Meters.

*"Buoy"* means any device designed to float that is anchored in the water and that is used to convey a message.

*"Display area"* means the area on a sign or buoy needed for display of a waterway marker symbol.

*"Diver's flag"* means a red flag or device with a white diagonal running from the upper left hand corner to the lower right hand corner (from mast head to lower outside corner).

*"PFD"* means a U.S. Coast Guard-approved personal flotation device that is intended to be worn or thrown.

*"Regulatory marker"* means a waterway marker that has no equivalent in the U.S. Coast Guard system of navigational aids.

*"Sign"* means any device for carrying a message that is attached to another object such as a piling, buoy, structure or the land itself.

*"Symbols"* means geometric figures such as a diamond, circle, rectangle, etc., used to convey a basic message.

*"Throwable PFD"* means a PFD that is intended to be thrown to a person in the water. A PFD marked as Type IV or Type V with Type IV performance is considered a throwable PFD. Unless specifically marked otherwise, a wearable PFD is not a throwable PFD.

*"Waterway marker"* means any device designed to be placed in, on, or near the water to convey an official message to a boat operator on matters which may affect health, safety, or well-being, except that such devices of the U.S. or any agency of the United States are excluded from the meaning of this definition.

*"Wearable PFD"* means a U.S. Coast Guard-approved PFD that is intended to be worn or otherwise attached to the body. A PFD marked as Type I, Type II, Type III, or Type V with Type I, II or III performance is considered a wearable PFD.

DIVISION I
EQUIPMENT AND REGISTRATION

**571—37.3(462A) Fire extinguishers.** The number and type of fire extinguishers required for motorboats within the state of Iowa are as follows:

**37.3(1)** *Fire extinguisher type.* Fire extinguishers shall be a U.S. Coast Guard-approved B-I or B-II type as described in 33 CFR Part 175, Subpart E (June 1, 2024).

**37.3(2)** *Number of fire extinguishers.* The number of fire extinguishers required shall be dependent upon motorboat class and in compliance with 33 CFR Part 175, Subpart E (June 1, 2024).

| Class | Minimum number of 5-B portable fire extinguishers | |
|---|---|---|
| | If no fixed fire extinguishing system | With fixed fire extinguishing system |
| I (less than 16 ft.) | 1 | 0 |
| II (16 ft. to under 26 ft.) | 1 | 0 |
| III (26 ft. to under 40 ft.) | 2 | 1 |
| IV (40 ft. to 65 ft.) | 3 | 2 |

**37.3(3)** *Fire extinguisher condition.* Fire extinguishers must:

*a.* Be on board and readily accessible;

*b.* Not be expired or appear to have been previously used; and

*c.* Be maintained in good and serviceable working condition, meaning:

(1) If the extinguisher has a pressure gauge reading or indicator, the reading or indicator must be in the operable range or position;

(2) The lock pin is firmly in place;

(3) The discharge nozzle is clean and free of obstruction; and

(4) The extinguisher does not show visible signs of significant corrosion or damage.

**571—37.4(462A) Flame arrestors.** All motorboat engines, except outboard engines, shall be equipped with an efficient flame arrestor, backfire trap or other similar device. An acceptable flame arrestor shall have evidence of compliance with UL Standard 1111 (October 31, 2008) or the revised 2020-02 Society of Automotive Engineers Standard J1928, titled "Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications."

**571—37.5(462A) Lights on vessels.** The following lights shall be required on all vessels:

**37.5(1)** *Vessels at anchor.*

*a.* A vessel at anchor shall exhibit between the hours of sunset and sunrise:

(1) In the forepart, a white light to show 360 degrees around the horizon or one ball.

(2) At or near the stern and at a lower level than the light prescribed in 37.5(1)*"a"*(1) a white light to show 360 degrees around the horizon.

*b.* A vessel of less than 50 meters in length may exhibit a white light to show 360 degrees around the horizon instead of the lights prescribed in this subrule.

**37.5(2)** *Vessels not powered by motor or sail.* All vessels not powered by motor or sail and not at anchor shall exhibit a white light to show 360 degrees around the horizon that is visible from at least one mile under clear conditions between the hours of sunset and sunrise when operated on natural lakes, Corps of Engineers impoundments, border rivers excluding border portions of the Big Sioux and Des Moines rivers, and impoundments on inland rivers. If the white light is partially obscured due to the nature of the craft, an additional white light must be shown in sufficient time to prevent collision. When operated on bodies of water other than those listed in subrule, all vessels not powered by motor or sail and not at anchor shall have in possession a white light to be used when necessary between the hours of sunset and sunrise.

**37.5(3)** *Sailing vessels.*

*a.* Vessels of all classes when propelled by sail alone shall exhibit one of the following lighting systems between sunset and sunrise and at all other times required by applicable laws:

(1) While underway, one of the following lighting systems is acceptable:

1. The international lighting system for the applicable class of vessel.

2. The combined lantern or separate side lights required for the applicable class of vessel plus a white light so placed as to illuminate the sail so the sail is visible at a distance of at least one-half mile.

(2) While at anchor, one of the following lighting systems is acceptable:

1. A white light that shows all around the horizon (360 degrees).

2. An illuminated sail, to be visible all around the horizon (360 degrees) at a distance of one-half mile.

*b.* A sailing vessel means any vessel whose sole source of propulsion is the natural element (i.e., wind). A sailing vessel using any auxiliary source of mechanical propulsion is a motorboat and must exhibit the lights required for the applicable class of motorboat.

**571—37.6(462A) Buoyant safety equipment.**

**37.6(1)** PFDs shall be U.S. Coast Guard-approved. Each PFD must be appropriately sized for the person for whom it is intended and be used in accordance with current U.S. Coast Guard safety equipment requirements as specified in 33 CFR 175.15 and 46 CFR 160 (June 1, 2024), any requirements on the approval label, and any requirements in the PFD's owner's manual if the approval label makes reference to such a manual.

Registered American Power Boat Association (APBA) drivers shall wear an APBA-certified PFD while in competition or practice related to an APBA-sanctioned event.

**37.6(2)** Wearable PFDs. Except as provided in 37.6(4), no person may use a vessel of any length unless at least one wearable PFD is on board for each person.

**37.6(3)** Throwable PFDs. No person may use a vessel 16 feet or more in length, except a canoe or kayak, unless at least one throwable PFD is on board in addition to the PFDs required in 37.6(2).

**37.6(4)** Exceptions. A person using a canoe or kayak that is enclosed by a deck and spray skirt need not comply with 37.6(2) if that person wears a vest-type lifesaving device that:

*a.* Has no less than 150 separate permanently inflated air sacs made of not less than 12 mil polyvinyl chloride film, and has not less than 13 pounds positive buoyancy in fresh water, if that person weighs more than 90 pounds; or

*b.* Has no less than 120 separate permanently inflated air sacs made of not less than 12 mil polyvinyl chloride film and has not less than 8½ pounds positive buoyancy in fresh water, if that person weighs 90 pounds or less.

**37.6(5)** Nonapproved devices. Any PFD that has a torn or missing strap, punctured flotation bag, waterlogged flotation material, rotted material in straps or webbing or cover, missing laces, missing hardware, envelope torn or perforated, torn stitching or any other condition that impairs the operating efficiency, any PFD on which the U.S. Coast Guard approval tag is no longer easily legible, or any inflatable device that has a discharged or otherwise inoperable gas cartridge shall be deemed as not approved for use on board vessels as equipment required by law.

**37.6(6)** Water skis and surfboards. Any person engaged in waterskiing, wakeboarding, wakesurfing, surfboarding, or other similar activity, except for vessels known as windsurfers, shall wear a U.S. Coast Guard-approved wearable PFD that is properly fastened and secured and used in accordance with current U.S. Coast Guard safety equipment requirements as specified in 33 CFR 175.15 and 46 CFR 160 (June 1, 2024), any requirements on the approval label, and any requirements in the PFD's owner's manual if the approval label makes reference to such a manual. Inflatable devices are not approved for waterskiing, wakeboarding, wakesurfing, or tow-behind activities. Skiers participating in a tournament or exhibition may be exempted from the PFD requirement if the skiers are wearing wet suits with built-in flotation and granted a specific exemption in the special events permit issued by the natural resource commission. A flotation wet suit may include a full suit (top and bottom) or a form-fitting top as long as the top will float the wearer when air is expelled from the wearer's lungs. A special event may include practice sessions if all practice sessions for the season are listed on the special event application. In that case, the application shall include a specific location, date and time for each practice session.

**37.6(7)** No person shall operate a vessel on any waters of this state under the jurisdiction of the commission, towing a person or persons on water skis, surfboard, or similar device, nor shall any person engage in waterskiing, wakeboarding, wakesurfing, surfboarding, or similar activities, at any time between the hours of one-half hour after sunset to sunrise.

**37.6(8)** Personal watercraft (PWCs). All operators and passengers of PWCs must wear a U.S. Coast Guard-approved wearable PFD that is properly fastened and secured and used in accordance with current U.S. Coast Guard safety equipment requirements as specified in 33 CFR 175.15 and 46 CFR 160 (June 1, 2024), any requirements on the approval label, and any requirements in the PFD's owner's manual if the approval label makes reference to such a manual. Inflatable PFDs are not approved for use on personal watercraft.

**571—37.7(462A) Motorboat noise.** No person shall operate any motorboat on waters of this state under the jurisdiction of the commission, in such a manner as to exceed the following noise levels:

**37.7(1)** *Stationary sound level test.* Motorboats manufactured prior to 1993 shall not exceed a noise level of 90dB(A) during a stationary sound level test as prescribed by 2018-06 Society of Automotive Engineers Standard J2005, titled "Stationary Sound Level Measurement Procedure for Recreational Motorboats." For motorboats manufactured on or after January 1, 1993, a motorboat shall not exceed a noise level of 88dB(A) when subjected to a stationary sound level test as prescribed by 2018-06 Society of Automotive Engineers Standard J2005, titled "Stationary Sound Level Measurement Procedure for Recreational Motorboats."

**37.7(2)** *Shoreline sound level test.* A motorboat engine shall not exceed a noise level of 75dB(A) when measured as specified in 2018-02 Society of Automotive Engineers Standard J1970, titled "Shoreline Sound Level Measurement Procedure for Recreational Motorboats."

**571—37.8(462A) Boat registration emblem placement.** The current registration emblem shall be placed within six inches of the stern of the registration number on each side of the bow of the vessel. On sailboats, when the registration number is placed on the mast, the registration emblem shall be placed six inches below the registration number on each side of the mast. All newly registered boats or boats with renewed registrations will receive emblems with the registration certificate. This rule shall apply to all registered vessels, including those being used by dealers in accordance with Iowa Code chapter 462A.

**571—37.9(462A) Procedure for application for boat registration number—content.**

**37.9(1)** *Application.* An applicant for a boat registration number shall submit the required information described in 33 CFR 174.17 (June 1, 2024).

**37.9(2)** *Vessels not previously registered.* If a person or business is making application for a boat registration number for a used vessel that has never before been registered or titled and the person does not have any satisfactory proof of ownership, the county recorder may issue a certificate of number for the used vessel if the applicant has provided the recorder with a signed and notarized affidavit on an appropriate department of natural resources form, stating that the person making the application is the lawful owner of the vessel.

**37.9(3)** *Information on certificate.* The certificate of number shall show the information described in 33 CFR 174.19 (June 1, 2024).

**37.9(4)** *Registration applied for card.* The dealer selling the vessel shall legibly print on the registration applied for card all information described in 33 CFR 174.21 (June 1, 2024).

*a. Use.* The registration applied for card may be used only after an application for registration has been made to the county recorder. Placing a completed application for registration and required fee in the mail to the recorder shall constitute making an application.

*b. Placement on vessel.* The registration applied for card shall be placed on the forward half of the vessel in a position so as to be clearly visible at all times and shall be maintained in a legible manner.

*c. Proof of purchase.* The operator of any vessel displaying a registration applied for card shall carry and display to any peace officer upon request a valid bill of sale for said vessel.

**571—37.10(462A) Vessels in storage.** If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit on an appropriate department form. The county recorder shall notify the department of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the applicable fees.

**571—37.11(462A) Numbering pattern to be used.** The identification numbers awarded under the Iowa system shall consist of three parts. The first part shall consist of the letters "IA" indicating this state. The second part shall consist of not more than four Arabic numerals. The third part shall consist of not more than two letters. Since the letters "I," "O," and "Q" may be mistaken for Arabic numerals, they shall not be used in the suffix. The parts shall be separated by a hyphen or an equivalent space. For example: IA-2500-C, IA-9875-EA, IA 7560 ZZ.

**571—37.12(462A) Display of number on vessel.**

**37.12(1)** The identification number awarded to any vessel under the Iowa numbering system shall be displayed thereon by being:

*a.* Painted on, or attached to, each side of the bow (i.e., the forward half) of the vessel; read from left to right, and in such position as to provide maximum visibility.

*b.* In block characters of good proportion not less than three inches in height.

*c.* Of a color that will contrast with the color of the background (i.e., dark numbers on a light background, or light numbers on a dark background) and so maintained as to be clearly visible and legible.

**37.12(2)** On vessels propelled by sail only, the numbers may be placed in such a position as to provide maximum visibility, on each side of the bow or deck or on each side of the boom or mast. In all cases except placement on the mast, the numbers shall read from left to right and comply with 37.12(1) *"b"* and *"c."* In placement on the mast, the number shall read from top to bottom and comply with 37.12(1)*"b"* and *"c."*

**37.12(3)** Purchase and attachment of these letters and numbers is the responsibility of the vessel owner.

**37.12(4)** No other number shall be carried or displayed on the bow of the vessel.

**571—37.13(462A) Special certificates for boat dealers or manufacturers.** A manufacturer or dealer may operate an unregistered vessel for purposes of transporting, testing, demonstrating, or selling the vessel after first obtaining a special certificate from the department. An application for a special

certificate shall be submitted on the appropriate department form. A manufacturer or dealer operating a vessel pursuant to the issuance of a special certificate shall file an annual report with the department.

**571—37.14(462A) Boat dealer's annual report of vessels with expired registrations.** Each boat dealer shall file, before May 5 of each year, an annual report with the department on the appropriate form listing all used vessels held by the dealer for sale or trade and for which the registration fee for the current year has not been paid.

**571—37.15(462A) Monthly reports by county recorders.** Each county recorder shall submit a monthly report to the department listing all vessels registered in that county in the previous month. The applicable fees shall accompany the monthly report.

**571—37.16(462A) Boats for hire.** Each commercial boat operator will be required to number the boat or boats used to operate for hire with block characters of good proportion not less than three inches in height, in the following manner:

Upon making application for a number for commercially operated vessels, the following type number will be assigned: Example IA-1555-E.

To identify this vessel as a commercial vessel, it will be required that the commercial operator affix an X as the final letter of the suffix: Example IA-1555-EX.

When a commercial operator transfers a vessel to another individual, unless it be to another commercial operator, it will be the operator's responsibility to remove the second letter from the suffix (the letter X).

| Transferred to | |
|---|---|
| Commercial Operator | Private Individual |
| IA-1555-XX | IA-1555-X |
| IA-1555-EX | IA-1555-E |

| Transferred to | |
|---|---|
| Private Individual | Commercial Operator |
| IA-1555-A | IA-1555-AX |
| IA-1555-D | IA-1555-DX |

**571—37.17(462A) U.S. Coast Guard capacity rating.** For vessels assigned a U.S. Coast Guard capacity rating in whole persons as evidenced by a U.S. Coast Guard capacity plate affixed to the vessel, that capacity shall be recognized as the registration capacity.

**571—37.18(462A) Vessels assigned a capacity rating by the manufacturer.** For vessels that have not been assigned a U.S. Coast Guard capacity rating in whole persons but that contain capacity information in whole persons on a plate affixed to the vessel furnished by the boating industry association, national marine manufacturer association or any similar organization, that capacity shall be recognized as the registration capacity.

**571—37.19(462A) Vessels not containing capacity rating information.** For vessels with no passenger capacity information provided by the U.S. Coast Guard or the manufacturer, the passenger capacity designated on the registration shall be O.R., "Operator's Responsibility." The operator of the vessel has responsibility for determining passenger capacity of a vessel so designated. Such operation must comply with the provisions of Iowa Code section 462A.12(1).

**571—37.20(462A) Incorrect registration.** When information contained on the registration certificate of a vessel is found to be incorrect regarding vessel length, vessel width, or passenger capacity, officers appointed by the department may, upon inspection of the vessel, or the county recorder, upon presentation of adequate documentation, including but not limited to an affidavit by the owner, may change the information on the certificate. The officer shall within four days notify the department and the county recorder of the county in which the vessel is registered of the changes.

**571—37.21(462A) Number designating passenger capacity.**

**37.21(1)** The passenger capacity of boats as assigned by the commission shall be painted or attached to the starboard side (the right side while in boat and facing the bow) of boat within nine inches of transom in three-inch or larger block numbers in a color contrasting to the boat color so that the numbers ride above the water line when boat is fully loaded.

**37.21(2)** The requirements of this rule pertaining to the display of registration decals, registration numbers and passenger capacity numbers do not apply to vessels that are exempt pursuant to Iowa Code section 462A.6A.

DIVISION II

Part I
Operating and Zoning

**571—37.22(462A) Inland navigation rules.** All vessels upon the inland waters, including border rivers, of this state shall conform to Subpart B, "Steering and Sailing Rules," Rules 11 through 18, of the Inland Navigation Rules Act of 1980 (June 1, 2024).

**571—37.23(462A) Uniform buoy system.** All buoys placed shall be those of the uniform waterway marking system adopted by the commission and shall be constructed, placed, and maintained in accordance with Iowa Code chapter 462A and this chapter.

**571—37.24(462A) Commission approval.** The placement of buoys or official signs that restrict speed and distance or involve special zoning restrictions shall be approved by the commission.

**571—37.25(462A) Restricted areas.** All vessels, except authorized emergency vessels, shall be operated in compliance with, and all persons engaged in water recreation activities shall obey, restrictions with posted areas marked with a uniform waterway buoy or official signs adopted by the commission.

**571—37.26(462A)** Right for aggrieved party to appeal. Any finding or establishment of areas involving special speed and distance or zoning restrictions by the commission may be appealed by aggrieved party upon written notice. A hearing thereon shall be held by the commission within 30 days thereafter.

**571—37.27(462A) Mooring of vessels on riparian property of the state of Iowa.** Where the state of Iowa owns riparian property adjacent to sovereign land or water, mooring of vessels is prohibited between sunset and sunrise on those riparian or sovereign lands or waters where posted by either official buoys or official signs of the department.

**571—37.28(462A) Horsepower limitations on artificial lakes.** On artificial lakes of 100 acres or less, a vessel shall only be operated with an electric motor or with an outboard motor where permitted by the rules in division II, part II, of this chapter. On artificial lakes of more than 100 acres, vessels may be operated with unrestricted horsepower motors at a speed not greater than 5 miles per hour except as otherwise permitted by the rules in division II, part II, of this chapter.

**571—37.29(462A) Horsepower rating.** The horsepower rating of an outboard motor permitted on artificial lakes under the authority of Iowa Code chapter 462A and these rules shall be as determined by the manufacturer when the motor was originally produced. An outboard motor that has been altered to increase its horsepower in excess of ten as rated by the original manufacturer shall not be permitted on artificial lakes.

**571—37.30(462A) Propulsion mechanism not in use.** Any power unit mounted or carried aboard a vessel, while not being used or operated as a source of propulsion, shall be lawful on artificial lakes, so long as the auxiliary power unit being used or operated as a source of propulsion is within the lawful horsepower limitation established for that lake.

Part II
Waterbody Specific Restrictions and Zoning

**571—37.31(462A) Avenue of the Saints Lake, Bremer County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.32(462A) Banner Lakes at Summerset State Park, Warren County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.33(462A) Beaver Lake, Dallas County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.34(462A) Beaver Creek Safety Zone, Polk County.** A safety zone is hereby established on Beaver Creek within the property boundaries of the Camp Dodge military reservation in Polk County.

**37.34(1)** Watercraft and vehicles shall be prohibited from entering the safety zone in order to prevent access to areas within Camp Dodge where a hazard to the public may exist. This prohibition shall not apply to watercraft or vehicles explicitly authorized to enter the safety zone by the Iowa national guard. The safety zone boundaries shall be indicated by signage including the wording "Warning, Restricted Area, No Entrance." The Iowa National Guard shall be responsible for the acquisition, placement, and maintenance of any signage.

**37.34(2)** The safety zone shall be recognized by the state of Iowa only where signage is posted as required. Any section of Beaver Creek that is not designated as a safety zone shall remain open to any otherwise lawful public access.

**37.34(3)** Signs establishing the safety zone boundaries may be moved within the present or future boundaries of Camp Dodge at the sole discretion of Iowa National Guard personnel. The Iowa National Guard shall notify the department when the location of the safety zone boundary is changed.

**571—37.35(462A) Beeds Lake, Franklin County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.36(462A) Black Hawk Lake, Sac County.** No motorboat shall be operated at a speed greater than 5 miles per hour within the zoned area marked by the regulatory buoys. The zoned area shall be the area commonly known as Town Bay on the northwest corner of Black Hawk Lake. Areas may be specifically designated for swimming by the use of regulatory buoys.

**571—37.37(462A) Black Hawk Pits, Sac County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.38(462A) Brown's Lake, Woodbury County.** Vessels may be operated at a speed not greater than 5 miles per hour within the two zoned areas designated by regulatory buoys or other approved uniform waterway markers. Areas may be specifically designated for swimming by the use of regulatory buoys.

**37.38(1)** Zone 1 shall extend 570 yards from the boat ramp east to the regulatory buoys and 150 yards west from the boat ramp.

**37.38(2)** Zone 2 shall begin at the regulatory buoys located at the 24-inch steel pipe and shall extend west.

**571—37.39(462A) Carter Lake, Pottawattamie County.** All vessels operated in a designated zone known as Shoal Pointe Canal shall be operated at a speed not greater than 5 miles per hour. The City of Carter Lake shall designate and maintain the 5-mile-per-hour speed zone with marker buoys approved by the commission.

**571—37.40(462A) Cedar River and connected backwaters.**

**37.40(1)** *Black Hawk County waters.* All vessels shall be operated at a speed not greater than 5 miles per hour when within 600 feet of the Franklin Street bridge. This 600-foot zone shall be designated by buoys, signs, or other approved uniform waterway marking devices. No vessel shall tow skiers, surfboard riders, or other towable devices within this zone.

**37.40(2)** *Chickasaw County waters.* The city of Nashua shall designate and maintain the following 5-mile-per-hour speed zones with marker buoys approved by the commission:

*a.* All vessels operated in a designated zone extending east 150 feet from the intersection of Wabash Street and Charles City Road and north 380 feet shall be operated at a speed not greater than 5 miles per hour.

*b.* All vessels operated in a designated zone extending north 131 feet from the intersection of Wabash Street and the north entrance to Cedar View Circle and east 80 feet and west 80 feet from this point along the shoreline and extending 110 feet north into the lake shall be operated at a speed not greater than 5 miles per hour.

**37.40(3)** *Floyd County waters.* All vessels operated in a designated zone extending 300 feet upstream from the upper dam shall be operated at a speed not greater than 5 miles per hour. The city of Charles City shall designate and maintain the 5 miles per hour speed zone with marker buoys approved by the commission.

**37.40(4)** *Mitchell County waters.* Operation of vessels in Mitchell County is restricted to speeds not greater than 5 miles per hour where a speed zone is designated by buoys on the following impounded waters:

*a.* Cedar River from Mitchell Dam, thence upriver to the County "S" bridge.

*b.* Cedar River from the St. Ansgar Mill Dam, thence upriver to the Newberg Bridge crossing Highway 105.

*c.* Cedar River from the Otranto Dam upriver to the Great Western Railway Bridge crossing the Cedar River.

*d.* The Stacyville Pool, on the Little Cedar River at Stacyville.

**571—37.41(462A) Clear Lake, Cerro Gordo County.** Areas may be specifically designated for swimming with the use of regulatory buoys. Areas within close proximity of dredging operations may be designated as areas where the speed of vessels is restricted to not greater than 5 miles per hour.

**571—37.42(462A) Coralville Lake, Johnson County.** Areas may be specifically designated for swimming, wading, and restricted speed areas.

**571—37.43(462A) Crawford Creek Recreation Area Lake, Ida County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.44(462A) Crystal Lake, Hancock County.** No motorboat shall be operated at a speed greater than 5 miles per hour within the 25-acre zoned area designated by regulatory buoys.

**571—37.45(462A) Deer Creek Lake, Plymouth County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.46(462A) Des Moines River.** Vessel operation on the Des Moines River from its confluence with the Mississippi River in Lee County to the northerly meander lines of both the East and West Branches shall be governed by this departmental rule as well as all applicable state laws and regulations. Areas may be specifically designated for swimming, wading, and restricted speed areas.

**571—37.47(462A) Dickinson County lakes.** All vessels shall be operated at a speed not greater than 5 miles per hour within 300 feet of shore on all lakes in Dickinson County. No vessels, except authorized emergency vessels, shall be operated at speeds greater than 25 miles per hour at any time between one-half hour after sunset and sunrise on all lakes located in Dickinson County.

**37.47(1)** *East Okoboji Lake.* No motorboat shall be operated at a speed greater than 5 miles per hour within the three zoned areas designated by regulatory buoys on East Okoboji Lake.

*a.* Zone 1 shall be a line 150 yards east from the north end of the railroad trestle bridge at Clair Wilson State Park south to the shoreline of East Okoboji.

*b.* Zone 2 shall be the area which is 300 feet north of the area commonly known as the Narrows on East Okoboji and extends to a southern boundary of a buoy line from the point at 16486 255th Avenue east to the state property adjacent to 16313 256th Avenue on the east side of East Okoboji.

*c.* Zone 3 shall be the area 50 feet east of the bridge between East Okoboji and Upper Gar on the East Okoboji side running in a northwesterly direction toward the end of the island from Gingles Point then west toward the shoreline.

**37.47(2)** *West Okoboji Lake.* No motorboat shall be operated at a speed greater than 5 miles per hour within the six zoned areas designated by regulatory buoys on West Okoboji Lake.

*a.* Zone 1 shall be a line from the east side of Givens Point to the south end of Arnolds Park City Beach on West Okoboji.

*b.* Zone 2 shall be the area commonly known as Okoboji Harbor at the northwest corner of West Okoboji.

*c.* Zone 3 shall be the area commonly known as the canals in the city of Wahpeton including Turtle Lake.

*d.* Zone 4 shall be the area commonly known as Lazy Lagoon located in the Triboji Area on West Okoboji.

*e.* Zone 5 shall be the area commonly known as Little Millers Bay. The zone shall start at Pinkies Point and extend southeasterly (160 degrees) approximately 370 yards until bisecting the southern shoreline of Little Millers Bay.

*f.* Zone 6 shall be the area commonly known as Little Emmerson Bay. The zone shall start at Breezy Point and extend southwesterly (235 degrees) approximately 330 yards until bisecting the west shoreline of Little Emmerson Bay.

**37.47(3)** *Spirit Lake, Dickinson County.* Operation of vessels in the area commonly known as Templar Park Lagoon is restricted to a speed not greater than 5 miles per hour. Areas may be specifically designated for swimming by the use of regulatory buoys.

**37.47(4)** *Upper Gar Lake, Dickinson County.* Operation of vessels on Upper Gar Lake is restricted to a speed not greater than 5 miles per hour between the Henshaw Bridge at the north end of Upper Gar and south end of East Lake and the Old Sawmill Bridge at the south end of Upper Gar and the north end of Minnewashta.

**571—37.48(462A) Five Island Lake, Palo Alto County.** Areas may be specifically designated for swimming by the use of regulatory buoys.

**571—37.49(462A) Fogle Lake, Ringgold County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.50(462A) George Wyth Lake, Black Hawk County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.51(462A) Green Valley Lake, Union County.**

**37.51(1)** No inboard boats, jet skis, or jet-powered boats are permitted. All boats must maintain a speed not greater than 5 miles per hour on the entire lake between the hours of sunset and 10:30 p.m. and between 4 a.m. and 10 a.m. No boating is permitted on the lake between 10:30 p.m. and 4 a.m. No boat shall be operated within 100 feet of shore at speeds greater than 5 miles per hour.

**37.51(2)** A portion of the west arm of Green Valley Lake shall be designated as a ski zone and shall be marked by controlled area buoys as designated by Iowa's uniform waterway marking system. This designated area shall be referred to as the "ski zone." Waterskiing and general boating are permitted in the designated ski zone between 10 a.m. and sunset. All boats must maintain a speed not greater than 5 miles per hour when outside the ski zone. No one shall be permitted in the water in the ski zone except those persons engaged in waterskiing or similar activity. All boats in the ski zone not engaged in waterskiing or similar activity shall keep out of the general traffic pattern of the boats pulling skiers.

**571—37.52(462A) Iowa River.**

**37.52(1)** *Iowa River, Iowa Falls, Hardin County.*

*a.* All vessels operated in a designated zone between the River Street Bridge and the dock at Dougan's Landing shall be operated at a speed not greater than 5 miles per hour.

*b.* The city of Iowa Falls shall designate and maintain the 5-mile-per-hour speed zone with marker buoys approved by the commission.

*c.* All vessels operated in a designated zone beginning at the west property boundary and ending at the east property boundary of the Scenic City Empress Boat Club property located at 1113 Union Street shall be operated at a no-wake speed. The zone shall not extend more than 75 feet into the Iowa River channel.

*d.* The Scenic City Empress Boat Club shall designate and maintain the no-wake zone with marker buoys approved by the commission.

**37.52(2)** *Iowa River, Iowa City, Johnson County.* No person shall operate any vessel towing persons on water skis, surfboards, or similar devices on the Iowa River in the area bounded by the Coralville Mill Dam and the Burlington Street Dam, except during regattas, races, marine parades, tournaments, or exhibitions authorized by the commission to be held in such area.

**571—37.53(462A) Ingham Lake, Emmet County.** Areas may be specifically designated for swimming by the use of regulatory buoys.

**571—37.54(462A) Lake Cornelia, Wright County.** All vessels shall be operated at a speed not greater than 5 miles per hour in the boat harbor and at the boat harbor entrance within the zoned area extending 300 feet from two points on shore and 100 feet in width, equidistant from either side of the harbor entrance. The Wright County conservation board shall designate the boat harbor entrance and the public swimming area with uniform marker buoys approved by the commission.

**571—37.55(462A) Lake Icaria, Adams County.** All vessels shall be operated at a speed not greater than 5 miles per hour when within 50 feet of another vessel that is not underway or is operating at a speed not greater than 5 miles per hour.

**37.55(1)** No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading that are plainly marked by the use of buoys or signs.

**37.55(2)** No motorboats, except authorized emergency vessels, shall be operated in marked bay areas at a speed greater than the limit designated by buoys or signs marking said bay.

**37.55(3)** No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by uniform marker buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area. Such zoned areas shall be not less than 50 feet nor more than 400 feet from shore.

**571—37.56(462A) Lake Iowa, Iowa County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.57(462A) Lake Macbride, Johnson County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour only from September 8 through May 20 of each year. A motorboat with a power unit exceeding 10 horsepower shall not be permitted the remainder of the year.

**571—37.58(462A) Lake Manawa, Pottawattamie County.** No motorboat shall be operated at a speed greater than 5 miles per hour within the zoned areas 300 feet from shore around Lake Manawa in Pottawattamie County.

**571—37.59(462A) Lake Odessa, Louisa County.** Areas may be designated restricted speed areas. All motorboats, except authorized emergency vessels, shall be operated at a speed not greater than 5 miles per hour year-round on two portions of Lake Odessa known as 1) the Sand Run Chute, lying south of the main lake to a point 100 yards south of the Sand Run Chute boat ramp, and 2) the lateral ditch, between the main lake and Bebee Pond, and on the channel between Yankee Chute and Beaver Pond.

**571—37.60(462A) Lake of Three Fires, Taylor County.** Unrestricted-horsepower vessels may operate at a speed not greater than 5 miles per hour.

**571—37.61(462A) Lake Panorama (Raccoon River), Guthrie County.**

**37.61(1)** Areas may be designated as restricted speed, direction, swimming and no boating areas.

**37.61(2)** Areas may be designated with operation restrictions pursuant to Iowa Code sections 462A.17A and 462A.17B.

**571—37.62(462A) Little Wall Lake.** No motorboat shall be operated at a speed greater than 5 miles per hour within the zoned area designated by regulatory buoys on Little Wall Lake in Hamilton County. The zoned area will not exceed approximately 20 acres in the northeast portion of the lake identified by a line from a point on the high-water mark approximately 296.6 feet west of the southeast corner of the southwest quarter of Section 10, Township 86 North, Range 24 West; thence northwest to the high-water mark which is 775 feet south and 319 feet west of the northeast corner of the northwest quarter of the southwest quarter of Section 10, Township 86 North, Range 24 West.

**571—37.63(462A) Little River Lake, Decatur County.** Vessels operating within a designated area beginning at the dam and extending north approximately to the mouth of "Bait Shop Bay" shall be operated at a speed no greater than 5 miles per hour. The Decatur County conservation board shall designate the speed zone with marker buoys approved by the commission.

**571—37.64(462A) Loch Ayr, Ringgold County.** Motorboats are restricted to not greater than 100 horsepower. A motorboat shall not be operated within 100 feet of shore at a speed greater than 5 miles per hour.

**571—37.65(462A) Lost Island Lake, Palo Alto and Clay Counties.** Areas may be specifically designated for swimming by the use of regulatory buoys.

**571—37.66(462A) Maquoketa River (Lake Delhi), Delaware County.** Water recreation activity restrictions shall be obeyed, including restrictions within posted areas that are marked with approved buoys, on the impoundment of the Maquoketa River in Delaware County, extending westerly and northerly from the line between Sections 29 and 30 in Delhi Township in said county, to the line between Sections 10 and 15 in Milo Township in said county which impoundment is sometimes known and referred to as Hartwick Lake or Lake Delhi. No motorboat shall be operated at speeds greater than 10 miles per hour at any time between the hours from one hour after sunset to one hour before sunrise.

**571—37.67(462A) Meadow Lake, Adair County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

MISSISSIPPI RIVER

**571—37.68(462A) Mississippi River lock and dam safety zone.** A safety zone is hereby established in Iowa waters above and below all navigation lock and dam structures on the Mississippi River between the Iowa-Minnesota border and the Iowa-Missouri border. The established zone shall be 600 feet upstream and 150 feet downstream from the roller gate or tainter gate section of the structure.

**37.68(1)** The safety zone does not include the area directly above and below the navigation lock structure.

**37.68(2)** The safety zone does not include the area directly above and below the solid fill portion of the dam and structure.

**37.68(3)** The safety zone shall be recognized by the state of Iowa only when plainly marked as follows:

*a.* Upstream signs worded—Restricted area keep 600 feet from dam.

*b.* Downstream signs worded—Restricted area keep 150 feet from dam.

*c.* Flashing red lights will be used to make the outer limits of the restricted areas.

**37.68(4)** No boat or vessel of any type, except authorized vessels, shall enter the established safety zones recognized by the state of Iowa as described in this rule.

ALLAMAKEE COUNTY

**571—37.69(462A) Mississippi River, Lansing, Allamakee County.** All vessels, except commercial barge traffic, shall be operated at a speed not greater than 5 miles per hour within an area extending 300 feet from shore and beginning at a point 800 feet north of river mile marker 662.2 and proceeding to Lansing City Marina Dike. The Friends of Pool 9 shall designate and maintain the 5-mile-per-hour speed zone with buoys approved by commission.

**571—37.70(462A) Harpers Slough, Harpers Ferry, Allamakee County.** All vessels operated in Harpers Slough between a point 200 feet above the state ramp and 200 feet out from the west shore and extending 550 feet downstream from a point known as Sandy Point Road Dead-End shall operate at a speed not greater than 5 miles per hour. The city of Harpers Ferry will designate the 5-mile-per-hour speed zone with buoys approved by the commission.

CLAYTON COUNTY

**571—37.71(462A) Mississippi River, Clayton, Clayton County.** All vessels, except commercial barge traffic, shall be operated at a speed no greater than 5 miles per hour within an area extending 150 feet from shore and beginning at a point 1,012 feet north of Mississippi River Day Marker 624.7R and extending south to a point 1,012 feet south of the same marker (624.7R). The city of Clayton shall designate and maintain the 5-mile-per-hour speed zone with buoys approved by the commission.

**571—37.72(462A) Mississippi River, Guttenberg river mile 616, Clayton County.** All vessels operated between the ice dike and Bussey Lake access shall be operated at a speed not greater than 5 miles per hour. The city will designate the 5-mile-per-hour speed zone with buoys approved by the commission.

**571—37.73(462A) Mississippi River, Johnson Slough, Clayton County.** All vessels shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 627 and 629.8, in a backwater known as Johnson Slough and designated by marker buoys approved by the commission.

**571—37.74(462A) Mississippi River, Marquette, Clayton County.** All vessels, except commercial barge traffic, shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 634.5 and 634.9 and designated by buoys or other approved uniform waterway markers. The

city of Marquette will designate and maintain the 5-mile-per-hour speed zone with buoys approved by the commission.

**571—37.75(462A) Mississippi River, McGregor, Clayton County.** All vessels, except commercial barge traffic, shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 634 and 633.4 and designated by buoys or other approved uniform waterway markers. The city of McGregor will designate the 5-mile-per-hour speed zone with buoys approved by the commission.

CLINTON COUNTY

**571—37.76(462A) Mississippi River, Joyce Slough Area, Clinton County.** The Joyce Slough Area, a portion of the Mississippi River within the city of Clinton, is hereby zoned to be a harbor area and vessels traveling therein shall not travel at speeds in excess of 5 miles per hour.

**571—37.77(462A) Mississippi River, Swan Slough, Camanche, Clinton County.** A restricted speed zone of not greater than 5 miles per hour is hereby established in all or part of the main channel of Swan Slough (Mississippi River mile 510.2 to 511.3), as designated by buoys.

DES MOINES COUNTY

**571—37.78(462A) Mississippi River, Des Moines County, city of Burlington.** All vessels shall be operated at a speed no greater than 5 miles per hour within the area designated by marker buoys or other approved uniform waterway markers beginning at the north city boat ramp and public dock and extending downstream to the south city boat ramp and public dock. The zoned area shall extend no farther than 150 feet from the shore and approximately 150 feet west of the west edge of the barge channel. The city of Burlington shall designate the 5-mile-per-hour speed zone with buoys approved by the commission.

DUBUQUE COUNTY

**571—37.79(462A) Mississippi River, Dubuque, Dubuque County.**

**37.79(1)** All vessels shall be limited to no more than 5 miles per hour in Lake Peosta Cut south and east of the Hawthorn Street municipal boat launching ramp.

**37.79(2)** A restricted speed zone of no more than 5 miles per hour is established in the vicinity of Chaplain Schmitt Memorial Island in proximity to the Schmitt Island municipal launching ramp and in waters adjacent to the southerly shoreline in the area of the Dubuque Yacht Basin.

**37.79(3)** A restricted speed zone of 5 miles per hour for the northern portion of Shawondassee Slough. Marker buoys shall be placed at a point approximately 750 feet upstream from the existing speed zone.

**571—37.80(462A) Mississippi River, Massey Slough, Dubuque County.** The operation of vessels in Massey Slough of the Mississippi River at Massey Station, Dubuque County, extending from a northerly to southerly direction from the upper end to the lower end of the slough, encompassing the water in Section 14, Township 88N, Range 3E of the 5th P.M., tract number NFIA-26M, is restricted as follows: all boats underway must maintain a speed of less than 5 miles per hour in said waters.

**571—37.81(462A) Catfish Creek, Mines of Spain State Recreation Area, Dubuque County.** All vessels shall be operated at a speed not greater than 5 miles per hour within the area beginning at the mouth of Catfish Creek and extending upstream to the confluence of Catfish Creek and Granger Creek and designated by uniform marker buoys approved by the commission.

**571—37.82(462A) Mississippi River, Mud Lake, Dubuque County.** All vessels shall be operated at a speed not greater than 5 miles per hour within the area of river mile markers 587.6 to 589.3, in a backwater known as Mud Lake and designated by marker buoys approved by the commission.

JACKSON COUNTY

**571—37.83(462A) Mississippi River, Bellevue, Jackson County.** All vessels shall be operated at a speed not greater than 5 miles per hour within the area designated by buoys or other approved uniform waterway markers beginning at the mouth of Mill Creek and extending upstream 900 feet, and extending 200 feet perpendicular from shore. The area shall be designated by a minimum of four approved buoys to be uniformly placed along the 900-foot length of the zone parallel to the shore. The city of Bellevue will designate the 5-mile-per-hour speed zone with buoys approved by the commission.

**571—37.84(462A) Green Island, Jackson County.** All motorboats except authorized emergency vessels shall be operated at a speed no greater than 5 miles per hour year around on boat channels adjacent to the interior channel 4 levee at the Green Island State Wildlife area. Both channels begin at the Green Island county road parking lot and proceed north 7,920 feet along each side of the channel 4 levee to an intersection with the Snag Slough complex.

**571—37.85(462A) Mississippi River, City of Sabula, Jackson County.** No motorboat shall operate at a speed to exceed 5 miles per hour within the four zoned areas designated by buoys or other approved uniform waterway markers. The city of Sabula shall designate the speed zones with uniform waterway markers (buoys) approved by the commission.

**37.85(1)** Zone 1 shall extend 200 feet from shore and begin at a point 250 feet upstream of the north Sabula city boat ramp and ending at a point downstream where Bank Street intersects the river bank.

**37.85(2)** Zone 2 shall extend 200 feet from shore and extend 100 feet upstream and 100 feet downstream from the entrance to the Island City Harbor.

**37.85(3)** Zone 3 shall extend 200 feet into South Sabula Lake from the county boat ramp and 100 feet to the west of the ramp and 600 feet to the east of the ramp.

**37.85(4)** Zone 4 shall extend 200 feet in all directions beginning at the center of the "cut" into Lower Sabula Lake.

**571—37.86(462A) Mississippi River, Spruce Creek County Park, Jackson County.** No motorboat shall operate at a speed to exceed 5 miles per hour within the area designated by buoys or other approved uniform waterway markers, beginning at the entrance of Spruce Creek harbor and extending southeast 550 feet and extending east 150 feet from shore. The Jackson County conservation board will designate the speed zone with uniform waterway markers (buoys) approved by the commission.

**571—37.87(462A) Otter Creek Lake, Tama County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.88(462A) Raccoon River Regional Park Lake, Polk County.** All vessels shall be operated at a speed not greater than 5 miles per hour. Areas may be specifically designated for swimming by the use of regulatory buoys. A 40-acre body of water located in the southeast corner, and separate from the main lake, shall be designated for nonmotorized and electric motors only. The city of West Des Moines will designate the area with regulatory buoys and signs.

**571—37.89(462A) Rathbun Lake, Appanoose County.** Areas may be specifically designated for swimming and wading, restricted speed, "no anchoring," and "no boating" areas.

**571—37.90(462A) Red Rock Lake, Marion County.** Areas may be specifically designated for swimming and wading, restricted speed, and "no anchoring" areas.

**571—37.91(462A) Shell Rock River (Greene Impoundment), Floyd County.** No motorboat shall be operated at a speed exceeding 5 miles per hour in the two zoned areas of the Greene Impoundment designated by buoys or other approved uniform waterway markers. The first zoned area extends from the

dam in the city of Greene, upstream approximately one-quarter mile to the north boundary of the city park in which the lower boat ramp is located. The second zoned area extends from the county bridge over the Shell Rock River on the north side of section 28 of Union Township in Floyd County, downstream approximately one-quarter mile to the south boundary of Gates Bridge County Park. The city of Greene and Floyd County shall designate their respective speed zones with uniform waterway markers (buoys) approved by the commission.

**571—37.92(462A) Saylorville Lake, Polk County.** Areas may be specifically designated for swimming, wading, and restricted speed.

**571—37.93(462A) Silver Lake, Delaware County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.94(462A) Snyder Bend Lake, Woodbury County.** All vessels shall be operated at a speed not greater than 5 miles per hour within the zoned area 400 yards from the boat ramp south to the regulatory sign and buoys. Areas may be specifically designated for swimming by the use of regulatory buoys.

**571—37.95(462A) Storm Lake, Buena Vista County.** Areas may be specifically designated for swimming by the use of regulatory buoys.

**571—37.96(462A) Thayer Lake, Union County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.97(462A) Three Mile Lake, Union County.** Motorboats not to exceed 200 horsepower shall be permitted on Three Mile Lake. All vessels shall be operated at a speed not greater than 5 miles per hour when within 50 feet of another vessel that is not underway or is operating at a speed not greater than 5 miles per hour.

**37.97(1)** No vessel, except authorized emergency vessels, shall be permitted in areas specifically designated for swimming and wading which are plainly marked by use of regulatory buoys. The Union County conservation board shall designate and maintain a swimming area(s) by the use of regulatory buoys approved by the commission.

**37.97(2)** No motorboats, except authorized emergency vessels, shall be operated in marked bay areas at a speed greater than the limit designated by buoys or signs marking said bay. No motorboats, except authorized emergency vessels, shall be operated other than at a speed not greater than 5 miles per hour above a line of buoys placed across the lake at the point where County Road H33 intersects the lake.

**37.97(3)** No motorboats, except authorized emergency vessels, shall be operated in restricted speed areas between the nearest shore and a line designated by regulatory buoys or signs at a speed greater than the limit designated on the buoys or signs marking the area. Such zoned areas shall be not less than 50 feet nor more than 400 feet from shore.

**571—37.98(462A) Wapsipinicon River in Pinicon Ridge Park, Linn County.** No motorboat shall be operated at a speed greater than 5 miles per hour within the zoned area designated by regulatory buoys or signs on the off-channel waters of the Wapsipinicon River above the dam at Central City, Linn County. The zoned area will be the off-channel waters created in and adjacent to the developed recreation areas of the Pinicon Ridge Park on the west and south bank of the Wapsipinicon River above the dam at Central City, Linn County.

**571—37.99(462A) Williamson Pond, Lucas County.** Unrestricted-horsepower vessels may be operated at a speed not greater than 5 miles per hour.

**571—37.100(462A) Artificial marshes.** A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated on the following listed artificial marshes under the jurisdiction of the

department at a speed not greater than 5 miles per hour between January 1 and August 31 and with no speed restrictions between September 1 and December 31:

Bays Branch, Guthrie County
Big Marsh, Butler County
Brown's Slough, Lucas County
Cardinal Marsh, Winneshiek County
Dudgeon Lake, Benton County
Elk Creek Marsh, Worth County
Green Island, Jackson County
Hendrickson Marsh, Story County
Hooper Pond, Warren County
North Colyn, Lucas County
Otter Creek Marsh, Tama County
Princeton Area, Scott County
Riverton, Fremont County
Round Pond, Johnson County
South Colyn, Lucas County
Sweet Marsh, Bremer County
Walnut Creek Marsh, Ringgold County
Willow Slough, Mills County
Woodpecker Marsh, Wayne County
Coal Creek Marsh, Warren County—restricted to boats with electric motors not to exceed 5 miles per hour.

**571—37.101(462A) Natural marshes.** There shall be no horsepower limitations on vessels operated on natural marshes, except Shimon Marsh Wetland Complex, Pocahontas County, which is restricted to nonmotorized vessels only.

**571—37.102(462A) Waterway markers.** Waterway markers used on the waters of this state shall be as follows:

**37.102(1)** *Aids to navigation.*

*a.* A red buoy or sign that indicates that side of the channel to be kept to the right side of the vessel when entering the channel from the main water body or when proceeding upstream.

*b.* A green buoy or sign that indicates that side of the channel to be kept to the left of a vessel when entering the channel from the main water body or when proceeding upstream.

*c.* Buoys or signs described in 37.102*"a"* and *"b"* above shall normally be used in pairs and only for the purpose of marking a clearly defined channel.

*d.* Red buoys and signs marking channels shall be identified with even numbers, and green buoys and signs marking channels shall be identified with odd numbers, the numbers increasing from the main water body or proceeding upstream.

*e.* Letters and numerals used with aids to navigation shall be white, in block characters of good proportion, and spaced in a manner that will provide maximum legibility. Such letters and numerals shall be at least six inches in height.

*f.* The shapes of aids to navigation shall be compatible with the shapes established by U.S. Coast Guard regulations for the equivalent U.S. Coast Guard aids to navigation. Where reflectorized materials are used, a red reflector will be used on a red buoy, and a green reflector on a green buoy.

**37.102(2)** *Regulatory markers.*

*a.* A diamond shape of international orange with white center indicates danger. The nature of the danger may be indicated by words or well-known abbreviations in black letters inside the diamond shape, or above or below it, or both, on white background.

*b.* A diamond shape of international orange with a cross of the same color within it against a white center without qualifying explanation indicates a zone from which all vessels are excluded.

*c.* A circle of international orange with white center indicates a control or restriction. The nature of the control or restriction shall be indicated by words, numerals, or well-known abbreviations in black letters inside the circle. Additional explanation may be given above or below it in black letters on white background.

*d.* A rectangular shape of international orange with white center indicates information, other than a danger, control or restriction, that may contribute to health, safety or well-being. The message will be presented within the rectangle in black letters.

*e.* Letters or numerals used with regulatory markers shall be black, in block characters of good proportion, spaced in a manner that will provide maximum legibility, and of a size that will provide the necessary degree of visibility.

**571—37.103(462A) Authority to place markers.**

**37.103(1)** No waterway marker shall be placed on, in, or near the waters of the state unless such placement is authorized by the agency or political subdivision of the state exercising jurisdiction, with respect to regulation of boating, over the area where placed, except that the provisions of this section shall not apply to private aids to navigation under the jurisdiction of the U.S. Coast Guard.

**37.103(2)** Such agency or political subdivision of the state will, prior to authorizing placement, obtain the necessary clearances of federal and state agencies exercising regulatory authority over the area concerned.

**37.103(3)** The agency or political subdivision of the state authorizing the placement of a waterway marker will inform the department of the following:

*a.* Exact location of the marker, expressed in distance and direction from one or more fixed objects whose precise location is known.

*b.* The description and purpose of the marker including its identifying number, if any.

**571—37.104(462A) Maintenance of waterway markers.**

**37.104(1)** Waterway markers will be maintained in proper condition or be replaced or removed.

**37.104(2)** Zoned areas shall extend not less than 50 feet nor more than 400 feet from shore.

**37.104(3)** Buoys delineating the restricted speed zone shall be placed no more than 400 feet apart through the length of the affected portion of the channel.

**571—37.105(462A) Display of waterway markers.**

**37.105(1)** A waterway marker may be displayed as a sign or a fixed support, as a buoy bearing a symbol on its surface, or as a sign mounted on a buoy.

**37.105(2)** When a buoy is used to carry a symbol on its surface, it will be white, with bands of international orange on the top, and at the bottom above the water line.

**37.105(3)** A buoy whose sole purpose is to carry a sign above it will be marked with three bands of international orange alternating with two bands of white, each band occupying approximately one-fifth of the total area of the buoy above the water line, except where the sign itself carries orange bands; however, nothing in these rules shall be construed to prohibit the mounting of a sign on a buoy that has been placed for a purpose other than that of carrying a sign.

**37.105(4)** When symbols are placed on signs, a suitable white background may be used outside the symbol.

**571—37.106(462A) Specifications for waterway markers.**

**37.106(1)** The size of a display area shall be as required by circumstances, except that no display area shall be smaller than 1 foot in height. The size shall increase in increments of 6 inches; provided, however, that this specification for increase in increments shall not apply to markers in existence prior to the adoption of this rule.

**37.106(2)** The thickness of the symbol outline shall be one-tenth of the height of the display area.

**37.106(3)** The outside width of the diamond, the inner diameter of the circle, and the average of the inside and outside widths of a square shall be two-thirds of the display area height.

**37.106(4)** The sides of the diamond shall slope at a 35-degree angle from the vertical on a plane surface. Appropriate adjustments for curvature may be made when applied to a cylindrical surface.

**37.106(5)** Waterway markers shall be made of materials that will retain, despite weather and other exposures, the characteristics essential to their basic significance, such as color, shape, legibility and position. Reflectorized materials may be used.

**571—37.107(462A) Mooring buoys and race course markers.** For all waters under the jurisdiction of the commission, the following apply:

**37.107(1)** Mooring buoys shall be white with a 2-inch blue reflectorized band clearly visible above the water, extend a minimum of 12 inches above the surface of the water, and have at least 1 square foot of surface visible from any direction.

**37.107(2)** Placement of mooring buoys shall be within 250 feet of shore, except under certain circumstances the commission may require them to be placed at a lesser distance. Requirements for mooring buoys may be waived by the director under special circumstances.

**37.107(3)** Permanent race course marker buoys shall be white with a ball of international orange of at least 12 inches in diameter, extend a minimum of 2 feet above the surface of the water, be at least 16 inches in diameter, and be lighted during periods of low visibility and during the hours of darkness.

**37.107(4)** Markers such as mooring buoys and race course markers will be processed in the same manner as waterway markers, and authorization for their placement will be obtained from the agency or political subdivision of the state exercising jurisdiction with respect to regulation of boating, and such agency or political subdivision will ensure that proper clearances for their placement are obtained from state and federal agencies exercising regulatory authority over the area concerned.

**37.107(5)** Such markers shall not be of a color, shape, configuration or marking that could result in their confusion with any federal or state aid to navigation or any state regulatory marker, and shall not be placed where they will obstruct navigation, cause confusion or constitute a hazard.

**571—37.108(462A) Diver's flag.**

**37.108(1)** A diver's flag shall, when displayed on the water, indicate the presence of a diver in the water in the immediate area.

**37.108(2)** Recognition of this flag by regulation will not be construed as conferring any rights or privileges on its users, and its presence in a water area will not be construed in itself as restricting the use of the water area so marked.

**37.108(3)** Operators of vessels will, however, exercise precaution commensurate with conditions indicated.

**37.108(4)** This flag shall be displayed only when diver activities are in progress, and its display in a water area when no diver activities are in progress in that area will constitute a violation of this rule and of Iowa Code chapter 462A.

DIVISION III
VESSEL OCCURRENCE REPORTING

**571—37.109(462A) Accident report.** In addition to provisions in Iowa Code section 462A.7, a written report is required in the case of loss of consciousness, disability in excess of 24 hours, and the disappearance of any person from onboard a vessel under circumstances that suggest any possibility of death or injury.

**571—37.110(462A) Procedure.** These reports shall be filed in writing within 48 hours of the accident with the department using forms provided by the department.

**571—37.111(462A) Contents.** The report shall include the information required in 33 CFR 173.57 (June 1, 2024).

These rules are intended to implement Iowa Code sections 321G.2, 321I.2, 462A.3, 462A.5, 462A.6A, 462A.7, 462A.9, 462A.11, 462A.12, 462A.13, 462A.15, 462A.16, 462A.17, 462A.19, 462A.20, 462A.24, 462A.26, 462A.31, 462A.32, 462A.36, and 456A.24.

ITEM 3. Rescind and reserve **571—Chapter 38**.

ITEM 4. Rescind and reserve **571—Chapter 39**.

ITEM 5. Rescind and reserve **571—Chapter 40**.

ITEM 6. Rescind and reserve **571—Chapter 41**.

ITEM 7. Rescind and reserve **571—Chapter 42**.

ITEM 8. Rescind and reserve **571—Chapter 43**.

ITEM 9. Rescind and reserve **571—Chapter 45**.

## ARC 8597C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to fireworks displays and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 44, "Special Events and Fireworks Displays," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 321G.16, 321I.17, 461A.42, 462A.16 and 481A.38.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 321G.16, 321I.17, 461A.3, 461A.4, 461A.42, 462A.16, 481A.22 and 481A.38.

*Purpose and Summary*

Proposed Chapter 44 provide rules on the issuance of permits for special events and fireworks displays held on public lands, waters, and ice of the state. The chapter allows for a balance with all user groups when scheduling special events and fireworks displays. Additionally, this chapter prevents the overuse, and potentially damaging use, of Iowa's natural resources, including depleted fisheries. Excessive events on the water would create a safety hazard and harm to the public with increased boating accidents. Unmanaged fireworks displays would create excess debris in the water and on public lands and are potentially fire and public safety hazards. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 11, 2025. Comments should be directed to:

Susan Stocker
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Fax: 515.725.8201
Email: susan.stocker@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at susan.stocker@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al susan.stocker@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 31, 2025<br>11 a.m. | Via videoconference call |
| February 11, 2025<br>11 a.m. | Via videoconference call |

Persons who wish to make oral comments at a public hearing must submit a request to Susan Stocker prior to the hearings to receive a Google Meet link and conference call number.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at susan.stocker@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al susan.stocker@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44
SPECIAL EVENTS AND FIREWORKS DISPLAYS

**571—44.1(321G,321I,461A,462A,481A) Scope.** The purpose of this chapter is to provide rules on the issuance of permits for special events and fireworks displays held on public land, waters, and ice of the state.

**571—44.2(321G,321I,461A,462A,481A) Definitions.** For the purposes of this chapter, the following definitions apply:

*"Accredited postsecondary institution or program"* means an institution or program listed in the U.S. Department of Education's database of accredited postsecondary institutions and programs.

*"Administrative processing fee"* means the fee collected for the processing of each special event application that is submitted.

*"All-terrain vehicle"* or *"ATV"* means the same as defined in Iowa Code section 321I.1(1)*"a."*

*"Bass fishing tournament"* means the same as defined in Iowa Code section 483A.39. For purposes of this chapter, "bass fishing tournament" is included in the definition of "special event" unless otherwise specified.

*"Catfish fishing tournament"* means an event with the purpose of fishing for catfish from boats that meets the definition of "fishing tournament." For purposes of this chapter, "catfish fishing tournament" is included in the definition of "special event" unless otherwise specified.

*"Centralized special events application system"* means the web-based system used by applicants to submit applications for special events as permitted under this chapter. Approved applications will be placed on a calendar of events web page, accessible from the department's homepage, to inform the general public of scheduled events on public, or when applicable, private, land, water, and ice.

*"Department"* means the Iowa department of natural resources.

*"Field and retriever meet or trial"* means the same as described in Iowa Code section 481A.22. For purposes of this chapter, "field and retriever meet or trial" is included in the definition of "special event" unless otherwise specified.

*"Fishing tournament"* means any organized fishing event, except for department-sponsored fishing events held for educational purposes, involving any of the following: (1) six or more boats or 12 or more participants, except for waters of the Mississippi River, where the number of boats shall be 20 or more and the number of participants shall be 40 or more; (2) an entry fee is charged; or (3) prizes or other inducements are awarded. Additionally, a "virtual fishing tournament," also known as a "catch-photo-release" tournament, is a fishing tournament where fish are not possessed (i.e., not placed in a live well) by the angler but instead are photographed and released upon catching. An "aggregated virtual fishing tournament" occurs when all participants are present on one body of water simultaneously. A "distributed virtual fishing tournament" occurs when participants are present on two or more bodies of water. Additionally, only five or fewer participants may be present on any one body of water simultaneously, and the tournament may occur over an extended time frame. For purposes of this chapter, "fishing tournament" is included in the definition of "special event" unless otherwise specified. "Friends group" means an organization incorporated under Iowa Code chapter 504 or prior statutory authority as a not-for-profit group which has been formed solely for the purpose of promoting and enhancing a particular state park, recreation area, or the Iowa state park system, or any combination of the three.

*"Off-road motorcycle"* or *"ORM"* means the same as defined in Iowa Code section 321I.1(16).

*"Off-road utility vehicle"* or *"ORV"* means the same as defined in Iowa Code section 321I.1(17).

*"Permit"* means a document issued by the department that enumerates all stipulations, requirements, and contingencies that the applicant must accept and adhere to throughout the duration of the approved special event.

*"Public land"* means land under the jurisdiction of the natural resource commission.

*"Public water"* means the same as "navigable waters" as defined in Iowa Code section 462A.2(22) and "waters of this state under the jurisdiction of the commission" as defined in Iowa Code section 462A.2(45).

*"Sailing school"* means an organization that provides basic and advanced sailing instruction by U.S. Sailing-certified instructors and is affiliated with a yacht club, an accredited postsecondary institution or program, a private or public primary or secondary school, a scouting organization, or a religious institution.

*"Snowmobile"* means the same as defined in Iowa Code section 321G.1(26).

*"Special event"* means either of the following occurring on public land, water, or ice:

1. An organized race, tournament, exhibition, demonstration, or other planned event in which an admission fee is charged, prizes are awarded, or competition occurs between participants;
2. A planned event that, due to its nature, potential or actual size, or length, would likely adversely impact the use of the area by the public.

*"Vessel"* means the same as defined in Iowa Code section 462A.2(40).

DIVISION I
SPECIAL EVENTS

**571—44.3(321G,321I,461,462A,481A) Permit required.** A permit is required in order to conduct a special event on any public land, water, or ice. A permit is also required for a field and retriever meet or trial held on private land.

**571—44.4(321G,321I,461A,462A,481A) Permit conditions.** The department may impose permit conditions not specifically covered herein as deemed necessary to protect the resource or to ensure public safety. Such conditions shall be included in the permit issued by the department.

**44.4(1)** *Use of concessionaire.* If the state park or recreation area where a special event is being held has a concessionaire, the sale of food or drinks shall be governed pursuant to 571—subrule 14.5(3). If a concessionaire chooses not to provide services during the special event, the event sponsor may bring in other concession operations as approved by the department.

**44.4(2)** *Special permit conditions for fishing tournaments.* In addition to permit conditions deemed necessary by rule 571—44.4(321G,321I,461A,462A,481A), the department may include some or all of the following permit conditions for fishing tournaments:

*a.* Release of live fish.
*b.* Fish measured to length and released from boat.
*c.* Multiple weigh-ins when water temperatures exceed 70°F.
*d.* Aerated live wells.
*e.* Designated release areas.
*f.* Designated release persons.

**44.4(3)** *Catfish fishing tournaments.* The daily catch limit for a catch and release catfish fishing tournament permitted under this chapter is five catfish per boat regardless of the number of tournament participants on the boat.

**44.4(4)** *Bass fishing tournaments.* In addition to permit conditions deemed necessary under the introductory paragraph of 571—44.4(321G,321I,461A,462A,481A) or under 44.4(2), the permit conditions for bass fishing tournaments shall include those listed in Iowa Code section 483A.39(2).

**571—44.5(321G,321I,461A,462A,481A) Application procedures.** The following procedures shall be used to apply for a special event permit:

**44.5(1)** Applications are made and submitted through the department's centralized special events application system.

**44.5(2)** Applications—when submitted.

*a. Events for the current year.* Applications may be submitted anytime during the calendar year in which the special event is to begin but no later than 30 days prior to the special event.

*b. Events for the next year.* Applications for a special event that will start in the next calendar year shall not be submitted until 7 p.m. on September 1 of the current year.

**44.5(3)** The number of special events to be held at any area on the same day may be restricted if deemed necessary to avoid congestion within the area or to protect the resource.

**44.5(4)** One application form may be submitted for all events of the same type being held at the same location within a nine-day period and will be processed as a single application. A distributed virtual fishing tournament may extend beyond the nine-day period and need not be at a single location.

**44.5(5)** Submission of an application does not guarantee issuance of a permit.

**44.5(6)** Permits are nontransferable.

**571—44.6(321G,321I,462A) Alternate dates for snowmobile, boating, all-terrain vehicle, off-road utility vehicle, and off-road motorcycle special events.** An applicant may submit and the department may approve both a primary date and an alternate date for snowmobile, boating, ATV, ORM, and ORV special events. However, if both a primary date and an alternate date are approved, the primary date shall be used unless circumstances beyond the control of the applicant prevent its use. If the alternate date must be used for the event, the applicant shall contact the department representative at least one week in advance of the event date to obtain final approval to use the alternate date. The department representative shall document this approval in writing. Upon approval of an alternate date, the applicant shall notify the local conservation officer, and the department representative will update the calendar of events.

**571—44.7(321G,321I,461A,462A,481A) Insurance coverage.** The applicant shall secure liability insurance for the special event that names the department as an additional insured. Insurance information shall be available at the time the application is submitted. The applicant shall have a copy of the insurance policy available at the event location to present to department personnel if requested. These requirements do not apply to events sponsored by a friends group. The department reserves the right to waive these requirements on a case-by-case basis.

**571—44.8(321G,321I,461A,462A,481A) Fees and exceptions.**

**44.8(1)** The administrative fee for each special event application is $25 plus a processing fee, except applications for field and retriever meets and trials, which are subject to the fee described in Iowa Code section 481A.22(1)*"c."* The fees are nonrefundable.

**44.8(2)** The department will waive the administrative fee for processing special event applications for sailing schools; accredited postsecondary institutions and programs; private and public primary and secondary schools; all department-approved watercraft education courses, ATV education courses, and snowmobile education courses; fishing clinics; friends groups; department-sponsored youth fishing days; and distributed virtual fishing tournaments.

**571—44.9(321G,461A) Structures placed on ice during a special event.** The following requirements apply to the placement, construction, or erection of structures on ice during a special event:

**44.9(1)** *Vendor information provided on application.* The applicant shall identify the names and addresses of any vendors who will be on site during the special event.

**44.9(2)** *Owner information.* The full name, street address, and city of the structure's owner shall be displayed legibly on all sides of the structure, in block letters at least four inches in height, and in a color contrasting to the background.

**44.9(3)** *Accessibility.* Structures cannot be locked when in use.

**44.9(4)** *Reflectors.* Reflectors shall be attached to all sides of the structure in such a manner to enable them to reflect light at all times from sunrise to sunset.

**571—44.10(462A) Boating special events—registration exemptions.**

**44.10(1)** A vessel entered in a boating special event shall not be required to be registered pursuant to Iowa Code sections 462A.4 and 462A.5 but shall be labeled with an identifying number or letter that is at least four inches high and is in a color contrasting to the vessel. The identifying number or letter shall be located in a prominent spot on the exterior of the vessel, other than on the bow.

**44.10(2)** The sponsor of the boating special event shall maintain a list containing:

*a.* The names and addresses of all persons participating in the event.

*b.* A description of and identifying number for each vessel in the event.

**571—44.11(462A) Mississippi River or Missouri River.** Upon notification and proof that a United States Coast Guard (U.S.C.G.) permit has been secured, the department shall not require a special event application for fireworks displays or boating special events on the Mississippi River or the Missouri River. The regional U.S.C.G. office issuing permits for Mississippi River and Missouri River events is located in St. Louis, Missouri. This rule does not apply to fishing tournaments.

**571—44.12(321G,321I,461A,462A,481A) Other requirements and permits.** The applicant for a permit is responsible for ensuring full compliance with the requirements of Iowa Code chapters 321G, 321I, 461A, 462A, and 481A and any other Iowa Code chapters and rules promulgated under those chapters that may be applicable to special events. The applicant shall also acquire and comply with all applicable state and local permits issued by other state and local agencies necessary to hold the special event.

**571—44.13(321G,321I,461A,462A,481A) Authority to cancel or stop a special event.** If a peace officer or any department employee determines that a permit is being violated or that safety concerns warrant canceling or stopping the special event, the peace officer or department employee has the authority to cancel or stop the special event.

**571—44.14(321G,321I,461A,462A,481A) Nonexclusive use of area.** Issuance of a permit does not grant the applicant exclusive use of the public land, water, or ice that is the subject of the permit unless the permit explicitly provides otherwise.

DIVISION II
FIREWORKS DISPLAYS

**571—44.15(461A) Entities eligible for permits.** Permits for fireworks displays shall be issued only to qualified entities, such as political subdivisions of the state of Iowa, and to community or civic organizations. Permits shall not be issued to individuals. Permits are not transferable to another entity and do not relieve the sponsoring entity from obtaining any other permits required by the state or its political subdivisions.

**571—44.16(461A) Permit conditions.** The department may impose permit conditions not specifically required in these rules for any fireworks display special event as deemed necessary to protect the resource or ensure public safety. Conditions shall be included in the permit that the applicant or sponsoring organization receives if the event is approved.

**571—44.17(461A) Application procedures.** The following procedures shall be used to apply for a permit:

**44.17(1)** Applications shall be made and submitted through the department's centralized special events application system.

**44.17(2)** Applications—when submitted.

*a. Events for current year.* Applications may be submitted anytime during the calendar year in which the fireworks display is to begin but no later than 30 days prior to the display.

*b. Events for the next year.* Applications for a fireworks display that will start in the next calendar year may be submitted beginning at 7 p.m. on September 1 of the current year.

**44.17(3)** The number of fireworks displays or other special events at any one public land, water or ice location during a given day may be restricted if deemed necessary to avoid congestion with the public or competing events and to protect the resource.

**44.17(4)** The applicant shall certify in the application that the fireworks display shall be conducted by a competent operator. The location of the display shall be determined by the department representative in charge of the area.

**44.17(5)** Submission of an application does not guarantee issuance of a permit by the department.

**571—44.18(461A) Fireworks display procedures.**

**44.18(1)** The sponsoring entity shall take adequate safety precautions to ensure that persons not actively involved in conducting the display remain a safe distance from the firing area and any areas containing set pieces.

**44.18(2)** The department representative in charge of the area in which the display is conducted or any state peace officer may halt any display when the character, location, weather, or firing of the display makes it hazardous to property or dangerous to any person.

**44.18(3)** Any fireworks that remain unfired after the display is concluded shall be immediately disposed of by the operator or the sponsoring entity in a manner that is safe for the particular type of fireworks.

**44.18(4)** The sponsoring entity shall make arrangements for firefighting equipment and emergency medical services to be on the scene at all times during the firing of the display.

**44.18(5)** The sponsoring entity is totally responsible for cleanup of the fireworks display site at the conclusion of the display.

**571—44.19(461A) Fees.** A nonrefundable administrative fee of $25 plus a processing fee shall be charged for each fireworks display application.

**571—44.20(461A) Insurance.** The sponsoring entity for a fireworks display shall provide proof of liability insurance naming the applicant and the department as an additional insured in the sum of not less than $1 million. The department may, at its discretion, require a greater amount. Insurance information shall be available at the time the application is submitted.

**571—44.21(461A) Concessions.** If the state park or recreation area has a concessionaire on site, sales of food and other items during the display shall be governed pursuant to 571—subrule 14.5(3). If a concessionaire chooses not to provide services during the event, the sponsoring entity may then bring in other concession operations as approved by the department.

These rules are intended to implement Iowa Code sections 321G.16, 321I.17, 461A.3, 461A.4, 461A.42, 461A.47, 461A.57, 462A.16, 481A.22, and 481A.38.

## ARC 8598C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to all-terrain vehicles, off-road motorcycles, and off-road utility vehicles and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 46, "All-Terrain Vehicles, Off-Road Motorcycles and Off-Road Utility Vehicles," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 321I.2.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 321I.

*Purpose and Summary*

Proposed Chapter 46 describes the requirements for registration, renewal, operation, and accident reporting for all-terrain vehicles, off-road utility vehicles, and off-road motorcycles. The chapter also regulates dealers that sell off-highway vehicles and describes regulations for designated riding areas. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Jessica Flatt
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jessica.flatt@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department of Natural Resources (Department) at jessica.flatt@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jessica.flatt@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference |

| | |
|---|---|
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing. The request for the hearing link/conference number shall be submitted to Ms. Flatt no later than 8 a.m. on January 29 or February 6.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at jessica.flatt@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jessica.flatt@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 46 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 46
## ALL-TERRAIN VEHICLES, OFF-ROAD MOTORCYCLES AND OFF-ROAD UTILITY VEHICLES

### DIVISION I
### REGISTRATION, RENEWAL, TITLING, DECAL PLACEMENT AND ACCIDENT REPORTS

**571—46.1(321I) Definitions.** For purposes of this chapter, the following definitions shall apply:

*"All-terrain vehicle"* means the same as defined in Iowa Code section 321I.1.

*"A scale"* means the physical scale marked "A" and graduated in decibels on a sound level meter that meets the requirements of the American National Standards Institute, Incorporated, publication S1.4-2014, Electroacoustics—Sound Level Meters.

*"Commission"* means the same as defined in Iowa Code section 321I.1.

*"Department"* means the same as defined in Iowa Code section 321I.1.

*"Designated riding area"* means the same as defined in Iowa Code section 321I.1.

*"Designated riding trail"* means the same as defined in Iowa Code section 321I.1.

*"Off-road motorcycle"* means the same as defined in Iowa Code section 321I.1.

*"Off-road utility vehicle"* means the same as defined in Iowa Code section 321I.1.

*"Operator"* means the same as defined in Iowa Code section 321I.1.

*"Owner"* means the same as defined in Iowa Code section 321I.1.

*"Public land"* means the same as defined in Iowa Code section 321I.1.

*"Regulated vehicle"* means all-terrain vehicles, off-road motorcycles, and off-road utility vehicles, either collectively or individually.

*"Roadway"* means the same as defined in Iowa Code section 321I.1.

**571—46.2(321I) Off-road motorcycles.**

**46.2(1)** Off-road motorcycles shall be subject to the following:

*a.* Registration requirements of this chapter; and

*b.* Titling requirements of this chapter, if a title has not previously been issued under Iowa Code chapter 321.

**46.2(2)** An operator of an off-road motorcycle is subject to the provisions of Iowa Code chapter 321I and this chapter, except that the operator is exempt from the safety instruction and certification program requirements of Iowa Code chapter 321I.

**571—46.3(321I) Off-road utility vehicles.**

**46.3(1)** An owner of an off-road utility vehicle operating the off-road utility vehicle on public land or ice, a designated riding area, or a designated riding trail shall register the off-road utility vehicle in accordance with Iowa Code chapter 321I and this chapter.

**46.3(2)** An operator of an off-road utility vehicle is subject to the provisions of Iowa Code section 321.234A and chapter 321I and this chapter, except that the operator is exempt from the safety instruction and certification program requirements of Iowa Code chapter 321I.

**571—46.4(321I) Operation on roadways, highways, streets, and snowmobile trails.** A person shall not operate a regulated vehicle upon roadways, highways, streets, or snowmobile trails except as provided in Iowa Code sections 321.234A and 321I.10.

NOTE: Additional driving and operation limitations are listed in Iowa Code section 321I.14.

**571—46.5(321I) Registration for regulated vehicles.**

**46.5(1)** *General.* A person shall not operate, maintain, or give permission for the operation or maintenance of a regulated vehicle on public land, a designated riding area, a designated riding trail, or ice unless the regulated vehicle:

*a.* Is registered in accordance with the requirements of Iowa Code chapter 321I and this chapter;

*b.* Displays a current nonresident user permit decal issued as provided in 571—46.6(321I); or

*c.* Is exempt from registration pursuant to Iowa Code section 321I.9.

**46.5(2)** *Registration requirements.*

*a.* The owner of each regulated vehicle required to be registered shall file an application for registration with the department through a county recorder and pay all applicable fees pursuant to Iowa Code section 321I.4 and these rules, except that a dealer of regulated vehicles shall make application and pay all applicable registration and title fees on behalf of a purchaser of a regulated vehicle.

(1) Application forms. Applications for registration shall be made on forms provided by the department. In the event the applicant does not have required documentation, the applicant may be required to secure a bond consistent with the requirements of 571—Chapter 50.

(2) Fees. The applicant shall pay the following fees: $15 for the permit fee; $1 for the writing fee; and $1.50 for the administrative fee. In addition, a county recorder may collect an additional 25 cents for the writing fee if the county recorder issues the registration.

*b.* At such time the department or the county recorder is satisfied with the application and has received the required fees, the department or county recorder shall issue to the applicant a registration certificate and registration decal.

**46.5(3)** *Preregistration grace period.*

*a. Dealer purchases.* An unregistered regulated vehicle sold by a dealer to an Iowa resident for use in Iowa shall bear a card that includes the words "registration applied for" and the date of purchase. Such card shall entitle the purchaser to operate the regulated vehicle for 45 days immediately following the purchase. The purchaser shall place this card on the rear of the all-terrain vehicle or off-road utility vehicle and the steering yoke of an off-road motorcycle in a position so as to be clearly visible at all times and maintained in a legible manner. The operator of any regulated vehicle displaying a

"registration applied for" card described in this paragraph shall carry and provide upon request to any peace officer a valid bill of sale for the regulated vehicle.

*b. Nondealer purchases.* Regulated vehicles may be sold by nondealers, and the registration grace period may apply depending on the current registration of the vehicle.

(1) A regulated vehicle that is currently registered in the state of Iowa may be legally operated for 30 days before it is registered under the purchaser's name.

(2) A regulated vehicle not currently registered in the state of Iowa shall not be operated until it is titled and registered in the purchaser's name. Valid registration in another state does not authorize preregistration operation.

**46.5(4)** *Registration—renewals.* Every regulated vehicle registration certificate and registration decal expires at midnight December 31 of the year issued or at the time specified on the registration decal. Applications for renewal shall be completed pursuant to Iowa Code section 321I.7.

**571—46.6(321I) Nonresident user permits.**

**46.6(1)** A nonresident wishing to operate a regulated vehicle, other than such vehicle owned by a resident and registered pursuant to Iowa Code chapter 321I, on public land, a designated riding area, a designated riding trail, or ice of this state must first obtain a user permit from the department.

**46.6(2)** The department, a county recorder or license agent designated by the director may issue nonresident user permits. The applicant shall pay the following fees for a user permit: $15 for the permit fee, $1 for a writing fee, and $1.50 for an administrative fee. In the event the county recorder issues such a permit, the county recorder may charge an additional 25 cents for the writing fee.

**46.6(3)** A nonresident user permit issued under this rule shall be valid for the calendar year or time period specified in the permit and be limited to the vehicle specified at the time of application.

**46.6(4)** Nonresident user permits are issued to a vehicle and are not transferable.

**571—46.7(321I) Display of registration and nonresident user permit decals.** The owner shall display the registration decal or nonresident user permit decal as follows:

**46.7(1)** *All-terrain vehicle.* The decal shall be affixed to the rear of the all-terrain vehicle so that the decal is clearly visible.

**46.7(2)** *Off-road motorcycle.* The decal shall be affixed to the steering yoke in such a manner that the decal does not cover up the vehicle identification number and is clearly visible.

**46.7(3)** *Off-road utility vehicle.* The decal shall be affixed to the rear of the vehicle so that the decal is clearly visible.

**571—46.8(321I) Registration certificate.**

**46.8(1)** An operator of a regulated vehicle shall carry the registration certificate either in such vehicle or on the person of the operator when the regulated vehicle is in use.

**46.8(2)** The operator of a regulated vehicle shall exhibit the registration certificate to all of the following:

*a.* To a peace officer or department personnel upon request;

*b.* To a person injured in an accident involving the regulated vehicle, or that person's agent;

*c.* To the owner or operator of another regulated vehicle when the regulated vehicle is involved in a collision or accident with the other regulated vehicle, or that person's agent;

*d.* To the owner of personal or real property when the regulated vehicle is involved in a collision or accident with the property of the other person, or that person's agent; and

*e.* To the property owner or tenant when the regulated vehicle is being operated on private property without permission from the property owner or tenant, or that person's agent.

**571—46.9(321I) Owner's certificate of title.** The owner of a regulated vehicle acquired on or after January 1, 2000, other than an all-terrain vehicle or an off-road utility vehicle used exclusively as a farm implement or an off-road motorcycle previously issued a title pursuant to Iowa Code chapter 321, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the regulated vehicle. The owner shall make application within 30 days after acquisition of the regulated

vehicle, using forms provided by the department, and shall include the required fees set out in Iowa Code section 321I.32.

**571—46.10(321I) Procedures for application and for issuance of a vehicle identification number (VIN) for homebuilt regulated vehicles.**

**46.10(1)** A person, other than a manufacturer, who constructs or rebuilds a regulated vehicle for which there is no legible VIN may make application to the department on forms provided by the department for the issuance of a new VIN. The application process shall include an inspection of the regulated vehicle by the department. If the application is approved, the VIN shall be affixed to the vehicle by a peace officer. The completed application shall then be surrendered to the county recorder.

**46.10(2)** The peace officer shall permanently affix the VIN as follows:

*a.* *All-terrain vehicle.* The VIN shall be affixed to the frame under the seat.

*b.* *Off-road motorcycle.* The VIN shall be affixed to the steering yoke.

*c.* *Off-road utility vehicle.* The VIN shall be affixed to the frame under the seat.

**571—46.11(321I) Accident report.**

**46.11(1)** Whenever any regulated vehicle is involved in an accident resulting in injury or death to any person or property damage amounting to $1,500 or more, the operator or a person acting for the operator shall immediately notify the county sheriff or another law enforcement agency in the state.

**46.11(2)** If the accident occurred on public land, a designated riding area, a designated riding trail, or ice under the jurisdiction of the commission, the operator shall file a report of the accident with the department within 72 hours. The report shall be on forms provided by the department.

**46.11(3)** Accidents other than those specified in 46.11(2) shall be reported as required in Iowa Code section 321.266.

**571—46.12(321I) Sound level limitation.** No person shall operate an all-terrain vehicle or off-road motorcycle that is constructed or altered in a manner that noise emitted from the all-terrain vehicle or off-road motorcycle exceeds 96 decibels on the A scale when measured in the manner prescribed in the revised 2017-04, Society of Automotive Engineers Standard J1287, titled "Measurement of Exhaust Sound Pressure Levels of Stationary Motorcycles."

DIVISION II
ALL-TERRAIN VEHICLE DEALERS

**571—46.13(321I) Purpose.** The rules in this division apply to registered regulated vehicle dealers, manufacturers, and distributors. These rules establish minimum standards for dealers as authorized under Iowa Code section 321I.22(9).

**571—46.14(321I) Definitions.** For purposes of this division, the following definitions shall apply:

*"Dealer"* means the same as defined in Iowa Code section 321I.1.

*"Distributor"* means the same as defined in Iowa Code section 321I.1.

*"Engaged in the business,"* or similar wording, means doing any of the following acts for the purpose of selling all-terrain vehicles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment or conducting a retail auction, or acting as an agent for the purpose of doing any of these acts. A person selling at retail more than five regulated vehicles during a 12-month period may be presumed to be engaged in the business.

*"Established place of business"* means the same as defined in Iowa Code section 321I.1.

*"Manufacturer"* means the same as defined in Iowa Code section 321I.1.

*"Manufacturer's certificate of origin"* means a certification signed by the manufacturer, distributor or importer that the regulated vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. A manufacturer's certificate of origin may also be referred to as a manufacturer's statement of origin.

**571—46.15(321I) Dealer's established place of business.** A dealer's established place of business shall include phone service and an adequate office area for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for regulated vehicles offered for sale.

**571—46.16(321I) Zoning.** Dealers licensed under these rules must comply with applicable local zoning ordinances. Upon request by the department, a dealer shall provide to the department written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the dealer's established place of business is located, that the dealer's established place of business complies with all applicable zoning provisions.

**571—46.17(321I) Sales tax permit.** A dealer shall provide to the department written evidence that the dealer has obtained a sales tax permit issued by the department of revenue.

**571—46.18(321I) Special registration certificates for manufacturers, distributors, and dealers.**

**46.18(1)** A manufacturer, distributor, or dealer owning a regulated vehicle required to be registered under Iowa Code chapter 321I and this chapter may operate the unregistered regulated vehicle for purposes of transporting, testing, demonstrating, or selling it if both of the following requirements are met:

*a.* The manufacturer, distributor, or dealer obtains from the department a special registration certificate containing a general identification number in accordance with Iowa Code section 321I.22. An application for a special registration certificate shall be submitted on forms provided by the department; and

*b.* The manufacturer, distributor, or dealer has the assigned identification number printed upon or attached to a removable sign that is temporarily but firmly attached to the regulated vehicle being used.

**46.18(2)** If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall obtain from the department a separate and distinct special registration certificate and general identification number for each place of business.

**46.18(3)** Duplicate special registration certificates may be obtained pursuant to the conditions set forth in Iowa Code section 321I.22.

**571—46.19(321I) Information provided to purchaser.** At the time of sale, a dealer shall provide all purchasers of all-terrain vehicles with information on how to access the department's website. The department shall provide regulations related to regulated vehicle use. Information provided on the department's website shall be deemed current information for purposes of this rule.

**571—46.20(321I) Right of inspection.** The department or any peace officer has the authority to inspect the following at any dealer location: (1) regulated vehicles or component parts of vehicles, (2) business records, and (3) manufacturers' certificates of origin, certificates of title and other evidence of ownership for regulated vehicles offered for sale. The department has the right at any time to verify compliance with all statutory and regulatory requirements by a dealer registered under Iowa Code chapter 321I.

**571—46.21(321I) Denial or revocation.** The department may deny a dealer application or revoke a dealer registration certificate when the director determines the applicant or dealer has violated any rule of this chapter or Iowa Code chapter 321I or when continuation of the permit is not in the public interest. Such denial or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the denial or revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation or denial, the applicant or dealer, whichever is applicable, may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be issued or reinstated.

DIVISION III
REGULATION OF DESIGNATED RIDING AREAS

**571—46.22(321I) Definitions.** In addition to the definitions in division I and division II of this chapter, the following definitions shall apply:

*"Direct supervision"* means the same as defined in Iowa Code section 321I.1.

*"Local sponsor"* means the entity that owns the designated riding area or is otherwise responsible for the day-to-day operations of the designated riding area. A local sponsor may or may not be a unit of government.

*"Operate"* means the same as defined in Iowa Code section 321I.1.

**571—46.23(321I) Designated riding areas.**

**46.23(1)** Designated riding areas shall be considered to be public land, available and open to the public to use consistent with these rules.

**46.23(2)** The following areas are hereby established as designated riding areas:

*a.* Bluff Creek OHV Park, Mahaska County.

*b.* Lakeview OHV Park, Johnson County.

*c.* Gypsum City OHV Park, Webster County.

*d.* Nicholson-Ford OHV Park, Marshall County.

*e.* Rathbun OHV Park, Appanoose County.

*f.* River Valley OHV Park, Pottawattamie County.

*g.* Riverview OHV Park, Black Hawk County.

*h.* Tama County OHV Park, Tama County.

**46.23(3)** A local sponsor may request that the commission adopt the local sponsor's riding area as a designated riding area by contacting the department in writing and providing information, as requested by the department, that demonstrates that the local sponsor's proposed designated riding area meets the minimum qualifications described in these rules. All studies or surveys required by these rules shall be at the local sponsor's expense. The department may require additional surveys or studies and conduct an on-site evaluation for each proposed designated riding area to determine whether the department should recommend that the commission adopt the proposed area as a designated riding area. The commission may adopt additional designated riding areas that meet the following minimum qualifications:

*a.* The site and plan for development and management is suitable for off-highway vehicle recreation. The department shall consider sites that were previously disturbed areas, such as agricultural lands, mining operations, road surfaces or other intensive land uses that have resulted in the elimination of high-quality natural areas, native plant communities, critical habitats and cultural resources.

*b.* There is demand for the proposed designated riding area. Consideration shall be given to nearby populations, distance to other OHV facilities, partnership possibilities and local support.

*c.* The local sponsor, through a letter of support, demonstrates a willingness and ability to maintain the proposed designated riding area consistent with these rules.

*d.* There is evidence that adjacent property owners, including those within the viewshed and within earshot of the proposed designated riding area, that exist at the time of establishment have been notified of the plan and their concerns have been addressed.

*e.* The proposed development and management of the proposed designated riding area comply with local, state or federal laws.

*f.* Any federal- or state-listed threatened or endangered species are identified and a plan to ensure that the development and management of the proposed designated riding area would not negatively impact those species is included.

*g.* Any cultural, historical or high-quality natural resources on the site are identified and a plan to ensure that the development and management of the proposed designated riding area would not negatively impact those resources is included. High-quality areas include those areas of high-quality native plant communities, highly restorable native plant communities or other areas that provide critical

wildlife habitat. In addition, if a site contains fragments of high-quality areas, but has been determined by the commission as suitable for use as a designated riding area, the local sponsor shall include in the plan how it will protect and enhance those fragments.

**46.23(4)** Designated riding areas approved by the commission shall be subject to these rules and shall be managed according to the plan approved by the commission. Major modifications to the plan, including expansions, must be approved by the commission for the designated riding area to continue to be a recognized designated riding area under these rules.

**571—46.24(321I) Department law enforcement at designated riding areas.** A local sponsor may request that the department provide law enforcement and other management assistance and oversight at the designated riding area, including adjacent parking and unloading areas, and at camping areas if applicable. The department, in its sole discretion, may provide such law enforcement and other management assistance and oversight it deems appropriate, provided that the local sponsor and the department enter into a written agreement describing what role and responsibilities the department shall have at the designated riding area and affording the department the right to terminate such agreement at any time, for any reason.

**571—46.25(321I) General rules for regulated vehicle operation in designated riding areas.** Operation on designated riding areas is limited to regulated vehicles as defined in this chapter and as described below:

**46.25(1)** *Allowable vehicles.* Persons shall operate only the vehicles allowed at a designated riding area that is signed as open for the specified vehicle.

**46.25(2)** *Compliance with signs.* Persons at designated riding areas shall comply with all signs erected and maintained by the local sponsor or the department consistent with its relationship to the local sponsor under 571—46.53(321I).

**46.25(3)** *Hours of operation.* Designated riding areas shall be open from sunrise to sunset. There may be instances when operating regulated vehicles in dark conditions is permissible. In those instances, persons operating regulated vehicles between sunset and sunrise, or in otherwise dark conditions, in designated riding areas must have headlights and taillights equipped on their regulated vehicles and use such lights.

**46.25(4)** *Registration required.* A person shall not operate, maintain, or give permission for the operation or maintenance of a regulated vehicle in a designated riding area unless the regulated vehicle is registered and such registration is displayed in accordance with Iowa Code chapter 321I and these rules. This requirement includes nonresidents operating regulated vehicles in a designated riding area who are required to have nonresident user permits for their regulated vehicles.

**46.25(5)** *Safety equipment required.* All operators and their passengers shall wear helmets while operating a regulated vehicle on a designated riding area, including parking and unloading areas. The local sponsor, or the department consistent with its relationship to the local sponsor under 571—46.53(321I), may post signs that require operators to wear additional safety gear depending on conditions.

**46.25(6)** *Working brakes.* Every regulated vehicle operated in a designated riding area, including parking and unloading areas, shall be equipped with working brakes.

**46.25(7)** *Minors—supervision.* A person under 12 years of age shall not operate an all-terrain vehicle or an off-road motorcycle on a designated riding area unless one of the following applies:

*a.* The person is taking an education training course, and the operation of the vehicle is under the direct supervision of a certified education instructor.

*b.* The operation is under the direct supervision of a parent or guardian of at least 18 years of age who is experienced in all-terrain vehicle or off-road motorcycle operation and who possesses a valid driver's license as defined in Iowa Code section 321.1.

**571—46.26(321I) Unauthorized vehicles.** The local sponsor, or the department consistent with its relationship to the local sponsor under 571—46.53(321I), may tow unauthorized vehicles, including hauling equipment. Towing shall be at the owner's expense.

**571—46.27(321I) Parking and unloading areas.** All vehicles, other than regulated vehicles, and trailers shall be parked in designated parking areas. No such vehicles, other than regulated vehicles, shall be left unattended in any park drive access point, unloading area, road or highway, except in the case of an emergency.

**571—46.28(321I) Operation with passengers.**

**46.28(1)** Persons shall not operate regulated vehicles on designated riding areas with a passenger unless the regulated vehicle is designed and constructed according to the manufacturer's specifications to carry a passenger. Passengers shall not ride on regulated vehicles that have been modified from the manufacturer's original design and construction to carry a passenger.

**46.28(2)** A person shall not operate a regulated vehicle in a designated riding area with a passenger without possession of a valid driver's license as defined in Iowa Code section 321.1.

**46.28(3)** The number of passengers on a regulated vehicle in a designated riding area shall not exceed the manufacturer's capacity recommendation and shall not exceed the number of passenger restraints originally installed by the manufacturer.

**46.28(4)** A passenger on an all-terrain vehicle or off-road motorcycle must be seated behind the operator and have the physical ability to securely hold on to the operator or passenger handles.

**46.28(5)** Passengers on an off-road utility vehicle must be able to place both feet flat on the floor boards with their backs resting against the seat back.

**571—46.29(321I) Off-road utility vehicle requirements.** The following additional restrictions apply to the operation of off-road utility vehicle operation in designated riding areas signed open to such use:

**46.29(1)** Driver's license required. A person shall not operate an off-road utility vehicle in a designated riding area without possession of a valid driver's license as defined in Iowa Code section 321.1.

**46.29(2)** Vehicles shall not be homebuilt or substantially modified from the manufacturer's specifications in the sole opinion of a peace officer.

**46.29(3)** Vehicles must be equipped with a roll-over protection system (ROPS) installed by the manufacturer.

**46.29(4)** Vehicles must be equipped with manufacturer seat belts or equivalent that are in good working order. The operator and all passengers must wear seat belts at all times the vehicle is in motion.

**46.29(5)** The operator and all passengers must keep their hands, arms, legs, and feet inside the vehicle at all times the vehicle is in motion.

**46.29(6)** The vehicle must be no wider than 65 inches.

**571—46.30(321I) Youth operational areas.** The local sponsor, or the department consistent with its relationship to the local sponsor under 571—46.53(321I), may establish areas for youth all-terrain vehicle and off-road motorcycle operation on designated riding areas, may restrict the age of the operator and the size of the all-terrain vehicle, may limit the engine displacement for both all-terrain vehicles and off-road motorcycles, and shall post such restrictions.

**571—46.31(321I) Unlawful operation.** A person shall not operate a regulated vehicle in any of the following instances:

**46.31(1)** At a rate of speed greater than reasonable or proper under all existing circumstances or greater than the posted speed, whichever is less. In no event shall a person operate any vehicle in a parking area of or adjacent to a designated riding area in excess of five miles per hour.

**46.31(2)** In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

**46.31(3)** While under the influence of intoxicating substances or narcotics or habit-forming drugs.

**46.31(4)** Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of 500 feet ahead.

**46.31(5)** Off established or marked trails or in prohibited areas.

**46.31(6)** In violation of official signs posted by the local sponsor or by the department consistent with its relationship to the local sponsor under 571—46.53(321I).

**46.31(7)** If the person's license to operate a motor vehicle is under suspension, revocation, bar, disqualification, cancellation or denial by this state or any other state.

**571—46.32(321I) Alcohol prohibited.** Persons shall not consume or possess alcohol in designated riding areas, except that the consumption and possession of alcohol shall be permitted at designated camping areas.

**571—46.33(321I) Pets.** Pets shall not be permitted in designated riding areas, except for parking and camping areas, if any.

**571—46.34(321I) Camping.** Camping shall not be permitted in designated riding areas, except for areas specifically designed for and identified by the local sponsor, or the department consistent with its relationship to the local sponsor under 571—46.53(321I), for such use. In such instances, camping rules shall be posted in such areas.

These rules are intended to implement Iowa Code chapter 321I.

## ARC 8603C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to snowmobiles and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 47, "Snowmobiles," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 321G.2 and 321G.21.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 321G and 2024 Iowa Acts, Senate File 2423.

*Purpose and Summary*

Proposed Chapter 47 sets forth the rules for registration, renewal, titling, decal placement, and accident reporting for snowmobiles. It also describes the process for dealer registration. This chapter has been reviewed and edited consistent with Executive Order 10 (2023). In addition, this rulemaking also implements 2024 Iowa Acts, Senate File 2423, which requires nonresidents to obtain a nonresident user permit prior to engaging in recreational snowmobile activities on public land, public ice, or designated snowmobile trails in this state.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Jessica Flatt
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jessica.flatt@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jessica.flatt@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jessica.flatt@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue<br>Des Moines, Iowa<br>And via videoconference |
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue<br>Des Moines, Iowa<br>And via videoconference |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing. The request for the hearing link/conference number shall be submitted to Ms. Flatt no later than 8 a.m. on January 29 or February 6.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at jessica.flatt@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jessica.flatt@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any

individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 47 and adopt the following **new** chapter in lieu thereof:

# CHAPTER 47
# SNOWMOBILES

## DIVISION I
## REGISTRATION, RENEWAL, TITLING, DECAL PLACEMENT AND ACCIDENT REPORTS

**571—47.1(321G) Definitions.** For purposes of this chapter, the following terms shall mean the same as defined in Iowa Code section 321G.1:

*"Commission"*
*"Department"*
*"Operator"*
*"Public land"*
*"Roadway"*
*"Snowmobile"*

**571—47.2(321G) Operation on roadways, highways, streets and snowmobile trails.** A person shall not operate a snowmobile upon roadways, highways, streets, or designated snowmobile trails except as provided in Iowa Code section 321G.9.

NOTE: Additional driving and operation limitations are listed in Iowa Code section 321G.13.

**571—47.3(321G) Registration for snowmobiles.**

**47.3(1)** *General.* A person shall not operate, maintain, or give permission for the operation or maintenance of a snowmobile on public land, a designated snowmobile trail, or ice unless the snowmobile:

*a.* Is registered in accordance with the requirements of Iowa Code chapter 321G and this chapter;

*b.* Displays a current nonresident user permit decal issued as provided in 571—47.4(321G); or

*c.* Is exempt from registration pursuant to Iowa Code section 321G.8.

**47.3(2)** *Registration requirements.*

*a.* The owner of each snowmobile required to be registered shall file an application for registration with the department through a county recorder and pay all applicable fees pursuant to Iowa Code section 321G.4 and these rules, except that a snowmobile dealer shall make application and pay all applicable registration and title fees on behalf of a purchaser of a snowmobile.

(1) Application forms. Applications for registration shall be made on forms provided by the department. In the event the applicant does not have the required documentation, the applicant may be required to secure a bond consistent with the requirements of 571—Chapter 50.

(2) Fees. The applicant shall pay the following fees: $30 for the registration fee; $1 for the writing fee; and $1.50 for the administrative fee. In addition, a county recorder may collect an additional 25 cents for the writing fee if the county recorder issues the registration.

*b.* At such time the department or the county recorder is satisfied with the application and has received the required fees, the department or county recorder shall issue to the applicant a registration certificate and registration decal.

**47.3(3)** *Preregistration grace period.*

*a. Dealer purchases.* An unregistered snowmobile sold by a dealer to an Iowa resident for use in Iowa shall bear a card made of cardstock or other similar material that includes the words "registration

applied for" and the date of purchase. Such card shall entitle the purchaser to operate the snowmobile for 45 days immediately following the purchase. The purchaser shall place this card on the windshield area of the snowmobile in a position so as to be clearly visible at all times and maintained in a legible manner. The operator of any snowmobile displaying a "registration applied for" card described in this paragraph shall carry and provide upon request to any peace officer a valid bill of sale for the snowmobile.

*b. Nondealer purchases.* Snowmobiles may be sold by nondealers, and the registration grace period may apply depending on the current registration of the vehicle.

(1) A snowmobile that is currently registered in the state of Iowa may be legally operated for 30 days before it is registered under the purchaser's name.

(2) A snowmobile not currently registered in the state of Iowa shall not be operated until it is titled and registered in the purchaser's name. Valid registration in another state does not authorize preregistration operation.

**47.3(4)** *Registration—renewals.* Every snowmobile registration certificate and registration decal expires at midnight December 31 of the year issued or at the time specified on the registration decal. Applications for renewal shall be completed pursuant to Iowa Code section 321G.6.

**571—47.4(321G) Nonresident user permits.**

**47.4(1)** A nonresident wishing to operate a snowmobile, other than such vehicle owned by a resident and registered pursuant to Iowa Code chapter 321G, on public land, a designated snowmobile trail, or ice of this state must first obtain a nonresident user permit from the department.

**47.4(2)** The department, a county recorder or license agent designated by the director may issue nonresident user permits. The applicant shall pay the following fees for a user permit: $15 for the permit fee; $1 for a writing fee; and $1.50 for an administrative fee. In the event the county recorder issues such a permit, the county recorder may charge an additional 25 cents for the writing fee.

**47.4(3)** A user permit issued under this rule shall be valid for the calendar year or time period specified in the permit and shall be limited to the vehicle specified at the time of application.

**47.4(4)** Nonresident user permits are issued to a vehicle and are not transferable.

**571—47.5(321G) Display of registration and nonresident user permit decals.** The owner of a snowmobile shall display the registration decal or nonresident user permit decal on the windshield of the snowmobile so that the decal is clearly visible. If the snowmobile does not have a windshield, then the decal shall be affixed to the area of the hood near the headlamp so that the decal is clearly visible.

**571—47.6(321G) Registration certificate.**

**47.6(1)** An operator of a snowmobile shall carry the registration certificate either in such vehicle or on the person of the operator when the snowmobile is in use.

**47.6(2)** The operator of a snowmobile shall exhibit the registration certificate to all of the following:

*a.* To a peace officer or department personnel upon request;

*b.* To a person injured in an accident involving the snowmobile, or that person's agent;

*c.* To the owner or operator of another snowmobile when the snowmobile is involved in a collision or accident with the other snowmobile, or that person's agent;

*d.* To the owner of personal or real property when the snowmobile is involved in a collision or accident with the property of the other person, or that person's agent; and

*e.* To the property owner or tenant when the snowmobile is being operated on private property without permission from the property owner or tenant, or that person's agent.

**571—47.7(321G) Owner's certificate of title.**

**47.7(1)** The owner of a snowmobile acquired on or after January 28, 1998, other than a snowmobile used exclusively as a farm implement or a previously registered snowmobile that is more than 30 years old, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the snowmobile. The owner shall make application within 30 days after acquisition

of the snowmobile, using forms provided by the department, and shall include the required fees set out in Iowa Code section 321G.30.

**47.7(2)** A certificate of title issued by the county recorder shall be on forms provided by the department.

**571—47.8(321G) Procedures for application and for issuance of a vehicle identification number (VIN) for homebuilt snowmobiles.**

**47.8(1)** A person, other than a manufacturer, who constructs or rebuilds a snowmobile for which there is no legible VIN may make application to the department on forms provided by the department for the issuance of a new VIN. The application process shall include an inspection of the snowmobile by the department. If the application is approved, the VIN shall be affixed to the vehicle by a peace officer. The completed application shall then be surrendered to the county recorder.

**47.8(2)** The peace officer shall permanently affix the VIN to the frame under the seat of the snowmobile.

**571—47.9(321G) Accident report.**

**47.9(1)** Whenever any snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to $1,500 or more, the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforcement agency of the state.

**47.9(2)** If the accident occurred on public land, a designated snowmobile trail, or ice under the jurisdiction of the commission, the operator shall file a report of the accident with the department within 72 hours. The report shall be on forms provided by the department.

**47.9(3)** Accidents other than those specified in 47.9(2) shall be reported as required in Iowa Code section 321.266.

**571—47.10(321G) Snowmobile fee grants, cost-share programs, and contracts.** The department shall transfer, via contract, at least 70 percent of snowmobile fees to a political subdivision or an incorporated private organization for distribution through snowmobile-related grants, cost-share agreements, or contracts consistent with Iowa Code section 321G.7(2). Terms of this contract shall, at a minimum, direct the receiving party to identify and make publicly available grant, cost-share program, and contract eligibility and selection criteria; accounting, auditing, and reporting requirements; termination terms; and unspent money repayment processes. Any contract entered into pursuant to this rule shall be available upon request from department snowmobile program staff.

DIVISION II
SNOWMOBILE DEALERS

**571—47.11(321G) Purpose.** The rules in this division apply to registered snowmobile dealers, manufacturers, and distributors. These rules establish minimal standards for snowmobile dealers as authorized under Iowa Code section 321G.21.

**571—47.12(321G) Definitions.** For purposes of this division, the following definitions shall apply:

*"Dealer"* means the same as defined in Iowa Code section 321G.1.

*"Distributor"* means the same as defined in Iowa Code section 321G.1.

*"Engaged in the business,"* or similar wording, means doing any of the following acts for the purpose of selling snowmobiles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment or conducting a retail auction, or acting as an agent for the purpose of doing any of these acts. A person selling at retail more than five snowmobiles during a 12-month period may be presumed to be engaged in the business.

*"Established place of business"* means the same as defined in Iowa Code section 321G.1.

*"Manufacturer"* means the same as defined in Iowa Code section 321G.1.

*"Manufacturer's certificate of origin"* means a certification signed by the manufacturer, distributor or importer that the snowmobile described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. A manufacturer's certificate of origin may also be referred to as a manufacturer's statement of origin.

**571—47.13(321G) Dealer's established place of business.** A dealer's established place of business shall include phone service and an adequate office area for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all snowmobiles offered for sale.

**571—47.14(321G) Zoning.** Dealers licensed under these rules must comply with applicable local zoning ordinances. Upon request by the department, a dealer shall provide to the department written evidence issued by the office responsible for the enforcement of zoning ordinances in the city or county where the dealer's established place of business is located that the dealer's established place of business complies with all applicable zoning provisions.

**571—47.15(321G) Sales tax permit.** A dealer shall provide to the department written evidence that the dealer has obtained a sales tax permit issued by the department of revenue.

**571—47.16(321G) Special registration certificates for manufacturers, distributors and dealers.**

**47.16(1)** A manufacturer, distributor, or dealer owning a snowmobile required to be registered under Iowa Code chapter 321G and this chapter may operate the unregistered snowmobile for purposes of transporting, testing, demonstrating, or selling it if both of the following requirements are met:

*a.* The manufacturer, distributor, or dealer obtains from the department a special registration certificate and decal containing a general identification number in accordance with Iowa Code section 321G.21. An application for a special registration certificate shall be submitted on forms provided by the department; and

*b.* The manufacturer, distributor, or dealer has the assigned decal attached to a removable sign that is temporarily but firmly attached to the snowmobile being used.

**47.16(2)** If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall obtain from the department a separate and distinct special registration certificate, decal and general identification number for each place of business.

**47.16(3)** Duplicate special registration certificates and decals may be obtained pursuant to the conditions set forth in Iowa Code section 321G.21.

**571—47.17(321G) Information provided to purchasers.** At the time of sale, a dealer shall provide all purchasers of snowmobiles with information on how to access the department's website. The department shall provide regulations related to snowmobile use. Information provided on the department's website shall be deemed current information for purposes of this rule.

**571—47.18(321G) Right of inspection.** The department or any peace officer has the authority to inspect the following at any dealer location: (1) snowmobiles or component parts of vehicles, (2) business records, and (3) manufacturers' certificates of origin, certificates of title and other evidence of ownership for snowmobiles offered for sale. The department has the right at any time to verify compliance with all statutory and regulatory requirements by a dealer registered under Iowa Code chapter 321G.

**571—47.19(321G) Denial or revocation.** The department may deny a dealer application or revoke a dealer registration certificate when the director determines the applicant or dealer has violated any rule of this chapter or Iowa Code chapter 321G or when continuation of the permit is not in the public interest. Such denial or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the denial or revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation or denial, the applicant or dealer, whichever is applicable, may file a

notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be issued or reinstated.

These rules are intended to implement Iowa Code chapter 321G.

## ARC 8604C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to permanently moored vessels and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 48, "Inspection of Permanently Moored Vessels," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 99F.7 and 462A.20.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 99F.7 and 462A.20.

*Purpose and Summary*

Proposed Chapter 48 establishes procedures to inspect excursion boats used for gambling that have been removed from navigation and designated as permanently moored vessels by the United States Coast Guard. This inspection oversight ensures a high level of safety for the public on these vessels, which are moored on the dynamic and ever-changing waters of the Mississippi and Missouri Rivers. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 11, 2025. Comments should be directed to:

Craig Cutts
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: craig.cutts@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at craig.cutts@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al craig.cutts@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 31, 2025<br>11 a.m. | Via videoconference call |
| February 11, 2025<br>11 a.m. | Via videoconference call |

Persons who wish to attend a public hearing or make oral comments at the public hearing should contact Craig Cutts via email prior to the hearing to receive a conference call number.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at craig.cutts@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 48 and adopt the following **new** chapter in lieu thereof:

CHAPTER 48
INSPECTION OF PERMANENTLY MOORED VESSELS

**571—48.1(462A) Purpose.** This chapter is intended to establish the procedures for compliance with the inspection requirements of Iowa Code sections 99F.7(14) and 462A.20.

**571—48.2(462A) Definitions.**

*"Commission"* means the Iowa racing and gaming commission.

*"Critical systems"* on a PMV means fire safety systems, systems that protect against flooding and progressive flooding, emergency power systems, emergency lighting systems, emergency ventilation shutdown systems, and fuel and sewage discharge prevention systems.

*"Permanently moored vessel"* or *"PMV"* means an excursion boat used for gambling that is removed from navigation and defined as a vessel under 46 CFR, Subchapter K or H (June 1, 2024), that would have previously required a United States Coast Guard Certificate of Inspection.

**571—48.3(462A) Inspection requirements.** All PMVs shall be inspected by a qualified inspector to determine compliance with the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005, as adopted by reference herein.

**571—48.4(462A) Inspectors.** Inspections of PMVs shall be conducted by a person or persons meeting the criteria set forth in this rule.

**48.4(1)** *Qualifications.* An inspector shall:

*a.* Have prior experience as a U.S. Coast Guard marine inspector or as a classification society (recognized by the U.S. Coast Guard) surveyor; or

*b.* Be a classification surveyor acting on behalf of a classification society; or

*c.* Be a professional engineer licensed by one of the 50 states; or

*d.* Be a professional naval architect or marine engineer.

**48.4(2)** *Minimum documented work experience.* An inspector shall:

*a.* Have obtained three years' experience in the examination of steel or aluminum vessels of similar design; and

*b.* Be familiar with the regulations and standards under which the PMV was built; and

*c.* Be familiar with permanent mooring arrangements and ship structures supporting the same; and

*d.* Have experience in marine emergency response operations and planning that is sufficient for the individual to competently review emergency action plans required by these rules; and

*e.* Have experience in the investigation of reportable occurrences as described in the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005.

**571—48.5(462A) Statewide inspection contract.** If the department determines that the administration of this chapter could best be effectuated through a contract with one or more third parties, the state may award such a contract or contracts pursuant to the provisions of 561—Chapter 8, as adopted by reference in 571—8.1(17A).

**48.5(1)** A statewide inspection contract shall authorize an inspection program coordinator to conduct the inspections required by this chapter, prepare and submit the required reports, and engage in such other activities as may be necessary for the administration of the PMV inspection program.

**48.5(2)** A contract entered into pursuant to this rule shall establish fees to be paid by PMV operators to the inspection program coordinator for the inspection of PMVs. There shall be a fixed fee established by contract for inspections and administration of the program by the inspection program coordinator. The contract may establish additional fees to be charged by the inspection program coordinator for work related to addressing deficiencies or other noncompliance by a PMV operator. Said fees shall be the sole source of payment to the inspection program coordinator.

**48.5(3)** In the event that a statewide inspection contract is executed by the department, all submissions required by these rules shall be sent to the inspection program coordinator established by the contract.

**571—48.6(462A) Submission.** Any person making application to the commission for the licensing of a PMV shall submit proof to the department that the PMV has been inspected by a qualified inspector and that the PMV satisfies all of the requirements of the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005. All PMVs licensed pursuant to Iowa Code chapter 99F shall submit to the department quarterly and annual reports in compliance with all of the requirements of the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005.

**571—48.7(462A) Notification to the commission.** If a PMV operator fails to cure an inadequacy in an inspection report or to comply with a correction report for a critical system or maritime security deficiency within the applicable time period, a determination of inadequacy shall be forwarded to the commission and shall be subject to the appeal and contested case procedures of the department as established by 561—Chapter 7 and adopted by reference at 571—7.1(17A).

**48.7(1)** *Inspection reports.* The department shall, within 60 days of receipt of an initial inspection, quarterly or annual report, determine the adequacy of the report and shall notify the submitting party of such determination. The submitting party shall be given a minimum of 60 days to cure any inadequacy not involving critical systems or maritime security.

**48.7(2)** *Correction reports.* To minimize safety and maritime security risks to the public, the environment and the PMV itself, deficiencies found in critical systems or security systems shall be immediately reported to the department. After consulting with the PMV operator, the department may issue a correction report if the deficiency was not immediately corrected. The correction report will direct the PMV operator to take corrective action within a specific period of time that is based on the nature and severity of the deficiency.

These rules are intended to implement Iowa Code sections 99F.7(14) and 462A.20.

## ARC 8611C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to operation of motor vehicles and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 49, "Operation of Motor Vehicles in Meandered Streams, Navigable Streams and Trout Streams," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 462A.34A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 462A.34A.

*Purpose and Summary*

Proposed Chapter 49 creates a process to identify meandered streams, navigable streams, and trout streams and listing the streams in which operation of motor vehicles is prohibited. This chapter is required by statute. The benefit of the chapter is to protect aquatic organisms and water quality from erosion and disruption by restricting motor vehicle access. The increase in aquatic organisms and water quality is a benefit to the public participating in fishing and water sports on these waters. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 11, 2025. Comments should be directed to:

Craig Cutts
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: craig.cutts@dnr.iowa.gov

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*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 31, 2025<br>11 a.m. | Via videoconference |
| February 11, 2025<br>11 a.m. | Via videoconference |

Persons who wish to attend a public hearing or make oral comments at a public hearing should contact Craig Cutts via email prior to the hearing to receive a conference call number.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 49 and adopt the following **new** chapter in lieu thereof:

CHAPTER 49
OPERATION OF MOTOR VEHICLES IN MEANDERED STREAMS, NAVIGABLE STREAMS AND TROUT STREAMS

**571—49.1(462A) Purpose and intent.** This chapter implements Iowa Code section 462A.34A and identifies meandered streams, trout streams, and navigable streams in which motor vehicles may not be operated.

**571—49.2(462A) Definitions.**

*"Department"* means the department of natural resources.

*"Meandered stream"* means a lake or stream that, at the time of the original government survey, was surveyed as a navigable and important water body and was transferred to the state upon admission to the union to be transferred or retained by the public in accordance with the laws of the state upon admission to the union.

*"Motor vehicle"* means a vehicle that is self-propelled and not operated upon rails. A motor vehicle is not a watercraft as defined in Iowa Code section 462A.2(43).

*"Navigable stream"* means all streams that can support a vessel capable of carrying one or more persons during a total of a six-month period in one out of every ten years.

*"Trout stream"* means a stream that, by natural or artificial methods, supports trout fish species.

**571—49.3(462A) Motor vehicle prohibition in meandered streams, trout streams and navigable streams and identification of streams.**

**49.3(1)** Motor vehicles shall not be operated in the following locations, except as provided for in Iowa Code section 462A.34A(2):

*a.* Any portion of the bed of a navigable stream when covered by water.

*b.* Any portion of a trout stream or meandered stream, including the dry bed and sandbars.

**49.3(2)** A vessel operating on any of the streams listed in this rule must be operating by floating on the water as a result of the buoyant force of the water. A vessel propelled by tires in contact with the bed of the stream is not a watercraft for the purpose of this rule.

**49.3(3)** For the purpose of this rule, meandered streams, trout streams and navigable streams include the following:

| COUNTY | RIVER/STREAM | LOCATION |
|---|---|---|
| Adair | Middle Nodaway River | Adams/Adair line to Hwy. 92 |
| | Middle River | All |
| | West Fork-Middle Nodaway | Mouth to County Road N51 |
| Adams | East Nodaway River | Adams/Taylor line to County Road H24 |
| | Middle Nodaway River | All |
| Allamakee | Bear Creek | Mouth, S1,T99N,R6W to West Line S30,T100N,R6W |
| | Clear Creek | Mouth, S35,T100,R5W to North Line S15,T100N,R5W |
| | Clear Creek | Mouth, S29,T99N,R3W to West Line S25,T99N,R4W |
| | Cota Creek | Mouth, S26,T97N,R3W to West Line S10,T97N,R3W |
| | Dousman Creek | Mouth, S33,T96N,R3W to South Line S36,T96N,R3W |
| | French Creek | Mouth, S1,T99N,R5W to East Line S23,T99N,R5W |
| | Hickory Creek | Mouth, S23,R96N,R5W to South Line S28,T96N,R5W |
| | Irish Hollow Creek | Mouth, S21,T100N,R4W to North Line S17,T100N,R4W |
| | Little Paint Creek | Mouth, S32,T97N,R3W to North Line S30,T97N,R3W |
| | Mississippi River | All |
| | Norfolk Creek | Mouth, S6,T96,R5W to Conf. w/Teeple Creek, S24,T97N,R6W |

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| | Paint Creek | Conf. w/Little Paint Creek, S32,T97N,R3W to Road Crossing, S18,T97N,R4W |
| | Patterson Creek | Mouth, S29,T99N,R6W to East Line S3,T98N,R6W |
| | Silver Creek | Mouth, S4,T99N,R5W to South Line S31,T99N,R5W |
| | Suttle Creek | Mouth, S18,T96N,R4W to South Line S31,T96N,R4W |
| | Teeple Creek | Mouth, S24,T97N,R6W to West Line S11,T97N,R6W |
| | Trout Run a/k/a Erickson's Brook | Mouth, S16,T98N,R4W to North Line S8,T98N,R4W |
| | Unnamed Creek | Mouth, S12,T99N,R4W to West Line S12,T99N,R4W |
| | Unnamed Tributary to Village Creek | Mouth, S23,T98N,R4W to West Line S23,T98N,R4W |
| | Unnamed Tributary to Yellow River | Mouth, S13,T96N,R5W to North Line S12,T96N,R5W |
| | Upper Iowa River | Mouth, S36,T100N,R4W to West Line S31,T100N,R6W |
| | Village Creek | Mouth, S33,T99N,R3W to West Line S19,T98N,R4W |
| | Waterloo Creek | Conf. w/Bear Creek, S35,T100N,R6W to North Line S8,T100N,R6W |
| | Wexford Creek | Mouth, S5,T98N,R2W to West Line S25,T98N,R3W |
| | Yellow River | Mouth, S34,T96N,R3W to West Line S24,T96N,R5W |
| Appanoose | Chariton River | Missouri Line to Rathbun Dam |
| | North Chariton River | Rathbun Lake to Hwy. 14 |
| | South Chariton River | Appanoose/Wayne Line to Rathbun Lake |
| Benton | Bear Creek | Benton County Line to Mouth at Cedar River |
| | Cedar River | All |
| | Iowa River | All |
| | Mud Creek | Road Crossing W½ S13,T84N,R11W to Mouth at Cedar River |
| | Opossum Creek | SE¼ S5,T84N,R9W to Benton/Linn Line |
| | Prairie Creek 2 | Road Crossing N½ S24,T83N,R12W to Benton/Linn Line |
| | Wolf Creek | All |
| Black Hawk | Beaver Creek | Mouth, S34,T90N,R14W to West County Line, S31,T90N,R14W |
| | Black Hawk Creek | Mouth, S22,T89N,R13W to West County Line, S6,T87N,R14W |
| | Cedar River | All |
| | Shell Rock River | Mouth, S4,T90N,R14W to North County Line, S4,T90N,R14W |
| | Wapsipinicon River | All |
| | West Fork Cedar River | All |
| | Wolf Creek | Mouth, S19,T87N,R11W to South County Line |
| Boone | Beaver Creek | West Line of S10,T82N,R28W to South County Line |
| | Des Moines River | All |
| Bremer | Cedar River | All |
| | Shell Rock River | All |
| | Wapsipinicon River | All |
| Buchanan | Wapsipinicon River | All |
| Buena Vista | Little Sioux River | All |
| | North Raccoon River | South County Line to North Line of S15,T91N,R36W |
| | Beaver Creek | All |
| | Hartgraves Creek | West County Line to Mouth at West Fork of Cedar River |
| Butler | Maynes Creek | West County Line to Mouth at West Fork of Cedar River |
| | Shell Rock River | All |
| | West Fork Cedar River | All |
| Calhoun | Cedar Creek | South County Line to S31,T87N,R31W |
| | North Raccoon River | All |
| Carroll | Middle Raccoon River | South County Line to West Line of S23,T84N,R35W |
| | North Raccoon River | All |

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| Cass | East Nishnabotna River | All |
| Cedar | Cedar River | All |
| | Clear Creek | East Line of S21,T82N,R4W to Mouth at Cedar River |
| | Rock Creek | Road Crossing North Line Section 1, T81N,R3W to Mouth at Cedar River |
| | Sugar Creek | Road Crossing North Line Section 29, T81N,R2W to South County Line |
| | Wapsipinicon River | All |
| Cerro Gordo | Beaverdam Creek | I-35 to Franklin County Line |
| | E Branch-Beaverdam Creek | Hwy. 65 to Mouth at Beaverdam Creek |
| | Shell Rock River | All |
| | Spring Creek | County Road B15 to Mouth at Winnebago River |
| | Willow Creek | Hwy. 18 to Mouth at Winnebago River |
| | Winnebago River | All |
| Cherokee | Grey Creek | North Line of S22,T93N,R40W to Mouth at Mill Creek |
| | Little Sioux River | All |
| | Maple River | North Line of S5,T90N,R39W to Ida County Line |
| | Mill Creek | North Line S13,T93N,R41W to Mouth at Little Sioux River |
| | Perry Creek | North Line of S5,T91N,R40W to Mouth at Little Sioux River |
| | Rock Creek | East Line of S4,T91N,R41W to Mouth at Little Sioux River |
| | West Fork, Little Sioux River | North Line of S12,T92N,R42W to Plymouth County Line |
| | Willow Creek | North Line S30,T91N,R41W to Mouth at Little Sioux River |
| Chickasaw | Cedar River | All |
| | Little Cedar River | All |
| | Little Turkey River | All |
| | Wapsipinicon River | All |
| Clay | Little Sioux River | All |
| | Ocheyedan River | All |
| Clayton | Bear Creek | South Line S18,T91N,R4W to South Line S26,T91N,R5W |
| | Bloody Run Creek | Mouth, S15,T95N,R3W to South Line S21,T95N,R4W |
| | Brownfield Creek | Mouth, S25,T91N,R4W to Source, S31,T91N,R3W |
| | Buck Creek | Mouth, S32,T92N,R2W to West Line S9,T93N,R3W |
| | Cox Creek | Conf. w/Spring Creek, S25,T92N,R6W to South Line S12,T91N,R6W |
| | Dry Mill Creek | Mouth, S25,T93N,R5W to West Line S9,T93N,R4W |
| | Hewett Creek | Mouth, S11,T92N,R6W to South Line S29,T92N,R6W |
| | Maquoketa River | South Line S32,T91N,R6W to West Line S19,T91N,R6W |
| | Miners Creek | Mouth, S20,T92N,R2W to West Line S1,T92N,R3W |
| | Mink Creek | Mouth, S30,T93N,R6W to West Line S19,T93N,R6W |
| | Mossy Glen Creek | Mouth, S3,T91N,R5W to South Line S3,T91N,R5W |
| | Mississippi River | All |
| | North Cedar Creek | Mouth, S8,T94N,R3W to Source, S24,T94N,R4W |
| | Pecks Creek | Mouth, S1,T91N,R3W to South Line S15,T91N,R3W |
| | Pine Creek | Mouth, S26,T91N,R4W to Conf. w/Brownfield Creek, S25,T91N,R4W |
| | Sny-Magill Creek a/k/a Magill | Mouth, S23,T94N,R3W to West Line S6,T94N,R3W |
| | South Cedar Creek a/k/a Cedar | North Line S7,T92N,R3W to North Line S24,T93N,R4W |
| | Spring Creek a/k/a Kleinlein Creek | Mouth, S25,T92N,R6W to Source, S10,T91N,R6W |
| | Steeles Brook | Mouth, S26,T91N,R4W to South Line S34,T91N,R4W |
| | Turkey River | All |
| | Unnamed Tributary to Sny-Magill a/k/a West Fork | Mouth, S7,T94N,R3W to West Line S7,T94N,R3W |
| | Volga River | All |

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| Clinton | Brophys Creek | South Line of S4,T81N,R5E to Mouth at the Wapsipinicon River |
| | Drainage Ditch 12 | South Line of S30,T82N,R2E to Mouth at the Wapsipinicon River |
| | Elk River | South Line of S5,T83N,R6E to Mouth at the Mississippi River |
| | Harts Mill Creek | South Line of S8,T81N,R6E to Mouth at Mill Creek |
| | Mill Creek | South Line of S14,T81N,R6E to Mouth with Mississippi River |
| | Mississippi River | All |
| | Silver Creek | South Line of S22,T82N,R3E to S6,T80N,R4E |
| | Wapsipinicon River | All |
| Crawford | Boyer River | All |
| | Soldier River | All |
| Dallas | Beaver Creek | All |
| | Des Moines River | All |
| | Middle Raccoon River | All |
| | Raccoon River | All |
| | South Raccoon River | All |
| Davis | Des Moines River | All |
| Decatur | Long Creek | DeKalb Wildlife Area to Mouth at the Thompson River |
| | Thompson River | All |
| | Weldon River | Missouri Border to Hwy. 2 |
| Delaware | Fenchel Creek | Mouth, S5,T90N,R6W to Richmond Springs, S4,T90N,R6W |
| | Fountain Spring Creek a/k/a Odell Branch | Mouth, S10,T90N,R4W to West Line S9,T90N,R4W |
| | Little Turkey River | North County Line, S1,T90N,R3W to South Line S11,T90N,R3W |
| | Maquoketa River | All |
| | Schechtman Branch | Mouth, S14,T90N,R4W to South Line S14,T90N,R4W |
| | South Branch Fountain Spring Creek | Mouth, S10,T90N,R4W to West Line S16,T90N,R4W |
| | Spring Branch | Mouth, S10,T88N,R5W to Spring Source, S35,T89N,R5W |
| | Steeles Branch | North County Line, S4,T90N,R4W to West Line S5,T90N,R4W |
| | Twin Springs Creek | Mouth, S2,T90N,R4W to Spring Source S12,T90N,R4W |
| Des Moines | Brush Creek | South Line of S5,T69N,R3W to Mouth at the Skunk River |
| | Cedar Fork Creek | West Line of S31,T72N,R3W to Mouth at the Flint River |
| | Dolbee Creek | East Line of S24,T72N,R2W to S31,T71N,R1W |
| | Flint River | County Line to Mouth at the Mississippi River |
| | Hawkeye Creek | North Line of S30,T72N,R3W to Mouth at the Mississippi River |
| | Knotty Creek | East Line of S25,T71N,R3W to the Mouth at the Flint River |
| | Long Creek | South Line of S3,T69N,R4W to the Mouth at the Skunk River |
| | Mississippi River | All |
| | Skunk River | All |
| | Spring Creek | South Line of S15,T69N,R3W to Mouth at the Mississippi River |
| | Tributary to Flint River | South Line of S27,T71N,R3W to Mouth at the Flint River |
| Dickinson | Little Sioux River | All |
| | Milford Creek | S12,T98N,R37W to Mouth at Little Sioux River |
| | West Branch, Little Sioux River | South Line of S27,T100N,R38W to Mouth at West Fork of Little Sioux River |
| | West Fork, Little Sioux River | South Line of S24,T100N,R38W to Mouth at Little Sioux River |
| Dubuque | Bloody Run | Mouth, S34,T90N,R2E to West Line S21,T90N,R2E |
| | Catfish Creek | South Line S9,T88N,R2E to Source S36,T88N,R1E |

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|---|---|---|
| | Cloie Branch | Mouth, S5,T89N,R2E to West Line S5,T89N,R2E |
| | Hogans Branch | Mouth, S35,T89N,R1W to Gravel Road West Line S9,T88N,R1W |
| | Little Maquoketa River | S5,T88N,R1W to Mouth at Mississippi River |
| | Middle Fork, Little Maquoketa River a/k/a Bankston Creek | West Line S31,T90N,R1E to North Line S33,T90N,R1W |
| | Mississippi River | All |
| | North Fork, Maquoketa River | All |
| | Paint Hollow Creek a/k/a White Pine Creek | North County Line, S6,T90N,R2W to Spring Source S8,T90N,R2W |
| Emmet | East Fork, Des Moines River | Tuttle Lake Outlet to East County Line |
| | West Fork, Des Moines River | All |
| Fayette | Bass Creek a/k/a Turners | Mouth, S3,T95N,R9W to West Line S3,T95N,R9W |
| | Bear Creek | Mouth, S25,T93N,R7W to West Line S6,T92N,R7W |
| | Bell Creek | Mouth, S10,T94N,R7W to West Line S8,T94N,R7W |
| | Brush Creek | Mouth, S8,T92N,R7W to Road Crossing S20,T92N,R7W |
| | Little Turkey River | Mouth, S18,T95N,R8W to North Line S5,T95N,R10W |
| | Maquoketa River | East Line S24,T91N,R7W to Conf. w/Hwy. 3 |
| | Mink Creek | East Line S24,T93N,R7W to West Line S15,T93N,R7W |
| | Otter Creek | Mouth, S13,T94N,R7W to S22,T94N,R8W |
| | Turkey River | All |
| | Unnamed Creek a/k/a Glovers Creek | Mouth, S22,T94N,R8W to West Line S15,T94N,R8W |
| | Unnamed Creek a/k/a Grannis Creek | Mouth, S30,T93N,R7W to Source, E¼ S36,T93N,R8W |
| | Volga River | East County Line to South Line S22,T93N,R8W |
| Floyd | Cedar River | All |
| | Little Cedar River | All |
| | Shell Rock River | All |
| | Winnebago River | All |
| Franklin | Bailey Creek | South Line of S13,T93N,R20W to Mouth at the West Fork, Cedar River |
| | Beaverdam Creek | North County Line to Mouth at the West Fork, Cedar River |
| | Hartgraves Creek | South Line of S28,T92N,R19W to East County Line |
| | Iowa River | All |
| | Maynes Creek | East Line of S30,T91N,R20W to East County Line |
| | Otter Creek | East Line of S31,T93N,R20W to Mouth at Hartgraves Creek |
| | Spring Creek | Beeds Lake Outlet to Mouth at Otter Creek |
| | West Fork, Cedar River | East Line of S19,T93N,R19W to East County Line |
| Fremont | East Nishnabotna River | Mouth at Nishnabotna River to East County Line |
| | Missouri River | All |
| | Nishnabotna River | Missouri/Iowa Line to South Line of S25,T68N,R41W |
| | West Nishnabotna River | Mouth at Nishnabotna River to North County Line |
| Greene | Cedar Creek | Mouth at North Raccoon River to North County Line |
| | North Raccoon River | All |
| Grundy | Black Hawk Creek | East Line of S35,T88N,R17W to Black Hawk County Line |
| | North Black Hawk Creek | NE¼ S8,T88N,R15W to Black Hawk County Line |
| | South Beaver Creek | E½ S3,T88N,R18W to Butler County Line |
| | Wolf Creek | N½ of S31,T86N,R17W to Black Hawk County Line |
| Guthrie | Middle Raccoon River | All |
| | South Raccoon River | East County Line to County Road F32 |
| Hamilton | Boone River | All |

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| | Brewers Creek | Mouth at Boone River to County Road R27 |
| | Eagle Creek | Mouth at Boone River to Wright County Line |
| | Skunk River | County Line to Hwy. 175 |
| | White Fox Creek | Mouth at Boone River to Wright County Line |
| Hancock | East Fork, Iowa River | South County Line to Hwy. 18 |
| | West Fork, Iowa River | South County Line to County Road B55 |
| | Winnebago River | All |
| Hardin | Elk Creek | Mouth at Iowa River to County Road D35 |
| | Honey Creek | South County Line to County Road D65 |
| | Iowa River | All |
| | South Fork, Iowa River | Mouth at Iowa River to Hwy. 359 |
| Harrison | Boyer River | All |
| | Little Sioux River | All |
| | Missouri River | All |
| | Soldier River | All |
| Henry | Big Creek | North Line of S31,T72N,R5W to S19,T70N,R5W |
| | Cedar Creek | County Line to Mouth at the Skunk River |
| | Crooked Creek | Mouth at S31,T73N,R7W to East Section Line |
| | East Fork, Crooked Creek | All |
| | Little Cedar Creek | South County Line to Mouth at Cedar Creek |
| | Mud Creek | South Line of S15,T70N,R5W to Mouth at the Skunk River |
| | Skunk River | All |
| Howard | Beaver Creek | Mouth, S19,T100N,R12W to County Road A23 |
| | Bohemian Creek | East Line S13,T97N,R11W to West Line S2,T97N,R11W |
| | Chialk Creek | Mouth, S1,T98N,R11W to Road Crossing, S36,T99N,R11W |
| | Nichols Creek | East Line S13,T100N,R11W to County Road V58 |
| | Staff Creek | Mouth, S7,T100N,R13W to County Road V10 |
| | Turkey River | East Line S12,T98N,R11W to Hwy. 9 |
| | Upper Iowa River | East Line S12,T100N,R11W to North Line S11,T100N,R14W |
| | Wapsipinicon River | South Line S17,T97N,R14W to West Line S19,T98N,R14W |
| Humboldt | Des Moines River | South County Line to Conf. of East and West Fork of Des Moines River |
| | East Fork, Des Moines River | Mouth at the Des Moines River to North County Line |
| | West Fork, Des Moines River | Mouth at the Des Moines River to West County Line |
| Ida | Little Sioux River | All |
| | Maple River | All |
| Iowa | Bear Creek | West County Line to Mouth at the Iowa River |
| | Iowa River | All |
| | North Fork, English River | All |
| | Old Man Creek | West Line of S35,T79N,R10W to East County Line |
| Jackson | Brush Creek | North Line S23,T85N,R3E to North Line S1,T85N,R3E |
| | Cedar Creek | Mouth, S30,T85N,R3E to East Line S29,T85N,R3E |
| | Little Mill Creek | Mouth, S13,T86N,R4E to West Line S29,T86N,R4E |
| | Maquoketa River | All |
| | Mill Creek a/k/a Big Mill Creek | Conf. w/Little Mill Creek S13,T86N,R4E to West Line S1,T86N,R3E |
| | Mississippi River | All |
| | North Fork, Maquoketa River | West County Line to Mouth at the Maquoketa River |
| | Ozark Spring Run | Mouth, S32,T86N,R1E to Spring Source S32,T86N,R1E |
| | Pleasant Creek | East Line S11,T85N,R4E to West Line S15,T85N,R4E |
| | Unnamed Creek | Mouth, S7,T86N,R2E to West Line S11,T86N,R1E |
| | South Fork, Big Mill | Mouth, S8,T86N,R4E to West Line S17,T86N,R4E |
| | Storybook Hollow | Mouth, S7,T86N,R4E to South Line S12,T86N,R3E |

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| | Unnamed Creek | Mouth, S1,T86N,R3E to West Line S2,T86N,R3E |
| Jasper | Indian Creek | All |
| | North Skunk River | All |
| | South Skunk River | All |
| Jefferson | Brush Creek | South Line of S18,T72N,R8W to the East County Line |
| | Cedar Creek | All |
| | Competine Creek | West County Line to Mouth at Cedar Creek |
| | Skunk River | All |
| | Walnut Creek | East Line of S22,T73N,R9W to the Mouth at the Skunk River |
| Johnson | Cedar River | All |
| | Clear Creek | West County Line to Mouth at the Iowa River |
| | Iowa River | All |
| | Old Mans Creek | West County Line to Mouth at the Iowa River |
| Jones | Buffalo Creek | West County Line to Mouth at the Wapsipinicon River |
| | Maquoketa River | All |
| | North Fork, Maquoketa River | All |
| | Wapsipinicon River | All |
| Keokuk | Bridge Creek | South Line of S23,T76N,R12W to the Mouth at the North Skunk River |
| | Cedar Creek | East Line of S19,T76N,R13W to the Mouth at the North Skunk River |
| | North Skunk River | West County Line to Mouth at the Skunk River |
| | Rock Creek | South Line of S21,T76N,R12W to Mouth at Cedar Creek |
| | South Fork, English River | West County Line to Mouth at the English River |
| | Skunk River | All |
| | South Skunk River | West County Line to Mouth at the Skunk River |
| Kossuth | Buffalo Creek | West Line of S4,T97N,R27W to Mouth at the East Fork, Des Moines River |
| | East Fork, Des Moines River | All |
| Lee | Big Sugar Creek | South Line of S26,T69N,R6W to Mouth at the Mississippi River |
| | Des Moines River | All |
| | Little Sugar Creek | South Line of S24,T68N,R7W to Mouth at the Des Moines River |
| | Lost Creek | South Line of S32,T69N,R4W to Mouth at the Mississippi River |
| | Mississippi River | All |
| | Pitman Creek | South Line of S10,T68N,R5W to Mouth at the Mississippi River |
| | Skunk River | All |
| Linn | Cedar River | All |
| | Prairie Creek | West County Line to Mouth at Cedar River |
| | Wapsipinicon River | All |
| Louisa | Big Slough Creek | East Line of S7,T74N,R5W to Mouth at Long Creek |
| | Cedar River | All |
| | Goose Creek | West County Line to Mouth at the Iowa River |
| | Iowa River | All |
| | Long Creek | South Line of S30,T75N,R5W to the Mouth at the Iowa River |
| | Mississippi River | All |
| | Muscatine Slough | North County Line to County Road Bridge in S31,T75N,R3W |
| | Muskrat Lake | S16,T74N,R3W to Mouth at the Iowa River |
| Lucas | Chariton River | Rathbun Lake to Hwy. 14 |
| Lyon | Big Sioux River | All |

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| | Little Rock River | East County Line to Mouth at Rock River |
| | Rock River | All |
| Madison | Clanton Creek | South Line of S32,T75N,R26W to the East County Line |
| | Middle River | All |
| | Thompson River | All |
| Mahaska | Cedar Creek | West County Line to Mouth at Des Moines River |
| | Des Moines River | All |
| | North Skunk River | All |
| | Skunk River | All |
| Marion | Des Moines River | All |
| | Skunk River | All |
| | Whitebreast Creek | West County Line to Mouth at Des Moines River |
| Marshall | Honey Creek | North County Line to Mouth at Iowa River |
| | Iowa River | All |
| | Minerva Creek | NW¼ S9,T85N,R20W to Mouth at Iowa River |
| | Timber Creek | County Road Bridge in S24,T83N,R18W to Mouth at Iowa River |
| Mills | Missouri River | All |
| | West Nishnabotna River | All |
| Mitchell | Beaver Creek | Mouth at S1,T98N,R16W to North Line S8,T99N,R15W |
| | Burr Oak Creek | County Road T46 to North Line S5,T98N,R16W |
| | Cedar River | South Line S13,T97N,R17W to North Line S8,T100N,R18W |
| | Little Cedar River | South Line S13,T97N,R15W to North Line S7,T100N,R16W |
| | Otter Creek | Mouth at S21,T100N,R18W to North Line S11,T100N,R18W |
| | Rock Creek | Conf. w/Goose Creek S35,T98N,R18W to Hwy. 9 |
| | Spring Creek | Mouth at S13,T97N,R17W to North Line S8,T97N,R16W |
| | Turtle Creek | Mouth at S23,T99N,R18W to East Line S7,T99N,R17W |
| | Wapsipinicon River | East County Line to North Line of S20,T100N,R15W |
| Monona | Little Sioux River | All |
| | Maple River | Mouth at Little Sioux River to North County Line |
| | Missouri River | All |
| | Soldier River | All |
| | West Fork, Little Sioux River | Mouth at Little Sioux River to North County Line |
| Montgomery | East Nishnabotna River | All |
| | Middle Nodaway River | Mouth at Nodaway River to East County Line |
| | Nodaway River | All |
| Muscatine | Cedar River | All |
| | Mississippi River | All |
| | Mud Creek | West Line of S5,T78N,R1E to Mouth at Mississippi River |
| | Muscatine Slough | South Line of S4,T76N,R2W to South County Line |
| | Pike Run | South Line of S34,T78N,R3W to S19,T77N,R3W |
| | Pine Creek | Wildcat Den State Park to Mouth at Mississippi River |
| | Sugar Creek | North County Line to Mouth at the Cedar River |
| | Wapsinonoc Creek | North County Line to Mouth at the Cedar River |
| | Weise Slough | S19,T78N,R3W |
| O'Brien | Little Sioux River | All |
| Osceola | Little Rock River | All |
| | Ocheyedan River | All |
| Page | East Nishnabotna River | All |
| | East Nodaway River | East County Line to Mouth at the Nodaway River |
| | Nodaway River | All |
| | Tarkio River | Hwy. 2 to South County Line |
| Palo Alto | West Fork, Des Moines River | All |
| Plymouth | Big Sioux River | All |

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| | Floyd River | All |
| | West Fork,<br>Little Sioux River | All |
| Pocahontas | Lizard Creek | West Line of S2,T90N,R31W to East County Line |
| | North Branch,<br>Lizard Creek | North Line of S6,T91N,R31W to Mouth with Lizard Creek |
| | Pilot Creek | West Line of S9,T92N,R31W to Mouth with the West Fork,<br>Des Moines River |
| | West Fork,<br>Des Moines River | All |
| Polk | Beaver Creek | All |
| | Des Moines River | All |
| | North River | All |
| | Raccoon River | All |
| | South Skunk River | All |
| | Walnut Creek | All |
| Pottawattamie | East Nishnabotna River | All |
| | Missouri River | All |
| | West Nishnabotna River | All |
| Poweshiek | Bear Creek | NW¼ S8,T80N,R14W to the East County Line |
| | North Fork, English River | North Line of S23,T79N,R14W to East County Line |
| | North Skunk River | All |
| Ringgold | East Fork, Grand River | South County Line to Hwy. 2 |
| | Grand River | South County Line to Hwy. 66 |
| | Platte River | All |
| | Thompson River | All |
| Sac | Big Cedar Creek | West Line of S10,T88N,R35W to the Mouth at the<br>North Raccoon River |
| | Boyer River | West Line of S5,T89N,R37W to South County Line |
| | Indian Creek | North Line of S7,T87N,R36W to Mouth at the<br>North Raccoon River |
| | North Raccoon River | All |
| | Outlet Creek | East Line of S35,T87N,R36W to Mouth at Indian Creek |
| Scott | Lost Creek | North Line of S32,T80N,R5E to Mouth at the<br>Wapsipinicon River |
| | Mississippi River | All |
| | Mud Creek | County Road Bridge in S11,T79N,R1E to Mouth at the<br>Wapsipinicon River |
| | Wapsipinicon River | All |
| Sioux | Big Sioux River | All |
| | Floyd River | Hwy. 18 to South County Line |
| | Rock River | All |
| Story | Skunk River | All |
| Tama | Iowa River | All |
| | Salt Creek | West Line of S28,T84N,R13W to Mouth at the Iowa River |
| | Wolf Creek | All |
| Taylor | East Fork, 102 River | Hwy. 49 to South County Line |
| | Platte River | All |
| | West Fork, 102 River | Hwy. 2 to South County Line |
| Union | Platte River | All |
| | Thompson River | All |
| Van Buren | Cedar Creek | All |
| | Des Moines River | All |
| Wapello | Des Moines River | All |
| Warren | Clanton Creek | West County Line to Mouth at Des Moines River |
| | Middle River | West County Line to Mouth at Des Moines River |
| | North River | All |

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| | South River | All |
| | Whitebreast Creek | All |
| Washington | Camp Creek | North Line of S33,T77N,R7W to the Mouth at English River |
| | Clemons Creek | West Line of S9,T75N,R8W to the South Line S14,T75N,R8W |
| | Crooked Creek | East Line of S28,T76N,R9W to Henry County Line |
| | Dutch Creek | South Line of S21,T75N,R9W to the Mouth at the Skunk River |
| | East Fork, Crooked Creek | All |
| | English River | All |
| | Goose Creek | East County Line to East Line of S22,T76N,R6W |
| | Honey Creek | Lake Darling to Mouth at the Skunk River |
| | Iowa River | All |
| | Long Creek | East County Line to West Line of S26,T75N,R6W |
| | North Fork, Long Creek | East Line of S3,T75N,R7W to Mouth at Long Creek |
| | Skunk River | All |
| | Smith Creek | West County Line to Mouth at the English River |
| | South Fork, Long Creek | County Road W61 to Mouth at Long Creek |
| | Williams Creek | South County Line to Mouth at East Fork, Crooked Creek |
| Wayne | North Chariton River | Rathbun Lake to Hwy. 14 |
| | South Chariton River | Rathbun Lake to County Road S56 |
| Webster | Brushy Creek | North Line of S8,T88N,R27W to Mouth at the Des Moines River |
| | Deer Creek | North Line of S16,T90N,R29W to Mouth at the Des Moines River |
| | Des Moines River | All |
| | North Branch, Lizard Creek | West County Line to Mouth at Des Moines River |
| | Prairie Creek | West Line of S29,T88N,R28W to Mouth at the Des Moines River |
| Winnebago | Winnebago River | All |
| Winneshiek | Bear Creek | East Line, S25,T100N,R7W to East Line of S29,T100N,R7W |
| | Bohemian Creek | Mouth at Turkey River to West Line S18,T97N,R10W |
| | Canoe Creek | County Road W38 to West Line S8,T99N,R8W |
| | Casey Spring | Mouth in S25,T99N,R9W to West line S26,T99N,R9W |
| | Coldwater Creek | Mouth S32,T100N,R9W to North Line S11,T100N,R10W |
| | Coon Creek | Mouth S2,T98N,R7W to NW¼ S13,T98N,R7W |
| | Dry Run Creek | Mouth S17,T98N,R8W to West Line S36,T98N,R9W |
| | East Pine Creek | Mouth S28,T100N,R9W to North Line of S9,T100N,R9W |
| | Martha Creek | Mouth S6,T99N,R9W to West Line of S13,T99N,R10W |
| | Middle Bear Creek | Mouth S14,T100N,R7W to North Line S16,T100N,R7W |
| | Nichols Creek | Mouth S18,T100N,R10W to West Line S18,T100N,R10W |
| | North Bear Creek | Conf. w/South Bear Creek, S25,T100N,R7W to East Line of S10,T100N,R7W |
| | North Canoe Creek | Mouth S22,T99N,R8W to North Line S1,T99N,R8W |
| | Pine Creek | Mouth at Upper Iowa River to the North Line S7,T100N,R9W |
| | Pine Creek | Mouth at Canoe Creek to the North Line S21,T99N,R7W |
| | Paint Creek | East Line S13,T99N,R7W to West Line S11,T99N,R7W |
| | Silver Creek | Mouth at Upper Iowa River to North Line S26,T100N,R9W |
| | Smith Creek | Conf. w/Trout Creek in S21,T98N,R7W to South Line S33,T98N,R7W |
| | Ten Mile Creek | Mouth at Upper Iowa River to Conf. w/Walnut Creek at S18,T98N,R9W |
| | Trout Creek | Mouth at Upper Iowa River to Conf. w/Smith Creek at S21,T98N,R7W |
| | Trout Creek | Mouth at Upper Iowa River to East Line of S27,T98N,R8W |

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| | Trout Run Creek | Road Crossing at NW¼ S1,T97N,R8W to Mouth at Trout Creek |
| | Twin Springs Creek | West Line of S17,T98N,R8W to Mouth at Upper Iowa River |
| | Upper Iowa River | All |
| Woodbury | Big Sioux River | All |
| | Floyd River | All |
| | Little Sioux River | All |
| | Maple River | All |
| | Missouri River | All |
| | West Fork, Little Sioux River | All |
| Worth | Beaver Creek | Hwy. 9 to Mouth at Winnebago River |
| | Deer Creek | County Road S56 to East County Line |
| | Elk Creek | Hwy. 105 to Mouth at Shell Rock River |
| | Shell Rock River | All |
| | Willow Creek | Hwy. 9 to Mouth at Winnebago River |
| | Winans Creek | Hwy. 9 to Mouth at Winnebago River |
| Wright | Boone River | All |
| | Eagle Creek | County Road R33 to South County Line |
| | East Fork, Iowa River | North County Line to Mouth at Iowa River |
| | Iowa River | South Line of S19,T93N,R23W to East County Line |
| | West Fork, Iowa River | North County Line to Mouth at Iowa River |
| | White Fox Creek | County Road R38 to South County Line |

**571—49.4(462A) Motor vehicle prohibition in meandered streams.** Motor vehicles shall not be operated in any part of the beds of meandered streams, including dry sandbars. Meandered streams are the following:

1. Des Moines River. From Mississippi River to west line of T95N, R32W, Palo Alto County, west branch, and north line of T95N, R29W, Kossuth County, east branch at a point near Algona.
2. Iowa River. From Mississippi River to west line T81N, R11W, Iowa County, due north of Ladora.
3. Cedar River. From Iowa River to west line T89N, R13W, Black Hawk County, at the east edge of Cedar Falls.
4. Raccoon River. From Des Moines River to west line of Polk County.
5. Wapsipinicon River. From Mississippi River to west line T86N, R6W, Linn County, northwest of Central City.
6. Maquoketa River. From Mississippi River to west line T84N, R3E, Jackson County, due north of Maquoketa.
7. Skunk River. From Mississippi River to north line of Jefferson County, at the southwest edge of Coppock.
8. Turkey River. From Mississippi River to west line T95N, R7W, Fayette County, northwest of Clermont.
9. Nishnabotna River. From Missouri River to north line T67N, R42W, Fremont County, northeast of Hamburg.
10. Upper Iowa River. From Mississippi River to west line Section 28, T100N, R4W, Allamakee County, about two and one-half miles upstream from its mouth.
11. Little Maquoketa River. From Mississippi River to west line Section 35, T90N, R2E, Dubuque County, about one mile upstream from its mouth.

These rules are intended to implement Iowa Code chapter 462A.

# ARC 8605C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to bonding and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 50, "All-Terrain Vehicle, Off-Road Motorcycle, Off-Road Utility Vehicle, Snowmobile and Vessel Bonding," and to adopt a new Chapter 50, "Regulated Vehicle, Snowmobile and Vessel Bonding," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 321G.29, 321I.31 and 462A.5A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 321G.29, 321I.31 and 462A.5A.

*Purpose and Summary*

Proposed Chapter 50 contains rules on vehicle and vessel bonding. Pursuant to Iowa Code chapters 321I, 321G, and 462A, customers who are unable to show ownership of their all-terrain vehicles, snowmobiles, or vessels for purposes of obtaining title or registration may file for a bond. This process allows customers to proceed with ownership documentation and use their all-terrain vehicles, snowmobiles, or vessels while also protecting prior owners in case of error or fraud.

This chapter has been reviewed and edited consistent with Executive Order 10 (2023). In an attempt to reduce and simplify regulatory burdens, the new chapter proposes to implement a new bonding process similar to what the Iowa Department of Transportation recently implemented for motor vehicles. Under the proposed language, the Department of Natural Resources (Department) may allow all-terrain vehicles, snowmobiles, or vessels that are over 15 years old and have a retail value of $1,000 or less to be registered without obtaining a bond, provided all other statutory and rule requirements are met.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Karmin Klingenberg
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.326.0430
Email: karmin.klingenberg@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at karmin.klingenberg@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al karmin.klingenberg@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue<br>Des Moines, Iowa<br>And via videoconference |
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue<br>Des Moines, Iowa<br>And via videoconference |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at karmin.klingenberg@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al karmin.klingenberg@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 50 and adopt the following **new** chapter in lieu thereof:

# CHAPTER 50
# REGULATED VEHICLE, SNOWMOBILE AND VESSEL BONDING

**571—50.1(321G,321I) Definitions.** For the purposes of this chapter, the following definitions shall apply:

*"All-terrain vehicle"* means the same as defined in Iowa Code section 321I.1.

*"Department"* means the department of natural resources.

*"Off-road motorcycle"* means the same as defined in Iowa Code section 321I.1.

*"Off-road utility vehicle"* means the same as defined in Iowa Code section 321I.1.

*"Regulated vehicle"* means all-terrain vehicles, off-road motorcycles, and off-road utility vehicles, either collectively or individually. For purposes of this chapter only, "regulated vehicle" shall also include a snowmobile.

*"Snowmobile"* means the same as defined in Iowa Code section 321G.1.

*"Vessel"* means the same as defined in Iowa Code section 462A.2.

*"Watercraft"* means the same as defined in Iowa Code section 462A.2. Docks, defined in and regulated by 571—Chapter 16, are not watercraft.

## DIVISION I
## REGULATED VEHICLES

**571—50.2(321G,321I) Bond required before issuance of title or registration.**

**50.2(1)** *Procedures.* An applicant for certificate of title who cannot provide the supporting documents required in 571—Chapters 46 and 47 (implementing Iowa Code chapters 321G and 321I) shall be required to complete the following procedures as a condition to obtaining a title and registration. The procedures described are in addition to the regular procedures for titling and registering a regulated vehicle.

*a.* The applicant shall submit a request form to the department on a form provided by the department. The request form shall include a copy of the written proof of ownership at the time the vehicle was acquired.

*b.* The applicant shall contact the department and provide identifying information in regard to the regulated vehicle. The required identifying information shall include the manufacturer identification number; registration sticker (if affixed to the regulated vehicle); photographs of the regulated vehicle that show the front, rear, and one side of the regulated vehicle; and any additional information about the regulated vehicle as may be requested by the department. If no manufacturer identification number is currently affixed to the regulated vehicle, the applicant shall complete the department's procedure for obtaining such number, and the assigned number shall be affixed before the applicant may proceed with the registration application process set forth in this chapter.

**50.2(2)** *Investigation.* The department, upon receipt of sufficient identifying information from an applicant, shall:

*a.* Search the department's registration records to determine whether there is an owner of record for the regulated vehicle and whether the regulated vehicle has been reported stolen or embezzled;

*b.* If the department finds a record of prior ownership in the department's registration records, mail the release of ownership and rights to the regulated vehicle by first-class mail to the owner of record at the owner's last-known address. The notice shall state that the owner of record may assert the owner's right to claim the regulated vehicle.

**50.2(3)** *Letter of release.* Upon receipt of the letter of release by the last registered owner or legal representative, the department may:

*a.* Provide approval notification to the applicant and the county recorder that there is sufficient evidence to indicate that the applicant is the rightful owner and that there is no known unsatisfied security interest, so the regulated vehicle may be registered and titled in Iowa.

*b.* Notify the appropriate authorities of the owner's claim to the regulated vehicle. No further action will be completed by the department.

**50.2(4)** *Letter of release.*

*a.* If the department receives no response from the owner of record within 30 days after the date of mailing or if the post office returns the notice to the department as undeliverable, the department will continue processing the bond request.

*b.* The department will determine the current retail value for the same type of regulated vehicle for which the registration is being sought with documentation from J.D. Power (formerly the National Automobile Dealers Association, or NADA) or Kelley Blue Book or through competitive pricing found on the Internet, or the applicant may submit an appraisal of the regulated vehicle by a licensed regulated vehicle dealer.

(1) If the current retail value of the regulated vehicle is $1,000 or less as determined by the department and is over 15 years old, the department may allow the registration of the vehicle.

(2) If the current retail value of the regulated vehicle as determined by the department is more than $1,000, the department will notify the applicant that the following requirements are needed to proceed with the bonding process:

1. A completed registration application form (as provided by the department).
2. Inspection of the regulated vehicle by a representative of the department, with a signature required on the registration application form.
3. A complete surety bond form (as provided by the department).

**50.2(5)** *Approval.* If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall forward the original application to the county recorder and notify the applicant that the regulated vehicle may be registered and titled in Iowa.

**50.2(6)** *Disapproval.* If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, that there is an unsatisfied security interest, or that the owner of record asserts a claim for the regulated vehicle, the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

DIVISION II
VESSELS

**571—50.3(462A) Bond required before issuance of title or registration.**

**50.3(1)** *Procedures.* An applicant for certificate of title who cannot provide the supporting documents required in 571—Chapters 46 and 47 (implementing Iowa Code chapters 321G and 321I) shall be required to complete the following procedures as a condition to obtaining a title and registration. The procedures described are in addition to the regular procedures for titling and registering a vessel.

*a.* The applicant shall submit a request form to the department on a form provided by the department. The request form shall include a copy of the written proof of ownership at the time the vessel was acquired.

*b.* The applicant shall contact the department and provide identifying information in regard to the vessel. The required identifying information shall include the manufacturer identification number; registration sticker (if affixed to the regulated vessel); photographs of the vessel that show the front, rear, and one side of the vessel; and any additional information about the vessel as may be requested by the department. If no manufacturer identification number is currently affixed to the vessel, the applicant shall complete the department's procedure for obtaining such number, and the assigned number shall be affixed before the applicant may proceed with the registration application process set forth in this chapter.

**50.3(2)** *Investigation.* The department, upon receipt of sufficient identifying information from an applicant, shall:

*a.* Search the department's registration records to determine whether there is an owner of record for the vessel and whether the vessel has been reported stolen or embezzled;

*b.* If the department finds a record of prior ownership in the department's registration records, mail the release of ownership and rights to the vessel by first-class mail to the owner of record at the owner's last-known address. The notice shall state that the owner of record may assert the owner's right to claim the vessel.

**50.3(3)** *Letter of release.* Upon receipt of the letter of release by the last registered owner or legal representative, the department may:

*a.* Provide approval notification to the applicant and the county recorder that there is sufficient evidence to indicate that the applicant is the rightful owner and that there is no known unsatisfied security interest, so the vessel may be registered and titled in Iowa.

*b.* Notify the appropriate authorities of the owner's claim to the vessel. No further action will be completed by the department.

**50.3(4)** *Letter of release.*

*a.* If the department receives no response from the owner of record within 30 days after the date of mailing or if the post office returns the notice to the department as undeliverable, the department will continue processing the bond request.

*b.* The department will determine the current retail value for the same type of vessel for which the registration is being sought with documentation from J.D. Power (formerly NADA) or Kelley Blue Book or through competitive pricing found on the Internet, or the applicant may submit an appraisal of the vessel by a licensed vessel dealer.

(1) If the current retail value of the vessel is $1,000 or less as determined by the department and is over 15 years old, the department may allow the registration of the vehicle.

(2) If the current retail value of the vessel as determined by the department is more than $1,000, the department will notify the applicant that the following requirements are needed to proceed with the bonding process:

1. A completed registration application form (as provided by the department).
2. Inspection of the vessel by a representative of the department, with a signature required on the registration application form.
3. A complete surety bond form (as provided by the department).

**50.3(5)** *Approval.* If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall forward the original application to the county recorder and notify the applicant that the vessel may be registered and titled in Iowa.

**50.3(6)** *Disapproval.* If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, that there is an unsatisfied security interest, or that the owner of record asserts a claim for the vessel, the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

These rules are intended to implement Iowa Code sections 321I.31(9), 321G.29(9) and 462A.5A.

## ARC 8606C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to game management areas and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 51, "Game Management Areas," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 456A.24(2)"a" and 481A.6.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(2)"a" and 481A.6.

*Purpose and Summary*

Proposed Chapter 51 establishes allowable uses of game management areas. The rules are designed to ensure that game management areas meet the goals of Iowa Code section 481A.6, which are to maintain biological balance and to provide for public hunting, fishing, or trapping in conformity with sound wildlife management. This chapter has been reviewed and edited consistent with Executive Order 10 (2023). Specifically, there were provisions in this chapter that were outdated or repetitive to statute. In addition, the revisions to the chapter update and clarify the process for power-driven mobility devices for persons with physical disabilities and remove a reference to a target shooting range at Bays Branch. This target shooting range is now closed.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Monica Thelen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: monica.thelen@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at monica.thelen@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al monica.thelen@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at monica.thelen@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al monica.thelen@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 51 and adopt the following **new** chapter in lieu thereof:

TITLE V
*MANAGEMENT AREAS AND PRACTICES*

CHAPTER 51
GAME MANAGEMENT AREAS

**571—51.1(481A) Definitions.**

*"Blind"* means a constructed place of ambush or concealment for the purpose of hunting, observing, or photographing any species of wildlife.

*"Decoy"* means a bird, or animal, or a likeness of one, used to lure game within shooting range.

*"Horse"* means any equine animal, including horses, mules, burros, donkeys, and all llamas or alpaca-like animals.

*"Motor vehicle"* means any self-propelled vehicle having at least three wheels and registered as a motor vehicle under Iowa Code chapter 321, 321G, or 321I.

*"Person with a physical disability"* means any of the following: an individual commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a single or double amputee of the legs; or a person with any other physical affliction that makes it impossible to ambulate successfully without the use of a motor vehicle.

*"Target shooting"* means the discharge of a firearm for any reason other than the taking of, or attempting to take, any game birds, game animals, or furbearers.

**571—51.2(481A) Jurisdiction.** All lands and waters under the jurisdiction of the department are established as game management areas under the provisions of Iowa Code section 481A.6. Use

restrictions are established to protect the primary purpose of game management areas, which is to provide fish and wildlife habitat and associated fish- and wildlife-dependent recreation. In addition to the restrictions in this chapter, the department may close portions of game management areas to any use if hazardous or poor conditions warrant. Use restrictions in this chapter do not apply to department personnel, law enforcement officials, or other authorized persons engaged in research, management, or enforcement when in performance of their duties.

**571—51.3(481A) Use of firearms.**

**51.3(1)** *Restrictions.* The use or possession of firearms on certain game management areas is restricted.

*a.* Target shooting with shotguns shooting shot is not restricted to a specific range, except as otherwise provided. Target shooters using shotguns with lead shot cannot discharge the shot over water.

*b.* Target shooting shall occur only on the designated and posted shooting range.

*c.* Any person target shooting with any type of handgun or any type of rifle, or shooting shotgun slugs through a shotgun, must fire through one of the firing tubes, if provided, or at the firing points on the rifle or pistol range.

*d.* It is a violation of these rules to place any target on the top of the earthen backstop or to fire at any target placed on top of the backstop.

*e.* The shotgun range, if provided, is restricted to the use of shotguns and the shooting of shotshells only.

*f.* Target shooting shall occur only between the hours of sunrise and sunset, unless otherwise posted.

*g.* No alcoholic beverages are allowed on the shooting range or adjacent parking area.

*h.* Target shooting is restricted to legal firearms and shall not be done with any fully automatic pistol, rifle, or shotgun of any kind. Armor piercing and tracer ammunition is prohibited.

*i.* Targets are restricted to paper or cardboard targets or metal silhouette-type targets. Metal targets must be placed a minimum of 15 yards from the firing point for handguns and 100 yards away from the firing point for rifles. No glass, plastic containers, appliances, or other materials may be used. Targets must be removed from the area after use or must be disposed of in trash receptacles if provided.

*j.* All requirements listed in this subrule shall apply to the following shooting ranges:

(1) Brushy Creek Area—Webster County.

(2) Hawkeye Wildlife Area—Johnson County.

(3) Hull Wildlife Area—Mahaska County.

(4) Mines of Spain—Dubuque County.

(5) Ocheyedan Wildlife Area—Clay County.

(6) Spring Run Wildlife Area—Dickinson County.

(7) Oyens Shooting Range—Plymouth County. The range is closed to the public except between 9 a.m. and sunset.

(8) McIntosh Wildlife Area—Cerro Gordo County. The use or possession of firearms, except shotguns shooting shot only, is prohibited.

**51.3(2)** *Use of paintball guns.* The use of any item generally referred to as a paintball gun is prohibited on all game management areas.

**571—51.4(481A) Use of horses on game management areas.**

**51.4(1)** *Prohibition.* Horses are prohibited on all game management areas unless allowed by exception. This rule does not apply to state forests or state recreation areas.

**51.4(2)** *Exception for hunting and field trials.* Horses may be used on all game management areas for training raccoon hunting dogs from October 1 to February 1 and for hunting raccoons during open hunting seasons. Horses may be used for participating in authorized field trials, unless this activity is posted as prohibited.

**51.4(3)** *Exception for horseback riding.* Horseback riding is allowed on the following game management areas from May 25 to September 30 and is confined to existing roads or trails as posted:

*a.* Elk Grove Wildlife Area—Guthrie County.
*b.* Lennon Mills Wildlife Area—Guthrie County.
*c.* Marlow Ray Wildlife Area—Guthrie County.
*d.* Middle Raccoon River Wildlife Area—Guthrie County.
*e.* Sand Creek Wildlife Area—Decatur and Ringgold Counties.
*f.* Cardinal Marsh—Winneshiek County.
*g.* Hawkeye Wildlife Area—Johnson County.
*h.* Black Hawk Wildlife Area—Sac County.
*i.* Turkey River Wildlife Area—Howard County.

**571—51.5(481A) Dogs prohibited—exception.** Dogs are prohibited on all state-owned game management areas between the dates of March 15 and July 15 each year. Training of dogs is permitted in designated training areas. Field and retriever meets are only permitted at designated sites and must have secured a permit as provided in Iowa Code section 481A.22 that shows the exact designated site of said meet, and all dogs shall be confined to that site.

**571—51.6(481A) Use of blinds and decoys on game management areas.**

**51.6(1)** *Stationary blinds.* The construction and use of stationary blinds on all game management areas, except on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River, are restricted as follows:

*a. Construction.* Any person may construct a stationary blind using only the natural vegetation found on the area. No trees or parts of trees other than willows may be cut for use in constructing a blind. No other man-made materials of any type may be used for building or providing access to a stationary blind.

*b. Use of blinds.* The use of any stationary blind that is constructed in violation of 51.6(1)*"a"* is prohibited.

*c. Ownership of blinds.* Any person who constructs or uses a stationary blind does not have any proprietary right-of-ownership to the blind.

**51.6(2)** *Portable blinds.* The construction and use of portable blinds on game management areas is restricted as follows:

*a. Construction.* A portable blind may be constructed of any natural or man-made material, as long as it is a self-contained unit capable of being readily moved from one site to another.

*b. Prohibited use.* Portable blinds shall be prohibited from one hour after sunset until midnight each day. Portable blinds that are built on, or are part of, a boat shall be considered as removed from an area when the boat and blind are tied up or moored at an approved access site. No boat shall be anchored away from shore and left unattended unless it is attached to a legal buoy.

*c. Exception—tree blinds.* Portable blinds placed in trees and used for purposes other than hunting waterfowl may be left on an area for a continuous period of time beginning seven days prior to the open season for hunting deer or turkey and ending seven days after the final day of that open season. Portable blinds left on game management areas do not guarantee the owner exclusive use of the blind when unattended, or exclusive use of the site.

*d. Protection of trees.* The use of any spike, nail, pin, or other object that is driven or screwed into a tree is prohibited.

**51.6(3)** *Use of decoys.* The use of decoys on any game management area, except on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River, is restricted as follows:

Decoys are prohibited from one hour after sunset until midnight each day, and decoys cannot be left unattended for over 30 minutes between midnight and one hour after sunset. Decoys are considered removed from an area when they are picked up and placed in a boat, vehicle or other container at an approved access site.

**51.6(4)** *Use of stationary blinds and waterfowl decoys on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River.* The use of stationary blinds for waterfowl hunting on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River is restricted as follows:

*a. Registration.* Hunters must register their blind site with the department of natural resources. Registration will be held annually in August. Registration is for a five-year period and requires payment of a fee of $100. The blind registration number must be visibly posted at the blind's entrance.

*b. Construction.* Blinds must have minimum dimensions of 4 feet by 8 feet and not greater than 500 square feet of floor space, not including a boat hide. The blind must be constructed of biodegradable materials, including nontreated dimensional lumber and nontreated plywood, unless the blind will be removed at the end of the waterfowl season. The use of metal or nylon fasteners, including but not limited to nails, screws, lag bolts, staples and ties, is allowed. Treated lumber, treated plywood, woven wire, chicken wire, cattle panels, tin and sheet metal, vinyl and plastic, and other nonbiodegradable materials are not allowed unless those materials or the entire blind is removed within three days after the close of the waterfowl season.

*c. Tree and brush removal.* The removal of brush or trees, except willows, surrounding any blind is prohibited. Willows and annual vegetation from the blind site may be used to cover the blind.

*d. Occupation of blinds.* Registrants must occupy their blind site by the opening of shooting time each day to claim the blind site for that day. After that time, unoccupied blind sites will be available to any other hunters. No person may claim or attempt to claim a blind that is legally occupied. No person may harass, in any manner, the occupants of a blind that is legally occupied.

*e. Locking blinds.* Locking of any blind is prohibited.

*f. Decoys.* Decoys may be left out for the entire waterfowl season but must be picked up and removed from the area within three days after the close of the waterfowl season. All jugs and other floating devices used to attract waterfowl are considered decoys.

**571—51.7(481A) Trapping on game management areas—marking trap sites.** The placement of traps, stakes, flags, markers, or any other item or device to be used for trapping furbearers, or to mark or otherwise claim any site for trapping furbearers on game management areas, is prohibited, except during the open season for taking furbearers other than coyote or raccoon.

**571—51.8(481A) Motor vehicle restrictions.** The use of motor vehicles on all game management areas is restricted.

**51.8(1)** *Roads and parking lots.* Except as otherwise provided in these rules, motor vehicles are prohibited on game management areas except on constructed and designated roads and parking lots.

**51.8(2)** *Use of motor vehicles by persons with a physical disability.* Persons with a physical disability may use certain motor vehicles to access specific areas in game management areas, according to restrictions set out in this subrule or otherwise provided for by the department's other power-driven mobility device (OPDMD) processes, in order to enjoy the same recreational opportunities available to others.

*a. Reasonable accommodations.* Each person with a physical disability or mobility impairment may request a reasonable accommodation to game management area staff in order to use an OPDMD within game management areas. Reasonable accommodation requests are considered on a case-by-case basis based on the facts and circumstances and considering need, protection of the permit holder, protection of other users, and protection of natural resources consistent with relevant state and federal law.

*b. Permits.* Persons with a physical disability or mobility impairment must have a permit issued by game management area staff in order to use a motor vehicle in specific, approved areas within game management areas. One companion may accompany the OPDMD user on the same vehicle if that vehicle is designed for more than one rider; otherwise, the companion must walk.

*c. Exclusive use.* The issuance of a permit does not imply that the permittee has exclusive or indiscriminate use of an area. Permittees shall take reasonable care not to unduly interfere with the use of the area by others.

*d. Prohibited acts.* Except as provided in 51.8(1), the use of a motor vehicle on any game management area by a person without a valid permit, or at any site not approved on a signed map, is prohibited. Permits and maps must be carried by the permittee at any time the permittee is using a motor vehicle on a game management area and must be exhibited to any department employee or law enforcement official upon request.

*e. Shooting from motor vehicle.* Except where prohibited by law, a person with a physical disability or mobility impairment meeting the conditions of this rule may shoot from a stationary motor vehicle.

**571—51.9(481A) Use of nontoxic shot on wildlife areas.** It shall be unlawful to hunt any migratory game bird or resident game or furbearers, except deer and turkeys, or target shoot with a shotgun while having in one's possession any shot other than nontoxic shot approved by the U.S. Fish and Wildlife Service on the following wildlife areas:

| County | Wildlife Area |
|---|---|
| Benton | Iowa River Corridor |
| Boone | Harrier Marsh |
| Buena Vista | All state and federal areas |
| Calhoun | South Twin Lake |
| Cerro Gordo | All state and federal areas |
| Clay | All state and federal areas except the Ocheyedan wildlife area target shooting range |
| Dickinson | All state and federal areas except the Spring Run target shooting range |
| Emmet | All state and federal areas |
| Franklin | All state and federal areas |
| Greene | All state and federal areas except Rippey Access and McMahon Access |
| Guthrie | McCord Pond, Lakin Slough and Bays Branch |
| Hamilton | Little Wall Lake, Gordon Marsh and Bauer Slough |
| Hancock | All state and federal areas |
| Humboldt | All state and federal areas |
| Iowa | Iowa River Corridor |
| Jasper | Chichaqua |
| Kossuth | All state and federal areas |
| Osceola | All state and federal areas |
| Palo Alto | All state and federal areas |
| Pocahontas | All state and federal areas except Kalsow Prairie |
| Polk | Paul Errington Marsh and Chichaqua |
| Sac | All state and federal areas except White Horse Access and Sac City Access |
| Story | Hendrickson Marsh and Colo Bog |
| Tama | Iowa River Corridor |
| Winnebago | All state and federal areas |
| Worth | All state and federal areas |
| Wright | All state and federal areas |

**571—51.10(481A) Rock climbing and rappelling.** Rock climbing and rappelling are prohibited at all game management areas except at Indian Bluffs and Pictured Rocks wildlife management areas, Boone Forks wildlife management area only on the abandoned railroad bridge piers., and those authorized by 571—subrule 61.10(12). No one shall place bolts, pitons, or similar anchoring devices at Indian Bluffs or Pictured Rocks unless authorized to do so by the wildlife biologist in charge of the area.

**571—51.11(481A) Camping restrictions.** Primitive camping is allowed on all game management areas for a period not to exceed 14 days of consecutive use, unless specific restrictions are posted on site. The department may prohibit or restrict camping at any game management area by the posting of signs stating the applicable restrictions.

These rules are intended to implement Iowa Code sections 456A.24(2) and 481A.6.

## ARC 8607C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to wildlife refuges and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 52, "Wildlife Refuges," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 481A.5, 481A.6, 481A.9 and 481A.39.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 481A.5, 481A.6, 481A.9 and 481A.39.

*Purpose and Summary*

Proposed Chapter 52 establishes wildlife refuges on state-owned lands and waters under the jurisdiction of the Department of Natural Resources (Department). Wildlife refuges are sanctuaries for wildlife and help preserve a species' biological balance pursuant to the provisions of Iowa Code sections 481A.6, 481A.35, and 481A.39; provide for the protection of public parks and public health, safety, and welfare; and effect sound wildlife management. This chapter has been edited consistent with Executive Order 10 (2023). Several long provisions identifying wildlife refuges have been removed and replaced with a more user-friendly list and visual map (with a fixed date) on the Department's website.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Monica Thelen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: monica.thelen@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at monica.thelen@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al monica.thelen@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at monica.thelen@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al monica.thelen@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 52 and adopt the following **new** chapter in lieu thereof:

CHAPTER 52
WILDLIFE REFUGES

**571—52.1(481A) Established.** State-owned lands and water under the jurisdiction of the department of natural resources may be established as wildlife refuges or sanctuaries for the purpose of preserving the

biological balance pursuant to the provisions of Iowa Code section 481A.39; for the protection of public parks and public health, safety and welfare; and to effect sound wildlife management.

**52.1(1)** *State parks, recreation areas and preserves.* State parks, recreation areas, and preserves listed on the department's website at www.iowadnr.gov/hunting/hunting-licenses-laws are established as wildlife refuges, except where posted as open to public hunting.

**52.1(2)** *Wildlife refuges.* Areas listed on the department's website at www.iowadnr.gov/hunting/hunting-licenses-laws are established as wildlife refuges where posted. It is unlawful to hunt, pursue, kill, trap, or take any wild animal, bird, or game on these areas at any time, and no one shall carry firearms thereon, except where and when specifically authorized by the department. It is unlawful to trespass in any manner on these areas, where posted, during the dates posted, both dates inclusive, except that department personnel, law enforcement officials, and other persons specifically authorized by the department may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter the area when specifically authorized by the department.

**52.1(3)** *Waterfowl refuges.* Areas listed on the department's website at www.iowadnr.gov/hunting/hunting-licenses-laws are established as waterfowl refuges where posted. It is unlawful to hunt ducks and geese on these areas, where posted, at any time during the year. It is unlawful to trespass in any manner on these areas, where posted, during the dates posted, both dates inclusive, except that department personnel, law enforcement officials, and other persons specifically authorized by the department may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter the area when specifically authorized by the department.

**52.1(4)** *Restricted areas.* It is unlawful to trespass in any manner on areas posted as restricted areas, except that department personnel, law enforcement officials, and other persons specifically authorized by the department may enter the area at any time in performance of their duties.

This rule is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.9 and 481A.39.

## ARC 8608C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to introduction and removal of plant life and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 54, "Restrictions on Introduction and Removal of Plant Life," and to adopt a new Chapter 54, "Restrictions on Removal of Plant Life" Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6), 456A.24(11), 461A.35 and 461A.41.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455A.5(6), 456A.24(11), 461A.35 and 461A.41.

*Purpose and Summary*

Proposed Chapter 54 governs the introduction and removal of aquatic plants in public waters and the harvest of other plants and fungi on public lands. More specifically, the chapter provides guidance on mushrooms and asparagus, fruit, American ginseng, and trees on public lands and aquatic plants under the jurisdiction of the Commission. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Randy Schultz
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: randy.schultz@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at randy.schultz@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al randy.schultz@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at randy.schultz@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al randy.schultz@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 54 and adopt the following **new** chapter in lieu thereof:

CHAPTER 54
RESTRICTIONS ON REMOVAL OF PLANT LIFE

**571—54.1(461A) Mushrooms and asparagus.** The public may harvest mushrooms and asparagus on lands under the jurisdiction of the natural resource commission during the hours the areas are open to the public.

**571—54.2(461A) Fruit.** Lands under the jurisdiction of the commission shall be open for the harvesting of all varieties of nuts, fruits, and berries unless signs are posted prohibiting such activity. Nut, fruit, and berry gathering shall be permitted only during the hours the areas are open to the public and shall not be permitted in state preserves unless allowed by the preserve's management plan.

**571—54.3(461A) American ginseng.** The harvesting of American ginseng (Panax quinquefolius) is subject to regulation by 571—Chapter 78.

**571—54.4(461A) Trees.** The commercial harvest of trees from lands under the jurisdiction of the commission shall be done in accordance with 561—8.5(17A,456A,461A) and 561—8.6(455B), according to the department's Forest Ecosystem Management Guide, approved by the commission on December 8, 1994, and hereby adopted by reference.

**571—54.5(461A) Aquatic plants.** This rule applies to the removal of plants in public waters as those waters are defined by rule 571—13.2(455A,461A,462A). For purposes of this rule, aquatic plants include vegetation that exists at or below the ordinary high-water line of a waterway.

**54.5(1)** *Permits.*

*a.* The department may issue permits for the removal of aquatic plants in public waters. To be considered for a permit under this rule, applicants shall use the department's application form for sovereign lands construction permits, as described in 571—13.9(455A,461A,462A), and complete all relevant information on that application form. Applicants shall also provide any additional information as may be necessary, as described in 571—13.10(455A,461A). The term of the permit shall be stated in the permit. Permits are nontransferable and are subject to reevaluation upon expiration. Permits may be issued for between one and five years.

*b.* Cities and counties in Iowa may use chemicals, including herbicides, to remove aquatic vegetation from water intake structures. Such cities and counties shall be required to obtain a permit under this rule unless operating under a vegetation management plan approved by the director. Permits under 567—Chapter 66 may be required separately. Additionally, a certified aquatic applicator is required to conduct all such use of chemicals, and any application is subject to the terms of a vegetation management plan approved by the director. Issuance of such permits and approval of a vegetation management plan is at the sole discretion of the department.

**54.5(2)** *Evaluation.* The department shall evaluate all permits sought under this rule in accordance with the evaluation criteria enumerated in 571—13.6(455A,461A,462A). In addition, the department shall consider the following criteria for aquatic plant removal:

*a.* The plants shall be removed by hand-cutting, hand-pulling, hand-raking or mechanical cutting only;

*b.* The plants shall be removed to establish a designated travel lane from a boat dock that has been permitted in accordance with 571—Chapter 16. Such travel lane shall not exceed a 15-foot width, and the placement of such lane shall be subject to the review and approval of the department. A travel lane allowed under this rule may be in the same location during the term of the permit, may be sited by the department to accommodate vegetation, and may not necessarily be the most direct path from the dock to the open water area; and

*c.* All plant material removed under the permit must be left in place or collected and composted on the land owned, leased or otherwise subject to use by the applicant that is adjacent to the removal area.

*d.* Unless otherwise provided by this rule, in no event may a person be allowed to apply chemicals including, without limitation, herbicides to remove aquatic plants from public waters. For nonpublic waters that meet certain designations in 567—Chapter 66, a person may be required to seek a permit under the rules established herein to use herbicides.

**54.5(3)** *Inspection requirements.* For the purpose of inspecting for compliance with permit conditions, the department shall have the right to enter the property attached to the public water at or near the place of removal. This inspection shall include, without limitation, identification of introduced species, a determination as to whether the travel lane is being maintained in accordance with the permit conditions, and whether removed plant material is left on site.

**54.5(4)** *Violations.* Persons in violation of this rule or who introduce aquatic plants to public waters are guilty of a simple misdemeanor as described by Iowa Code section 461A.57.

**54.5(5)** *Exceptions.*

*a.* A dock permittee whose dock meets the conditions of 571—16.4(461A,462A), 571—16.6(461A,462A), or 571—16.7(461A,462A) may remove aquatic vegetation without a permit if the aquatic vegetation:

(1) Creates a hazardous or detrimental condition in the boating area around the dock, or

(2) Covers a minimum of 75 percent of the boating area around the dock.

*b.* A dock permittee meeting one of the exceptions in 54.5(5)*"a"* must verify at inspection that the dock meets the criteria for a Class I, Class II or Class III dock permit and is limited to the following:

(1) Removal of vegetation in a 20-foot radius around the dock;

(2) Removal of a hazardous or detrimental condition when it interferes with safe boating passage and is located within the boating area around the dock;

(3) Creation of a 15-foot-wide boating pathway utilizing a direct route from the dock to open water;

(4) Adherence to the requirement to leave the vegetation in place or collect and compost it on land that is owned, leased or otherwise subject to use by the dock permittee and is adjacent to the removal area; and

(5) Removal of the vegetation by hand-cutting, hand-pulling, hand-raking or mechanical cutting devices, excluding automated plant control devices that disturb the bottom substrate.

These rules are intended to implement Iowa Code sections 456A.24, 461A.35, and 461A.42.

## ARC 8610C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to introduction and removal of plant life and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 55, "Nonpermanent Structures," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 461A.4.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 461A.4.

*Purpose and Summary*

Proposed Chapter 55 regulates the placement, visibility, and identification of ice fishing shelters on public waters. This chapter ensures increased safety on the ice, prevents accidents, and reduces the risk of shelters falling through melting ice. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 11, 2024. Comments should be directed to:

Matt Bruner
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: matt.bruner@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at matt.bruner@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al matt.bruner@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 31, 2025<br>11 a.m. | Via videoconference |
| February 11, 2025<br>11 a.m. | Via videoconference |

Persons who wish to attend a public hearing or make oral comments at the public hearing should contact Matt Bruner via email prior to the hearing to receive a conference call number.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at matt.bruner@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al matt.bruner@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 55 and adopt the following **new** chapter in lieu thereof:

CHAPTER 55
NONPERMANENT STRUCTURES

**571—55.1(461A) Ice fishing shelters.**

**55.1(1)** *General.* The following rules govern the placement, construction, or erection of ice fishing shelters placed on or over lands or waters under the jurisdiction of the natural resource commission.

**55.1(2)** *Removal.* Unattended ice fishing shelters and all material used in their construction shall be removed from on or over lands or waters under the jurisdiction of the natural resource commission before ice melt or March 1 of each year, whichever comes first.

**55.1(3)** *Owner information.* All unattended shelters left on the ice or state-owned land shall display the owner's assigned department number; or full name, street address and city in clearly visible three-inch-high block letters in a color contrasting to the background.

**55.1(4)** *Permit.* The owner information displayed in accordance with the provisions of this rule will act as the permit for the placement of ice fishing shelters on or over lands or waters under the jurisdiction of the natural resource commission.

**55.1(5)** *Accessibility.* Ice fishing shelters shall not be locked when in use.

**55.1(6)** *Reflectors.* All shelters on the ice after sunset shall display reflectors on all external sides in such a manner to enable them to reflect light at all times between the hours of sunset and sunrise.

**55.1(7)** *Shelter prohibited.* No person shall own or use any shelter placed on or over lands or waters under the jurisdiction of the natural resource commission in violation of any of the provisions of this rule.

This rule is intended to implement Iowa Code section 461A.4.

# ARC 8613C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to shooting sports grant program and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 56, "Shooting Sports Program Grants," and to adopt a new Chapter 56, "Shooting Sports Grant Program," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 456A.30 and 481A.17.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 456A.30 and 481A.17.

*Purpose and Summary*

Proposed Chapter 56 establishes a target shooting sports grant program to promote recreational target shooting sports. The purpose of the program is to introduce more Iowans to target shooting sports, promote existing target shooting programs, provide more target shooting facilities, and improve existing target shooting facilities. Chapter 56 also establishes a grant program and provides clear requirements to Iowans on how to apply for the grants.

Consistent with Executive Order 10 (2023) and the five-year rule review under Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, the chapter was revised to recognize that the two grant programs (the shooting sports development grant program and the shooting sports equipment grant program) follow the same process with just a few differences. Instead of separate rules for each grant program, the chapter was streamlined to recognize that the same process applies to both programs, with the few differences between the programs identified as appropriate.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 11, 2025. Comments should be directed to:

Megan Wisecup
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: megan.wisecup@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at megan.wisecup@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al megan.wisecup@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 31, 2025<br>11 a.m. | Via videoconference call |
| February 11, 2025<br>11 a.m. | Via videoconference call |

Persons who wish to make oral comments at a public hearing must submit a request to Megan Wisecup prior to the hearings to receive a Google Meet link and conference call number.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at megan.wisecup@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al megan.wisecup@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 56 and adopt the following **new** chapter in lieu thereof:

CHAPTER 56
SHOOTING SPORTS GRANT PROGRAM

**571—56.1(456A,481A) Purpose.** The purpose of the shooting sports development grant is to provide state cost sharing to eligible applicants for the creation of new shooting ranges and improvement of existing shooting ranges and facilities. The purpose of the shooting sports equipment grant is to provide state cost sharing to eligible applicants for the purchase or improvement of shooting range equipment. The department of natural resources shall administer this program.

**571—56.2(462A) Definitions.**

*"Commission"* means the same as defined in Iowa Code section 481A.1.

*"Committee"* means the review and selection committee established in 56.6(1).

*"Department"* means the same as defined in Iowa Code section 481A.1.

*"Director"* means the same as defined in Iowa Code section 481A.1.

**571—56.3(456A,481A) Eligibility requirements.** The applicant must submit an application and all supporting documents in a timely manner.

**56.3(1)** *Applicant requirements.* The entity submitting the application must meet the requirements of this subrule. The entity must:

*a.* Allow public access;

*b.* Be free of any unresolved close-out issues on prior grant projects;

*c.* Ensure that the shooting range will be located on property owned by the applicant or that the property is enrolled in a long-term lease of at least 25 years;

*d.* Have liability insurance unless not required by law; and

*e.* Make the range available for department hunter education courses, department hunter and recreational shooter recruitment efforts, department archery programs, and Scholastic Clay Target Program and Scholastic Action Shooting Program activities.

**56.3(2)** *Eligible entities.* The following entities are eligible to apply for development grants:

*a.* Iowa-based shooting sports organizations.

*b.* Iowa primary and secondary public and private schools.

*c.* Iowa public and private colleges and universities.

*d.* Iowa nonprofit corporations.

*e.* Public ranges not owned by the state.

*f.* City park and recreation agencies, or county governments.

**56.3(3)** *Ineligible entities.* Privately owned for-profit ranges and state-owned-and-operated public ranges are not eligible for development grants.

**571—56.4(456A,481A) Maximum grant amounts.** The following are the maximum grant request amounts established for the development and equipment grant programs:

**56.4(1)** The maximum grant request amount for development grants is $50,000 per project with at least a 25 percent match as described in 56.5(3).

**56.4(2)** There is no maximum grant request amount for equipment grants, but a 50 percent match is required as described in 56.5(3).

**571—56.5(456A,481A) Grant application submissions.**

**56.5(1)** *Form of application.* Grant applications shall be on forms provided by the department and shall follow guidelines provided by the department.

**56.5(2)** *Application deadline.* Grant applications (one original and five copies) must be received by the department by February 1.

**56.5(3)** *Match and local funding.* Applicants are expected to finance 25 percent of development grant projects or 50 percent of equipment grant projects, either through cash, donated materials and labor, or another preapproved in-kind match. An applicant shall certify that it has committed its match before the 90 percent up-front grant payment will be made pursuant to 571—56.11(456A,481A). A letter of intent signed by the mayor, the chairperson of the board of supervisors, the chairperson of the county conservation board, or the CEO or chief financial officer of an agency, organization, or corporation and submitted with the application showing intent to include matching funds in finalized budgets will be

accepted as proof of commitment. Applicants must forward proof of local funding to the department by June 1. If proof of local funding is not submitted, the application will be removed from the list of approved projects.

**56.5(4)** *Competitive bids.* Any development or equipment grant expense of more than $15,000 that is funded by grant dollars must be purchased through a competitive bid or quotation process. Records of such processes must be submitted with close-out documentation. Items purchased by any other means are not reimbursable under the grant.

**571—56.6(456A,481A) Grant project review and selection.**

**56.6(1)** *Review and selection committee.* The review and selection committee shall be comprised of six members appointed by the director. The committee shall review and evaluate grant applications and determine final project approval to be recommended to the commission. Three members shall be department staff, and three members shall be from the public/private sector and shall be appointed based upon their expertise and interest in one of the three shooting sports of rifle/handgun, shotgun, and archery.

**56.6(2)** *Conflict of interest.* If a grant project is submitted to the committee by an entity with a member or employee on the committee, that committee member shall not participate in discussion and shall not vote on that particular project.

**56.6(3)** *Consideration withheld.* The committee will not consider any application that, on the date of the selection session, is not complete or for which additional pertinent information has been requested and not received. The committee will not consider any application from an entity that, on the date of the selection session, has not demonstrated compliance with or does not have a reasonable plan for achieving compliance with the requirements of Iowa Code section 657.9.

**56.6(4)** *Application rating system.* The committee will apply a numerical rating system to each grant application that is considered for funding. The criteria and maximum number of points are as follows:

*a.* Overall program strength and feasibility—30 points.
*b.* Education—30 points.
*c.* Proximity to other public ranges—25 points.
*d.* Range capacity—15 points.
*e.* Project type—10 points.

**56.6(5)** *Rating of scores for tiebreakers.* If two or more projects receive the same score, the committee shall use the points awarded for overall program strength and feasibility (56.6(4)*"a"*) to determine which project has a higher rank.

**571—56.7(456A,481A) Commission review.** The commission will review and act upon all committee recommendations at the next scheduled commission meeting. The commission may reject any grant application selected for funding. Applicants shall be notified of their grant status in writing within 30 days after the commission meeting.

**571—56.8(456A,481A) Appeals.** Unfunded applicants may appeal the commission's decision to the director within five days of receipt of the commission's decision. A letter of appeal shall be sent to the director of the department. Before making a final decision as to the grant award, the director shall review the application, committee score sheets and commission minutes.

**571—56.9(456A,481A) Grant amendments.** Grant amendments may be made upon request by the applicant, subject to the availability of funds and approval by the director or the director's designee.

**571—56.10(456A,481A) Timely commencement of projects.** Grant recipients are expected to carry out their projects in an expeditious manner. Projects shall be initiated no later than two months following their approval by the committee and shall be completed no later than June 30 of the year following the grant award. Failure to initiate projects in a timely manner may be cause for termination of the agreement and cancellation of the grant.

**571—56.11(456A,481A) Payments.** Ninety percent of approved grant funding may be paid to project grantees when requested, but no earlier than the start-up date of the project. Ten percent of the grant total shall be withheld by the department, pending successful completion of the project and final site inspection, or until any irregularities discovered as a result of the final site inspection have been resolved.

**56.11(1)** *Expense documentation, balance payment or reimbursement.* Documentation of expenditures eligible for prepayment or reimbursement shall be submitted on forms provided by the department and shall be accompanied by applicable receipts showing evidence that the expense is necessary and reasonably related to the creation of a new shooting range or to the improvement of an existing shooting range or facility. The grantee shall sign a certification stating that all expenses for which reimbursement is requested are related to the project and have been paid by the grantee prior to requesting reimbursement. The grantee shall provide copies of evidence or documents to verify that expenses were made.

**56.11(2)** *Reasonable costs.* For purposes of this rule, expenses that are necessary and reasonably related to the creation of a new shooting range or to the improvement of an existing shooting range or facility include, without limitation: (1) costs associated with the lease or acquisition of real property used for the project; (2) personal property acquired for use in the project; (3) management and maintenance costs associated with the project; and (4) if applicable, costs of the actual equipment approved as the funded project and associated delivery costs, as well as the management and maintenance costs associated with such equipment. However, in no event shall funds awarded under this program be used to cover costs associated with employment or personnel costs of the grant recipient, including salaries and benefits. Those costs, however, may be used to meet the match requirement described in 56.5(3).

**571—56.12(456A,481A) Recordkeeping and retention.** Grant recipients shall keep adequate records relating to the administration of the project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office for a period of three years following the close of the grant. All records shall be retained in accordance with state laws.

**56.12(1)** *Definition of records.* Records include but are not necessarily limited to invoices, canceled checks, bank statements, and bid and quote documentation.

**56.12(2)** *Annual reports.* Grant recipients shall submit on forms provided by the department an annual report for five years following the close of the grant.

**56.12(3)** *Final performance reports.* At the conclusion of the project agreement, grant recipients shall submit on forms provided by the department a final performance report.

**571—56.13(456A,481A) Project life and recovery of grant funds.** Applicants shall state an expected project life of at least ten years, which will become part of the project agreement. Should the funded project cease to be used for public recreation before the end of the stated project life, the director may seek to recover the remaining value of the grant award.

**571—56.14(456A,481A) Unlawful use of grant funds.** Unlawful use of grant funds includes whenever any property, real or personal, acquired or developed with grant funds under this program passes from the control of the grantee or is used for purposes other than the approved project.

**571—56.15(456A,481A) Remedy.** Grant funds used without authorization for purposes other than the approved project, or unlawfully, must be returned to the department for deposit in the account supporting this program. In the case of diversion of personal property, the grantee shall remit to the department funds in the amount of the original purchase price of the property. The grantee shall have a period of three months after notification from the department in which to correct the unlawful use of funds. The remedy provided in this rule is in addition to others provided by law.

**571—56.16(456A,481A) Ineligibility.** Whenever the director determines that a grantee is in violation of these rules, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the director.

These rules are intended to implement Iowa Code sections 456A.30 and 481A.17.

## ARC 8585C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to state parks and recreation areas and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 61, "State Parks, Recreation Areas, and State Forest Camping," and rescind Chapter 63, "Keg Beer Rules," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 461A.3 and 461A.35.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 461A.3 and 461A.35.

*Purpose and Summary*

Chapter 63 provides guidance on consumption of beer dispensed from a keg in state parks and recreation areas, and designated state forest campgrounds. In compliance with Executive Order 10 (2023), Chapter 63 on gatherings involving keg beer is proposed to be rescinded due to outdated and unnecessary language. This chapter is unnecessarily burdensome in light of other existing processes for gatherings within state parks, recreation areas, and designated state forests.

However, one rule from Chapter 63 is proposed to be repromulgated in Chapter 61, and an existing reference in Chapter 61 to Chapter 63 is proposed to be removed. Chapter 61 provides the citizens of Iowa and other visitors who use state parks, recreation areas, and state forest campgrounds with guidance for using these areas. Additionally, during review it was determined that certain definitions needed to be updated. The phrase "Boy Scouts of America" is no longer accurate and has been changed to "Scouts of America." The terms "recreation areas," "state parks," and "state park managed by another governmental entity" have also been modified to add sentences that were inadvertently removed during a prior rulemaking.

This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Jessica Manken
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jessica.manken@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jessica.manken@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jessica.manken@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing. The request for the hearing link/conference call number shall be submitted to Ms. Manken no later than 8 a.m. on January 29 or February 6.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at jessica.manken@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jessica.manken@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend rule **571—61.1(461A)**, definitions of "Chaperoned, organized youth group," "Recreation areas," "State park" and "State park managed by another governmental entity," as follows:

*"Chaperoned, organized youth group"* means a group of persons 17 years of age and under~~,~~ ~~which~~ that is sponsored by and accompanied by adult representatives of a formal organization, including~~,~~ but not limited to~~,~~ the ~~Boy~~ Scouts of America or Girl Scouts of America, a church, or a Young Men's or Young Women's Christian Association. "Chaperoned, organized youth group" does not include family members of a formal organization.

*"Recreation areas"* means the following areas that have been designated by action of the commission:

| Area | County |
|---|---|
| Badger Creek Recreation Area | Madison |
| Brushy Creek Recreation Area | Webster |
| Clair Wilson Park | Dickinson |
| Emerson Bay and Lighthouse | Dickinson |
| Fairport Recreation Area | Muscatine |
| Lower Gar Access | Dickinson |
| Marble Beach | Dickinson |
| Mines of Spain Recreation Area | Dubuque |
| Pilot Knob State Recreation Area | Winnebago |
| Pleasant Creek Recreation Area | Linn |
| Templar Park | Dickinson |
| Volga River Recreation Area | Fayette |
| Wilson Island Recreation Area | Pottawattamie |

These areas are managed for multiple uses, including public hunting, and are governed by rules established in this chapter as well as in 571—Chapters 51 and 105.

*"State park"* means areas managed by the state and designated by action of the commission and listed on the department's website at www.iowadnr.gov. Use and management of these areas are governed by Iowa Code chapter 461A and by other restrictions prescribed on area signs pursuant to Iowa Code section 461A.44.

*"State park managed by another governmental entity"* means areas designated by action of the commission and listed on the department's website at www.iowadnr.gov. Use and management of these areas are governed by Iowa Code chapter 461A, by this chapter, and by rules adopted by the managing entity.

ITEM 2. Amend paragraph **61.8(2)"a"** as follows:

*a.* Renters shall pay in full a damage deposit equal to the weekend daily or nightly rental fee for the facility or $50, whichever is greater, by the established deadline for the facility. ~~If a gathering with keg beer takes place in a lodge or open shelter with kitchenette, the damage deposit shall be waived in lieu of a keg damage deposit as specified in 571—subrule 63.5(3) if the keg damage deposit is greater than the lodge or open shelter with kitchenette damage deposit.~~

ITEM 3. Adopt the following **new** subrule 61.10(15):

**61.10(15)** *Prohibited areas for kegs.* Gatherings at which keg beer is served shall not be conducted in beach areas, campgrounds, or parking areas or in areas immediately adjacent to those areas. Kegs are permitted in day-use lodges and open-air shelters with a kitchenette.

ITEM 4. Rescind and reserve **571—Chapter 63**.

**ARC 8586C**

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to metal detectors and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 64, "Metal Detectors Use in State Areas," and to adopt a new Chapter 64, "Metal Detector Use in State Areas," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 461A.35.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 461A.35.

*Purpose and Summary*

Proposed Chapter 64 regulates the use of metal detectors in state areas. This chapter allows members of the public to engage in metal detecting in areas that will be least disruptive to the natural environment and to other members of the public. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Jessica Manken
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jessica.manken@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jessica.manken@dnr.iowa.gov.

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing. The request for the hearing link/conference call number shall be submitted to Ms. Manken no later than 8 a.m. on January 29 or February 6.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jessica.manken@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 64 and adopt the following **new** chapter in lieu thereof:

CHAPTER 64
METAL DETECTOR USE IN STATE AREAS

**571—64.1(461A) Definitions.**

*"Beach"* or *"beach area"* means that portion of state parks or recreation areas designated for swimming activity including the sand, a 200-foot buffer of land surrounding the sand or a designated area that is fenced in, and the water area contiguous to the beach as marked by swim buoys or swim lines.

*"Metal detector"* means a portable electronic device carried by an individual used only for detecting metal above or below the surface of the ground.

**571—64.2(461A) Use areas.** Metal detector use in state parks and recreation areas is prohibited except in the following areas:

**64.2(1)** *Designated beach areas.* From May 22 to September 7 each year, metal detectors may be used on designated beach areas from 4 a.m. to 11 a.m. each day. From September 8 to May 21 each year, metal detectors may be used on designated beach areas during the hours established in 571—subrule 61.10(10).

**64.2(2)** *Drained lakes.* When an artificial lake has been drained or the water level lowered for any reason, metal detector use may be allowed during the hours established in 571—subrule 61.10(10) only after the lake bed has been thoroughly surveyed for archaeological resources and a survey report has been completed and approved by the state historic preservation office.

**571—64.3(461A) Archaeological/scientific studies.** When the use of a metal detector may support an archaeological or scientific study, a sovereign lands construction permit may be issued. Review of all sovereign lands construction permit applications shall be coordinated with the state historic preservation office.

**571—64.4(461A) Found items.** All items found are subject to the provisions of Iowa Code chapter 556F.

**571—64.5(461A) Lost item search by owner.** An owner of lost property may use a metal detector to search for that item in an area where such use is prohibited under the following conditions:

**64.5(1)** Written approval has been granted by the director of the department of natural resources or designee.

**64.5(2)** The search is confined to a reasonable area within the park or recreation area.

**64.5(3)** The search is limited to 12 hours or less in length.

**571—64.6(461A) Tools used.** Tools used to recover items detected beneath the ground level shall be limited to the following:

**64.6(1)** Probes not over 12 inches long, 1-inch wide, and ¼-inch thick.

**64.6(2)** A sand scoop or sieve not over ten inches in diameter.

**571—64.7(461A) Digging limitations and restoration.**

**64.7(1)** In recovering items located below the ground, a person shall not unduly disturb the earth and shall limit all excavations to less than three inches square when using probes and ten inches in diameter when using sand scoops or sieves.

**64.7(2)** When digging is done to search for an object, the metal detector operator shall restore the disturbed area as nearly as possible to its original condition.

**571—64.8(461A) Disposal of litter.** All litter that is recovered shall be disposed of in approved trash receptacles.

These rules are intended to implement Iowa Code section 461A.35.

## ARC 8587C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to Saylorville multiuse trail and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 66, "Saylorville Multiuse Trail," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 461A.35, 481A.5 and 481A.6.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 461A.35, 481A.5 and 481A.6.

*Purpose and Summary*

Proposed Chapter 66 establishes the rules regarding the Saylorville Multiuse Trail. The chapter identifies hunting, trapping, and area-use restrictions to decrease instances of noncompliance and to ensure the trail and surrounding areas are used in an authorized manner. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Kim Bohlen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: kim.bohlen@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at kim.bohlen@dnr.iowa.gov.

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |

| | |
|---|---|
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing. The request for the hearing link/conference call number shall be submitted to Ms. Bohlen no later than 8 a.m. on January 29 or February 6.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 66 and adopt the following **new** chapter in lieu thereof:

CHAPTER 66
SAYLORVILLE MULTIUSE TRAIL

**571—66.1(461A,481A) Applicability.** This chapter governs activity in the following described areas, all in Polk County, Iowa:

**66.1(1)** The parking area and trailhead facility located adjacent to the Des Moines River on the north side of Kempton Road (NW 66th Street) locally known as Sycamore Access.

**66.1(2)** All federally owned property on the east side of the Des Moines River from Sycamore Access south to the north corporate limits of the city of Des Moines. This area is bounded on the west by the ordinary high water line of the Des Moines River and on the east by Morningstar Drive and NW 26th Street.

**66.1(3)** Federally owned property in Sections 15 and 22, Township 79N, Range 24W, located east of Morningstar Drive and north of the north corporate limits of the city of Des Moines.

**571—66.2(456A,481A) Wildlife refuge.** The following described areas are established as game refuges and shall be posted with signs designating the boundaries other than the river.

**66.2(1)** An area along and adjacent to the surfaced multiuse trail from the ordinary high water line of the Des Moines River to a point 50 yards east of the east edge of that trail extending from Sycamore Access to the north boundary of the right-of-way of Interstates 80-35.

**66.2(2)** All federally owned land on the east side of the Des Moines River from the north right-of-way boundary of Interstates 80-35 south to the north corporate limits of the city of Des Moines.

**571—66.3(481A) Hunting and trapping restrictions.**

**66.3(1)** *Hunting.* Hunting in those areas not designated as wildlife refuge shall be confined to the use of shotguns shooting shot only and use of bow and arrow. The use of any other method is prohibited. All laws and regulations governing hunting and trapping seasons and limits on possession are applicable on these areas.

**66.3(2)** *Trapping.*

*a.* The use of snares is prohibited on the area covered by this rule.

*b.* Any traps used on the area, including foothold, leghold, body gripping or conibear type must be set completely underwater.

**571—66.4(461A) Area use restrictions.**

**66.4(1)** The use of motor vehicles and snowmobiles is prohibited on the hard-surfaced multiuse trail except where signs authorize such use.

**66.4(2)** Snowmobile use is restricted to the area posted with signs permitting their use.

**66.4(3)** The use of equine animals is restricted to areas other than the hard-surfaced multiuse trail.

**66.4(4)** Permits may be issued by the director for special events on specific dates utilizing golf carts or similar transportation along the trail for elderly or handicapped persons.

These rules are intended to implement Iowa Code sections 461A.35, 481A.5 and 481A.6.

# ARC 8588C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to recreation trails and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 67, "Development and Management of Recreation Trails on State Forests, Parks, Preserves and Recreation Areas," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5, 456A.24 and 461A.35.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 455A.5, 456A.24 and 461A.35.

*Purpose and Summary*

Proposed Chapter 67 identifies the guidelines for the development and proper management of recreational trails in state forests, parks, preserves and recreational areas. This chapter ensures that trails are designated, constructed, and used in a safe and compliant manner.

Consistent with Executive Order 10 (2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were provisions in this chapter that were outdated or repetitive to statute. These provisions have been removed from the proposed version.

In addition, the proposed changes to this chapter remove the process to request an equestrian hunting permit. This permit has not been requested by the public in the last decade, and the existing special events permit process provides similar benefits on certain state land.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Kim Bohlen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: kim.bohlen@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at kim.bohlen@dnr.iowa.gov.

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*Public Hearing*

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| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference call |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing. The request for the hearing link/conference call number shall be submitted to Ms. Bohlen no later than 8 a.m. on January 29 or February 6.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at kim.bohlen@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al kim.bohlen@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 67 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 67
## DEVELOPMENT AND MANAGEMENT OF RECREATION TRAILS ON STATE FORESTS, PARKS, PRESERVES AND RECREATION AREAS

**571—67.1(456A,461A) Applicability.** This chapter is applicable to all state-owned parks, recreation areas, forests and preserves under the jurisdiction of the department of natural resources, except those areas under management by a local government entity.

**571—67.2(456A,461A) Definitions.**

*"All-terrain vehicle"* means the same as defined in Iowa Code section 321I.1.

*"Area"* means any park, recreation area, forest, or preserve under the jurisdiction of the department of natural resources.

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

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

*"Division administrator"* means the division administrator of the department division responsible for managing the area in question.

*"Equestrian"* means a horse rider or a person who is horseback riding.

*"Horse"* means any equine animal, including horses, mules, burros, donkeys, and all llamas or alpaca-like animals.

*"Snowmobile"* means the same as defined in Iowa Code section 321G.1.

**571—67.3(456A,461A) Purpose.** The purpose of this chapter is to establish guidelines for developing and properly managing the use of recreation trails on state parks, recreation areas, forests and preserves.

**571—67.4(456A,461A) Establishment of trails.** Establishment and designation of recreation trails shall not be undertaken until after a plan showing the basic design, location and designated use for any such trail has been prepared. The director shall approve all trail plans for areas, and trails shall follow only those routes designated on the plan.

**571—67.5(456A,461A) Designation of recreation trails.** All trails shall be designated by the department. Designation shall include an assignment of the use or uses for which each trail is intended. Uses shall be classified as follows: foot traffic, horseback riding, snowmobiling, cross-country skiing, bicycling and multiple-use trails. The intended uses of trails shall be described on signs at appropriate locations within the area, in informational brochures about the area, or on posted notice at the area's headquarters.

**571—67.6(456A,461A) Guidelines for trail location.** No new trail shall be designated or constructed:

1. On any slope where erosion will occur unless measures are taken to permanently control erosion. The measures may include but not be limited to water bars, steps, vegetative or crushed stone surfacing and terraces;
2. Through rare or sensitive plant communities, except for trails intended for interpretive purposes and designed for foot traffic only;
3. In locations where wildlife management practices are being carried out that would be negatively affected by trail activity;
4. To pass over archaeological sites or adversely affect known archaeological sites eligible for the National Register of Historic Places or known sites not yet evaluated;
5. Where past trail use has resulted in erosion or other environmental damage that would be exacerbated by continued trail use;
6. So as to allow travel through a river, stream or wetland or waterway except at designated crossings.

**571—67.7(456A,461A) Control of trail use.**

**67.7(1)** Use of trails may be temporarily limited or suspended by the area manager when use or any natural event has created conditions that will cause the trail to degrade if further use is allowed. Guidelines may include but are not limited to the following considerations:

*a.* Precipitation events (e.g., rain, thaws, or flooding that, based on the soils and topography, would present a problem for resource protection or public safety if the trail were to remain open).

*b.* Special events (e.g., events that are large, involve concessionaires, or would otherwise require a special event permit as described in 571—subrule 61.7(16) and would interfere with the safety or enjoyment of other trail users).

*c.* Ecosystem management activities (e.g., scheduled harvests, timber stand improvement, planting, or controlled burns that would temporarily disrupt trail use).

*d.* Trail construction or repair.

*e.* Off-trail use (e.g., vehicle or animal use that has created damage off the actual trail that affects the trail and needs to be corrected).

*f.* Conflicts between trail users.

*g.* Trail damage/erosion (e.g., overuse, use at the wrong time, or unauthorized vehicle use).

**67.7(2)** The area manager shall limit or suspend use of a trail by posting signs at appropriate trailheads and by posting notices in conspicuous locations within the area.

**67.7(3)** Upon suspension or limitation of trail use, the area manager shall take prompt and reasonable steps to correct the conditions that led to suspension or limitation. When, in the area manager's judgment, such conditions have been corrected, normal use of the trail may resume.

**67.7(4)** No trail shall be permanently closed to public use without approval of the director. Recommendations for permanent closure shall be made to the division administrator by the area manager. The division administrator shall prepare a report documenting reasons for closure and provide the report and recommendation to the director. At the request of six or more persons, the director shall direct that a public informational meeting be held in the vicinity of the area to inform the public of the planned closure and to receive public comments. A summary of the public comments made at the meeting shall be presented to the natural resource commission for review. The commission may uphold or reverse the director's decision and shall consider both public comments and staff recommendations before taking action.

**571—67.8(456A,461A) Use of designated trails.**

**67.8(1)** Bicyclists, equestrians and snowmobile operators shall use only trails officially designated and properly signed for such uses.

**67.8(2)** Unless otherwise prohibited by law, the use of motorized all-terrain vehicles shall be limited to roadways on all areas except as necessary to carry on authorized activities such as area

management, agricultural activity, search and rescue operations and special events authorized by the department.

These rules are intended to implement Iowa Code sections 455A.5, 456A.24 and 461A.35.

## ARC 8589C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to timber buyers and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 72, "Timber Buyers," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 456A.36(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 456A.36.

*Purpose and Summary*

Proposed Chapter 72 outlines the procedures by which a timber buyer can become bonded in order to engage in the business of buying timber in Iowa. The bond amount is available to be claimed by the seller of timber in a situation in which a timber buyer cuts and takes possession of the timber but fails to pay for it. In other words, this chapter ensures compliance with the law and provides protection for timber owners. This chapter has been reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Jeff Goerndt
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200

Des Moines, Iowa 50321
Email: jeff.goerndt@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jeff.goerndt@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jeff.goerndt@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 29, 2025<br>1 to 2 p.m. | Via videoconference call |
| February 5, 2025<br>1 to 2 p.m. | Via videoconference call |

Persons wishing to attend a hearing may contact Jeff Goerndt for the hearing link.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 72 and adopt the following **new** chapter in lieu thereof:

CHAPTER 72
TIMBER BUYERS

**571—72.1(456A) Definitions.**

*"Collateral bond"* means a bond signed by the timber buyer as principal and accompanied by a bank certificate of deposit.

*"Corporate surety bond"* means a bond signed by the timber buyer as principal and a corporate surety authorized to engage in the business of executing surety bonds within Iowa.

*"Department"* means the department of natural resources.

*"Director"* means the director of the department of natural resources or the administrator of the division of forests and forestry who has been designated to act for the director.

*"Proof of ownership"* means a timber sale contract; bill of sale or bill of lading showing owner's name, address, and telephone number, point of origin, and destination.

*"The Act"* means Iowa Code section 456A.36.

*"Timber buyer"* means a person engaged in the business of buying timber for sawing into lumber for processing or resale, but does not include a person who occasionally purchases timber for sawing or processing for the person's own use and not for resale. "Timber buyer" includes a person who contracts with a timber grower on a shared-profit basis to harvest timber from the grower's land.

*"Timber buyer surety bond"* means a bond signed by the timber buyer as principal, bonding the timber buyer to the commission for the performance under the Act.

**571—72.2(456A) Applicability of rules.**

**72.2(1)** *Duty to file.*

*a. General.* On and after January 1, 1981, no person shall engage in the business of timber buying in the state of Iowa unless the timber buyer shall have on file with the department a bond and application for bond approval in compliance with these rules.

*b. Timber buying.* All persons engaged in the business of timber buying shall file prior to engaging in business as a timber buyer, a bond complying with these rules and an application for bond approval as specified in 571—72.2(456A) and 571—72.3(456A). Should the department determine that the bond or application, although in substantial compliance, is insufficient to comply with the law, it shall provide notice by certified mail, return receipt requested. The timber buyer will be given 20 days to correct the insufficiency. If not corrected within that time period, or within an additional time period approved by the director, the timber buyer shall be deemed to be in violation of the Act and of these rules. If the department determines that the bond or application does not substantially comply with the Act or these rules, it shall immediately notify the timber buyer that the filing does not satisfy the statutory requirements for filing a bond or surety and that the buyer may not lawfully engage in the business of timber buying until a bond has been approved by the department.

*c. Date of filing.* For purposes of this rule, the date of filing shall be the date on which the materials are received by the department or the date postmarked, if mailed.

**72.2(2)** *Filing of required forms.*

*a.* Application for Bond Approval, Form NRC72-1.

(1) Form NRC72-1 shall be filed as a single copy with the department.

(2) Form NRC72-1 shall be filed prior to buying timber from timber growers in Iowa.

(3) Form NRC72-1 shall be refiled annually by January 1 of each calendar year the timber buyer will be engaged in the business of buying timber from timber growers in Iowa.

(4) The timber buyer shall report the amount of dollars paid to timber growers in one of the following ways: (1) for the timber buyer's most recently completed fiscal or business year, or (2) for the 12 months preceding the filing of the application for bond approval and bond.

(5) Forms are available from the department.

*b.* Corporate Surety Bond, Form NRC72-2.

(1) Form NRC72-2 shall be filed as a single copy with the department at the same time as the application for bond approval unless a collateral bond and bank certificate of deposit are submitted.

(2) Form NRC72-2 shall be filed prior to buying timber from timber growers in Iowa.

(3) Form NRC72-2 shall be in the amount determined by the timber buyer and reported to the department by the timber buyer on Form NRC72-1, Application for Bond Approval.

(4) Forms are available from the department.

*c.* Timber Buyer Surety Bond, Form NRC72-3.

(1) Form NRC72-3 shall be filed as a single copy at the same time as the collateral assignment of certificate of deposit, Form NRC72-4, and the bank certificate of deposit, with the department.

(2) Form NRC72-3 shall be filed prior to buying timber from timber growers in Iowa.

(3) Forms are available from the department.

*d.* Collateral Assignment of Certificate of Deposit, Form NRC72-4.

(1) Form NRC72-4 shall be filed as a single copy with the department unless a surety bond is submitted.

(2) Form NRC72-4 shall be filed prior to buying timber from timber growers in Iowa.

(3) Form NRC72-4 shall be accompanied by a bank certificate of deposit in the amount determined by the timber buyer and reported to the department by the timber buyer on the Application for Bond Approval, Form NRC72-1, and by Timber Buyer Surety Bond, Form NRC72-3.

(4) Forms are available from the department.

*e.* Verified Application for Release of Bond and Certificate of Deposit, Form NRC72-5.

(1) Form NRC72-5 shall be filed with the department by timber buyers who wish the release of their certificate of deposit being held by the department in lieu of a surety bond because that person wishes to replace it with a surety bond or because that person no longer wishes to stay in the timber buying business in Iowa.

(2) Forms are available from the department.

*f.* All filings must be on approved department forms.

**72.2(3)** *Terms and conditions of bank certificate of deposit and collateral bond.* Collateral bonds shall be subject to the following conditions:

*a.* The department shall obtain possession of and keep in custody all collateral deposited by the timber buyer, until released or replaced.

*b.* Certificates of deposit shall be assigned to the department, in writing, and upon the books of the bank issuing such certificates.

*c.* Banks issuing these certificates shall waive all rights of setoff or liens that they have or might have against those certificates.

*d.* Certificates of deposit shall be automatically renewed unless the director approves release of the funds in writing.

*e.* The funds shall be made payable upon demand to the director, subject to the provisions of the Act, for the use and benefit of the people of the state and for the use and benefit of a timber grower whose timber has been cut by the timber buyer or the timber buyer's agents, and who has not been paid.

*f.* The timber buyer may, upon 60 days' written notice to the department, provide a surety bond in lieu of the certificate of deposit and collateral bond.

*g.* The certificate of deposit and collateral bond will be kept in custody by the department for one year beyond the date of presentation by the timber buyer of a surety bond in lieu of certificate of deposit and collateral bond or upon written notice to the department of termination of the business of buying timber in Iowa.

**72.2(4)** *Determination of the bond amount.*

*a.* The standard applied by the department in determining the amount of the bond shall be:

(1) The bond shall be in the principal amount of 10 percent of the total amount paid to timber growers during the preceding year, plus 10 percent of the total amount due or delinquent and unpaid to timber growers at the end of the preceding year, and 10 percent of the market value of growers' share of timber harvested during the previous year. However, the total amount of the bond shall be not less than $25,000 and no more than $50,000.

(2) In the case of a timber buyer not previously engaged in business as a timber buyer, the amount of the bond shall be based on the estimated dollar amount to be paid by the timber buyer to timber growers for timber purchased during the next succeeding year.

(3) In determining the amount of the bond, the department shall consider only amounts paid or estimated to be paid, to Iowa timber growers.

*b.* The timber buyer is responsible for maintaining the proper amount of bond to comply with the Act.

*c.* Change in bond amount. If the amount of the bond, as determined under this section, has changed from that of the existing bond on file, the timber buyer shall enclose a rider to the bond or an additional certificate of deposit as necessary to increase the amount of bonding to meet the required amount for the new year or may request approval of a substituted bond or certificate of deposit if the amount required for future bonding is reduced.

**72.2(5)** *Release of collateral bond and certificate of deposit.* The timber buyer, or any person authorized to act on behalf of the timber buyer, may file Form NRC72-5, Verified Application for

Release of Bond and Certificate of Deposit with the department for release of the security and the department will respond as follows:

*a.* If the timber buyer replaces the certificate of deposit and collateral assignment with a surety bond, the department will release the certificate of deposit and collateral assignment to the timber buyer or the timber buyer's authorized representative one year after the timber buyer files a surety bond, if no known claims on the collateral bond exist.

*b.* If the timber buyer no longer wishes to stay in the timber buying business in Iowa, the department will hold the verified application for 12 months from the date of receipt and after that time release the certificate of deposit and collateral bond to the timber buyer or the timber buyer's authorized representative by certified mail or in person, if no known claims on the collateral bond exist.

*c.* Should any person be adversely affected by the release of the collateral bond, that person may file a written request with the department to obtain notice of any application by the timber buyer for release of collateral bond. The request shall give name, mailing address, and the reason why that party would be affected.

**72.2(6)** *Use of bond proceeds when the bond is forfeited.* If the department realizes more than the amount of the liability from the security, after deducting expenses including all costs and expenses of the state in forfeiture proceedings and incurred by the state in converting the security into money, the department shall pay the excess as follows:

*a.* Certificate of deposit excess will be paid to the timber buyer who furnished the security.

*b.* Surety bond excess will be paid to the corporate surety.

**72.2(7)** *Requests for confidential treatment.*

*a.* If any person filing a document with the director for use in carrying out the responsibilities under the Act relating to timber buyer bonding claims that some or all the information contained in the document is exempted from disclosure by Iowa Code chapter 22, or is otherwise exempt by law from public disclosure, and if the person requests the director not to disclose this information, the person shall file together with the document a second copy of the document from which has been deleted the information for which confidential treatment is claimed. The person shall conspicuously indicate on the face of the original document that it is confidential information and shall file a statement specifying the justification of nondisclosure of the information for which confidential treatment is claimed. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the director may assume that there is no objection to public disclosure of the document in its entirety.

*b.* The director retains the right to make a determination with regard to any claim of confidentiality. Notice of the decision by the director to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days if possible prior to its public disclosure, or placement in files open to the public.

**571—72.3(456A) Forms.** The forms required for use in complying with this chapter and Iowa Code section 456A.36 shall be available from the department. The forms are as follows:

| | |
|---|---|
| NRC72-1 | APPLICATION FOR BOND (Revised 2/23) |
| NRC72-2 | CORPORATE SURETY BOND COVERING<br>THE PURCHASE OF TIMBER FROM TIMBER GROWERS<br>BY TIMBER<br>BUYER OR BUYER'S AGENT (Revised 3/21) |
| NRC72-3 | TIMBER BUYER SURETY BOND<br>(USING A CERTIFICATE OF DEPOSIT)<br>GOVERNING THE PURCHASE OF TIMBER FROM TIMBER<br>GROWERS BY BUYER OR<br>BUYER'S AGENT (Revised 8/17) |
| NRC72-4 | COLLATERAL ASSIGNMENT OF<br>CERTIFICATE OF DEPOSIT (Revised 8/17) |

| | |
|---|---|
| NRC72-5 | VERIFICATION APPLICATION FOR RELEASE OF BOND AND CERTIFICATE OF DEPOSIT (Revised 8/17) |
| NRC72-6 | TIMBER TRANSPORT CERTIFICATE (Revised 5/20) |

Copies of the forms may be obtained by writing Forestry Section, Iowa Department of Natural Resources, 6200 Park Avenue, Suite 200, Des Moines, Iowa 50321; by calling 515.725.8200; or online at iowadnr.gov.

These rules are intended to implement Iowa Code sections 456A.24 and 456A.36.

## ARC 8622C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to forest and fruit-tree reservations and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 73, "Forest and Fruit-Tree Reservations," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 427C.12.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 427C and 441.

*Purpose and Summary*

Proposed Chapter 73 sets the criteria for establishing forest and fruit-tree reservations and defines the format and components of the related annual report due to the Department of Natural Resources (Department). Forest and fruit-tree reservations are exempt from taxation by the Iowa Code. This chapter will ensure consistent application of the tax exemptions afforded such reservations as provided by Iowa Code chapter 427C and section 441.22. Additionally, county assessors are required to report forest and fruit-tree reservation data to the Department annually. The current chapter does not specify the format for this data. This proposed rulemaking clarifies the format for the data to provide consistency across counties and to ensure that the data can be sorted and analyzed by the Department. This data is often requested by legislators and the public. This chapter has been otherwise reviewed and edited consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 5, 2025. Comments should be directed to:

Jeff Goerndt
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jeff.goerndt@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jeff.goerndt@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jeff.goerndt@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 29, 2025<br>1 to 2 p.m. | Via videoconference call |
| February 5, 2025<br>1 to 2 p.m. | Via videoconference call |

Any person who wishes to attend a hearing may contact Jeff Goerndt via email for the hearing link.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at jeff.goerndt@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jeff.goerndt@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 73 and adopt the following **new** chapter in lieu thereof:

CHAPTER 73
FOREST AND FRUIT-TREE RESERVATIONS

**571—73.1(427C,456A) Criteria for establishing and maintaining forest and fruit-tree reservations.**

**73.1(1)** *Designation.* The selection of a forest or fruit-tree reservation is the prerogative of the taxpayer and shall not be denied unless the criteria set forth in Iowa Code chapter 427C and these rules have not been satisfied.

**73.1(2)** *Area designated.* The area designated as a forest or fruit-tree reservation may be less than one legally described tract of land if the minimum acreage requirement of Iowa Code section 427C.2 is satisfied.

**73.1(3)** *Size of reservation.* As used in Iowa Code section 427C.2, the term "continuous area" means an area of land that is not separated by public roads or streets. A continuous area may include land contained in more than one legal description.

**73.1(4)** *Fencing.* It is not mandatory that a forest or fruit-tree reservation be fenced. However, it is the taxpayer's responsibility to ensure that livestock are not permitted on the reservation (1938 O.A.G. 198).

**73.1(5)** *Number of trees.* To qualify initially as a forest reservation, a tract of land must contain at least 200 growing trees on each acre. However, if trees are removed pursuant to Iowa Code section 427C.4, a taxpayer has up to one year to replace the trees.

**73.1(6)** *Economic gain.* As used in Iowa Code section 427C.10, the term "gain from raising fruit or forest trees" means gain from the harvest from trees, including but not limited to fruit, nuts, Christmas trees and greens, posts, poles, logs, fuelwood, pulpwood, and tree sap.

**571—73.2(427C,456A) County assessor's annual report on forest and fruit-tree reservations to the department of natural resources.**

**73.2(1)** *Report content.* The report shall be submitted in a sortable Microsoft Excel file and shall contain the county, parcel ID, class of parcel (agricultural, commercial, residential, etc.), name of owner, mailing address of owner, number of acres for each parcel, and exempted dollar value of each parcel for each forest and fruit-tree reservation. In addition, the report shall include the total number of acres, total number of parcels, and total exempted value.

**73.2(2)** *Report due date.* The report shall be submitted annually to the department of natural resources no later than June 15 of the assessment year.

This rule is intended to implement Iowa Code chapters 427C and 441.

## ARC 8621C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to forest and land enhancement program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 74, "Forest Land Enhancement Program (FLEP)," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 456A.24.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 456A.24(13).

*Purpose and Summary*

Chapter 74 defines procedures by which federal, state or private moneys designated for forestry cost-share practices on private lands may be utilized for those purposes. This chapter is unnecessary. The Department of Natural Resources (Department) can utilize funds for these purposes under the authority provided by Iowa Code sections 455A.13(1) and 456A.24(13). Therefore, consistent with Executive Order 10 (2023), this chapter is proposed to be rescinded.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Jeff Goerndt
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jeff.goerndt@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jeff.goerndt@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jeff.goerndt@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 29, 2025<br>1 to 2 p.m. | Via videoconference call |

Any person who wishes to attend a public hearing may contact Jeff Goerndt via email for the hearing link.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at jeff.goerndt@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jeff.goerndt@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 74**.

## ARC 8623C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to migratory game bird hunting and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 91, "Waterfowl and Coot Hunting Seasons"; to adopt a new Chapter 91, "Migratory Game Bird Hunting"; and to rescind Chapter 92, "Migratory Game Birds," Chapter 97, "Common Snipe, Virginia Rail and Sora, Woodcock, Ruffed Grouse, and Dove Hunting Seasons," and Chapter 102, "Falconry Regulations for Hunting Game," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 481A.38, 481A.39 and 481A.48(2).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 481A.48; 50 CFR 20.105 (see also 16 U.S.C. §703 through 712); preliminary regulations in 89 Fed. Reg. 8631 (February 8, 2024); and proposed supplemental regulations in 89 Fed. Reg. 41522 (May 13, 2024).

*Purpose and Summary*

Proposed Chapter 91 establishes and organizes migratory bird hunting requirements as required by law and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting. Covered species include waterfowl and teal, coots, geese, common snipe, Virginia rail and sora, woodcock, dove, and crow. This chapter is the result of the consolidation of several existing chapters, including Chapters 91, 92, 97, and 102. These chapters have been merged consistent with the principles of Executive Order 10 (2023). Migratory bird hunting is an exciting recreational opportunity for licensed hunters. More importantly, though, Iowa relies upon hunters to help manage the state's wildlife, including migratory waterfowl, which are held in trust for the people and required by law to be managed for posterity. Approximately 30,000 individuals hold licenses to participate in migratory bird hunting in

Iowa. These rules ensure that the season dates are within the frameworks established by the U.S. Fish and Wildlife Service (USFWS) and compatible with current populations and habitat conditions.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Orrin Jones
Iowa Department of Natural Resources
1203 North Shore Drive
Clear Lake, Iowa 50428
Fax: 641.357.5523
Email: orrin.jones@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at andrew.kellner@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al andrew.kellner@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at andrew.kellner@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al andrew.kellner@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 91 and adopt the following **new** chapter in lieu thereof:

CHAPTER 91
MIGRATORY GAME BIRD HUNTING

**571—91.1(481A) Duck hunting.**

**91.1(1)** *Zone boundaries.* Zone boundaries are as specified in the November 2023 Waterfowl Hunting Map Book published on the department of natural resources' (department's) website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 1 "Waterfowl Hunting Zones."

**91.1(2)** *Season dates - north zone.* Special September teal season: Will be the maximum number of days allowed by the U.S. Fish and Wildlife Service. A 16-day teal season will begin on September 1. A nine-day teal season will begin on the first Saturday in September. For all ducks: The first segment of the season will begin on the Saturday nearest September 30 and run for seven days. The second segment of the season will open on the Saturday nearest October 14 and continue for 53 consecutive days.

**91.1(3)** *Season dates - central zone.* Special September teal season: Will be the maximum number of days allowed by the U.S. Fish and Wildlife Service. A 16-day teal season will begin on September 1. A nine-day teal season will begin on the first Saturday in September. For all ducks: The first segment of the season will begin on the Saturday nearest October 7 and run for seven days. The second segment of the season will open on the Saturday nearest October 21 and continue for 53 consecutive days.

**91.1(4)** *Season dates - south zone.* Special September teal season: Will be the maximum number of days allowed by the U.S. Fish and Wildlife Service. A 16-day teal season will begin on September 1. A nine-day teal season will begin on the first Saturday in September. For all ducks: The first segment of the season will begin on the Saturday nearest October 14 and run for seven days. The second segment of the season will open on the Saturday nearest October 28 and continue for 53 consecutive days.

**91.1(5)** *Bag limit.* Bag limits for all species are as adopted by the U.S. Fish and Wildlife Service. The daily bag limit for scaup will be one for the first 15 days of the duck hunting season and two for the remaining 45 days.

**91.1(6)** *Possession limit.* For the special September teal season and for all ducks: Possession limit is three times the daily bag limit.

**91.1(7)** *Shooting hours.* For the special September teal season: Shooting hours are sunrise to sunset each day. For all ducks: Shooting hours are one-half hour before sunrise to sunset each day.

**571—91.2(481A) Coots (split season).**

**91.2(1)** Same as duck season dates and shooting hours.

**91.2(2)** Bag and possession limits. Daily bag limit is 15 and possession limit is three times the daily bag limit.

**571—91.3(481A) Goose hunting.**

**91.3(1)** *Zone boundaries.* Zone boundaries are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 1 "Waterfowl Hunting Zones."

**91.3(2)** *Season dates - north zone.* For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 23 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 14 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 13 and remain continuously open until the total number of days used for goose hunting reaches 107.

**91.3(3)** *Season dates - central zone.* For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 30 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 21 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 20 and remain continuously open until the total number of days used for goose hunting reaches 107.

**91.3(4)** *Season dates - south zone.* For all geese: The first segment of the regular goose season will begin on the Saturday nearest October 7 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 28 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 27 and remain continuously open until the total number of days used for goose hunting reaches 107.

**91.3(5)** *Bag limit.* The daily bag limit for dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese) is five and may include no more than two Canada geese during the first segment of the statewide season and no more than three Canada geese during the remainder of the statewide season. The daily bag limit for light geese (white and blue-phase snow geese and Ross' geese) is 20.

**91.3(6)** *Possession limit.* The possession limit is three times the daily bag limit for Canada geese, brant and white-fronted geese. There is no possession limit for light geese.

**91.3(7)** *Shooting hours.* Shooting hours are one-half hour before sunrise until sunset each day.

**91.3(8)** *Light goose conservation order season.* Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service beginning the day after the regular goose season closes and continuing until May 1.

*a.* *Zone boundaries.* Statewide.

*b.* *Shooting hours.* One-half hour before sunrise to one-half hour after sunset.

*c.* *Bag limit.* No bag limit.

*d.* *Possession limit.* No possession limit.

*e.* *Other regulations.* Methods of take approved by the U.S. Fish and Wildlife Service for hunting light geese during the conservation order season shall be permitted.

**91.3(9)** *Metropolitan goose hunting seasons and specified areas.*

*a.* *Season dates.* The second Saturday in September for nine consecutive days.

*b.* *Bag limit.* Daily bag limit is five Canada geese.

*c.* *Possession limit.* Three times the daily bag limit.

*d.* *Specified areas.*

(1) Cedar Rapids/Iowa City. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

(2) Des Moines. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

(3) Cedar Falls/Waterloo. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

**571—91.4(481A) Closed areas.** Waterfowl and coots may be hunted statewide except in specific areas.

**91.4(1)** *Waterfowl and coots.* There shall be no open season for ducks, coots and geese as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 3 "Areas Closed to Waterfowl Hunting."

**91.4(2)** *Canada geese.* There shall be no open season on Canada geese in certain areas described as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 4 "Areas Closed to Canada Goose Hunting."

**571—91.5(481A) Canada goose hunting within closed areas.**

**91.5(1)** *Closed areas.* All areas are as described in 91.4(2).

*a. Purpose.* The hunting of Canada geese in closed areas is being undertaken to allow landowners or tenants who farm in these closed areas to hunt Canada geese on land they own or farm in the closed area.

*b. Criteria.*

(1) Landowners and tenants who own or farm land in the closed areas will be permitted to hunt Canada geese in the closed areas.

(2) Landowners and those individuals named on the permit according to the criteria specified in 91.5(1)*"b"*(9) will be permitted to hunt in the closed area. Tenants may obtain a permit instead of the landowner if the landowner transfers this privilege to the tenant. Landowners may choose, at their discretion, to include the tenant and those individuals of the tenant's family specified in 91.5(1)*"b"*(9) on their permit. Assigned permits must be signed by both the permittee and the landowner assigning the permit.

(3) Landowners must hold title to, or tenants must farm by a rent/share/lease arrangement, at least eight acres inside the closed area to qualify for a permit.

(4) No more than one permit will be issued to corporations, estates, or other legal associations that jointly own land in the closed area. No individual may obtain more than two permits nor may an individual be named as a participant on more than two permits.

(5) Persons holding a permit can hunt with those individuals named on their permit as specified in 91.5(1)*"b"*(9) on any property they own (or rent/share/lease in the case of tenants) in the closed area provided their activity complies with all other regulations governing hunting. Nothing herein shall permit the hunting of Canada geese on public property within the closed area.

(6) Persons hunting under this permit must adhere to all municipal, county, state and federal regulations that are applicable to hunting and specifically applicable to Canada goose hunting. Hunting as authorized by this rule shall not be used to stir or rally waterfowl.

(7) Hunting within the closed area will be allowed through October 31.

(8) Permit holders will be allowed to take eight Canada geese per year in the closed area.

(9) Permits will be issued only to individual landowners or tenants; however, permit holders must specify, when requesting a permit, the names of all other individuals qualified to hunt on the permit. Individuals qualified to hunt on the permit shall include the landowners or tenants and their spouses, domestic partners, parents, grandparents, children, children's spouses, grandchildren, siblings and siblings' spouses only.

*c. Procedures.*

(1) Permits can be obtained from the local conservation officer or wildlife unit headquarters within the closed area no later than 48 hours before the first Canada goose season opens. The permit will be issued to an individual landowner or tenant and must list the names of all individuals who may hunt with the permittee. The permit will also contain a description of the property covered by the permit. The permit must be carried by a member of the hunting party whose name is listed on the permit. Conservation officers will keep a record of permittees and locations of properties that are covered by permits.

(2) Eight consecutively numbered tags will be issued with each permit. Geese will be tagged around the leg immediately upon being reduced to possession and will remain tagged until delivered to the person's abode.

(3) No one may attempt to take Canada geese under this permit unless the person possesses an unused tag for the current year.

(4) No landowner or tenant shall be responsible or liable for violations committed by other individuals listed on the permit issued to the landowner or tenant.

**91.5(2)** Reserved.

**571—91.6(481A,483A) Youth waterfowl hunt.** A special youth waterfowl hunt will be held the weekend before the first segment of the regular duck season in each duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

**571—91.7(481A) Common snipe season.** Open season for hunting common snipe shall be from the first Saturday in September through November 30. Shooting hours shall be from one-half hour before sunrise to sunset each day. Daily bag limit 8; possession limit 24. Entire state open.

**571—91.8(481A) Virginia rail and sora season.** Open season for hunting Virginia rail and sora shall be from the first Saturday in September and continue for 70 consecutive days. Shooting hours shall be from one-half hour before sunrise to sunset each day. Daily bag limit 12 and possession limit 36 in aggregate of both species. Entire state open.

**571—91.9(481A) Woodcock season.** Open season for hunting woodcock shall be from the first Saturday in October and continue for 45 consecutive days. Shooting hours shall be from sunrise to sunset each day. Daily bag limit 3; possession limit 9. Entire state open.

**571—91.10(481A) Dove season.** Open season for hunting mourning doves and Eurasian collared- doves shall begin on September 1 and continue for 90 consecutive days. Shooting hours shall be from one-half hour before sunrise to sunset each day. Daily bag limit 15; possession limit 45. Entire state open.

**571—91.11(481A) Crow season.** Open season for hunting crows shall be from October 15 through November 30 and January 14 through March 31 of each year. No bag or possession limit. Entire state open.

**571—91.12(481A) General.** Migratory game birds may be taken only in accordance with the daily bag and possession limits during the open season and shooting hours as prescribed annually by the natural resource commission.

**571—91.13(481A) Duck stamp.** It shall be unlawful for any person who has attained the age of 16 years to take any migratory waterfowl (brant, wild ducks, geese, and swans) unless at the time of such taking that person has with them an unexpired federal migratory bird hunting and conservation stamp (commonly called duck stamp), validated by the person's signature written across the face of the stamp in ink, or an unexpired e-stamp version of the federal migratory bird hunting and conservation stamp.

**571—91.14(481A) Hunting methods.** Migratory game birds may be taken by any method except those prohibited in this rule. No person shall take migratory game birds (brant, wild ducks, geese, rails, coots, woodcock, and snipe):

**91.14(1)** With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10-gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive or stupefying substance;

**91.14(2)** With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

**91.14(3)** On all lands and waters of the state of Iowa while having in one's possession any shot other than nontoxic shot approved by the U.S. Fish and Wildlife Service. This subrule shall not apply to the taking of woodcock.

**91.14(4)** From or by means or use of a sinkbox or any other type of low-floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

**91.14(5)** From or by means, aid, or use of any motor vehicle, motor-drive land conveyance, or aircraft of any kind, except that paraplegics and single or double amputees of the legs may take from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord;

**91.14(6)** From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off or the sail furled, and its progress therefrom has ceased: Provided, that a craft under power may be used to retrieve dead or crippled birds. However, crippled birds may not be shot from such craft under power;

**91.14(7)** By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this subrule for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl;

**91.14(8)** By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;

**91.14(9)** By means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird; or

**91.14(10)** By the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. As used in this subrule, "baited area" means any area on which salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed. "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them. However, nothing in this subrule shall prohibit:

*a.* The taking of all migratory game birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and

*b.* The taking of all migratory game birds, except waterfowl, on or over any lands where shelled, shucked or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered solely as the result of valid agricultural operations or procedures.

**91.14(11)** By any of the methods or means prohibited in this rule unless such methods or means have been approved by the U.S. Fish and Wildlife Service for the taking of light geese during special light goose-only seasons or light goose-only hunts.

**571—91.15(481A) Restrictions applicable to possession, tagging, and recordkeeping requirements.**

**91.15(1)** No person shall possess, have in custody, or transport more than the daily bag limit or aggregate daily bag limit, whichever applies, of migratory game birds, tagged or not tagged, at or between the place, where taken and either:

*a.* The person's automobile or principal means of land transportation; or

*b.* The person's personal abode or temporary or transient place of lodging; or

*c.* A migratory bird preservation facility; or

*d.* A post office; or

*e.* A common carrier facility.

**91.15(2)** No person shall put or leave any migratory game birds at any place other than at the person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds have a tag attached, signed by the hunter, stating the person's address, the total number and species of birds, and the date such birds were killed. Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

**91.15(3)** No person shall receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required under 91.15(2).

**91.15(4)** No migratory bird preservation facility shall:

*a.* Receive or have in custody any migratory game birds unless accurate records are maintained showing:

(1) The number of each species;

(2) The date such birds were received;

(3) The name and address of the person from whom such birds were received;

(4) The date such birds were disposed of;

(5) The name and address of the person to whom such birds were delivered.

*b.* Destroy any records required to be maintained under this rule for period of one year following the last entry on the record.

*c.* No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

**571—91.16(481A) Transportation within the state or between states.** No person shall transport or ship any migratory game birds, unless the head or one fully feathered wing remains attached to each such bird at all times while being transported or shipped from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

**571—91.17(481A) Wounded, live migratory game birds.**

**91.17(1)** Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit.

**91.17(2)** Wanton waste. No person shall kill or cripple any migratory game bird pursuant to this chapter without making a reasonable effort to retrieve the bird and include it in the daily bag limit.

**571—91.18(481A) Migratory game bird hunting by falconry.**

**91.18(1)** In addition to the falconry permit, a falconer must have all other licenses, stamps, and permits required by law. A falconry observer is not required to be licensed for hunting, but an observer shall not assist in the hunt.

**91.18(2)** No falconer or observer may possess a long gun, bow, or crossbow while in the field with a raptor or in the act of falconry.

**91.18(3)** Ducks and coots. The season for taking ducks and coots by means of falconry may vary among duck hunting zones. Falconry seasons for ducks and coots shall be open whenever the conventional (gun) duck and coot hunting season is open in each zone, as described in 571—91.1(481A) and 571—91.2(481A), and shall also be open beginning the first Saturday in January in each zone and remain open until the combined total of the conventional hunting season days plus falconry hunting season days reaches 107 for the zone or February 28, whichever occurs first.

**91.18(4)** Geese. The season for taking geese by means of falconry may vary among goose hunting zones. Falconry seasons for white-fronted geese and light geese (white and blue-phase snow geese and Ross' geese) shall begin each year on the first day of the conventional (gun) hunting season for these

geese in each zone, as described in 571—91.3(481A). Falconry seasons for Canada geese and brant shall be open concurrently with the conventional (gun) hunting season for these geese.

**91.18(5)** Rails, snipe and woodcock. The seasons for taking rails, snipe, and woodcock by means of falconry shall begin each year on the first day of the conventional (gun) hunting seasons for these species, as described in 571—91.7(481A), 571—91.8(481A), and 571—91.9(481A), and continue for 107 consecutive days. The entire state is open for these species.

**91.18(6)** Hawking hours and limits. Hawking hours for migratory game birds are one-half hour before sunrise to sunset. The daily bag limit shall include no more than three migratory game birds, singly or in aggregate. The possession limit is three times the daily bag limit. There are no hawking hour restrictions for nonmigratory game during the legal season.

**571—91.19(481A) Harvest information program (HIP).**

**91.19(1)** Each licensed hunter pursuing migratory game birds (brant, wild ducks, geese, rails, coots, snipe, woodcock, doves or any other migratory game bird) shall carry proof that they have first registered with the HIP. Hunters must supply their name, address, and information on the number of migratory game birds taken during the previous year, or other information that may be requested.

**91.19(2)** The natural resource commission will develop methods for collecting information from hunters at the time they purchase their hunting license or prior to going hunting, either by written or electronic means, and develop a method for validating in the field that hunters have registered.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48(2).

ITEM 2. Rescind and reserve **571—Chapter 92**.

ITEM 3. Rescind and reserve **571—Chapter 97**.

ITEM 4. Rescind and reserve **571—Chapter 102**.

# ARC 8620C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rulemaking related to small game hunting and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 96, "Pheasant, Quail and Gray (Hungarian) Partridge Hunting Seasons"; to adopt a new Chapter 96, "Small Game Hunting"; and to rescind Chapter 100, "Crow and Pigeon Regulations," and Chapter 107, "Rabbit and Squirrel Hunting," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 481A.38, 481A.39 and 481A.48.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 481A.38, 481A.39 and 481A.48.

*Purpose and Summary*

Proposed Chapter 96 governs small game hunting by residents and nonresidents in the state of Iowa. This chapter regulates small game hunting and sets forth season dates, bag limits, possession limits, shooting hours, areas open to hunting, and transportation requirements. This chapter is a result of the consolidation of existing Chapters 96, 100, and 107.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Chris Ensminger
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chris.ensminger@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at chris.ensminger@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al chris.ensminger@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at chris.ensminger@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al chris.ensminger@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 96 and adopt the following **new** chapter in lieu thereof:

CHAPTER 96
SMALL GAME HUNTING

**571—96.1(481A) Pheasant season.**

**96.1(1)** *Open season.* Open season for hunting cock pheasants is the last Saturday in October through January 10 of the succeeding year. Daily bag limit 3 cocks; possession limit 12. Shooting hours are 8 a.m. to 4:30 p.m. Entire state open.

**96.1(2)** *Transportation.* No person shall transport a pheasant within the state without a leg and foot, or fully feathered wing, or fully feathered head attached to the intact carcass.

**96.1(3)** *Youth pheasant hunt.* A special two-day youth pheasant hunt for residents only will be held on the weekend preceding the last Saturday in October. Youth hunters must be 15 years old or younger. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt. Only the youth hunter may shoot pheasants. The daily bag limit is 1 cock bird and possession limit is 2 after the first day. All other hunting regulations in effect for the regular pheasant season apply to the youth hunt. Entire state open.

**571—96.2(481A) Gray (Hungarian) partridge season.** Open season for hunting gray partridge is the second Saturday in October through January 31 of the succeeding year. Daily bag limit 8; possession limit 16. Shooting hours are 8 a.m. to 4:30 p.m. Entire state open.

**571—96.3(481A) Bobwhite quail season.** Open season for hunting quail is the last Saturday in October through January 31 of the succeeding year. Daily bag limit 8; possession limit 16. Shooting hours are 8 a.m. to 4:30 p.m. Entire state open.

**571—96.4(481A) Ruffed grouse season.** Open season for hunting ruffed grouse is the first Saturday in October through January 31 of the succeeding year. Daily bag limit 3; possession limit 6. Shooting hours are sunrise to sunset.

**96.4(1)** *Portion of the state open to hunting.* The area open to hunting shall be that portion of the state lying north and east of a line described as follows: beginning at Sabula, Iowa; thence west along State Highway 64 to U.S. Highway 151; thence west along U.S. Highway 151 to State Highway 13; thence north along State Highway 13 to U.S. Highway 20; thence west along U.S. Highway 20 to U.S. Highway 63; thence north along U.S. Highway 63 to the state line.

**96.4(2)** Reserved.

**571—96.5(481A) Pigeon season.** There is a continuous open season for hunting pigeons. No bag or possession limit. There are no restrictions on shooting hours. Entire state open.

**571—96.6(481A) Cottontail rabbit season.** Open season for hunting cottontail rabbits is the Saturday before Labor Day through February 28 of the succeeding year. Daily bag limit 10; possession limit 20. Shooting hours are sunrise to sunset. Entire state open.

**571—96.7(481A) Jackrabbit season.** Continuous closed season.

**571—96.8(481A) Squirrel season.** Open season for hunting squirrels (fox and gray) is the Saturday before Labor Day through January 31 of the succeeding year. Daily bag limit 6; possession limit 12. There are no restrictions on shooting hours. Entire state open.

**571—96.9(481A) Small game hunting by falconry.**

**96.9(1)** In addition to the falconry permit, a falconer must have all other licenses, stamps, and permits required by law. A falconry observer is not required to be licensed for hunting, but an observer shall not assist in the hunt.

**96.9(2)** No falconer or observer may possess a long gun, bow, or crossbow while in the field with a raptor or in the act of falconry.

**96.9(3)** Seasons.

*a. Pheasant (both sexes), quail, gray partridge, ruffed grouse, and jackrabbit.* The season for the taking of pheasant, quail, gray partridge, ruffed grouse, and jackrabbit is October 1 of each year through March 31 of the following year.

*b. Cottontail rabbit and squirrel.* The season for the taking of cottontail rabbits and squirrels is September 1 of each year through March 31 of the following year.

**96.9(4)** Limits.

*a. Pheasants (both sexes) and jackrabbit.* The daily limit is two pheasants, no more than one of which may be a hen, and one jackrabbit; the possession limit is four pheasants and two jackrabbits.

*b. Quail, gray partridge, ruffed grouse, squirrels and cottontail rabbit.* The daily limit is two quail, two gray partridge, two ruffed grouse, four cottontail rabbits and four squirrels; the possession limit is four quail, four gray partridge, four ruffed grouse, eight cottontail rabbits, and eight squirrels.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48.

ITEM 2. Rescind and reserve **571—Chapter 100**.

ITEM 3. Rescind and reserve **571—Chapter 107**.

## ARC 8590C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to turkey hunting and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 98, "Wild Turkey Spring Hunting," and to adopt a new Chapter 98 with the same title, and to rescind Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 481A.38, 481A.39 and 481A.48.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.7 and 483A.24.

*Purpose and Summary*

Proposed Chapter 98 governs spring and fall wild turkey hunting by residents and nonresidents in the state of Iowa. This chapter regulates turkey hunting and sets forth season dates, bag limits, possession

limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements. Existing Chapters 98 and 99, which regulate spring and fall turkey hunting, respectively, are proposed to be merged into a new Chapter 98 consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Chris Ensminger
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chris.ensminger@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at chris.ensminger@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al chris.ensminger@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

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Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al chris.ensminger@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 98 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 98
## WILD TURKEY HUNTING

### RESIDENT WILD TURKEY HUNTING

**571—98.1(483A) General.** Wild turkey may be taken during the spring or fall season subject to the following:

**98.1(1)** *License.* When hunting wild turkey, all hunters must have in possession a wild turkey hunting license valid for the current year and season, the unused transportation tag issued with that license, a hunting license, and evidence of having paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No one, while hunting wild turkey, shall carry or have in possession any license or transportation tag issued to another hunter. No one who is issued a wild turkey license and transportation tag shall allow another person to use or possess that license or transportation tag while turkey hunting or tagging a turkey. A hunter having a license valid for one of the spring turkey seasons may accompany, call for, or otherwise assist any other hunter who has a valid turkey hunting license for any of the spring seasons. The hunter who is assisting may not shoot a turkey or carry a firearm or bow unless the hunter has a valid license with an unused tag for the current season. Licenses for the fall turkey season will only be issued to Iowa residents, except as specified in 98.9(5).

*a. Types of spring licenses.*

(1) Combination shotgun-or-archery license. Combination shotgun-or-archery licenses shall be issued by season and shall be valid statewide in the designated season only.

(2) Archery-only license. Archery-only licenses shall be valid statewide and shall be valid during all seasons open for spring turkey hunting, except the youth season.

*b. Number of spring licenses.* No one may apply for or obtain more than two spring wild turkey hunting licenses. A hunter may obtain no more than two combination shotgun-or-archery licenses, or two archery-only licenses, or one of each. If two combination shotgun-or-archery licenses are obtained, at least one must be for season 4. If one combination shotgun-or-archery license and one archery-only license are obtained, the combination shotgun-or-archery license must be for season 4.

*c. Types of fall licenses.*

(1) Combination shotgun-or-archery licenses. Combination shotgun-or-archery licenses shall be valid for taking turkeys of either sex in the zone designated on the license.

(2) Archery-only licenses. Archery-only licenses shall be valid statewide for taking turkeys of either sex.

*d. Number of fall licenses.* No one may apply for or obtain more than two wild turkey fall hunting licenses. A hunter may obtain no more than two combination shotgun-or-archery licenses, or two archery-only licenses, or one of each. One license of either type may be free to eligible landowners or tenants.

**98.1(2)** *Daily bag and possession limit.* Season possession limit, including daily bag limit, is one bearded (or male) wild turkey per spring license. Season possession limit, including daily bag limit, is one turkey of either sex per fall license.

**98.1(3)** *Shooting hours.* Shooting hours for combination shotgun-archery licenses and spring archery-only licenses shall be from one-half hour before sunrise to sunset. Shooting hours for fall archery-only licenses shall be from one-half hour before sunrise to one-half hour after sunset.

**571—98.2(483A) Means and method of take.**

**98.2(1)** *Permitted weapons.* Wild turkey may be taken in accordance with the type of license issued as follows:

*a. Combination shotgun-or-archery license.* Wild turkey may be taken by shotgun or muzzleloading shotgun not smaller than caliber .410 and shooting only shot sizes number 4 through 10 (lead or nontoxic) shot; or archery equipment as described in 98.2(1)*"b."* A person shall not have shotshells containing shot of any size other than number 4 through 10 (lead or nontoxic) shot on the person while hunting wild turkey.

*b. Archery-only license.* Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.22(481A), only longbows, compound bows, or recurve bows shooting broadhead arrows are permitted. Blunthead arrows with a minimum diameter of 9/16 inch may also be used. Arrows must be at least 18 inches long. Arrows with chemical or explosive pods are not permitted.

**98.2(2)** *Prohibited devices.* The use of live decoys, dogs (except for fall licenses), horses, motorized vehicles, aircraft, bait, or crossbows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds, are prohibited. Paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. "Bait" means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food products; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

**98.2(3)** *Zones, quotas and seasons.* A person with a resident wild turkey spring hunting license may take wild turkey statewide during the spring seasons. Fall resident hunting is limited to zones and permits as designated by the natural resource commission. Fall resident zones and quotas for combination shotgun-or-archery licenses will be issued by zone as follows:

*a.* Zone 4: 1,500.
*b.* Zone 5: 650.
*c.* Zone 6: 1,400.
*d.* Zone 7: 250.
*e.* Zone 8: 200.
*f.* Zone 9: 200.

**98.2(4)** *Archery-only licenses.* The number of fall archery-only licenses shall not be limited.

**98.2(5)** *Landowner/tenant licenses.* The total number of fall landowner/tenant licenses shall not be limited.

**98.2(6)** *Additional licenses.* Additional combination shotgun-or-archery licenses may be added to zone quotas if turkey surveys indicate that annual brood production and turkey populations are high enough to warrant additional hunting opportunity. The licenses will be added at the discretion of the commission upon advice from the wildlife bureau.

**98.2(7)** *Seasons.* Seasons will be established in accordance with the type of license issued.

*a. Spring combination shotgun-or-archery licenses.* Consecutive seasons are 4, 5, 7, and 19 days, respectively, with the first season beginning on the second Monday of April. These seasons shall be designated as seasons 1, 2, 3 and 4, respectively.

*b. Spring archery-only licenses.* The season shall be 35 days beginning on the second Monday of April.

*c. Fall combination shotgun-or-archery licenses.* The dates for the fall combination shotgun-or-archery season shall be from the Monday following the second Saturday in October through the Friday before the first Saturday in December of the same year. Wild turkey may be taken with a combination shotgun-or-archery license only in the following zones: 4, 5, 6, 7, 8, and 9 as defined by the department of natural resources.

*d. Fall archery-only licenses.* The dates for the fall archery-only wild turkey hunting season shall be the same as the dates for the bow season for deer as described in 571—Chapter 106.

**571—98.3(483A) Procedures to obtain licenses.** All wild turkey hunting licenses will be issued using the electronic licensing system for Iowa (ELSI). Licenses may be purchased through ELSI license agents, by calling the ELSI telephone ordering system, or through the ELSI Internet license sales website.

**98.3(1)** Spring wild turkey hunting licenses will be sold beginning December 15 through the last day of the season for which the license is valid. There will be no quotas for combination shotgun-or-archery licenses or for archery-only licenses for resident hunters.

**98.3(2)** Landowner/tenant licenses. An eligible resident landowner or tenant may obtain a combination shotgun-or-archery license or a free archery-only license. Nonresident landowners are not eligible for turkey hunting licenses.

*a. Spring combination shotgun-or-archery licenses.* A spring combination shotgun-or-archery license will be issued by season and will be valid only on the farm unit of the landowner or tenant.

*b. Spring archery-only licenses.* A spring archery-only license will be valid for all seasons but only on the farm unit of the landowner or tenant.

*c. Number of spring licenses.* One combination shotgun-or-archery license or one archery-only license may be obtained in addition to the free shotgun-or-archery license or the free archery-only license. If an archery-only license and a combination shotgun-or-archery license are obtained, the shotgun-or-archery license must be for season 4. If a free shotgun-or-archery license and a paid shotgun-or-archery license are obtained, one of the licenses must be for season 4.

**98.3(3)** Fall license availability. All fall turkey hunting licenses for which a quota is established may be obtained from ELSI agents on a first-come, first-served basis beginning August 15 until the quota fills, or through the last day of the hunting period for which the license is valid. All fall turkey hunting licenses that have no quota may be obtained from ELSI agents beginning August 15 through the last day of the hunting period for which a license is valid.

**571—98.4(483A) Providing false information.** If anyone provides false information when obtaining any turkey hunting license, that license and transportation tag and any other turkey hunting license and transportation tag obtained during the same year shall be invalid.

**571—98.5(483A) Transportation tag.** Immediately upon the killing of a wild turkey, the transportation tag issued with the license and bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of the turkey. The hunter who shot the turkey must use the transportation tag issued to that hunter to tag the turkey. No one may tag a turkey with a transportation tag issued to another hunter. The tag must be attached in such a manner that it cannot be removed without mutilating or destroying the tag. The tag must be attached before the carcass can be moved in any manner from the place of kill. The transportation tag shall remain affixed to the leg of the turkey until the turkey is processed for consumption. The leg that bears the tag must be attached to the carcass of any wild turkey being transported within the state during any wild turkey hunting season. The tag shall be proof of possession of the carcass by the above-mentioned licensee.

**571—98.6(483A) Eligibility for free landowner/tenant turkey licenses.**

**98.6(1)** *Who qualifies for a landowner/tenant turkey hunting license.*

*a.* Owners and tenants of a farm unit and the spouse or domestic partner as defined by the Iowa department of administrative services and juvenile child of an owner or tenant who reside with the owner

or tenant are eligible for free turkey licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

*b.* "Juvenile child" means a person less than 18 years of age or a person who is 18 or 19 years of age and is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma or a high school equivalency diploma. A person 18 years of age or older who has received a high school diploma or high school equivalency diploma does not qualify.

**98.6(2)** *Who qualifies as a tenant.* A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including in some circumstances the landowner's spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

**98.6(3)** *Definition of "actively engaged in farming."* Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party that operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

**98.6(4)** *Landowners who qualify as active farmers.* These landowners:

*a.* Are the sole operator of a farm unit (along with immediate family members); or

*b.* Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work; or

*c.* Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant; or

*d.* Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements; or

*e.* May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually; or

*f.* Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

**98.6(5)** *Landowners who do not qualify.* These landowners:

*a.* Use a farm manager or other third party to operate the farm; or

*b.* Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

**98.6(6)** *Where landowner/tenant licenses are valid.* A free license is valid only on the farm unit of the landowner or tenant. "Farm unit" means all parcels of land that are at least two contiguous acres in size, that are operated as a unit for agricultural purposes, and that are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

**98.6(7)** *How many landowner/tenant licenses may be obtained.* The maximum number of landowner/tenant licenses for the spring turkey season is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one landowner/tenant license even if the tenant farms land for more than one landowner.

**98.6(8)** *Registration of landowners and tenants.* Landowners and tenants and their eligible family members who want to obtain free spring wild turkey hunting licenses must register with the department of natural resources before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

**571—98.7(483A) Youth spring wild turkey hunt.**

**98.7(1)** *Licenses.* A special youth spring wild turkey hunting license valid statewide may be issued to any Iowa resident who is 15 years old or younger on the date the youth purchases the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth's family is eligible. Each participating youth must be accompanied by an adult who possesses a valid wild turkey spring hunting license for one of the seasons and a hunting license, and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). The accompanying adult must not possess a firearm or bow and must be in the direct company of the youth at all times. A person may obtain only one youth turkey hunting license but may also obtain one archery-only license or one combination shotgun-or-archery license for season 4.

**98.7(2)** *Youth season dates.* The youth turkey hunting license shall be valid during the three days immediately before the first turkey season. A person who is issued a youth spring wild turkey hunting license and does not take a wild turkey during the youth spring wild turkey hunting season may use the wild turkey hunting license and unused tag during any remaining spring wild turkey hunting season in the year in which the youth license was issued.

**98.7(3)** *Limits and license quotas.* An unlimited number of licenses may be issued. The daily and season bag and possession limit is one bearded (or male) wild turkey.

**98.7(4)** *Method of take and other regulations.* Wild turkeys may be taken with shotguns, muzzleloaded shotguns or bows as described in 571—98.2(483A). All other spring wild turkey hunting regulations for residents shall apply.

**98.7(5)** *Procedures for obtaining licenses.* Youth season licenses may be obtained through ELSI beginning December 15 through the last day of the youth season.

**571—98.8(481A) Harvest reporting.** Each hunter who harvests a turkey must report that kill according to procedures described in 571—95.1(481A).

NONRESIDENT WILD TURKEY HUNTING

**571—98.9(483A) General.** Wild turkey may be taken during the spring season subject to the following:

**98.9(1)** *License.* When hunting wild turkey, all hunters must have in possession a valid nonresident wild turkey spring hunting license, the unused transportation tag issued with that license, a valid nonresident hunting license, and proof of having paid the current year's habitat fee. No one, while hunting turkey, shall carry or have in possession any license or transportation tag issued to another hunter. No one who is issued a wild turkey license and transportation tag shall allow another person to possess that license or transportation tag while turkey hunting or tagging a turkey. Licenses will be issued by zone and season and will be valid in the designated zone and season only. No one shall obtain more than one nonresident wild turkey spring hunting license. A hunter having a license valid for one of the spring turkey seasons may accompany, call for, or otherwise assist any other hunter who has a valid turkey hunting license in that season and zone. The hunter who is providing assistance may not shoot a turkey or carry a firearm or bow unless that hunter has a valid license and an unused tag for the current season and zone. Two types of licenses will be issued:

*a. Combination shotgun-or-archery license.* Shotguns, muzzleloading shotguns and archery equipment as defined in 98.12(1) may be used.

*b. Muzzleloading shotgun-only license.* Only muzzleloading shotguns as defined in 98.12(1) may be used.

**98.9(2)** *Seasons.* Bearded (or male) wild turkey may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during the first, second, third or fourth seasons as defined in 98.2(4)*"a."*

**98.9(3)** *Daily bag, possession and season limits.* The daily bag limit is one bearded (or male) wild turkey; the possession and season limit is one bearded (or male) wild turkey.

**98.9(4)** *Shooting hours.* Shooting hours shall be from one-half hour before sunrise to sunset each day.

**98.9(5)** *Fall special licenses.* The commission shall issue licenses in conformance with Iowa Code section 483A.24(12) to nonresidents 21 years of age or younger who have a severe physical disability or who have been diagnosed with a terminal illness. A person applying for this license must provide a completed form obtained from the department of natural resources. The application shall be certified by the applicant's attending physician with an original signature and declare that the applicant has a severe physical disability or a terminal illness using the criteria listed in 571—Chapter 15. A medical statement from the applicant's attending physician that specifies criteria met shall be on 8½″ × 11″ letterhead stationery. The attending physician shall be a currently practicing doctor of medicine, doctor of osteopathy, physician assistant or nurse practitioner.

**571—98.10(483A) Zones open to hunting.** Licenses shall be valid only in designated areas as follows:

1. Zone 4. Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59.
2. Zone 5. Zone 5 is that portion of Iowa bounded on the north by U.S. Highway 20 and on the east by U.S. Highway 59.
3. Zone 6. Zone 6 is that portion of Iowa lying east of U.S. Highway 63 and north of Interstate Highway 80.
4. Zone 7. Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80, and on the east by U.S. Highway 63.
5. Zone 8. Zone 8 is that portion of Iowa north of U.S. Highway 20 and west of U.S. Highway 63.

**571—98.11(483A) License quotas.** A limited number of wild turkey hunting licenses will be issued in each zone in each season as follows:

**98.11(1)** *Combination shotgun-or-archery licenses.*

*a.* Zone 4: 262.
*b.* Zone 5: 55.
*c.* Zone 6: 165.
*d.* Zone 7: 35.
*e.* Zone 8: 20.

**98.11(2)** *Muzzleloading shotgun-only licenses.* 150 statewide. A hunter purchasing a muzzleloading shotgun license must declare a zone and season and hunt only in that zone and season.

**571—98.12(483A) Means and method of take.**

**98.12(1)** *Permitted weapons.* Wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than caliber .410 and shooting only shot sizes number 4 through 10 (lead or nontoxic) shot. No person may have shotshells containing shot of any size other than number 4 through 10 (lead or nontoxic) shot on the person while hunting wild turkey. Except for crossbows for persons with certain afflictions of the upper body, as provided in 571—15.22(481A), only longbow, compound, or recurve bows shooting broadhead arrows are permitted. Blunthead arrows with a minimum diameter of 9/16 inch may also be used. Arrows must be at least 18 inches long. No explosive or chemical devices may be attached to the arrow, broadhead, or blunthead.

**98.12(2)** *Prohibited devices.* The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait, crossbows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds are prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. "Bait" means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

**571—98.13(483A) Application procedure.**

**98.13(1)** Applications for nonresident wild turkey spring hunting licenses must be made through the ELSI telephone ordering system or the ELSI Internet license sales website. Applications will be accepted from December 15 through the last Sunday in January. No one may submit more than one application during the application period. If applications have been sold in excess of the license quota for any license type, zone, or season, a drawing will be held to determine which applicants receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees, Internet sales charges and telephone order charges will not be refunded. If any license quota has not been filled, the excess licenses will be sold first-come, first-served through the telephone ordering system or the Internet license sales website beginning at 6 a.m. the second Saturday after the close of the application period until the quota has been filled or the last day of the season for which the license is valid, whichever occurs first. No one may obtain more than one nonresident wild turkey spring hunting license. Hunters may apply individually or as a group of up to 15 applicants. All members of a group will be accepted or rejected as a group in the drawing. If a group is rejected, members of that group may purchase licenses individually if excess licenses are available.

**98.13(2)** Each individual applicant who is unsuccessful in the drawing will be assigned one preference point for each year in which the individual applies and is unsuccessful. If a person who was unsuccessful in the drawing purchases a leftover license within four weeks, the person will receive a refund for the cost of the preference point. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Once an applicant receives a license, all preference points will be erased. Preference points will apply to any zone or season for which a hunter applies. The first license drawing each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

**571—98.14(483A) Transportation tag.** Immediately upon the killing of a wild turkey, the transportation tag issued with the license and bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of the turkey. The hunter who shot the turkey must use the transportation tag issued to that hunter to tag the turkey. No one may tag a turkey with a transportation tag issued to another hunter. The tag must be attached in such a manner that it cannot be removed without mutilating or destroying the tag. The tag must be attached before the carcass can be moved in any manner from the place of kill. The transportation tag shall remain affixed to the leg of the turkey until the turkey is processed for consumption. The leg that bears the tag must be attached to the carcass of any wild turkey being transported within the state during any wild turkey spring hunting season. The tag shall be proof of possession of the carcass by the above-mentioned licensee.

**571—98.15(481A) Harvest reporting.** Each hunter who bags a turkey must report that kill according to procedures described in 571—95.1(481A).

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.7 and 483A.24.

ITEM 2. Rescind and reserve **571—Chapter 99**.

**ARC 8609C**

# NATURAL RESOURCE COMMISSION[571]

## Notice of Intended Action

### Proposing rulemaking related to falconry regulations and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 101, "Falconry Regulations," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 481A.38, 481A.39 and 481A.48.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 481A.38 and 481A.48.

*Purpose and Summary*

Proposed Chapter 101 governs falconry by residents and nonresidents in the state of Iowa. This chapter regulates raptor take and possession for the use of falconry and sets forth permit types and fees, species permitted to be taken from the wild, facility and equipment requirements, the wild Peregrine falcon take process, and annual reporting requirements. This chapter has been reviewed and simplified consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Anna Buckardt
Iowa Department of Natural Resources
1436 255th Street
Boone, Iowa 50036
Email: anna.buckardt@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at anna.buckardt@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al anna.buckardt@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at anna.buckardt@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al anna.buckardt@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 101 and adopt the following **new** chapter in lieu thereof:

CHAPTER 101
FALCONRY REGULATIONS

**571—101.1(481A) Falconry regulations.** No person may take, transport, or possess any raptor without having first obtained a valid state/federal falconer's permit. Falconry permit holders shall comply with the department of natural resources' rules and with the current Code of Federal Regulations pertaining to falconry. Only the following raptors may be taken from the wild: American kestrel, Cooper's hawk, Ferruginous hawk, American goshawk, Great horned owl, Gyrfalcon, Harris's hawk, Merlin, Peregrine falcon, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk. Raptors taken from the wild shall not be sold, bartered or traded. All wild raptors legally trapped or taken by a resident or nonresident falconer must be marked with an Iowa band provided by the department.

**101.1(1)** A falconry permit allows for the purchase, capture, possession and use of designated legal raptors in hunting, subject to state regulations.

**101.1(2)** A falconry permit may be issued to any person 14 years of age or older who has successfully passed a written examination provided by the department and approved by the U.S. Department of the Interior covering basic biology, care and handling of raptors, laws, regulations or other appropriate subject matter, with a minimum score of 80 percent, and who has satisfied the

minimum requirements for keeping raptors as determined by inspection of the applicant's facilities. In the event an individual fails the examination, this individual may reapply.

**101.1(3)** There shall be three classes of falconer permits as follows:

*a. Apprentice falconer.*

(1) An applicant shall have a sponsor who is a holder of a general or master falconry permit and who has at least two years of active experience as a general falconer. A qualifying sponsor must submit a signed letter to the department in which the sponsor agrees to assist and mentor the apprentice falconer for the duration of the apprenticeship. A sponsor may have no more than two apprentices at any one time.

(2) Apprentice permit holders may only possess a Red-tailed hawk (Buteo jamaicensis) and shall not possess more than one individual or obtain more than one replacement bird during any 12-month period. Apprentice permit holders may not take nestling or fledgling birds.

(3) A sponsor has the right to withdraw sponsorship at any time by submitting a signed letter to the department requesting withdrawal of sponsorship. If an apprentice falconer fails to successfully complete the required two-year apprenticeship, the apprentice falconer's Red-tailed hawk shall be transferred to the sponsor of record. The sponsor will be required to properly care for the bird until it is transferred to another permitted falconer or hacked back into the wild.

(4) Upon completion of the apprenticeship requirements, the apprentice's sponsor must submit a signed letter of endorsement confirming that the apprentice has satisfied the terms and conditions of the apprenticeship as required by these rules and approved by the department.

*b. General falconer.* An applicant shall be at least 18 years old. An applicant shall have at least two years of field experience in the practice of falconry at the apprentice level or its equivalent; the keeping of raptors without actively hunting the bird(s) shall not be considered field experience. General permit holders shall not possess more than three raptors and may not take more than one raptor for a replacement bird from the wild during any 12-month period. Licensed general class falconers may purchase properly marked captive-bred raptors only from federally licensed raptor propagators.

*c. Master falconer.* An applicant shall have at least five years of field experience in the practice of falconry at the general level or its equivalent. The keeping of raptors without actively hunting the bird(s) shall not be considered field experience. A master falconer shall possess no more than five raptors at any one time and be permitted to take no more than two replacement birds from the wild in any 12-month period. Master class falconers may purchase properly marked captive-bred raptors only from federally licensed raptor propagators.

**101.1(4)** Falconry permits are $61.50, are valid for a three-year period, and are nontransferable. Permits shall expire June 30 of the third year after issuance. Permits may be renewed without examination following the falconer's submission of an annual report of birds possessed during the previous year and provided that the department is satisfied as to the competency of the applicant whose permit has expired.

**101.1(5)** A federal raptor propagation permit is required before any raptor propagator may take, possess, transport, sell, purchase, barter, or transfer any captive-bred raptor, raptor egg, or raptor semen for propagation or sale purposes.

This rule is intended to implement Iowa Code section 481A.48 and conforms to the federal regulations promulgated under the Migratory Bird Treaty Act.

**571—101.2(481A) Facilities and equipment.** Before any individual shall be issued a falconry permit, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the department as meeting the following standards:

**101.2(1)** Facilities. The primary consideration for raptor housing facilities, whether indoors or outdoors, is protection from the environment, predators or undue disturbance. Depending upon climatic conditions, the applicant shall have either or both of the following facilities:

*a. Indoor facilities.* Indoor facilities (mews) shall be a minimum of 6 feet high, with a floor area at least 6 feet square for each bird. If more than one raptor is to be kept in the mews, the raptors shall be tethered or separated by partitions. There shall be at least one window, protected on the inside by vertical

bars spaced narrower than the width of the bird's body and a door that can be easily closed and secured. The floor of the mews shall permit easy cleaning. Falcons are to be kept on perches with a flat perching surface while accipiters, buteos and eagles are to be kept on perches that have a perching surface round in cross section and all perches should provide a good grasping surface satisfactory to the bird in possession.

*b. Indoor facilities—exception.* An exception may be allowed from the standard size requirements listed in 101.2(1)*"a"* to general and master class permittees only for housing the smaller species of raptors; however, the facilities shall be large enough to allow the bird to fully extend its wings without touching the walls of the mew.

*c. Outdoor facilities.* Outdoor facilities (weathering area) shall be fenced and covered with netting or wire, or roofed to protect the birds from disturbance and attack by predators. The enclosed area shall be large enough to ensure the birds cannot strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.

*d. Transportation—temporary holding.* A raptor may be transported or held in temporary facilities, which shall be provided with an adequate perch and protected from extreme temperatures and excessive disturbance for a period not to exceed 30 days.

*e. Maintenance and inspection.* All facilities and equipment shall be kept at or above the preceding standards at all times and shall be available for inspection by representatives of the department at all reasonable hours.

**101.2(2)** Equipment. The following items shall be in the possession of the applicant before the applicant can obtain a permit.

*a. Jesses.* At least one pair of Alymeri or similar-type jesses constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free (traditional one-piece jesses may be used on raptors when the raptors are not being flown).

*b. Leashes and swivels.* At least one flexible, weather-resistant leash and one strong swivel of acceptable falconry design.

*c. Bath container.* At least one suitable container for each raptor, two to six inches deep and wider than the length of the raptor.

*d. Outdoor perches.* At least one weathering area perch of an acceptable design for each raptor.

*e. Weighing device.* A working scale or balance suitable for weighing the raptor(s) held and graduated to increments of not more than two-tenths of an ounce, or five grams.

This rule is intended to implement Iowa Code section 481A.48 and conforms to the federal regulations promulgated under the Migratory Bird Treaty Act.

**571—101.3(481A) Taking and possession provision.** The taking of American kestrel, Cooper's hawk, Ferruginous hawk, American goshawk, Great horned owl, Gyrfalcon, Harris's hawk, Merlin, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk from the wild by resident falconers shall be limited to the following conditions:

**101.3(1)** Young birds not yet capable of flight may be taken at any time following hatch by a general class or master class falconer. The falconer may take no more than two nestlings, and at least one nestling shall be left in any nest from which a nestling is taken. The taking of nestlings and branchers is permitted only between April 1 and July 31. Removal of eggs from nests is prohibited.

**101.3(2)** First year (passage) birds shall be taken only from August 1 through March 31.

**101.3(3)** Only American kestrels (Falco sparverius) and Great horned owls (Bubo virginianus) may be taken when over one year old; however, the permissible period for taking shall be no different than that prescribed for passage birds of all other legal species.

**101.3(4)** No permittee shall employ any method of taking raptors that is injurious to the bird.

**101.3(5)** Any species except endangered or threatened species or exotic birds, the import of which has been banned by the international convention, federal regulation or the department, may be possessed and used for falconry provided the license holder can provide evidence that the bird was legally

acquired. No one may import a raptor into Iowa or export a raptor out of Iowa for a period greater than 30 days without having first obtained written permission of the department.

**101.3(6)** Recapture. Banded raptors that are lost to the wild through accident may be retrapped provided that the department has been advised of the loss and is notified of the attempt to recapture. If the banded raptor is recaptured, the department shall be notified of the recovery within 48 hours.

**101.3(7)** Previously banded birds. Any raptor captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

**101.3(8)** Nonresident raptor trapping. A permit may be issued upon application by a nonresident for the purpose of taking a raptor in Iowa, provided that the applicant's resident state provides for the taking of raptors by nonresidents. Nonresidents shall submit a photocopy of a valid state or federal falconry permit. Only general and master class nonresident raptor trapping permits shall be issued.

*a. Trapping provisions.* Trapping of raptors in Iowa by permitted nonresident falconers shall be limited to the legal species listed in these rules.

*b. Marking requirements.* Raptors legally trapped by nonresidents must be marked with an Iowa band provided by the department. No raptor shall be transported from Iowa without first having had the Iowa band attached. Permittees may, with written permission from the department, provide their own band issued by their state of residency. Permittees who provide their own band shall place the band on the raptor immediately upon capture and must notify the department within five days of the capture and of the corresponding band number.

*c. Fees.* Fees for nonresident raptor trapping applications shall be reciprocal to the fee charged by the applicant's resident state. If the applicant's resident state does not provide for a nonresident raptor trapping fee, then the Iowa nonresident raptor trapping application fee shall be $100.

*d. Restrictions.* Nonresident falconers may apply for one raptor trapping permit per trapping season. All nonresident raptor trapping permits shall be valid for a period not to exceed 60 consecutive days, beginning on the date of issuance. No nestlings or raptor eggs may be taken. First year (passage) birds may be taken only from September 1 through January 31. The nonresident raptor trapping permit shall be valid for only one raptor of the species designated on the permit. The raptor trapping permit shall be carried by the permittee while in the act of trapping and the transportation of any subsequently trapped raptor.

**571—101.4(481A) Wild Peregrine falcons.** A wild Peregrine falcon permit allows for the capture, possession and use of a wild Peregrine falcon in hunting, subject to 571—Chapter 101. In addition to the following provisions, the holder of a wild Peregrine falcon permit shall comply with 571—101.1(481A), 571—101.2(481A), and 571—101.5(481A) through 571—101.7(481A) as well as other applicable law.

**101.4(1)** The taking of Peregrine falcons from the wild shall be conducted only by resident general or master falconers with at least five consecutive years of field experience in the years immediately preceding the filing of an application as described in 101.4(4) and subject to the following conditions:

*a.* Nestling birds shall not be taken. Young birds not yet capable of flight shall not be taken. Removal of eggs from nests is prohibited.

*b.* Only wild Peregrine falcons less than one year old shall be taken, and only between September 20 and October 20.

*c.* No permittee shall employ any method of take that is injurious to the bird.

*d.* No more than one wild Peregrine falcon per person may be possessed at any given time.

**101.4(2)** Recapture. Banded Peregrine falcons that are lost to the wild through accident may be retrapped at any time provided that the department has been advised of the loss and is notified of the attempt to recapture. If the banded raptor is recaptured, the department shall be notified of the recovery within 48 hours.

**101.4(3)** Previously banded Peregrines. Any wild Peregrine falcon captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

**101.4(4)** Lottery. Applications for wild Peregrine falcon permits shall be received by the department no later than July 31 of each year. Permit drawing from the names of qualifying applicants will be held at the August commission meeting.

**571—101.5(481A) Annual reports.** Each holder of a falconer's permit shall submit an annual report to the department by July 31 of each year. This report shall list all raptors in possession on the preceding thirtieth day of June and any raptor held during the year by species, sex (if known), age (if known), date acquired and where or from whom acquired, and whether the raptor escaped, died, was recaptured, or was released during this time period and the date on which the event occurred.

**571—101.6(481A) Other provisions.**

**101.6(1)** Any raptor captured with a research radio transmitter attached must be reported to the department within five days, and the raptor shall be released immediately.

**101.6(2)** No permittee may take, purchase, receive or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless such permittee submits federal Form 3-186A (Migratory Bird Acquisition/Disposition Report), completed in accordance with the instructions on the form, to the issuing regional fish and wildlife service office within five days of such transaction. A falconry permittee shall notify the department in writing of the death, replacement, loss, release or temporary transfer or other such change in the status of the permittee's raptors within five days of such occurrence. Written authorization shall be obtained from the department before a replacement raptor may be secured. Each dead raptor shall be surrendered to the department or disposed of at the department's direction. Primary, secondary, and tail feathers may be retained and exchanged from these birds to imp or repair broken feathers.

**101.6(3)** Raptor exportation and importation permits may be issued to resident and nonresident falconers licensed to practice falconry in other states. Such permits shall be issued only when the export or import term will exceed 30 days. In the case of exportation or importation terms of less than 30 days, the permittee shall have in possession a photocopy of raptor possession documentation (Form 3-186A) and a photocopy of a valid state or federal falconry permit. Persons wishing to participate in hunting will be required to possess appropriate hunting licenses or permits.

**101.6(4)** A falconry permit holder shall obtain written authorization from the department before any raptor not indigenous to the state is intentionally released to the wild, at which time the band from the released raptor shall be removed and surrendered to the department. The band from an intentionally released raptor which is indigenous to the state shall also be removed and surrendered to the department. A standard federal bird band shall be attached to such raptors by the state or a service-authorized federal bird bander whenever possible. A falconer shall not permanently release a captive-bred raptor to the wild.

**101.6(5)** A raptor possessed under a state or federal falconry permit may be temporarily held by a person other than the permittee only if that person is otherwise authorized to possess raptors and only if the raptor is accompanied at all times by the properly completed Form 3-186A (Migratory Bird Acquisition/Disposition Report) designating the permittee as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

**101.6(6)** A general or master falconer may charge a fee for presentation of a raptor education program to the public. The fee cannot exceed the amount required to cover the falconer's expenses.

**101.6(7)** When a hybrid or exotic falconry bird is flown free, it must be fitted with two working radio telemetry transmitters.

**571—101.7(481A) Compliance.** Permits will be revoked for any individual failing to comply with the provisions of these rules.

These rules are intended to implement Iowa Code sections 481A.39 and 481A.42.

# ARC 8628C

# NATURAL RESOURCE COMMISSION[571]

## Notice of Intended Action

### Proposing rulemaking related to deer population management zones and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 105, "Deer Population Management Zones," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.8.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 481A.38, 481A.48 and 483A.8.

*Purpose and Summary*

Proposed Chapter 105 establishes deer management zones to be used in areas that do not typically have hunting opportunities in order to safely, ethically, and effectively manage deer populations. The chapter includes additional measures for state parks, urban environments, county conservation board property, other government jurisdictions, and private property to make sure that the program is conducted safely and to guide the managing entities through the process. This chapter has been reviewed consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Andrew Kellner
Iowa Department of Natural Resources
55 East Jefferson Street

Winterset, Iowa 50273
Email: andrew.kellner@dnr.iowa.gov

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 105 and adopt the following **new** chapter in lieu thereof:

CHAPTER 105
DEER POPULATION MANAGEMENT ZONES

**571—105.1(481A) Definitions.**

*"Commission"* means the natural resource commission.

*"Department"* means the department of natural resources.

*"Special deer management zones"* means defined units of public and private land, including state parks, state recreation areas, county parks, urban areas, and areas managed by other governmental jurisdictions.

*"Urban deer management zones"* means areas mostly within incorporated city limits including city, county, state, and private land.

**571—105.2(481A) Special deer management zones.** Special deer management zone boundaries, seasons, permitted weapons, license quotas, and other conditions for hunting shall be designated annually by the commission.

**105.2(1)** *Seasons.* Deer hunting in a special deer management zone may occur only on dates established by the commission. Season dates may or may not coincide with seasons for general deer hunting outside special deer management zones.

**105.2(2)** *Licenses.* Every hunter must have in possession a paid special hunting license valid only for the specific special deer management zone. The hunting license shall specify dates of hunting and the type of deer that may be taken as designated by the commission. The special licenses will be issued at locations and on dates announced by the commission. Special licenses shall be issued to Iowa residents only and shall cost the same as deer licenses issued during the general deer seasons. Incentives, including but not limited to issuing additional antlerless-only or any-deer licenses, may be used to attract hunters to a special hunt.

**105.2(3)** *Permitted weapons.* Only weapons permitted during the general deer seasons may be used. The commission may limit the use of specific weapons in some deer management zones and seasons on a case-by-case basis to improve the safety of hunters and the surrounding area.

**105.2(4)** *Hunter safety and proficiency.* Hunters may be required to pass a weapons proficiency test and attend a meeting prior to hunting in special deer management zones. The meeting will be used to familiarize hunters with zone boundaries, location of private lands, safety areas around buildings, access points, objectives of the hunt and other aspects of hunting in a special deer management zone.

**105.2(5)** *Checking deer.* A hunter who takes a deer may be required to check the deer at a designated headquarters prior to leaving the area.

**105.2(6)** *Educational hunts.* Hunts in designated special deer management zones may be restricted to youth or novice hunters to introduce them to safe and ethical deer hunting.

*a.* Age, experience or other eligibility restrictions may be designated by the commission. Zones, seasons and other conditions for hunting will be designated the same as specified in this rule.

*b.* An adult must accompany each youth participating in an educational hunt. The adult must be licensed as specified in 571—subrule 106.10(1).

*c.* A novice, nonyouth hunter may be accompanied by an adult mentor. The mentor must have a valid hunting license and have paid the habitat fee, if otherwise required to do so.

**105.2(7)** *Zone request.* Deer management zones will be established only upon request from cities, task forces, a county government, the federal government, or an appropriate responsible entity and when approved by the commission.

**571—105.3(481A) State parks and recreation areas.** A summary of public comments shall be included with other recommendations to the commission related to hunting in a state park or state recreation area.

**571—105.4(481A) Urban deer management zones.**

**105.4(1)** *Special restrictions.* Cities, deer task forces, or other public entities may require hunters to do one or more of the following: pass a hunter safety and education course, pass a weapons proficiency test, or be approved by the appropriate police department or conservation officer.

**105.4(2)** *Other methods.* The natural resource commission in cooperation with the city government may approve other methods of deer removal in urban areas.

**571—105.5(481A) County park deer management zones—special restrictions.** County park managers may require hunters to do one or more of the following: pass a hunter safety and education course, pass a weapons proficiency test, or be approved by the appropriate county sheriff or conservation officer.

**571—105.6(481A) Special deer management zones on private land.** Special deer management zones may be established on private land when approved by the commission. Zones, seasons, and other conditions for hunting will be determined by the commission. Hunters will be required to comply with all applicable regulations specified in 571—Chapter 106.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.8.

# ARC 8612C

# NATURAL RESOURCE COMMISSION[571]

## Notice of Intended Action

### Proposing rulemaking related to wild furbearer hunting and trapping and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons"; to adopt a new Chapter 108, "Wild Furbearer Trapping and Hunting"; and to rescind Chapter 109, "Groundhog Season," and Chapter 110, "Trapping Limitations," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87 and 481A.90.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 481A.6, 481A.38, 481A.87 and 481A.92.

*Purpose and Summary*

Proposed Chapter 108 sets the season dates, daily bag limits, possession limits, and areas open to hunting or trapping furbearers. This chapter is a consolidation of existing Chapters 108, 109, and 110, which collectively regulate the take of various species of furbearers and trapping generally. This consolidation has been made consistent with Executive Order 10 (2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Chris Ensminger
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chris.ensminger@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at chris.ensminger@dnr.iowa.gov.

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at chris.ensminger@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 108 and adopt the following **new** chapter in lieu thereof:

CHAPTER 108
WILD FURBEARER TRAPPING AND HUNTING

**571—108.1(481A) Badger, opossum, striped skunk, red fox, gray fox, mink, muskrat and weasel.** Open season for the taking of mink, muskrat and weasel shall be from 8 a.m. on the first Saturday in November through February 28 of the succeeding year. Entire state open. No daily bag or possession limit.

**108.1(1)** *Disturbing muskrat houses.* Any department of natural resources officer, natural resource biologist, or county conservation board director may permit trappers to dig into or disturb muskrat houses on specific state or county game management areas as provided in Iowa Code section 481A.90, after finding that muskrats are causing excessive damage by destroying the vegetation essential to the welfare of a marsh and after so posting the area.

**108.1(2)** *Game management areas.* Open season for taking muskrats on certain state game management areas, certain federal national wildlife refuges, and certain county conservation board areas, only where approved by the wildlife bureau and posted accordingly, shall be from 8 a.m. the day after the regular muskrat trapping season ends until April 1. The use of foothold traps during this season is prohibited unless each trap is placed completely inside a muskrat house. No daily bag or possession limit.

**571—108.2(481A) Groundhog.** Continuous open season. Entire state open. No daily bag or possession limit.

**571—108.3(481A) Raccoon.**

**108.3(1)** *Hunting.* Continuous open season on private lands and from 8 a.m. on the first Saturday in November through February 28 of the succeeding year on public lands. Entire state open. No daily bag or possession limit.

**108.3(2)** *Trapping.* Continuous open season using cage traps and dog-proof traps on private lands year-round. Trapping limitations described in this chapter apply to trapping raccoons from 8 a.m. on the first Saturday in November through February 28 of the succeeding year on all lands. Entire state open. No daily bag or possession limit.

**571—108.4(481A) Beaver.** Open season for the taking of beaver shall be from 8 a.m. on the first Saturday in November through April 15 of the succeeding year. No daily bag or possession limit.

**571—108.5(481A) Coyote.**

**108.5(1)** *Hunting.* Continuous open season. Entire state open. No daily bag or possession limit.

**108.5(2)** *Trapping.* Open season for trapping coyote shall be 8 a.m. on the first Saturday in November through February 28 of the succeeding year. Entire state open. No daily bag or possession limit. Any conservation officer or wildlife biologist may authorize a landowner, tenant or designee to trap coyotes causing damage outside the established trapping season dates.

**571—108.6(481A) Gray (timber) wolf and spotted skunk.** Continuous closed season.

**571—108.7(481A) River otter and bobcat.**

**108.7(1)** *License requirements.* Each person who takes river otters or bobcats shall have a valid fur harvester license and pay the habitat fee if normally required to have a license to hunt or trap.

**108.7(2)** *Open area.* River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Audubon, Boone, Cass, Cedar, Cherokee, Clarke, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Plymouth, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Sioux, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, and Woodbury.

**108.7(3)** *Seasonal daily bag limit.*

*a.* The seasonal daily bag limit for river otters is 3 river otters per person.

*b.* The seasonal daily bag limit for bobcats is 1 bobcat per person in the following counties: Audubon, Boone, Cedar, Cherokee, Clinton, Crawford, Dallas, Delaware, Guthrie, Harrison, Iowa, Jackson, Jasper, Johnson, Jones, Lyon, Monona, Muscatine, Plymouth, Polk, Poweshiek, Scott, Shelby, Sioux, Webster, and Woodbury.

*c.* The seasonal daily bag limit for bobcats is 3 bobcats per person in the following counties: Adair, Adams, Appanoose, Cass, Clarke, Davis, Decatur, Des Moines, Fremont, Henry, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monroe, Montgomery, Page, Pottawattamie, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, and Wayne.

*d.* No more than 3 bobcats total can be legally harvested by a fur harvester in a season. River otters or bobcats trapped in excess of the seasonal daily bag limit or in a closed area must be turned over to the department; the fur harvester shall not be penalized.

**108.7(4)** *Season dates.* The season for taking river otters and bobcats opens on the first Saturday in November and closes on February 28 of the following year.

**108.7(5)** *Reporting requirements.* Anyone, including a landowner or tenant not required to have a fur harvester license, who takes a river otter or bobcat must report the harvest and arrange to receive a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) tag from the officer or designated department employee within seven days of harvest. The river otter or bobcat shall be skinned and its lower jaw or skull turned over to the department conservation officer or designated department employee at the time the CITES tag is issued. If the specimen is to be kept whole for taxidermy purposes, a cut shall be made by the trapper between the gum line and eye so the CITES tag can be attached to the skin.

**108.7(6)** *Tagging requirements.* Every river otter or bobcat that may legally be kept must have a CITES tag attached. Tags will be supplied by the conservation officer or designated department employee. The tag must remain with the pelt until the pelt is sold or used for other purposes that render it no longer available for sale. Persons displaying river otters or bobcats as taxidermy mounts or as other decorative items must keep the tags in their possession as proof of legal harvest.

**571—108.8(481A) Accidental capture of a river otter or bobcat during a closed season.** A person who accidentally captures a river otter or bobcat during a closed season or in a closed area or after the person's individual daily bag limit has been reached shall not be penalized provided that:

1. The river otter or bobcat is captured during a legal trapping season or as part of a legal depredation control process; and
2. A conservation officer is contacted within 24 hours and the river otter or bobcat and all parts thereof are turned over to a conservation officer as soon as practical.

**571—108.9(481A) Trapping restrictions.** Trapping for all furbearers will be restricted as follows:

**108.9(1)** *Exposed bait.* No person shall set or maintain any leghold, body-clasping trap, or snare within 20 feet of exposed bait on land anywhere in the state or over water in the following areas:

*a.* Mississippi River corridor—Allamakee, Clayton, Dubuque, Jackson, Clinton, Scott, Muscatine, Louisa, Des Moines and Lee Counties.

*b.* Missouri River corridor—Those portions of Woodbury, Monona, Harrison, Pottawattamie, Mills and Fremont Counties west of Interstate 29.

*c.* Des Moines River corridor—Boone, Dallas, Polk, Marion, Mahaska, Wapello and Van Buren Counties.

"Exposed bait" means meat or viscera or any animal, bird, fish, amphibian, or reptile with or without skin, hide, or feathers visible to soaring birds.

**108.9(2)** Reserved.

**571—108.10(481A) Public roadside limitations—snares and body-gripping type traps.** No person shall set or maintain any snare or body-gripping type trap within any public road right-of-way within 200 yards of buildings inhabited by human beings unless a resident of the dwelling adjacent to the public road right-of-way has given permission or unless the body-gripping type trap is completely underwater or at least one-half of the loop of a snare is underwater. Nothing in this rule shall be construed as limiting the use of foothold traps or box-type live traps in public road rights-of-way. No person shall place or leave any trap, stake, or nonindigenous set making material upon any public road right-of-way except during a period of time that begins two weeks before the trapping season opens and ends on the last day of the season.

**571—108.11(481A) Snares.**

**108.11(1)** *Placement.* No person shall set or maintain any snare in any public road right-of-way so that the snare when fully extended can touch any fence. Snares may not be attached to a drag.

**108.11(2)** *Loop size.* No snare when set will have a loop larger than 8 inches in horizontal measurement except for snares set with at least one-half of the loop underwater or snares set on private land other than roadsides within 30 yards of a pond, lake, drainage ditch, creek, stream or river shall not have a loop larger than 11 inches in horizontal measurement.

**108.11(3)** *Deer locks.* All snares must have a functional deer lock that will not allow the snare loop to close smaller than 2½ inches in diameter.

**108.11(4)** *Mechanical snares.* It shall be illegal to set any mechanically powered snare designed to capture an animal by the neck or body unless such snares are placed completely underwater.

**571—108.12(481A) Body-gripping traps.** No person shall set or maintain any body-gripping trap on any public road right-of-way within five feet of any fence.

**571—108.13(481A) Foothold traps.** No person shall set or maintain on land any foothold trap with metal-serrated jaws, metal-toothed jaws or a spread inside the set jaws of greater than 7 inches.

**571—108.14(481A) Removal of animals from traps and snares.** All animals or animal carcasses caught in any type of trap or snare, except those that are placed entirely underwater and designed to drown the animal immediately, must be removed from the trap or snare by the trap or snare user immediately upon discovery and within 24 hours of the time the animal is caught.

**571—108.15(481A) Trap tag requirements.** All traps and snares, whether set or not, possessed by a person who can reasonably be presumed to be trapping shall have a metal tag attached plainly labeled with the user's name and address.

**571—108.16(481A) Colony traps.** All colony traps must be set entirely under water.

These rules are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, 481A.90, and 481A.92.

ITEM 2. Rescind and reserve **571—Chapter 109**.

ITEM 3. Rescind and reserve **571—Chapter 110**.

## ARC 8624C

# NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

### Proposing rulemaking related to nuisance wildlife control and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 114, "Nuisance Wildlife Control," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 456A.24(8), 481A.38, 481A.39 and 481A.48.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(8) and 481A.48.

*Purpose and Summary*

Proposed Chapter 114 governs the nuisance wildlife control program. The rules contain specific requirements for application, testing, license requirements, special species considerations, annual

reporting, and special permit guidance to nuisance wildlife control operators (NWCOs). NWCOs are experienced professionals who assist homeowners, businesses, and cities with removal of wildlife in conflict scenarios. Strong relationships between the Department of Natural Resources (Department) and NWCOs have resulted in a positive customer service response to the public.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Andrew Kellner
Iowa Department of Natural Resources
55 East Jefferson Street
Winterset, Iowa 50273
Email: andrew.kellner@dnr.iowa.gov

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*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

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*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 114 and adopt the following **new** chapter in lieu thereof:

CHAPTER 114
NUISANCE WILDLIFE CONTROL

**571—114.1(456A) Nuisance wildlife control program.** No provision of this chapter shall restrict a landowner from lawfully removing nuisance wildlife pursuant to Iowa Code section 481A.87.

**571—114.2(456A) Definitions.**

*"Annual activity report"* means an annual report submitted on a form provided by the department of natural resources.

*"Biologist"* means a natural resource biologist employed by the wildlife bureau of the department.

*"Guidebook"* means the nuisance wildlife control operator's manual provided by the department, updated November 2024.

*"Helper"* means a person who possesses a fur harvester license, has paid the habitat fee, and is listed, by name, on the permit as authorized to perform nuisance wildlife control operator duties under the direction of the permittee.

*"Nuisance wildlife"* means wild, native animals or birds under the jurisdiction of the department that are causing damage to property, creating a nuisance, or presenting a health hazard.

*"Nuisance wildlife control operator"* or *"NWCO"* means a person who operates as a business and charges a fee to remove nuisance wildlife.

*"Permit"* means an annual permit issued by the department under the authority of Iowa Code section 455A.5(6)*"e"* for the purpose of capturing and removing nuisance wildlife.

*"Permittee"* means an NWCO who possesses a valid nuisance wildlife control operator's permit issued by the department.

*"Special Canada goose control permit"* or *"SCGCP"* means a permit to engage in the Canada goose population control activities specified by the department.

*"Translocate"* means to transport and release an animal at a site other than the site at which it was captured.

**571—114.3(456A) Nuisance wildlife control operator's permit.** An NWCO permit may be issued to an NWCO who complies with all requirements established within this chapter. This is an annual permit and may be renewed by January 10 of the following year and is not transferable. The department shall not renew a permit without first receiving a completed annual activity report for the previous year.

**571—114.4(456A) Application requirements.** All applicants must be at least 18 years of age and possess a valid driver's license.

**571—114.5(456A) Nuisance wildlife control operator's guidebook.** All applicants will receive an NWCO guidebook at the time they submit a completed permit application form. The permittee shall

refer to the guidebook as an operating manual for nuisance wildlife control activity. All requirements and procedures listed in the guidebook must be followed. The NWCO guidebook is hereby adopted by reference and shall be a part of this chapter as if set forth herein.

**571—114.6(456A) Nuisance wildlife control operator's test and interview.** An applicant must successfully pass a written test with a minimum test score of 80 percent before an NWCO permit will be issued. If the applicant fails the written test, the applicant must wait 45 days before retaking the test. If the applicant fails the written test a second time, the applicant must wait 180 days before reapplying. A $25 testing fee will be assessed when the applicant successfully completes the test. In addition, the applicant must successfully complete an oral, in-person interview with a representative of the department to determine the applicant's knowledge of wildlife and wildlife capture techniques, and to determine if the applicant has the ability to provide effective services to the public.

**571—114.7(456A) Records and recordkeeping requirements.** All permittees shall keep an up-to-date daily record of their nuisance wildlife control activities and keep it on file at the business location specified in the permit. Each record must contain the client's name, address, telephone number, date of service, service provider's name, species of animal, number of animals removed, control methods used, and disposition of the animals. Permittees holding an SCGCP must also document the locations of all Canada goose nests destroyed, the numbers of Canada goose eggs destroyed, and the numbers of Canada geese killed at each project site. The permittee shall provide these records for inspection by a department representative at any reasonable time.

**571—114.8(456A) Annual activity report.** The permittee shall submit an annual activity report on forms provided by the department no later than January 31 of the following year. The department shall not renew a permit until a complete and accurate annual activity report has been received for the preceding year.

**571—114.9(456A) Permit renewal.** An NWCO permit may be renewed by the department when all reporting requirements for the previous year have been met. An administrative fee of $20 will be assessed at the time of permit renewal.

**571—114.10(456A) Helper.** A helper shall operate under the same conditions as the permittee. The permittee shall be responsible for all actions of the helpers listed on the permit. Compliance violations committed by a helper may be cause for the department to revoke the NWCO permit.

**571—114.11(456A) Capture methods and trap tagging.** The permittee and designated helpers shall observe all Iowa fur trapping and fur possession regulations as provided by Iowa law, the Iowa Administrative Code, and the NWCO guidebook. If traditional capture methods fail, the permittee may use chemicals, smoking devices, mechanical ferrets, wire, tools, instruments, or water to remove nuisance animals in accordance with the procedures contained in the guidebook. No person, except a person acting under an NWCO permit, shall capture or take, or attempt to capture or take, with any trap, snare, or net, any game bird.

**571—114.12(456A) Endangered and threatened wildlife species.** The permittee is not authorized to capture or possess any wildlife species listed as endangered or threatened. A permittee may only capture or possess a federally protected species to the extent that the permittee is authorized to engage in specific Canada goose population control activities by the terms of a valid SCGCP. This prohibition includes but is not limited to the capture or possession of bobcats, spotted skunks, hawks, owls, eagles, migratory birds, waterfowl, and songbirds. When a nuisance wildlife problem involves an endangered or threatened species, the local state conservation officer must be contacted, and the officer will determine how the situation should be handled.

**571—114.13(456A) Special Canada goose control permits.** A person applying for a special Canada goose control permit to use lethal methods to control Canada goose populations or to trap and translocate Canada geese must be a currently certified NWCO and must abide by the following rules:

**114.13(1)** *Lethal control practices.* Permittees wishing to use lethal methods, such as nest destruction, egg oiling, egg addling, or killing geese, must comply with the following procedures:

*a.* Permittees must obtain written permission from the biologist responsible for the county in which the lethal control practice is proposed for every site where a lethal control practice is proposed before implementing any such practice. The biologist will determine if lethal control practices are necessary and will specify the number of nests, eggs, or adult geese that can be destroyed at each site.

*b.* The permittee must follow the procedures in the NWCO guidebook for implementing lethal control practices and disposing of dead birds, eggs, and nests. Failure to follow such procedures will result in immediate revocation of the permit.

*c.* Permittees must satisfactorily complete at least two lethal control projects under the direct supervision of a biologist before being granted an SCGCP for lethal control practices. Upon the permittee's satisfactory completion of two lethal control projects, the biologist can issue the NWCO an SCGCP to perform lethal control activities without direct supervision by department personnel. The NWCO must carry this permit whenever engaged in lethal Canada goose control activities and exhibit it upon request by department personnel. Any persons assisting with the lethal control practices must be listed on the SCGCP. The permittee is responsible for the conduct of all persons listed on the SCGCP who are helping conduct lethal control operations.

*d.* All Canada goose work must be reported as specified in the NWCO guidebook by December 31 of the year for which the SCGCP is valid. The department will not renew a permit until a complete and accurate annual activity report has been received for the preceding year.

**114.13(2)** *Trapping and translocation operations.* Permittees wishing to trap and translocate Canada geese must comply with the following procedures:

*a.* Permittees must obtain written permission from the biologist responsible for the county in which the trap and translocation operation is proposed for every site where such operation is proposed before implementing any such operation. The biologist will determine if a trap and translocation operation is necessary and will specify the number of geese that can be translocated from each site. The biologist will also specify release sites for the captured geese. Release sites must be approved by the biologist before any geese are captured.

*b.* The permittee must follow the procedures in the NWCO guidebook for implementing trap and translocation operations. Failure to follow such procedures will result in immediate revocation of the permit.

*c.* Before the permittee engages in a trap and translocation operation, the permittee's trapping and transport equipment must be inspected and approved by a biologist.

*d.* Permittees must satisfactorily complete at least four trap and translocation projects under the direct supervision of a biologist before being granted an SCGCP for trap and translocation operations. Upon satisfactory completion of four trap and translocation projects, the biologist can issue the NWCO an SCGCP to perform trap and translocation operations without direct supervision by department personnel. The NWCO must carry this permit whenever engaged in trap and translocation operations and exhibit it upon request by department personnel. Any persons assisting with the trap and translocation operations must be listed on the SCGCP. The permittee is responsible for the conduct of all persons listed on the SCGCP who are helping with trap and translocation operations.

*e.* Permittees must inform the biologist of the number of birds captured and translocated within 48 hours of the completion of each operation. Permittees must document the number of Canada geese trapped and released for each capture and release site and the number of geese that died during each trap and translocation operation. Any banded geese that are captured and translocated must be reported as specified in the NWCO guidebook within 48 hours of completion of the project.

*f.* Permittees must provide the department a written report of all trap and translocation operations by December 31 of the year for which the SCGCP is valid. Failure to provide this report by December 31 will result in the permittee's not being reauthorized to trap and translocate geese the following year.

**114.13(3)** *General provisions.*

*a.* The SCGCP is valid for one year and must be reauthorized by a biologist each year when the NWCO permit is renewed.

*b.* Any plumage, eggs, eggshells, nests, or dead birds encountered by the permittee when performing activities permitted under this rule may not be sold, offered for sale, bartered or shipped or possessed for the purposes of being sold, offered for sale, bartered or shipped.

*c.* Any properties on which lethal control or trap and transport operations are conducted must be open at all reasonable times, including during actual operations, to any biologist, conservation officer, U.S. Fish and Wildlife Service special agent, or U.S. Department of Agricultural Wildlife Services agent wishing to inspect the activity or the results of the activity.

*d.* Nothing in the permit should be construed to authorize the killing of any migratory bird or the destruction of the nests or eggs of any migratory bird other than resident Canada geese.

**571—114.14(481A) Pigeons.**

**114.14(1)** Pigeons causing a health or safety hazard may be taken by trapping, or any current Environmental Protection Agency (EPA)- and Iowa-registered pesticide repellent, or toxic perches. Strychnine-based products cannot be used. The person or organization engaging in such a program will provide for proper removal and disposal of all pigeons taken by such means.

**114.14(2)** If a specific problem involving the use of a toxic substance or a procedure designed to destroy problem pigeons proves not to be species-specific, the director, conservation officer or biologist will issue an immediate order to stop the particular method being employed or the substance being used.

**571—114.15(456A) Disposition of captured nuisance wildlife.** Nuisance wildlife, with the exception of endangered or threatened species, may be relocated or euthanized. The permittee shall comply with the euthanization and release methods described in the NWCO guidebook. Sick or injured wildlife must be handled as described in the NWCO guidebook. The carcass of a dead nuisance animal must be disposed of in a legal manner and within 24 hours of the animal's death.

**571—114.16(456A) General conditions for permits.** Records and facilities shall be available for inspection by officers of the department during reasonable hours. All records and reports must be kept current and shall reflect a true and accurate account of the permittee's activities. The department's law enforcement bureau shall be notified in writing within 30 days if the permittee ceases operation as a nuisance wildlife control operator. Permittees and helpers must obtain and possess valid fur harvester licenses and have paid the habitat fees, except that permittees and helpers solely conducting Canada goose control activities with an SCGCP do not need to have a valid fur harvester license nor to have paid the habitat fee. Permittees must renew their NWCO permits by January 31 of each year.

**571—114.17(456A) Permit refusal.** The department may suspend, revoke, refuse to issue, or refuse to renew a nuisance wildlife control operator's permit if the department finds that the permittee, a helper, or an employee of the permittee is not in compliance with this chapter. In addition, any violation of Iowa Code chapter 481A, 481B, 482, 483A, 484A, 484B, or 716 shall be cause for the department to suspend, revoke, refuse to issue, or refuse to renew a permit.

**571—114.18(456A) Penalties.** A person or organization that violates a provision of this chapter is guilty of a simple misdemeanor.

These rules are intended to implement Iowa Code sections 456A.24(8), 481A.38, 481A.39 and 481A.48.

**ARC 8642C**

# NATURAL RESOURCES DEPARTMENT[561]

**Notice of Intended Action**

**Proposing rulemaking related to rescission of chapters and providing an opportunity for public comment**

The Department of Natural Resources (Department) hereby proposes to rescind Chapter 1, "Description of Organization," and Chapter 3, "Submission of Information and Complaints—Investigations," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code chapter 455A and sections 17A.3(1)"b" (rescinded), 17A.7(1) and 17A.9(2).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 2370, and Executive Order 10.

*Purpose and Summary*

The Iowa Administrative Procedure Act has long required agencies to adopt rules describing its internal organization and mission and how to submit information and complaints. To satisfy these obligations, the Department promulgated Chapters 1 and 3.

However, 2024 Iowa Acts, Senate File 2370, rescinded this underlying law (section 4). Accordingly, the Department is proposing to rescind these chapters consistent with the principles of Executive Order 10 as being either unauthorized or unnecessary. That said, information about the Department's structure and important contact information that was previously provided in Chapters 1 and 3 is available on the Department's website and in other Department publications. Additionally, specific information regarding filing complaints related to environmental matters was incorporated into 567—Chapter 10 during the Department's 2023 Executive Order 10 rulemaking process.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at tamara.mcintosh@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov.

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025 | 6200 Park Avenue, Suite 200 |
| 1 to 2 p.m. | Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at tamara.mcintosh@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.901.3294 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.901.3294 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **561—Chapter 1**.

ITEM 2. Rescind and reserve **561—Chapter 3**.

**ARC 8640C**

# NATURAL RESOURCES DEPARTMENT[561]

## Notice of Intended Action

### Proposing rulemaking related to rules of practice in contested cases and providing an opportunity for public comment

The Department of Natural Resources (Department) hereby proposes to rescind Chapter 7, "Rules of Practice in Contested Cases," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 17A.22.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 17A.12 through 17A.18.

*Purpose and Summary*

Proposed Chapter 7 contains the Department's rules of practice in contested cases. This chapter is necessary to guarantee due process and ensure a consistent and transparent hearing process. This chapter is narrowly tailored to that end. However, the Department has edited the chapter consistent with Executive Order 10 and has made strategic updates to account for electronic filing and other modern digital processes.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 31, 2025. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at tamara.mcintosh@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 30, 2025 | Virtual meeting |
| 12 noon | A meeting registration link will be provided prior to the hearing |
| January 31, 2025 | Virtual meeting |
| 12 noon | A meeting registration link will be provided prior to the hearing |

A link for the virtual meeting will be provided to those who make a request to take part in the virtual hearing. The request for the link shall be submitted to Ms. McIntosh by 8:00 a.m. on January 30, 2025.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at tamara.mcintosh@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.901.3294 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.901.3294 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 7 and adopt the following **new** chapter in lieu thereof:

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, appeals, and licensing or the agency, as provided in rule 561—7.7(17A,455A).

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

**561—7.3(17A,455A) Time requirements.**

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

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

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

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

**7.4(1)** *Time.*

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

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

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

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

*a.* The name and address of the appellant,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*f.* Reference to the procedural rules governing informal settlement;

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

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

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

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

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

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

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

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

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

*a.* Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding (i.e., there is no

conflict of interest because the agency would not act as both party and adjudicator in the contested case proceeding).

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

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

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

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

*f.* The request was not timely filed.

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

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

**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 that would delay the proceeding will ordinarily be denied.

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

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

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

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

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

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

**7.12(1)** *Petition.*

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

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

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

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

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

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

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

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

**7.12(2)** *Answer.*

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

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

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

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

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

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

**7.12(4)** *Form.* All pleadings shall adhere to the form as provided by the department of inspections, appeals, and licensing and be signed by the person filing the pleading.

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

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

**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 that the party expects to introduce into evidence. Amendments and additions to these materials may be made no later than ten days prior to the date of the hearing. However, following a prehearing conference held in accordance with subrule 7.14(5), witnesses, documents or exhibits may be added only if the moving party can show that they were not readily identifiable with reasonable diligence prior to the prehearing conference and that the addition is necessary to prevent manifest injustice.

**7.14(4)** *Subpoenas.*

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

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

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

**7.14(5)** *Prehearing conference.*

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

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

(2) The necessity or desirability of amending pleadings;

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

(4) Limiting the number of witnesses;

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

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

(7) The procedure at the hearing;

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

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

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

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

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

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

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

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

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

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

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

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

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

**7.17(2)** *Final decision or order.*

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

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

**7.17(3)** *Decisions and orders.*

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

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

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

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed findings of fact in accordance with subrule 7.17(1), the decision or order shall include a ruling

upon each proposed finding. The decision shall include an explanation as to why the relevant evidence in the record supports each material finding of fact.

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

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

**7.17(4)** *The record.*

*a. Content of record.* The record shall include:

(1) All pleadings, motions and intermediate rulings;

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

(3) A statement of all matters officially noticed;

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

(5) All proposed findings and exceptions;

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

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

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

*a. Time allowed.*

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

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

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

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

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

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

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

**7.17(6)** *Applications for rehearing.*

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

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

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

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

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

**7.17(7)** *Motion to vacate.*

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

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

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

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

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

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

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

**7.17(8)** *Stays of agency action.*

*a. When available.*

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

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

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

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

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

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

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

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

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

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

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

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

*a.* Findings of fact,

*b.* Conclusions of law, and

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

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

*a.* Personal delivery;

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

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

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

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

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

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

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

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

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

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

(3) Where lies the public interest, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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.

## ARC 8645C

# NATURAL RESOURCES DEPARTMENT[561]

### Notice of Intended Action

### Proposing rulemaking related to contracts for services and public improvements and providing an opportunity for public comment

The Department of Natural Resources (Department) hereby proposes to rescind Chapter 8, "Contracts for Public Improvements and Professional Services," and to adopt a new Chapter 8, "Contracts for Services and Public Improvements," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.22, 455A.4, 456A.20(2) and 573.12(13).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 455A, 456A and 573.

*Purpose and Summary*

Proposed Chapter 8 sets forth the Department's process for soliciting and awarding contracts for services, contracts for public improvements, and contracts for sale of timber. Specifically, the proposed

new chapter reduces and consolidates these longstanding rules consistent with Executive Order 10. This is accomplished by rescinding outdated provisions and by removing those redundant to statute. The proposed new chapter sets out how the Department will interact with other parties to enter into contracts and to accomplish the contract's scope of work and specific tasks.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 30, 2025. Comments should be directed to:

Anne Preziosi
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: anne.preziosi@dnr.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views will be held as follows:

| | |
|---|---|
| January 29, 2025<br>9 to 10 a.m. | Lake Darling Conference Room<br>6200 Park Avenue, Suite 200<br>Des Moines, Iowa |
| January 30, 2025<br>9 to 10 a.m. | Virtual Meeting<br>A meeting registration link will be provided prior to the hearing upon request |

The January 30, 2025, hearing will be a virtual meeting only. A link for the virtual meeting will be provided to those who make a request to take part in the virtual hearing. The request for the link shall be submitted to Ms. Preziosi by 8:00 a.m. on January 29, 2025.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at anne.preziosi@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.238.3429 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al anne.preziosi@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.238.3429 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
CONTRACTS FOR SERVICES AND PUBLIC IMPROVEMENTS

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

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

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

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

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

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

**8.2(5)** *Interest on retained funds.*

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

*b. General requirements.*

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

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

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

*c. Procedures.*

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

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

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

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

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

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

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

**8.3(2)** *Purchasing standards for service contracts.* The department shall comply with the provisions of 11—Chapters 117 through 121 (as of June 25, 2024).

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

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

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

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

## ARC 8648C

# NATURAL RESOURCES DEPARTMENT[561]

### Notice of Intended Action

### Proposing rulemaking related to groundwater hazard documentation and providing an opportunity for public comment

The Department of Natural Resources (Department) hereby proposes to rescind Chapter 9, "Groundwater Hazard Documentation," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.103(2), 455B.105(3), 558.69(5), and 558.69(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 558.69.

*Purpose and Summary*

Proposed Chapter 9 benefits the public by standardizing the process by which groundwater hazard statements are completed, submitted to county recorders for recording, and transmitted to the Department. This process provides clarity and consistency for county recorders, real estate professionals, and members of the public. This chapter has been reviewed consistent with Executive Order 10. The new chapter omits unnecessary and redundant language.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 7, 2025. Comments should be directed to:

Bradley Adams
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: bradley.adams@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at bradley.adams@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al bradley.adams@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 30, 2025<br>12 noon | Virtual Meeting<br>A meeting registration link will be provided prior to the hearing |
| January 31, 2025<br>12 noon | Virtual Meeting<br>A meeting registration link will be provided prior to the hearing |

A link for the virtual meeting will be provided to those who make a request to take part in the virtual hearing. The request for the link shall be submitted to Mr. Adams by 8:00 a.m. on January 30, 2025.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at bradley.adams@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.664.8894 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al bradley.adams@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.664.8894 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
GROUNDWATER HAZARD DOCUMENTATION

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

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

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

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

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

**561—9.2(558) Form.**

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

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

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

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

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

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

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

*b.* In the absence of such an agreement, or if the county land record information system is inoperable, a county recorder shall submit a digital copy of each recorded groundwater hazard statement to the department via email within 15 days of its recording. All emails shall be directed to the department's records division. The department shall retain custody of such forms for at least five years.

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

These rules are intended to implement Iowa Code section 558.69.

## ARC 8643C

# NATURAL RESOURCES DEPARTMENT[561]

### Notice of Intended Action

### Proposing rulemaking related to waivers from administrative rules and providing an opportunity for public comment

The Department of Natural Resources hereby proposes to rescind Chapter 10, "Waivers from Administrative Rules," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 17A.9A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 17A.9A.

*Purpose and Summary*

Proposed Chapter 10 sets forth the process for a person to petition the Department for a waiver from the requirements of an administrative rule. These rules are narrowly tailored to align with underlying statute. However, the Department has carefully reviewed the chapter for duplication of statute and made edits consistent with Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 31, 2025. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at tamara.mcintosh@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 30, 2025 | Virtual meeting |
| 12 noon | A meeting registration link will be provided prior to the hearing |
| January 31, 2025 | Virtual meeting |
| 12 noon | A meeting registration link will be provided prior to the hearing |

A link for the virtual meeting will be provided to those who make a request to take part in the virtual hearing. The request for the link shall be submitted to Ms. McIntosh by 8:00 a.m. on January 30, 2025.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at tamara.mcintosh@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.901.3294 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.901.3294 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 10 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 10
## WAIVERS FROM ADMINISTRATIVE RULES

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

**561—10.2(17A) Burden of persuasion.** The burden of persuasion rests with the person who petitions the department for the waiver of a rule consistent with Iowa Code section 17A.9A(3).

**561—10.3(17A) Special waiver rules not precluded.** This chapter shall not preclude the department from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so, and the director deems it appropriate to do so.

**561—10.4(17A) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons governed by the particular rule.

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

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

**10.5(2)** *Other.* If the petition does not relate to a pending contested case, the petition may be submitted to the director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**561—10.15(17A) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all decisions granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public.

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

**561—10.17(17A) Violations.** Violation of conditions of the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

**561—10.18(17A) Defense.** After the department issues a decision granting a waiver, the decision is a defense within its terms and the specific facts indicated therein for the person to whom the decision pertains in any proceeding in which the rule in question is sought to be invoked.

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

## ARC 8647C

# NATURAL RESOURCES DEPARTMENT[561]

**Notice of Intended Action**

**Proposing rulemaking related to the Iowa nature store and providing an opportunity for public comment**

The Natural Resources Department (Department) hereby proposes to rescind Chapter 11, "The Iowa Nature Store," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 456A.24(5).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10.

*Purpose and Summary*

Chapter 11 created the Iowa Nature Store. The Iowa Nature Store sold environmental- and natural resources-themed merchandise. Sale proceeds went into the Conservation Fund. The Iowa Nature Store has been closed for more than a decade. Accordingly, this chapter can be rescinded.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 30, 2025. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200

Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at tamara.mcintosh@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov.

*Public Hearing*

A public hearing at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 30, 2025<br>12 noon | Via videoconference call: A link will be provided to those who make a request to participate by 8 a.m. on January 30, 2025.<br>Contact: Tamara McIntosh |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at tamara.mcintosh@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **561—Chapter 11**.

## ARC 8646C

# NATURAL RESOURCES DEPARTMENT[561]

### Notice of Intended Action

### Proposing rulemaking related to deer and turkey licenses and providing an opportunity for public comment

The Natural Resources Department (Department) hereby proposes to rescind Chapter 12, "Special Nonresident Deer and Turkey Licenses," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 483A.24.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 483A.24.

*Purpose and Summary*

Proposed Chapter 12 implements Iowa Code section 483A.24, which requires the Director of the Department to provide a certain number of special nonresident turkey and deer licenses. 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. This chapter has been reviewed and edited consistent with Executive Order 10 (2023). Changes from the prior version of the chapter include removing inconsistencies in due dates for applications by allowing the coordinator of the licenses to set dates, removing language regarding services provided by recipients of special promotional licenses, and removing an outdated reference to an electronic lottery system.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on Wednesday, January 29, 2025. Comments should be directed to:

Denise Roberg
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: denise.roberg@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at denise.roberg@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al denise.roberg@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa |

| | |
|---|---|
| January 29, 2025 | 6200 Park Avenue, Suite 200 |
| 12 noon to 1 p.m. | Des Moines, Iowa |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at denise.roberg@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al denise.roberg@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 12 and adopt the following **new** chapter in lieu thereof:

## 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.

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

*"Approved organization"* means an organization that is incorporated under Iowa Code chapter 504 as a nonprofit organization, whose mission involves providing hunting experiences for disabled veterans and military personnel.

*"Conservation organization"* means an organization that is incorporated under Iowa Code chapter 504 as a nonprofit organization, 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. A person who purchases a deer license from a conservation organization under these rules is not subject to the restriction provided in 12.5(1)*"b."*

*"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 director or the director's designee 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.

*"Nonresident disabled veteran or disabled member of the armed forces"* means a person who is a veteran and who has an assigned service-related disability rating of 30 percent or more under United

States Code, Title 38, Chapter 11; or a person who is a member of the armed forces serving on active federal duty currently participating in the Integrated Disability Evaluation System (IDES).

*"Outdoor industry"* means a commercial enterprise or venture that promotes or otherwise contributes to the use of natural resources. 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. Sponsors shall either conduct business in Iowa and be registered with the secretary of state or have some other affiliation with the state of Iowa.

**561—12.3(483A) Availability of special licenses.** The program shall be available to provide no more than the number of special licenses allowed by Iowa Code section 483A.24 to nonresidents through requests submitted by individual hunters, through a sponsor, or through an approved organization.

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

**12.4(1)** Assist the internal committee 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, sponsors, and approved organizations upon request.

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

**12.4(4)** Summarize each request received and distribute the summaries to the internal committee and the director or the director's designee.

**12.4(5)** Establish the date on which applications for special licenses for disabled veterans and disabled active military personnel are due, establish the dates on which the director or the director's designee will select the conservation organizations and hunters who will receive special licenses, and inform the conservation organizations, the approved organizations and the hunters of their selection.

**561—12.5(483A) Request, review, and selection process for promotional special licenses.**

**12.5(1)** *Submission of requests.*

*a.* Individual hunters or sponsors shall submit a request, or requests, to the coordinator.

*b.* Applicants will not qualify for a deer license under this rule if they were issued a deer license under this rule the previous year.

*c.* Hunters awarded a deer license under this rule may purchase preference points for the regular nonresident deer license and shall not lose those preference points when awarded a deer license under this rule.

**12.5(2)** *Review.* The internal committee shall review the summaries prepared by the coordinator, rank the hunters according to criteria in 561—12.7(483A), and forward the rankings to the director or the director's designee for consideration and final selection. The internal committee shall exercise its discretion and, in addition to the criteria in 561—12.7(483A), shall also consider the following:

*a.* Requests that demonstrate little or no promotion of the state of Iowa or its natural resources shall not be included in the rankings forwarded to or considered by the director or the director's designee.

*b.* Requests from a sponsor, a sponsor-related entity, or hunter that has been found guilty of a game violation in Iowa or elsewhere within the past five years or that, in the opinion of the internal committee, has exhibited poor hunting ethics or judgment shall not be considered for a special license.

*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 561—12.12(483A) to the department through the coordinator.

**561—12.6(483A) Consideration of requests for promotional special licenses.** The internal committee will recommend to the director or the director's designee that conservation organizations are best qualified to promote the state and its natural resources. In making recommendations to the director or the director's designee, the internal committee will base its recommendations on the expected ability of hunters 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 fundraiser 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 director or the director's designee. The sponsoring conservation organization shall notify the coordinator 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 fundraiser.

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

**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.

**561—12.7(483A) Ranking criteria for promotional special licenses.**

**12.7(1)** The following criteria shall be used by the internal committee to rank individual hunters as identified in 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 director or the director's designee as an aid in determining the selection of hunters.

*a.* Five points if the hunter is directly affiliated with an Iowa-based outdoor industry.

*b.* From 0 to 10 points for 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 12.6(5).

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

**12.7(3)** Hunters as identified in 12.6(3) shall not be ranked by the internal committee, and their requests will be forwarded to the director or the director's designee for consideration.

**561—12.8(483A) License term for promotional special licenses.** With the exception of the term provided for in 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.

**561—12.9(483A) Reporting by recipients of promotional special licenses.** 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. The director or the director's designee may consider compliance with this reporting requirement in evaluating future requests.

**561—12.10(483A) License costs for promotional special licenses.** With the exception provided in 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:

**12.10(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.

**12.10(2)** For a special nonresident turkey license, the fee described in Iowa Code section 483A.1 for a wild turkey hunting license.

**561—12.11(483A) Request, review, and selection processes for special licenses for nonresident disabled veterans or disabled members of the armed forces.**

**12.11(1)** *Submission of requests.*

*a.* Individual hunters or approved organizations shall submit a request, or requests, to the coordinator.

*b.* Applicants will not qualify for a deer or turkey license under this rule if they were issued a deer or turkey license under this rule the previous year. However, if there are unclaimed deer or turkey licenses under this rule, then the coordinator may keep a list of applicants who received licenses the previous year and who apply for the current year, and process those applicants' applications to determine the recipients of the unclaimed licenses.

*c.* Hunters awarded a deer license under this rule may purchase preference points for the regular nonresident deer license and shall not lose those preference points when awarded a deer license under this rule.

**12.11(2)** *Review.* After the established deadlines have passed, the coordinator shall review the applications for completeness and shall process the complete applications to determine the recipients of the special licenses. The coordinator shall exercise discretion and shall also consider the following:

*a.* Requests from an approved organization or hunter that has been found guilty of a game violation in Iowa or elsewhere shall not be considered for a special license.

*b.* If special licenses are unclaimed after the established deadlines, the coordinator may set new deadlines and inform participating approved organizations that licenses are still available.

**12.11(3)** *Selection and payment.* Upon notice of selection to receive a special license, the approved organization or hunter shall make payment in accordance with 561—12.17(483A) to the department through the coordinator.

**561—12.12(483A) License term for disabled veteran and military special licenses.** Special deer or turkey licenses issued under these rules shall be valid for only the applicable deer or turkey season immediately following allocation of the license.

**561—12.13(483A) License costs for disabled veteran and military special licenses.** A nonresident who obtains a special license issued pursuant to this chapter shall pay the applicable fee as follows:

**12.13(1)** For a special nonresident deer hunting antlered or any sex deer license or a turkey hunting license, the fee described in Iowa Code section 483A.24(5)*"c."*

**12.13(2)** For a special nonresident hunting license that includes the wildlife habitat fee, the fee described in Iowa Code section 483A.24(5)*"d."*

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

**ARC 8615C**

# NATURAL RESOURCES DEPARTMENT[561]

**Notice of Intended Action**

**Proposing rulemaking related to state lands volunteer program and providing an opportunity for public comment**

The Natural Resources Department (Department) hereby proposes to rescind Chapter 13, "State Lands Volunteer Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 461A.81.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 461A.81.

*Purpose and Summary*

Proposed Chapter 13 establishes the rules regarding the State Lands Volunteer Program. This program allows certain nonprofit organizations and individuals providing qualifying volunteer services for the Department to be eligible for liability protection under Iowa Code chapter 669 (Iowa Tort Claims Act).

Consistent with Executive Order 10 (2023) and the five-year review of rules under Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were redundant language and provisions in this chapter that were repetitive to statute. These provisions have been removed from the proposed version in this rulemaking.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Kim Bohlen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200

Des Moines, Iowa 50321
Email: kim.bohlen@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at kim.bohlen@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al kim.bohlen@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>Also via videoconference call: A link will be provided to those who make a request to participate by 8 a.m. on January 29, 2025.<br>Contact: Kim Bohlen |
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>Also via videoconference call: A link will be provided to those who make a request to participate by 8 a.m. on February 6, 2025.<br>Contact: Kim Bohlen |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at kim.bohlen@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al kim.bohlen@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
STATE LANDS VOLUNTEER PROGRAM

**561—13.1(461A) Definitions.**

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

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

*"Volunteer"* means an organization incorporated under Iowa Code chapter 504 as a nonprofit organization, or an individual providing services on behalf of the nonprofit organization, that provides volunteer services for the benefit of lands under the jurisdiction of the department and that registers as a

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

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

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

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

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

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

## ARC 8644C

# NATURAL RESOURCES DEPARTMENT[561]

### Notice of Intended Action

### Proposing rulemaking related to concessions and providing an opportunity for public comment

The Natural Resources Department (Department) hereby proposes to rescind Chapter 14, "Concessions," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 17A.7.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 17A.7 and 461A.4(2) and Executive Order 10.

*Purpose and Summary*

Chapter 14 creates a framework for the Department to competitively hire a business to operate on public lands or waters under the Department's jurisdiction. However, all concession operations are in state parks, which have their own administrative rules under the Natural Resource Commission[571]. This chapter has not been used in several decades and has not been amended since 1988. Therefore, consistent with Executive Order 10, it can be rescinded.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 561—Chapter 10. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 30, 2025. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at tamara.mcintosh@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov.

*Public Hearing*

A public hearing at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 30, 2025<br>12 noon | Via videoconference call: A link will be provided to those who make a request to participate by 8 a.m. on January 30, 2025.<br>Contact: Tamara McIntosh |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at tamara.mcintosh@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **561—Chapter 14**.

## ARC 8641C

# NATURAL RESOURCES DEPARTMENT[561]

**Notice of Intended Action**

**Proposing rulemaking related to failure to pay state liabilities and providing an opportunity for public comment**

The Department of Natural Resources (Department) hereby proposes to rescind Chapter 15, "Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 272D.8.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 272D.

*Purpose and Summary*

Proposed Chapter 15 sets forth the rules on collecting debts owed to the State from persons who have licenses with the Department. This chapter is procedural in nature and required by law. It describes how the Department will pass along the Iowa Department of Revenue's notice of an outstanding state liability obligation and associated certificate of noncompliance and how the certificate can be challenged.

The Department has reviewed Chapter 15 consistent with Executive Order 10 (January 10, 2023) and removed redundant statutory language and other outdated provisions.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 31, 2025. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Free language assistance: if you need assistance in a language other than English, contact the Department at matthew.graesch@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.250.1923 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al matthew.graesch@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.250.1923 al menos siete días antes del evento.

*Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 30, 2025<br>12 noon | Via videoconference call<br>A link will be provided to those who make a request to participate by 8 a.m. on January 30, 2025.<br>Contact: Tamara McIntosh |
| January 31, 2025<br>12 noon | Via videoconference call<br>A link will be provided to those who make a request to participate by 8 a.m. on January 30, 2025.<br>Contact: Tamara McIntosh |

Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at tamara.mcintosh@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.901.3294 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al tamara.mcintosh@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.901.3294 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 15 and adopt the following **new** chapter in lieu thereof:

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

**561—15.1(272D) Purpose and use.** This chapter is intended to help collect liabilities of the state or a state agency from persons who have licenses with the department. This chapter shall apply to all licenses issued, renewed or otherwise authorized by the department.

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

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

*"Department"* means the department of natural resources.

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

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

*"Withdrawal of a certificate of noncompliance"* means a document provided by the collecting agency certifying that the certificate of noncompliance is withdrawn and that the department may proceed with issuance, reinstatement, or renewal of a person's license.

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

**15.3(1)** *Records.*

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARC 8649C

# NATURAL RESOURCES DEPARTMENT[561]

### Notice of Intended Action

### Proposing rulemaking related to state park and recreation area fees and providing an opportunity for public comment

The Department of Natural Resources (Department) hereby proposes to rescind Chapter 16, "State Park and Recreation Area Fees," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 455A.14.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 455A.14.

*Purpose and Summary*

Proposed Chapter 16 provides the methodology for how fees for camping, the use of rental facilities, vessel storage, and other special privileges are determined in state park and recreation areas. The overall intent of this rulemaking is to increase revenue for the State's conservation fund, which is required by law to support Iowa's state parks system among other public lands and waters but to also maximize occupancy and usage of the Iowa state parks and recreation areas.

The Department has statutory authority to set fees to be reasonably competitive with other parks and recreation areas in close proximity and to increase, reduce, or waive fees in response to promotional events or efforts. The chapter will provide clarity to staff and customers on reservation changes, what fee is charged when there is a recent fee change, and the expectation of alternative fees when political subdivisions are managing the State-owned areas.

This chapter has been reviewed and revised consistent with Executive Order 10 (January 10, 2023).

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 25, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on February 6, 2025. Comments should be directed to:

Jessica Manken
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.571.4010
Email: jessica.manken@dnr.iowa.gov

Free language access. If you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at jessica.manken@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jessica.manken@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 29, 2025<br>12 noon to 1 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference |
| February 6, 2025<br>4 to 5 p.m. | 6200 Park Avenue, Suite 200<br>Des Moines, Iowa<br>And via videoconference |

A Google Meet link and conference call number will be provided prior to each of the hearings to those who make a request to take part in the hearing. The request for the hearing link/conference call number shall be submitted to Ms. Manken no later than 8 a.m. on January 29 or February 6.

Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. Any persons who intend to attend a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at jessica.manken@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.571.4010 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jessica.manken@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.571.4010 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any

individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
STATE PARK AND RECREATION AREA FEES

**561—16.1(455A) Definitions.**

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

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

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

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

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

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

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

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

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

*e.* Cost of operations.

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

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

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

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

## ARC 8651C

# NATURAL RESOURCES DEPARTMENT[561]

### Notice of Intended Action

### Proposing rulemaking related to oil, gas, and metallic minerals and providing an opportunity for public comment

The Department of Natural Resources (Department) hereby proposes to rescind Chapter 17, "Oil, Gas, and Metallic Minerals," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 458A.4(5) and 458A.4(6).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 458A.

*Purpose and Summary*

Proposed Chapter 17, along with its enabling legislation in Iowa Code chapter 458A, is intended to promote the development and utilization of oil, gas, and metallic minerals in Iowa. This chapter ensures that these resources are accessed and used in a way that prevents waste; provides a greater ultimate recovery of resources; protects correlative rights of all owners; and encourages practices that will result in landowners, royalty owners, producers, and the general public realizing the greatest possible good from these vital natural resources. The chapter also seeks to protect the groundwater and surface water from pollution.

Proposed Chapter 17 has been reviewed consistent with Executive Order 10. Additionally, the chapter has been updated to reflect 2024 Iowa Acts, Senate File 2421. This legislation expands the scope of Iowa Code chapter 458A to include all naturally occurring gasses.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 31, 2025. Comments should be directed to:

Matthew Graesch
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: matthew.graesch@dnr.iowa.gov

Free language assistance: if you speak a non-English language, we offer you language assistance services free of charge. Contact the Department at matthew.graesch@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística: si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al matthew.graesch@dnr.iowa.gov.

*Public Hearing*

Public hearings at which persons may present their views orally will be held by conference call as follows:

| | |
|---|---|
| January 30, 2025<br>1 p.m. | Via videoconference call<br>A meeting registration link and conference call number will be provided prior to the hearing. |
| January 31, 2025<br>9 a.m. | Via videoconference call<br>A meeting registration link and conference call number will be provided prior to the hearing. |

Persons who wish to attend the conference call should contact Matthew Graesch at matthew.graesch@dnr.iowa.gov. Persons who wish to make oral comments at the conference call public hearing must submit a request to Matthew Graesch prior to the hearing to facilitate an orderly hearing. Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Free language assistance: if you need assistance in a language other than English, contact the Department at matthew.graesch@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.250.1923 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al matthew.graesch@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.250.1923 al menos siete días antes del evento.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 561—Chapter 17 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 17
## OIL, GAS, AND METALLIC MINERALS

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

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

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

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

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

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

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

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

*"Common source of supply"* is synonymous with pool.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The two nearest lease lines,

(2) The two nearest section lines, and

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

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

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

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

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

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

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

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

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

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

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

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

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

**561—17.5(458A) Organization reports.**

**17.5(1)** Every person independently engaged in, or acting as a principal or agent for another entity that is engaged in, the production, storage, transportation (except railroad), refining, reclaiming, treating, marketing, or processing of oil or gas, or the exploration for or production of metallic minerals, shall file the following with the department:

*a.* The name under which the business is being operated.

*b.* The name and contact information of the person, business or businesses engaged in any of the above.

*c.* The plan of organization.

*d.* In case of a corporation:

(1) The law under which it is chartered;

(2) The names and contact information for any persons acting as trustees;

(3) The name(s) of the manager, agent or executive; and

(4) The names and contact information of officers.

*e.* If business is conducted under an assumed name, the names and contact information of all owners in addition to the other information required.

**17.5(2)** Immediately after any change of facts stated in the report filed, a supplementary report shall be filed with the department with updated information.

**561—17.6(458A) Drilling.** The following subrules shall apply to all wells drilled:

**17.6(1)** *Sealing off strata.* During the drilling of any well for production of or exploration for oil, gas, or metallic minerals, all oil, gas, and water strata above and below the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

*a.* All fresh waters and waters of present or probable value for domestic, public, commercial or livestock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the department. Special precautions shall be taken in drilling and abandoning wells to guard against any loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water, oil, or gas.

*b.* All water shall be isolated from the various oil- and gas-bearing strata that are penetrated. Isolation shall be performed by cementing casing with or without the use of mud-laden fluid. Alternative methods shall be approved on a case-by-case basis by the department.

**17.6(2)** *Casing and tubing requirements.* All wells drilled for oil, gas or production of metallic minerals shall be completed with strings of casing that shall be properly cemented at sufficient depths to protect all water-, oil-, or gas-bearing strata.

*a.* Sufficient cement shall be used on surface to fill the annular space back of the casing to the bottom of the cellar or to the surface of the ground.

*b.* All strings of casing shall be cemented under pressure for at least 12 hours before drilling plug or initiating tests. The department may approve having the casing under pressure for less than 12 hours if the applicant provides evidence that the shorter time frame is adequate. The term “under pressure” as used in this subrule will be complied with if one float valve is used or if pressure is otherwise held.

*c.* Cementing shall be by the pump and plug method, or another method approved by the department.

*d.* All flowing wells shall be tubed. The tubing shall be set as near the bottom as practicable, but tubing perforations shall not be above the top of pay unless authorized by the department.

**17.6(3)** *Defective casing or cementing.* In any well that appears to have defective, faultily cemented, or corroded casing that will permit or may create underground waste, the operator shall use

the appropriate method and means to eliminate underground waste. If waste cannot be eliminated, the well shall be properly plugged and abandoned.

**17.6(4)** *Blowout prevention.* In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high-pressure fittings attached to properly cemented casing strings, where indicated by geologic conditions.

**17.6(5)** *Pulling outside string of casing.* In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid or cement of adequate specific gravity to seal off all fresh and salt water strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the department.

**17.6(6)** *Safety rules.*

*a.* All oil wells shall be cleaned into a pit or tank, not less than 40 feet from the derrick floor and 150 feet from any fire hazard.

*b.* All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order.

*c.* No boiler or portable electric lighting generator shall be placed or remain nearer than 150 feet from any producing well or oil tank.

*d.* Any debris that might constitute a fire hazard shall be removed to a distance of at least 150 feet from the vicinity of wells and tanks. All waste shall be disposed of in such manner as to avoid creating a fire hazard and to comply with the rules of the environmental protection commission.

*e.* The drilling fluid level shall be maintained continuously at a height sufficient to control subsurface pressures.

*f.* During the course of drilling, blowout preventers shall be tested at least once each 24-hour period, and results of the test shall be noted in the driller's record.

**17.6(7)** *Preservation of cores and samples.*

*a.* Sample cuttings shall be taken at 5-foot intervals and at each change of formation or member, if less than 5 feet thick, in all wells drilled for oil, gas, or metallic mineral exploration or production, in the state of Iowa, unless a geophysical log is to be taken for the entire depth of the well.

*b.* Where a geophysical log is to be taken for the entire depth of the well, sample cuttings shall be taken at 10-foot intervals and at each formation or member change if less than 10 feet thick. The department may grant a waiver from the 10-foot sample interval under special conditions. Each sample shall be carefully identified as to well name and depth of sample, and all samples shall be shipped at the operator's expense to the Iowa geological survey.

*c.* The operator of any well drilled as provided in the previous paragraph shall, during the drilling of, or immediately following the completion of, any given well, advise the department of all intervals that are to be cored, or have been cored. The cores shall be preserved and forwarded to the Iowa geological survey at the operator's expense.

*d.* This rule shall not be construed as prohibiting the operator from taking samples of the core for identification and tests pertaining to oil and gas or metallic minerals. In the event that it is necessary for the operator to utilize all or any portion of the core to the extent that representative samples, sufficiently large to analyze, are not available for the state, the operator shall furnish the Iowa geological survey with the results of identification or testing procedures.

**17.6(8)** *Well completion or recompletion report and well log.* Within ten days after completion of a well drilled for oil or gas or production of metallic minerals, or casinghead gas, the operator or the operator's agent shall file with the department a complete log or record of the well, duly signed, on forms prescribed by the department. This record shall be filed even though samples of the drill cuttings have been taken and preserved for subsequent delivery to the Iowa geological survey. The logs on the wells shall be forwarded to the department and shall be confidential for a period of six months when so requested by the operator in writing.

A proper log for any well shall include all normally recorded information on the following:

*a.* Depth to and thickness of water-bearing beds, including, where measured, the static water level and volume of such water.

*b.* Lithology of formations penetrated, including color, hardness, and character of the rock, and particularly showing the position and thickness of coal beds and deposits of mineral materials of economic value.

*c.* Any caverns, large voids, losses of circulation, and sudden appreciable changes in water level.

*d.* A record of all oil, gas, and highly mineralized water encountered, including fill-up, volumes, and pressures.

*e.* A record of all casing and liner used, including the size, weight, amount, and depth set, the amount of cement used on each casing string, and the amount of casing stripped from the hole on completion or abandonment of the well.

*f.* Data on drill stem tests.

*g.* Generalized description of any core taken during drilling.

*h.* Data on perforating, acidizing, fracturing, shooting, and testing.

*i.* Data on bridge plugs set, make and type of plug, depth set, whether left in place or removed, and details of plug back operation below the bridge.

*j.* Electrical or other geophysical logging.

**17.6(9)** *Stratigraphic test wells.*

*a.* All stratigraphic test wells shall be plugged in accordance with the provisions of 561—17.14(458A).

*b.* Lithologic samples must be collected during the drilling of all stratigraphic test wells in accordance with the provisions of 17.6(7).

*c.* All records, samples, and logs, including mechanical logs, required under this rule must be filed with the Iowa geological survey six months after completion of the program set forth in the original application. If the company so requests in writing, these records, samples, and logs shall be kept confidential for an additional year after filing.

**561—17.7(458A) Identification of wells.** Every well shall be identified by a sign, posted on the derrick or not more than 20 feet from the wellhead. Such signs shall be durable and legible. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number of the well, the name of the lease (which shall be different or distinctive for each lease), the name of the lessee, owner or operator, the permit number, and the location by quarter, section, township, and range.

**561—17.8(458A) Surface equipment.**

**17.8(1)** *Meter fittings.* Meter fittings and associated metering equipment shall measure gas and oil flows separately and shall obtain gas-oil ratios either on the gas vent line of every separator or other proper connections made for metering, using current industry standard of practices. Wellhead equipment shall be installed and maintained so that static bottom hole pressures may be obtained at any time by the department after notification of the operator. Valves shall be installed so that pressures can be readily obtained on both casing and tubing.

**17.8(2)** *Chokes or beans.* All flowing wells shall be equipped with adequate chokes or beans to properly control the flow of the well.

**17.8(3)** *Separators.* All flowing wells must be produced through separators to maintain efficient gas-oil and oil-water ratios.

**17.8(4)** *Dikes.* When it is deemed necessary by the department to protect life, health, or property, the department may require any lease or oil storage tanks to be surrounded by an earthen dike with a capacity of one and one-half times the capacity of the tank or tanks it surrounds. The dike shall be continually maintained and the reservoir kept free from vegetation, water, or oil.

**561—17.9(458A) Deviation.** No well may be intentionally deviated from the plans in the approved permit without written approval. Directional surveys may be required by the department whenever the location of the bottom of the well is in doubt. When necessary to protect correlative rights, the department shall require that the well be modified.

**561—17.10(458A) Notification of fire, breaks, leaks, or blowouts.** All persons controlling or operating any oil and gas wells or pipelines, or receiving tanks, storage tanks, or receiving and storage receptacles into which crude oil is produced, received, or stored, or through which oil or gas is piped or transported, shall notify the department of fire, breaks, leaks or blowouts in accordance with Iowa Code section 455B.386. A written report, giving full details concerning all fires that occur at such oil or gas wells or tanks or receptacles on their property, all tanks or receptacles struck by lightning and any other fire that destroys oil or gas, and any breaks or leaks in or from tanks or receptacles and pipelines from which oil or gas is escaping or has escaped shall be submitted to the department within 30 days. In all reports of fires, breaks, leaks, or escapes, or other accidents of this nature, the location of the well, tank, receptacle, or line break shall be given by section, township, range, and property so that the exact location thereof can be readily located on the ground. The report shall likewise specify what steps have been taken or are in progress to remedy the situation reported, and shall detail the quantity of oil or gas lost, destroyed, or permitted to escape. In case any tank or receptacle is permitted to run over, the escape thus occurring shall be reported as in the case of a leak.

**561—17.11(458A) Producing from different pools through the same casing string or multiple completion of wells.** No well shall be permitted to produce either oil or gas from different pools through the same string of casing. The multiple-zone completion of any well may be authorized only by special order of the department upon notice and hearing.

**561—17.12(458A) Commingling of production prohibited.** The production from one pool shall not be commingled with that from another pool in the same field before delivery to a purchaser, unless otherwise ordered by the department.

**561—17.13(458A) Reports by producers, transporters or storers.**

**17.13(1)** *Producers.* The producer or operator of each and every lease shall, on or before the fifteenth day of each month succeeding the month in which the production occurs, submit to the department a statement showing the amount of production made by each such lease during the preceding month.

**17.13(2)** *Transporters or storers.* Each transporter or storer of any oil or gas from any well, lease, pool, or developed unit shall, on or before the fifteenth day of each month succeeding the month in which the purchasing or taking occurs, file with the department, a statement of oil or gas purchased or taken from any such well, lease, pool, or developed unit during the preceding month.

**561—17.14(458A) Abandonment and plugging of wells.** Any well drilled in connection with oil or gas operations or metallic mineral exploration or production shall be properly plugged when the well is no longer used for the purpose for which it was drilled. In instances where no completion or recompletion reports are filed, the well(s) in question must be properly abandoned and plugged within 30 days after the permit authorizing the drilling expires.

**17.14(1)** *Notice of intent to abandon and plug.* Notice of the proposed method of abandoning and plugging any well drilled in connection with oil or gas operations or metallic mineral exploration or production must be filed with the department. Approval must be obtained from the department prior to commencing operations. Time must be allowed for a department representative to be present at the plugging operations if so desired by the department. Where the time required to file notice and obtain approval in writing would constitute an undue hardship, verbal permission to proceed may be granted, but in any case, the notice must be filed.

**17.14(2)** *Method of plugging.* Before any well is abandoned, it shall be plugged in a manner that will permanently confine all oil, gas, and water in the separate strata in which they occur. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as approved by the department. In the event that no log or an unsatisfactory log of the well is supplied, the well shall be completely plugged with cement from bottom to top. Casing shall be cut off below plow depth. Seismic, core, or other exploratory holes drilled to or below strata containing fresh water shall be plugged and abandoned in accordance with the applicable provisions in this subrule.

**17.14(3)** *Extension of time to plug well.* Upon written application to defer the abandonment and plugging of any unplugged well, the department may grant an extension for a reasonable period of time when good cause is shown and provided that all of the casing is left in the well and is in sound condition. The bond covering such well shall remain in full force and effect until the well is plugged and the other requirements of final abandonment have been completed.

These rules are intended to implement Iowa Code chapter 458A.

## ARC 8720C

# PUBLIC HEALTH DEPARTMENT[641]

**Notice of Intended Action**

**Proposing rulemaking related to blood lead testing and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 67, "Blood Lead Testing," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 135.102.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 135.105D and 2008 Iowa Acts, Senate File 2111.

*Purpose and Summary*

This rulemaking is in response to Executive Order 10. These proposed rules are intended to help ensure that all Iowa children receive at least one blood lead screening prior to age six.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 641—Chapter 67 and adopt the following **new** chapter in lieu thereof:

CHAPTER 67
BLOOD LEAD TESTING

**641—67.1(135) Definitions.** For purposes of this chapter, the following definitions apply:

*"Applicant"* means any person seeking first-time enrollment in kindergarten in a public or accredited nonpublic elementary school in Iowa.

*"Transfer student"* means an applicant from any school outside Iowa who is seeking enrollment in kindergarten in a school in Iowa.

**641—67.2(135) Persons included.** The blood lead testing requirement specified in this chapter applies to all applicants and transfer students as defined in this chapter.

**641—67.3(135) Persons excluded.** Exclusions to these rules are permitted on an individual basis for religious reasons and for children determined by the department to be at very low risk for elevated blood lead levels. The parent or guardian of an applicant or transfer student approved for a religious exemption or an exemption for very low risk shall submit to the board of directors of each school district and the authorities in charge of each nonpublic school a valid department certificate of blood lead testing exemption.

**641—67.4(135) Records.** Within the constraints of the privacy rights of the parents or guardians and students, the local board of health, the department of education, and the department or its designee have the right to access the department's determination that a child has received a blood lead test and the certificates of blood lead testing exemption of children enrolled in kindergarten.

These rules are intended to implement Iowa Code chapter 135.

## ARC 8719C

# PUBLIC HEALTH DEPARTMENT[641]

**Notice of Intended Action**

**Proposing rulemaking related to control of lead-based paint hazards and providing an opportunity for public comment**

The Department of Health and Human Services hereby proposes to rescind Chapter 68, "Control of Lead-Based Paint Hazards," Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 135.102.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 135.102.

*Purpose and Summary*

This proposed rulemaking is in response to Executive Order 10. The provisions of this chapter are applicable in jurisdictions in which a local board of public health has adopted this chapter for the purpose of requiring control of lead-based paint hazards where a child has been identified with an elevated blood lead level. Nothing in this chapter shall be construed as requiring a local board to adopt this chapter as a model regulation.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 641—Chapter 68 and adopt the following **new** chapter in lieu thereof:

CHAPTER 68
CONTROL OF LEAD-BASED PAINT HAZARDS

**641—68.1(135) Definitions.**

*"Certified elevated blood lead (EBL) inspector/risk assessor"* or *"inspector"* means a person who has met the requirements of rule 641—70.5(135) for certification or interim certification and who has been certified by the department.

*"Chewable surface"* means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew.

*"Child-occupied facility"* means a building, or portion of a building, constructed prior to 1978, visited by the same child under the age of six years on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours).

*"Clearance testing"* means an activity conducted following interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation to determine that the hazard reduction activities are complete. Clearance testing includes a visual assessment, the collection and analysis of environmental samples, the interpretation of sampling results, and the preparation of a report.

*"Deteriorated paint"* means any interior or exterior paint or other coating that is cracking, flaking, chipping, peeling, or chalking, or any paint or coating located on an interior or exterior surface that is otherwise damaged or separated from the substrate of a building component.

*"Dripline"* means the area within three feet surrounding the perimeter of a building.

*"Dust-lead hazard"* means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on widow troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property. If dust samples are not taken, it may be assumed that surfaces in rooms with hazardous lead-based paint or where renovation, remodeling, or repainting has occurred recently are dust-lead hazards.

*"Elevated blood lead"* or *"EBL"* means one venous blood level greater than or equal to 20 micrograms per deciliter or at least two venous blood levels of 15 to 19 micrograms per deciliter.

*"Elevated blood lead child"* or *"EBL child"* means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

*"Elevated blood lead inspection"* or *"EBL inspection"* means an inspection to determine the sources of lead exposure for an EBL child and the provision within ten working days of a written report explaining the results of the investigation to the property owner and occupant of the residential dwelling or child-occupied facility being inspected and to the parents of the EBL child. An inspector shall not determine that a residential dwelling is free of lead-based paint as a result of an EBL inspection.

*"Friction surface"* means an interior or exterior surface that is subject to abrasion or friction, including but not limited to certain window, floor, and stair surfaces.

*"Hazardous lead-based paint"* means lead-based paint that is present on a friction surface where there is evidence of abrasion or where the dust-lead level on the nearest horizontal surface underneath the friction surface (e.g., the windowsill or floor) is equal to or greater than the dust-lead hazard level, lead-based paint that is present on an impact surface that is damaged or otherwise deteriorated from impact, lead-based paint that is present on a chewable surface, or any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of a residential building or child-occupied facility.

*"Impact surface"* means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of doorframes.

*"Lead-based paint"* means any paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram of lead per square centimeter or more than 0.5 percent by weight. Lead-based paint is present on any surface that is tested and found to contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight and on any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

*"Lead-based paint hazard"* means hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard.

*"Local board"* means the local board of health as authorized by Iowa Code chapter 137.

*"Mid-yard"* means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

*"Occupant"* means any person living, sleeping, cooking or eating in, or having any actual possession of a dwelling or dwelling unit.

*"Owner"* means any person who, alone or jointly with others (1) has legal title to any dwelling, with or without accompanying actual possession thereof, or (2) has charge, care, or control of any dwelling by acting as the agent of the owner or as the executor, administrator, trustee, or guardian of the estate of the owner.

*"Paint-lead hazard"* means the presence of hazardous lead-based paint in a residential dwelling or a child-occupied facility.

*"Play area"* means an area of frequent soil contact by children of less than six years of age as indicated by but not limited to factors including the following: the presence of play equipment, toys, or other children's possessions; observations of play patterns; or information provided by parents, residents, caregivers, or property owners.

*"Residential building"* means a building containing one or more residential dwellings.

*"Residential dwelling"* means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures, including but not limited to garages, farm buildings, and fences; or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, that is used or occupied, or intended to be used or occupied, in whole or part, as the home or residence of one or more persons.

*"Retaliation"* means harassment, termination of the tenancy, discontinuation of utilities or other services, and any other action taken against the lessee.

*"Soil-lead hazard"* means bare soil on residential real property or on the property of a child-occupied facility that contains total lead greater than or equal to 400 parts per million for the dripline, mid-yard, and play areas. A soil-lead hazard is present in a dripline, mid-yard, or play area when the soil-lead concentration from a composite sample of bare soil is greater than or equal to 400 parts per million. If soil samples are not taken, it may be assumed that bare soil within three feet of the foundation of a garage or other structure built prior to 1978 is a soil-lead hazard.

**641—68.2(135) EBL inspections required.** The local board will appoint a certified inspector to conduct EBL inspections in residential dwellings and child-occupied facilities where an EBL child lives, visits, or has recently lived. All owners and occupants shall allow access to the residential dwellings and child-occupied facilities that the certified inspector desires to inspect.

**641—68.3(135) Refusal of admittance.** If the inspector appointed by the local board is refused entry to a property, then the inspector may make a complaint under oath to any magistrate of the county. The magistrate may issue a warrant directing the owner or occupant to allow the inspector to conduct an EBL inspection and directing a peace officer to accompany the inspector during the EBL inspection/risk assessment.

**641—68.4(135) Lead hazard reduction required.**

**68.4(1)** When the certified inspector appointed by the local board determines that hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard is present in a residential dwelling unit or child-occupied facility where an EBL child lives, frequently visits, or has recently resided, the inspector shall issue a written notice to the owner within two weeks of the inspection and receipt of any laboratory results. The written notice shall require the owner to complete lead hazard reduction in a time period determined by the inspector. If the occupant who occupies the residential dwelling at the time that this written notice is issued vacates the residential dwelling, the residential dwelling shall not be leased or occupied by any other person until the inspector issues a written notice that the lead hazard reduction has been completed.

**68.4(2)** The owner of any residential dwelling or child-occupied facility that has been determined to contain hazardous lead-based paint, a soil-lead hazard, or a dust-lead hazard shall correct these hazards within the time period allowed by the inspector in the written notice. The following methods shall be used for lead hazard reduction. These methods do not require the services of a lead abatement contractor certified in accordance with rule 641—70.5(135). However, other local, state, or federal

regulations may require the use of a contractor who has completed an eight-hour lead-safe work practices course or a lead abatement contractor or lead abatement worker certified in accordance with rule 641—70.5(135).

*a.* On a surface that contains hazardous lead-based paint but is not chewable and does not have evidence of impact or friction, the lead-based paint hazard shall be reduced by removing all loose and deteriorated paint from the surface, preparing the surface for repainting, and repainting the surface with a lead-free coating.

*b.* On a surface that contains hazardous lead-based paint and is chewable or has evidence of impact or friction, the lead-based paint hazard shall be reduced by treating the surface one inch back from the edge or corner through one of the following methods:

(1) All lead-based paint on the treatment area shall be removed to the bare substrate. The surface shall be prepared for repainting and repainted with a lead-free coating.

(2) The treatment area shall be covered with a permanently affixed lead-free material such as plastic, wood, or vinyl. Carpet may be used on floors and stair treads.

*c.* Dust-lead hazards shall be reduced by thoroughly cleaning the affected surface.

*d.* Soil-lead hazards shall be reduced by planting grass or groundcover, applying sod, or covering the affected area with six inches of bark, gravel, or other material.

*e.* Lead hazard reduction shall be conducted using lead-safe work practices to protect the safety of the occupants and workers. Occupants shall not enter the work area while work is underway. The following are prohibited methods of lead hazard reduction:

(1) Open-flame burning or torching of lead-based paint.

(2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with high-efficiency particulate air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

(3) Uncontained water blasting of lead-based paint.

(4) Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.

(5) Operating a heat gun at a temperature above 1,100 degrees Fahrenheit.

**68.4(3)** The inspector shall inspect all areas identified as hazards after lead hazard reduction is complete. The inspector may conduct clearance testing pursuant to 641—Chapter 70 to ensure that no dust-lead hazards exist after the work is complete. Within two weeks of verifying that all lead hazard reduction has been completed as required, the inspector shall issue a written notice to the owner and occupant stating that the lead hazard reduction has been completed and that the repaired surfaces must be maintained in good condition.

**641—68.5(135) Retaliation prohibited.**

**68.5(1)** The lessor of a dwelling, the employees of the lessor, and agents or persons acting on behalf of the lessor shall not retaliate against lessees of residential dwellings and child-occupied facilities whose occupants or visitors have been tested for lead poisoning and shall not discourage the occupants or visitors from being tested for lead poisoning.

**68.5(2)** An action taken against the lessee is not considered retaliation if it is supported by reasonable cause unrelated to the testing of an occupant for lead poisoning or if it is shown to have occurred as a result of an accident or mistake and not to be the intentional act of the lessor of a dwelling, the employees of the lessor, or agents or persons acting on behalf of the lessor.

**641—68.6(135) Enforcement.** The inspector appointed by the local board will have the duty and responsibility of enforcing this chapter.

**68.6(1)** Penalties are as provided in Iowa Code section 137.21.

**68.6(2)** Upon failure of any person to correct a hazard identified through this chapter in the time specified by the inspector appointed by the local board, the local board may direct or cause the correction of said hazards. All expenses incurred thereby may be recovered by suit in the name of the local board, or the local board may certify the amount of the expenses, together with a description of the

property, to the county treasurer, who will enter the same into the tax roll as costs for removing a lead hazard, and the amounts will be collected as other taxes.

**641—68.7(135) Hearings.** In the event any person is aggrieved by any order of the inspector, the person may appeal to the local board in writing within ten days of the date of such order. The appeal shall state the reasons for requesting the order to be rescinded or modified. The local board will review the action of the inspector. The local board will order compliance with the order or may, with cause, modify or withdraw the order. Any order of the local board may be appealed within ten days to the district court for the county in which the local board is located.

**641—68.8(135) Variances.** The inspector may determine that a chewable surface that would otherwise be identified as a hazard by this chapter is not causing or does not have reasonable potential to cause lead exposure and is not required to be corrected through lead hazard reduction. The inspector shall document the reason for this determination in the inspection report. However, the inspector shall not, under any circumstances, determine that any other surface meeting the definition of hazardous lead-based paint does not need to be corrected through lead hazard reduction.

**641—68.9(135) Injunction.** Nothing in this chapter prevents a local board from pursuing injunctive relief or other relief as allowed by law.

**641—68.10(135) Effective date.** This chapter will be in effect in a jurisdiction after a local board adopts it.

These rules are intended to implement Iowa Code section 135.102.

## ARC 8721C

# PUBLIC HEALTH DEPARTMENT[641]

### Notice of Intended Action

### Proposing rulemaking related to emergency medical services—service program authorization and providing an opportunity for public comment

The Department of Health and Human Services hereby proposes to rescind Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 147A.4.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 147A, 147D, and 272C; Iowa Code section 321.231; 49 CFR 396; and 2024 Iowa Acts, House File 2507.

*Purpose and Summary*

This rulemaking is a result of Executive Order 10. It also implements, in part, 2024 Iowa Acts, House File 2507, which allows physicians to staff authorized emergency medical services (EMS) programs. This proposed chapter provides clarity and creates a process for EMS program authorization.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 6, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 641—Chapter 132 and adopt the following **new** chapter in lieu thereof:

CHAPTER 132
EMERGENCY MEDICAL SERVICES—SERVICE PROGRAM AUTHORIZATION

**641—132.1(147A) Definitions.** For the purpose of these rules, the following definitions apply:

*"Advanced emergency medical technician level service"* or *"AEMT level service"* means a service program that provides emergency medical care that does not exceed the scope of practice of a certified AEMT provider as outlined in 641—subrule 131.5(2).

*"Advanced registered nurse practitioner"* or *"ARNP"* means a nurse licensed pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role.

*"Ambulance"* means any privately or publicly owned ground, fixed-wing or rotor-wing vehicle equipped with life-support systems and specifically designed to transport the sick or injured who require emergency medical care.

*"Applicant"* means an owner of a transport or nontransport program or service program that is applying to the department for authorization as a service program or renewal of current authorization as a service program.

*"Biomedical hazardous waste"* means waste product that may be contaminated with a biological material that is an infectious disease transmission risk.

*"Communication system"* means but is not limited to a telecommunication system, radio communication system, or mobile data communication system.

*"Conditional service level authorization"* means an enhanced service program authorization under which a service program may provide an advanced level of service from that routinely provided under the service program's full authorization level, on an intermittent basis with department and medical director approval.

*"Continuous quality improvement"* or *"CQI"* means a program that is an ongoing process to monitor standards at all EMS operational levels.

*"Credentialing"* means a clinical determination that is the responsibility of a physician medical director. It is the employer or affiliating organization's responsibility to act on the clinical credentialing status of EMS personnel in making employment or deployment decisions.

*"Critical care transport"* or *"CCT"* means a paramedic level service program that has received an endorsement from the department to provide specialty care patient transportation and that is staffed by one or more paramedics with a critical care paramedic endorsement from the department or that is staffed by other health care professionals in an appropriate specialty area.

*"Deficiency"* means noncompliance with Iowa Code chapter 147A or these administrative rules.

*"Emergency medical care"* means any medical procedure authorized by Iowa Code chapter 147A and 641—Chapter 131.

*"Emergency medical care provider"* means the same as defined in Iowa Code section 147A.1.

*"Emergency medical responder level service"* or *"EMR level service"* means a nontransport service program that provides emergency medical care that does not exceed the scope of practice of a certified EMR provider as outlined in 641—subrule 131.5(2).

*"Emergency medical services"* or *"EMS"* means the same as defined in Iowa Code section 147A.1.

*"Emergency medical technician-basic"* or *"EMT-B"* means an individual who has successfully completed the current U.S. Department of Transportation's Emergency Medical Technician-Basic curriculum and department enhancements, has passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-B.

*"Emergency medical technician level service"* or *"EMT level service"* means a service program that provides emergency medical care that does not exceed the scope of practice of a certified EMT provider as outlined in 641—subrule 131.5(2).

*"Emergency medical transportation"* means transportation of a patient by an ambulance.

*"Emergency vehicle driver"* or *"driver"* means a currently licensed driver rostered with the service program or other emergency response personnel with emergency vehicle driving training.

*"EMS clinical guidelines"* or *"minimum EMS clinical guidelines"* means a minimum clinical standard approved by the department upon which a service program's medical director will base service program protocols.

*"Endorsement"* means an approval granted by the department authorizing a paramedic level service program to provide critical care transport (CCT).

*"FAA"* means Federal Aviation Administration.

*"Fixed-wing ambulance"* means any privately or publicly owned fixed-wing aircraft specifically designed, modified, constructed, equipped, staffed and used regularly to transport the sick, injured or otherwise incapacitated who are in need of out-of-hospital emergency medical care or whose condition requires treatment or continuous observation while being transported.

*"First response vehicle"* means any privately or publicly owned vehicle that is not an ambulance and that is used solely for the transportation of personnel and equipment to and from the scene of an emergency.

*"Full authorization"* means a service program authorization under which a service is authorized to provide and routinely provides a specific level of emergency medical care for initial 911 or emergency calls 24 hours per day, seven days per week.

*"Hospital"* means any hospital licensed under the provisions of Iowa Code chapter 135B.

*"Medical direction"* means direction, advice, or orders provided by a medical director, supervising physician, PA, or ARNP to emergency medical care personnel.

*"Medical director"* means a physician designated by the service program and responsible for providing medical direction and overall supervision of the medical aspects of the service program.

*"Nontransport service"* means any privately or publicly owned service program that does not provide patient transportation and provides emergency medical care at the scene of an emergency.

*"Paramedic"* or *"EMT-P"* means an emergency medical technician-paramedic.

*"Paramedic level service"* or *"PM level service"* means a service program that provides emergency medical care that does not exceed the scope of practice of a certified paramedic provider as outlined in 641—subrule 131.4(2).

*"Paramedic specialist"* or *"PS"* means an individual who has successfully completed the current U.S. Department of Transportation's EMT-Paramedic curriculum, as amended to August 1, 2024, or equivalent, has passed the department's approved written and practical examinations, and is currently certified by the department as a paramedic specialist.

*"Patient"* means any individual who is sick, injured, or otherwise incapacitated.

*"Patient care report"* or *"PCR"* means a report that documents the assessment and management of the patient by the emergency care provider.

*"Physician"* means an individual licensed under Iowa Code chapter 148.

*"Physician assistant"* or *"PA"* means an individual licensed pursuant to Iowa Code chapter 148C.

*"Primary response ambulance"* means any ambulance utilized by a service program and dispatched as the initial ambulance response to a 911 or emergency call.

*"Protocols"* means written directions and orders approved by a service program's medical director utilizing the EMS clinical guidelines.

*"Registered nurse"* or *"RN"* means an individual licensed pursuant to Iowa Code chapter 152.

*"Rotorcraft ambulance"* means any privately or publicly owned rotorcraft specifically designed, modified, constructed, equipped, staffed and used regularly to transport the sick, injured or otherwise incapacitated who are in need of out-of-hospital emergency medical care or whose condition requires treatment or continuous observation while being transported.

*"Service director"* means an individual designated by the service program who is responsible for the operation and administration of a service program.

*"Service program"* or *"service"* means any ground or air medical transport service or nontransport service, inclusive of associated satellites, that has received full or conditional authorization from the department.

*"Service program affiliate"* or *"affiliate"* means an independently owned service program affiliated with one or more service programs or a separate management entity.

*"Service program affiliate agreement"* or *"affiliate agreement"* means a written agreement executed between one or more service programs or one or more management entities and filed with the

department that clearly defines the responsibilities of each service program to ensure compliance with these rules.

*"Service program base of operation"* means the physical location from which a service program responds and at which the service program houses emergency medical care personnel and equipment.

*"Service program ownership"* means the legal owner of the service program responsible for providing emergency medical care and compliance with Iowa Code chapter 147A and these rules.

*"Service program satellite"* or *"satellite"* means one or more additional service program locations owned by the same service program.

*"Student"* means any individual enrolled in a training program and participating in the didactic, clinical, or field experience portions.

*"Tiered response"* means a rendezvous between service programs to allow the transfer, continuation, or enhancement of patient care.

*"Transport agreement"* means a written agreement executed between two or more service programs and filed with the department that ensures response and transportation for initial 911 or emergency calls. A transport agreement may be a component of an affiliate agreement.

*"Transport service"* means any privately or publicly owned service program that utilizes ambulances in order to provide patient transportation.

**641—132.2(147A) Service program—authorization and renewal procedures and inspections.**

**132.2(1)** *Requirements for initial service program authorization.*

*a.* An entity that desires to provide emergency medical care services in the out-of-hospital setting in this state shall apply to the department for service program full authorization.

*b.* Information for initial authorization can be found on the department's website or upon request.

*c.* Transport service—full authorization. An entity seeking authorization as a transport service program shall apply for full authorization at a minimum of the EMT level or the level of care that will be provided by the service program or through a transport agreement for initial 911 or emergency calls 24 hours per day, seven days per week at the following EMS service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*d.* Transport service—conditional service level authorization. An entity seeking authorization as a transport service that is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) AEMT.
(2) Paramedic.

*e.* Nontransport service—full authorization. An entity seeking authorization as a nontransport service program shall apply for full authorization at a minimum of the EMR level or at the level of care that will be provided for initial 911 or emergency calls 24 hours per day, seven days per week at the following EMS service levels:

(1) EMR.
(2) EMT.
(3) AEMT.
(4) Paramedic.

The nontransport service program shall have an executed written transport agreement ensuring simultaneous dispatch with an authorized transport service program for all 911 or emergency calls.

*f.* Nontransport service—conditional service level authorization. An entity seeking authorization as a nontransport service program that has an executed written transport agreement ensuring simultaneous dispatch with an authorized transport service program for all 911 or emergency calls and is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*g.* Conditional service level authorization requirements.

(1) A service program that has been granted conditional service level authorization shall only advertise or otherwise hold itself out to the public as an authorized service program at the level of full authorization.

(2) A service program authorized to operate at a conditional service level shall operate at such level only when an emergency medical care provider certified at the advanced certification level is listed on the service roster, physically present and directly responsible for patient care.

*h.* Initial service program authorization is valid for a period of one year from its effective date unless otherwise specified on the certificate of authorization or unless sooner suspended or revoked or surrendered.

*i.* An applicant shall provide evidence of liability insurance coverage for the service program and emergency medical care provider staff. Any change in insurance status must be reported to the department no later than 30 days from the change.

*j.* An applicant seeking endorsement must submit a department-approved application.

**132.2(2)** *Requirements for renewal of service program authorization.*

*a.* A service program seeking renewal of current authorization shall submit all required documentation to the department at least 90 days prior to the current authorization expiration date.

*b.* Transport service—full authorization. An entity seeking renewal authorization as a transport service program shall apply for full authorization at a minimum of the EMT level or the level of care that will be provided by the service program or through a transport agreement for initial 911 or emergency calls 24 hours per day, seven days per week at the following EMS service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*c.* Transport service—conditional service level authorization. An entity seeking renewal authorization as a transport service that is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) AEMT.
(2) Paramedic.

*d.* Nontransport service—full authorization. An entity seeking renewal authorization as a nontransport service program shall apply for full authorization at a minimum of the EMR level or at the level of care that will be provided for initial 911 or emergency calls 24 hours per day, seven days per week at the following EMS service levels:

(1) EMR.
(2) EMT.
(3) AEMT.
(4) Paramedic.

*e.* Nontransport service—conditional service level authorization. An entity seeking renewal authorization as a nontransport service program that is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*f.* Air medical requirements.

(1) Staff fixed-wing ambulances, at a minimum on each flight request, with the following staff while a patient is being transported:

1. One health care clinician who is certified or licensed in the state from which the aircraft launches and is certified as an EMS-Basic or higher level; and

2. One FAA-certified commercial pilot who is appropriately rated in the aircraft being used for the transport.

(2) Staff rotor craft ambulances, at a minimum on each flight request, with the following staff while a patient is being transported:

1. Two health care clinicians who are certified or licensed in the state from which the aircraft launches, one of whom must at a minimum be certified as a paramedic specialist; and

2. One FAA-certified commercial pilot who is appropriately rated in the aircraft being used for the transport.

(3) Medical crew members trained in the following areas:

1. Patient care limitations in flight.
2. Altitude physiology.
3. Appropriate utilization of air medical services.
4. Air medical communication systems.
5. Aircraft operations and safety.
6. Emergency safety and survival.
7. Prehospital scene response and safety.
8. Crew resource management.
9. Program flight risk assessment procedures.

*g.* Conditional service level authorization requirements.

(1) A service program that has been granted conditional service level authorization shall only advertise or otherwise hold itself out to the public as an authorized service program at the level of full authorization.

(2) A service program authorized to operate at a conditional service level shall operate at such level only when an emergency medical care provider certified at the advanced certification level is listed on the service roster, physically present and directly responsible for patient care.

*h.* A service program that has submitted to the department fewer than 100 data reports per year for each of the previous two consecutive calendar years shall only be eligible for renewal of current authorization as an affiliate. The department will provide technical assistance in developing affiliations.

*i.* A service program shall be fully operational upon the effective date specified on the certificate of authorization and shall ensure compliance with Iowa Code chapter 147A and these rules.

*j.* A service program renewal authorization is valid for a period not to exceed three years from its effective date unless otherwise specified on the certificate of authorization or unless sooner revoked or suspended or surrendered.

**132.2(3)** *Reinstatement of service program authorization.*

*a.* A service program whose full authorization or conditional service level authorization has been revoked or suspended or surrendered may apply to the department for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the authorization is permanently revoked.

*b.* If the authorization was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

**132.2(4)** *Out-of-state service programs.*

*a.* An emergency medical service program authorized and based in another state shall provide the department with verification of current state authorization upon request and may provide emergency medical care to patients in Iowa.

*b.* A service program authorized and based in another state shall meet all requirements of Iowa Code chapter 147A and these rules and must be authorized by the department to respond to 911 requests in Iowa to transport patients in Iowa to locations within Iowa.

**132.2(5)** *Service program inspections.*

*a.* The department, at a minimum, will complete an inspection of each base of operations, all associated satellites, and all affiliate locations prior to initial authorization or renewal of current full

authorization or conditional service level to ensure compliance with Iowa Code chapter 147A and these rules.

*b.* The department without prior notification may make additional inspections at times, at places and under such circumstances as it deems necessary to ensure compliance with Iowa Code chapter 147A and these rules.

*c.* Service program inspection forms are available on the department's website.

*d.* A service program shall correct deficiencies identified during a service program inspection within the time period specified by the department on the inspection form. Failure to correct identified deficiencies within the specified time period may result in disciplinary action.

*e.* The department may request additional information from or may inspect the records of any service program or associated satellite or associated affiliate that is currently authorized or that is seeking authorization to ensure continued compliance or to verify the validity of any information presented on the application for initial service program authorization or renewal of current authorization.

*f.* The department may inspect the patient care records of a service program to verify compliance with Iowa Code chapter 147A and these rules.

*g.* No person shall interfere with the inspection activities of the department or its agents pursuant to Iowa Code section 135.36.

*h.* Interference with or failure to allow an inspection by the department or its agents may be cause for disciplinary action.

**641—132.3(147A) Service program operations.**

**132.3(1)** *Ownership.*

*a.* Each service program will have a unique authorization number assigned by the department.

*b.* A service program with satellites will have a single authorization number assigned by the department for all locations.

*c.* A service program owner shall ensure compliance with Iowa Code chapter 147A and these rules.

*d.* A service program shall report any change in ownership to the department at least seven days prior to the change.

*e.* A service program changing ownership shall apply to the department at least seven days prior to the change in ownership for initial authorization in accordance with 132.2(1).

**132.3(2)** *Medical director.*

*a.* Each service program shall have a designated medical director at all times.

*b.* A medical director shall:

(1) Be accessible for medical direction 24 hours per day, seven days per week or ensure accessibility to alternate medical direction.

(2) Ensure that all duties and responsibilities of the medical director are not relinquished before a new or temporary replacement is functioning in that capacity.

(3) Complete a department-sponsored medical director training within one year of assuming duties as a medical director and at a minimum once every three years thereafter.

(4) Develop, approve, and update service program guidelines that meet or exceed the minimum EMS clinical guidelines approved by the department.

(5) Ensure that the emergency medical care providers rostered with the service program are credentialed in the emergency medical skills to be provided and the duties of the emergency medical care provider do not exceed the provider's scope of practice as referenced in 641—subrule 131.4(2) and the service program's EMS service level of authorization.

(6) Be available for individual evaluation and consultation with service program personnel.

(7) Have authority to restrict a service program's authorized functional EMS service level.

(8) Have the authority to permanently or temporarily restrict a service program member to function within a lower level scope of practice or prohibit a service program member from providing patient care.

(9) Approve the service program's CQI program.

(10) Perform or complete, or appoint a designee to perform or complete, the medical audits in the service program's established CQI policy.

(11) Randomly audit (on at least a quarterly basis) documentation of calls where emergency medical care was provided.

(12) Randomly review audits performed by the qualified appointee.

*c.* A medical director may:

(1) Make additions to the department-approved EMS clinical guidelines when developing service guidelines, provided the additions are within the service program's level of authorization, the EMS provider's scope of practice, and acceptable medical practice.

(2) Request that service program providers provide additional emergency medical care skills on a limited pilot project basis. The pilot project applications are available from the department upon request.

(3) Approve the physician, PA and RN exception form identifying the level of EMS provider equivalency not to exceed the service program's EMS service level authorization for each physician, PA and RN who will be providing emergency medical care as part of the service program.

*d.* A medical director who receives no compensation for the performance of the director's volunteer duties under this chapter is considered a state volunteer as provided in Iowa Code section 669.24 while performing volunteer duties as an emergency medical services medical director. Compensation does not include payments for reimbursement of expenses.

*e.* A medical director, supervising physician, PA, or ARNP who gives orders to an emergency medical care provider is not subject to criminal liability by reason of having issued the orders and is not liable for civil damages for acts or omissions relating to the issuance of the orders unless the acts or omissions constitute recklessness.

*f.* Nothing in these rules requires or obligates a medical director, supervising physician, PA, or ARNP to approve requests for orders received from an emergency medical care provider.

*g.* A service program medical director who fails to comply with Iowa Code chapter 147A or these rules may be referred to the Iowa board of medicine.

**132.3(3)** *Service director.*

*a.* Each service program shall have a designated service director at all times.

*b.* A service director shall:

(1) Be accessible 24 hours per day, seven days per week or ensure accessibility to a service director designee.

(2) Be responsible for providing direction and overall supervision of the administrative and operational aspects of the service program.

(3) Ensure that all duties and responsibilities of the service director are not relinquished before a new or temporary replacement is functioning in that capacity.

(4) Complete a department-sponsored training within one year of assuming duties as a service director and at a minimum once every three years thereafter.

(5) Ensure the service program is in compliance with service program policy, Iowa Code chapter 147A and these rules.

(6) Ensure that duties of the service program's emergency medical care providers do not exceed the providers' scope of practice as referenced in 641—subrule 131.4(2) or the service program's EMS service level of authorization.

**132.3(4)** *Service program requirements.*

*a.* A service program shall:

(1) Not advertise or otherwise imply or hold itself out to the public as a service program unless currently authorized by the department.

(2) Only advertise at or otherwise hold itself out as having the level of full authorization.

(3) Select a new or temporary medical director if the current medical director cannot or no longer wishes to serve in that capacity. Selection shall be made before the current medical director relinquishes the duties and responsibilities of that position.

(4) Notify the department in writing within seven days prior to any change in medical director or any reduction or discontinuance of operations.

(5) Select a new or temporary service director if the current service director cannot or no longer wishes to serve in that capacity. Selection shall be made before the current service director relinquishes the duties and responsibilities of that position.

(6) Notify the department in writing within seven days prior to any change in service director or any reduction or discontinuance of operations.

(7) Notify the department within seven days prior to any change in location of a service program base of operations, administrative office, satellite, or affiliate.

(8) Notify the department within seven days when entering into agreements with one or more service programs or a management entity to form multiservice systems for shared service program management, administration, data submission, or other services to ensure compliance with these rules.

(9) Report the termination or resignation in lieu of termination of an emergency medical care provider due to negligence, professional incompetency, unethical conduct, substance use, or violation of any of these rules to the department in writing within seven days.

(10) Report theft of drugs to the department in writing within 48 hours following the occurrence of the incident.

(11) Develop a notification process for service members in the event of a motor vehicle collision involving a first response vehicle, ambulance, rescue vehicle or personal vehicle when used by a service program member responding as a member of the service program.

(12) Notify the department in writing within 48 hours of a motor vehicle collision resulting in personal injury or death.

(13) Ensure a response to an initial 911 or emergency call request to the service program, 24 hours per day, seven days per week.

(14) Utilize guidelines developed and approved by the service program medical director that meet or exceed the minimum EMS clinical guidelines approved by the department.

(15) Ensure alterations to the minimum EMS clinical guidelines by the service program's medical director are approved by and filed with the department.

(16) Maintain a communication system at a minimum between medical direction, receiving facility, and other emergency responders.

(17) Maintain a current personnel roster utilizing a department-approved registry system. Ensure all rostered personnel are currently certified as active EMS providers in the state of Iowa.

(18) Maintain files with the medical director and department-approved physician, PA and RN exception forms for appropriate personnel. PA and RN forms are available on the department's website.

(19) Ensure all service program members who operate motorized emergency response vehicles, ambulances, and rescue vehicles when used by a service member responding as a member of the service have a valid driver's license and attend driver training prior to driving an emergency vehicle.

(20) Develop, maintain and follow a written driver training policy that includes a review of Iowa laws regarding emergency vehicle operations (Iowa Code section 321.231), frequency of service required driver training, a review of service program policies and criteria for response with lights or sirens or both, speed limits, procedure for approaching intersections, and use of the service program communications equipment.

(21) Ensure the emergency medical care provider with the highest level of certification attends the patient unless otherwise indicated by patient assessment and approved by the service program's guidelines.

*b.* A transport service program shall:

(1) Provide as a minimum, on initial 911 or emergency calls, the following staff on each primary response ambulance:

1. One currently certified emergency medical care provider certified at the service program full level of authorization.
2. One driver.

(2) Provide as a minimum on each subsequent call or nonemergency call, when responding, the following staff:

1. One currently certified EMT.

2. One driver.

(3) Establish a transport decision policy that requires a complete assessment of a patient in order to determine transport needs. The service transport decision policy shall include:

1. The Out-of-Hospital Trauma and Triage Destination Decision Guideline, as amended to August 1, 2024, and described in 641—Chapter 135.

2. Time critical condition considerations for transport to facilities that specialize in conditions such as cardiac conditions or stroke.

3. A process for a service program provider to determine transportation to a hospital, medical clinic, extended care facility, or other facilities where health care is routinely provided.

4. A process for patient refusal or nontransport if emergency transport is not warranted. The service program provider will obtain a signed transport/treatment refusal document or liability release if transport is not required.

5. A process by which a service program provider may make arrangements for alternate transport if emergency transport is not needed and remain with the patient until alternate transport arrives unless the provider is called to respond to another emergency.

*c.* Nontransport service programs.

(1) Nontransporting service programs, when responding to 911 or emergency calls, shall provide as a minimum one currently certified emergency medical care provider certified at the service program full level of authorization.

(2) Nontransport service programs shall have an executed written transport agreement ensuring simultaneous dispatch with an authorized transport service program for all 911 or emergency calls.

(3) Nontransport service programs may transport patients in an ambulance only in an emergency situation when lack of transporting resources would cause an unnecessary delay in patient care.

**132.3(5)** *Data reporting.*

*a.* A service program shall report data electronically to the department.

*b.* A service program shall submit data in a format approved by the department.

*c.* A service program shall submit reportable data to the department no later than the last day of the month following the month services were provided.

*d.* The data collected by the EMS data registry and furnished to the department pursuant to this rule are confidential records of the condition, diagnosis, care, or treatment of patients or former patients, including outpatients, pursuant to Iowa Code section 22.7. The compilations prepared for release or dissemination from the data collected are not confidential under Iowa Code section 22.7(2). However, information that individually identifies patients shall not be disclosed, and state and federal law regarding patient confidentiality shall apply.

*e.* The department may approve requests for reportable patient data for special studies and analysis provided:

(1) The request has been reviewed and approved by the department with respect to the scientific merit and confidentiality safeguards.

(2) The department has given administrative approval for the proposal.

(3) The confidentiality of patients is protected pursuant to Iowa Code section 22.7 and chapter 147A.

(4) The department may require those requesting the data to pay any or all of the reasonable costs associated with furnishing the reportable data.

*f.* For the purpose of ensuring the completeness and quality of reportable data, the department or authorized representative may examine all or part of the data record as necessary to verify or clarify all reportable data submitted by a service program.

*g.* To the extent possible, activities under this subrule shall be coordinated with other health data collection methods.

*h.* A service program will develop, maintain and follow a written data submission policy.

**132.3(6)** *Patient care reporting.*

*a.* Each service program, satellite, and affiliate shall complete and maintain a patient care report documenting the care provided to each patient.

*b.* The patient care report is a confidential document and is exempt from disclosure pursuant to Iowa Code section 22.7(2) and shall not be accessible to the general public. Information contained in these reports, however, may be utilized by any of the indicated distribution recipients and may appear in any document or public health record in a manner that prevents the identification of any patient or person named in these reports.

*c.* To facilitate the continuum of care, transport service programs shall provide at a minimum, upon delivery of a patient to a receiving facility, a verbal patient care report that contains details of the assessment and care provided.

*d.* Transport service programs shall provide a final patient care report within 24 hours to the receiving facility. Transport services and receiving facilities must work together to initiate reasonable and realistic mechanisms (including but not limited to paper, secure email, secure links, secure electronic system retrieval, and access to printers at the receiving facility) to ensure the delivery of the patient care report.

*e.* A service program will develop, maintain, and follow a written patient care report policy.

**132.3(7)** *Continuous quality improvement (CQI).*

*a.* A service program shall develop, maintain, and follow a CQI program that follows a written CQI policy.

*b.* The CQI program shall include medical audits that review patient care provided.

*c.* The CQI program shall be utilized to identify deficiencies or potential deficiencies regarding medical knowledge or skill or procedure performance.

*d.* The CQI program shall review at a minimum 911 response and scene times.

*e.* The CQI program shall develop a written plan that monitors, identifies and documents at a minimum continuing education, credentialing of skills and procedures, and personnel performance for the service program's emergency medical care providers, drivers, physicians, PA and RN exceptions.

*f.* The CQI program shall establish measurable outcomes that reflect the goals and standards of the service program.

*g.* The CQI program shall ensure completion of loop closure/resolution of identified areas of concern.

**132.3(8)** *Medications in service programs.*

*a.* A service program shall have written pharmacy agreements in accordance with the Iowa board of pharmacy's 657—Chapter 11.

*b.* A service program shall maintain all medications in accordance with the rules of the Iowa board of pharmacy's 657—Chapters 10 and 11.

*c.* A service program shall develop, maintain, and follow a written pharmacy policy.

**132.3(9)** *Vehicle standards, supplies, equipment and maintenance.*

*a.* All service programs, regardless of their designation as governmentally owned, not-for-profit, or privately operated, shall annually systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all ambulances operated by the service program.

*b.* A service program shall utilize a vehicle inspection report approved by the department to record the results of an annual ambulance safety inspection. Annual safety inspection forms that comply with the requirements of 49 CFR 396 as amended to August 1, 2024, shall be approved by the department. A sample annual vehicle inspection form that complies with the reporting requirements of 49 CFR 396 as amended to August 1, 2024, can be found on the department's website.

*c.* A service program shall ensure individuals performing annual safety inspections are qualified and capable of performing an inspection by reason of experience, training, or both.

*d.* A service program shall not use an ambulance that fails to meet or maintain the requirements of this subrule to transport patients.

*e.* A service program shall house primary response ambulances in a garage or other enclosed facility that is maintained in a clean, safe condition, free of debris or other hazards; is temperature controlled; and has an unobstructed exit to the street.

*f.* A service program shall secure all equipment stored in the ambulance patient compartment so the patient and service program personnel are not injured by moving equipment.

*g.* New ambulances manufactured and placed into service shall meet at a minimum either the Commission on Accreditation of Ambulance Services (CAAS) Ground Vehicle Standard for Ambulances, as amended to August 1, 2024, or the National Fire Protection Association (NFPA) Standard for Automotive Ambulances (NFPA 1917) as amended to August 1, 2024.

*h.* A service program shall maintain first response and rescue vehicles in safe operating condition and provide regular maintenance. Vehicles shall have the exterior clean and the interior clean and disinfected.

*i.* A service program shall ensure medical and patient care supplies are monitored for expiration dates, cleaned, laundered or disinfected. All medical supplies shall be stored in clean environments.

*j.* A service program shall ensure personal protection equipment and supplies are available to ensure emergency medical care responder safety during every response.

*k.* A service program shall ensure supplies to properly dispose of biomedical hazardous waste are available in all response vehicles, and all waste shall be disposed of according to accepted biomedical waste practices.

*l.* A service program shall ensure medical equipment is maintained per manufacturer requirements for safe emergency medical care provider and patient use.

*m.* A service program will develop, maintain, and follow vehicle standards, supplies, and equipment maintenance policies.

**641—132.4(147A) Waivers.** If during a period of authorization, a service program is unable to maintain compliance with Iowa Code chapter 147A and these rules, the department may grant a waiver.

**132.4(1)** The department may grant waivers of these rules to a currently authorized service program.

**132.4(2)** Requests for waivers shall apply only to the service program requesting the waiver and shall apply only to those requirements and standards for which the department is responsible.

**132.4(3)** A service program shall apply for a waiver in accordance with 441—Chapter 6.

**641—132.5(147A) Complaints and investigations—denial, citation and warning, probation, suspension or revocation of service program authorization or renewal.**

**132.5(1)** All complaints regarding the operation of authorized emergency medical care service programs, or those purporting to be or operating as the same, shall be reported to the department.

**132.5(2)** Complaints and the investigative process will be treated as confidential in accordance with Iowa Code section 22.7 and chapter 272C. An emergency medical care provider who has knowledge of an emergency medical care provider, service program or training program that has violated Iowa Code chapter 147A or these rules shall report such information to the department within 30 days following knowledge of the violation.

**132.5(3)** Service program authorization may be denied, issued a civil penalty not to exceed $1,000, issued a citation and warning, placed on probation, suspended, revoked, or otherwise disciplined by the department in accordance with Iowa Code section 147A.5(3) for any of the following reasons:

*a.* Knowingly allowing the falsifying of a patient care report (PCR).

*b.* Failure to submit required reports and documents.

*c.* Delegating professional responsibility to a person when the service program knows that the person is not qualified by training, education, experience or certification to perform the required duties.

*d.* Practicing, condoning, or facilitating discrimination against a patient, student or employee based on race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability diagnosis, or social or economic status.

*e.* Knowingly allowing sexual harassment of a patient, student or employee. Sexual harassment includes sexual advances, sexual solicitations, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

*f.* Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.

*g.* Obtaining or attempting to obtain or renew or retain service program authorization by fraudulent means or misrepresentation or by submitting false information.

*h.* Engaging in conduct detrimental to the well-being or safety of the patients receiving or who may be receiving emergency medical care.

*i.* Failure to correct a deficiency within the time frame required by the department.

*j.* Engaging in any conduct that subverts or attempts to subvert a department investigation.

*k.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

*l.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

*m.* Knowingly aiding, assisting or advising a person to unlawfully practice EMS.

*n.* Acceptance of any fee by fraud or misrepresentation.

*o.* Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

*p.* Violating privacy and confidentiality. A service program shall not disclose or be compelled to disclose patient information unless disclosure is required or authorized by law.

*q.* Practicing emergency medical services or using a designation of certification or otherwise holding itself out as practicing emergency medical services at a certain level of authorization when the service program is not authorized at such level.

*r.* Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department that was sent by registered or certified mail.

**132.5(4)** The department will notify the applicant of the granting or denial of authorization or renewal, or will notify the alleged violator of action to issue a citation and warning, place on probation or suspend or revoke authorization or renewal pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a denial, citation and warning, probation, suspension or revocation will be served by restricted certified mail, return receipt requested, or by personal service.

**132.5(5)** Any requests for appeal concerning the denial, citation and warning, probation, suspension or revocation of service program authorization or renewal shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, citation and warning, probation, suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

**132.5(6)** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections, appeals, and licensing pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the department of inspections, appeals, and licensing.

**132.5(7)** The hearing shall be conducted according to the procedural rules of the department of inspections, appeals, and licensing, found in 481—Chapter 10.

**132.5(8)** When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in 132.5(9).

**132.5(9)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code chapter 147A and 2024 Iowa Acts, House File 2507.

**ARC 8722C**

# PUBLIC HEALTH DEPARTMENT[641]

**Notice of Intended Action**

**Proposing rulemaking related to emergency medical services—air medical service program authorization and providing an opportunity for public comment**

The Department of Public Health hereby proposes to rescind Chapter 144, "Emergency Medical Services—Air Medical Service Program Authorization," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 147A.4.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 147A.

*Purpose and Summary*

This rulemaking is a result of Executive Order 10. This proposed rulemaking rescinds and reserves Chapter 144. The content of 641—Chapters 132 and 144 are proposed to be combined into a single Chapter 132 in another rulemaking herein (ARC 8721C, IAB 1/8/24). It is not necessary to have a separate chapter for air medical services. Combining the two chapters is congruent with the intent of Executive Order 10.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 7, 2024

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This chapter is being rescinded, so there is no waiver provision.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Victoria L. Daniels
Department of Health and Human Services
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319

Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| January 28, 2025<br>1 to 2 p.m. | Microsoft Teams<br>Meeting ID: 222 847 169 42<br>Passcode: d7aG7cR9 |
| January 29, 2025<br>10 to 11 a.m. | Microsoft Teams<br>Meeting ID: 243 840 908 594<br>Passcode: a7Jg78UJ |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **641—Chapter 144**.

## ARC 8740C

# TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

### Proposing rulemaking related to automated traffic enforcement mobile systems and providing an opportunity for public comment

The Transportation Department hereby proposes to adopt new Chapter 145, "Automated Traffic Enforcement Mobile Systems," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12(1)"j" and 321P.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 321P.

*Purpose and Summary*

Proposed Chapter 145 establishes conditions, procedures, and responsibilities for the use of automated traffic enforcement mobile systems to issue citations for violations of the speed limit. These rules apply to local authorities using or planning to use an automated traffic enforcement mobile system.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024. A public hearing was held on the following date(s):

- November 8, 2024

The Department received nine written comments from the city of Cedar Rapids. The nine comments included:

1. A request for the Department to add a permit application review time frame to rule 761—145.3(321P);
2. A statement that the Department is exceeding its authority by implementing a mobile location reevaluation process in subrule 145.5(1);
3. A request for the Department to establish a requirement for itself to issue a reevaluation report;
4. A request that the Department clarify in the rules that a local authority may continue to use a mobile system until an official decision is issued by the Department deeming the mobile location no longer necessary;
5. A request to revise paragraph 145.5(1)"e" to replace the term "implementation" with the term "consideration of";
6. A request to delete paragraph 145.5(1)"f" as redundant;
7. A request to remove language in subrule 145.5(2) authorizing the Department to rescind a permit;
8. A request to modify the language in subrule 145.5(2) to state that the Department's authority to request modification of a mobile system be limited to the exterior physical appearance of the mobile system; and
9. A request to remove the phrase "as deemed appropriate" from subrule 145.5(2).

The Department revised the rules in response to comments 1, 4, 5, 7 and 9, including adding a 180-day time frame for application review to subrule 145.3(3), specifying in new subrule 145.5(3) that a mobile system may continue to be operated at a location in the original permit until five days after the Department rescinds the permit or issues an amended permit with the disapproved location removed, clarifying in paragraph 145.5(1)"d" that safety countermeasures that were considered may factor into the Department's reevaluation analysis, clarifying in subrule 145.5(2) that only a mobile location can be removed from a permit under these rules, and removing the unnecessary phrase "as deemed appropriate" from subrule 145.5(2). The Department declined to revise the rules in response to comments 2, 3, 6 and 8.

The Department also revised rule 761—145.6(321P) to clarify that the Department will schedule a contested case hearing within 45 days of receipt of an appeal request and that the decision by the Department's presiding officer is final agency action.

*Fiscal Impact*

This rulemaking has no fiscal impact beyond the impact estimated by the Legislative Services Agency for 2024 Iowa Acts, House File 2681.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 28, 2025. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

*Public Hearing*

A public hearing at which persons may present their views orally will be held as follows:

| | |
|---|---|
| January 28, 2025 | Microsoft Teams link |
| 9 to 10 a.m. | Or dial: 515.817.6093 |
| | Conference ID: 535 185 780 |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** 761—Chapter 145:

CHAPTER 145
AUTOMATED TRAFFIC ENFORCEMENT MOBILE SYSTEMS

**761—145.1(321P) General.**

**145.1(1)** *Purpose and applicability.* This chapter establishes conditions, procedures, and responsibilities for the use of automated traffic enforcement mobile systems to issue citations for violations of the speed limit. These rules apply to local authorities using or planning to use an automated traffic enforcement mobile system.

**145.1(2)** *Overview.*

*a.* Mobile systems must comply with Iowa Code chapter 321P.

*b.* A local authority's use of a mobile system is subject to the population limit identified in Iowa Code section 321P.3(2). However, a local authority of any population may use a mobile system to issue warnings in accordance with Iowa Code section 321P.3(3).

*c.* Use of a mobile system is limited to locations identified in Iowa Code section 321P.3(2).

*d.* Mobile systems are to be situated in a manner that:

(1) Maintains a safe environment for all road users.

(2) Allows for free passage along the roadway right-of-way.

(3) Minimizes the potential to cause backups or delays.

(4) Does not obstruct the view of other road users or traffic control devices.

**145.1(3)** *Contact information.* Information relating to this chapter may be obtained from the Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or at www.iowadot.gov/traffic.

**145.1(4)** *Definitions.* The definitions in Iowa Code section 321P.1 apply to this chapter. In addition:

*"Automated traffic enforcement mobile system"* or *"mobile system"* means a vehicle, trailer, or other portable apparatus containing one or more automated or remote systems for traffic law enforcement.

*"Interstate road"* means the same as "interstate roads" as defined in Iowa Code section 306.3.

*"Location"* means a street address, a block number, an intersection, or a mile marker and includes the direction of traffic being monitored.

*"Primary road"* means the same as "primary roads" as defined in Iowa Code section 306.3.

**761—145.2(321P) Conditions for mobile systems.**

**145.2(1)** *Placement.*

*a.* Except when used in a construction zone, a mobile system shall not be placed or parked:

(1) Less than 15 feet from any traffic lane of an interstate road unless shielded by a crashworthy barrier.

(2) On the outside shoulder of any non-interstate primary road for longer than 72 hours unless shielded by a crashworthy barrier.

(3) Within the median or on the inside shoulder of any road.

(4) Less than two feet behind the back of a curb on any road.

(5) Less than two feet from the edge of any traffic lane on any road.

*b.* When used in a construction zone, a mobile system shall be shielded by a crashworthy barrier unless it is placed or parked more than 15 feet from any active traffic lane.

**145.2(2)** *Duration of use.* Except when used in a construction zone, a mobile system shall not be used in one location for longer than three consecutive weeks or be used in one location for more than 21 days in any 45-day period. When used in a construction zone, a mobile system may be used in one location for the duration of construction activities.

**145.2(3)** *Public notice.* A local authority operating a mobile system shall provide information regarding where and when a mobile system will be used on the local authority's Internet site or social media outlets.

**145.2(4)** *Vehicles and trailers.* A vehicle or trailer used as a mobile system shall be operated by a law enforcement agency, marked with distinguishing decals, and identified by a distinguishing license plate affixed to the vehicle or trailer.

**761—145.3(321P) Permitting.**

**145.3(1)** *Initial permit.* A local authority may apply for a permit by submitting a request to the department, following the procedure outlined in Iowa Code section 321P.2(2), for each location where a mobile system is proposed to be used. The department will not issue an initial permit before July 1, 2026.

**145.3(2)** *Updating an existing permit.* A local authority holding a permit may apply to update the permit with one or more additional locations by submitting a request to the department, following the procedure outlined in Iowa Code section 321P.2(2), for each location where a mobile system is proposed to be used.

**145.3(3)** *Department review.* The department will review the application within 180 days of receipt and will approve or deny each requested location based on the department's determination that use of a mobile system is appropriate, necessary, and the least restrictive means to address the critical traffic safety issues at that location. Incomplete applications will be returned to the applicant. If approval is granted, the department will issue a permit listing all approved locations.

**145.3(4)** *Exception for warnings.* Use of a mobile system at a location solely for the issuance of warnings does not require a permit.

**761—145.4(321P) Annual report.**

**145.4(1)** A local authority using a mobile system shall submit to the department and post an annual report as described in Iowa Code section 321P.5(2).

**145.4(2)** The report must also include the following information from the previous calendar year for each location listed in the permit:

*a.* Number of days the mobile system was in use.

*b.* Count of all vehicles traveling past the mobile system while it was in use.

*c.* Speed distribution data for all vehicles traveling past the mobile system while it was in use.

*d.* Description of any changes in traffic patterns, roadway infrastructure, zoning, or land use.

*e.* Identification of any other safety countermeasures that have been implemented.

**761—145.5(321P) Continued use of mobile system.**

**145.5(1)** *Reevaluation.* The department will utilize information collected from the annual report to assist in annually evaluating the ongoing need for a mobile system at each location listed in the permit. Continued approval of each location will be contingent on the effectiveness of the mobile system in addressing the critical traffic safety issues and the local authority's compliance with these rules and Iowa Code chapter 321P. The department may also consider the following factors in the reevaluation:

*a.* Changes in traffic speeds, volumes, or patterns.

*b.* Changes in roadway infrastructure.

*c.* Changes in zoning or land use.

*d.* Implementation or consideration of other safety countermeasures.

*e.* Appropriate administration of the mobile system by the local authority.

**145.5(2)** *Reserve the right.* The department reserves the right to rescind a permit, remove a mobile location from a permit, or require modification of a mobile system.

**145.5(3)** *Continued use.* A local authority may continue to operate a mobile system at a location listed in the original permit until five days after the date the department rescinds the permit or amends the permit to remove the mobile location.

**761—145.6(321P) Appeal process.** A local authority may appeal a decision made by the department under this chapter by submitting a written explanation of the issues for appeal and any supporting information to the director of transportation or director's designee (director). Once the director receives the appeal, the department will schedule a contested case hearing within 45 days. The decision by the department's presiding officer is final agency action.

These rules are intended to implement Iowa Code chapter 321P.

# ARC 8742C

# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

**Adopted and Filed**

**Rulemaking related to the renewable fuel infrastructure program**

The Agriculture and Land Stewardship Department hereby rescinds Chapter 13, "Renewable Fuel Infrastructure Board—Organization," and adopts a new Chapter 13, "Renewable Fuel Infrastructure Program"; and rescinds Chapter 14, "Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites," Chapter 15, "Renewable Fuel Infrastructure Program for Biodiesel Terminal Grants," and Chapter 16, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 159.5.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 159A; 2024 Iowa Acts, House File 2687; and 2024 Iowa Acts, House File 2691.

*Purpose and Summary*

This rulemaking is regarding the Renewable Fuels Infrastructure Program (RFIP). The rulemaking combines four administrative chapters into one single chapter, removes rules that are duplicative of statute, and removes outdated and unnecessary language.

In addition, this rulemaking implements changes that were made during the 2024 Legislative Session regarding the RFIP. This includes maximum grant award amounts and infrastructure compatibility updates.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8329C**. No public comments were received.

Following discussions with members of the RFIP Board and industry stakeholders, an additional paragraph has been added to subrule 13.23(3), which addresses the stacking of federal and state incentives for the same project to protect Iowa taxpayer dollars. The additional paragraph clarifies that when both federal and state incentives are being utilized for a single project, the RFIP award will be reduced to not exceed the total project cost.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 17, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 21—Chapter 13 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 13
## RENEWABLE FUEL INFRASTRUCTURE PROGRAM

### DIVISION I
### DEFINITIONS

**21—13.1(159A) Definitions.** As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 159A.11 apply to this chapter. The following definitions also apply:

*"Agreement"* means the cost-share agreement executed by the department after approval of the grant by the board.

*"Applicant"* means a person, as defined in this rule, who owns or operates a site.

*"Biodiesel,"* for the purpose of this rule, must be at least B99.

*"Biodiesel blended fuel,"* means the same as defined in Iowa Code section 214A.1. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 5 percent at a retail site.

*"Biofuel"* means ethanol or biodiesel as defined in Iowa Code section 214A.1.

*"Blender pump"* means the same as defined in Iowa Code section 214.1.

*"Board"* means the renewable fuel infrastructure board established by Iowa Code section 159A.13.

*"Checklist"* or *"IDNR checklist"* means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

*"Grant"* or *"cost-share grant"* means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code chapter 159A to help pay for a project.

*"Person"* means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

*"Project"* means the installation of equipment for motor fuel storage, dispensing and distribution of E-15 or higher gasoline, biodiesel or biodiesel blended fuel classified as B-5 or higher.

*"Rack"* means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

*"Renewable fuel"* means the same as defined in Iowa Code section 214A.1.

*"Retail"* means offered for sale to the public for final consumption.

*"Retail motor fuel site"* means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis.

*"Special status"* means a retail motor fuel site that does not comply with the E-15 access standard under Iowa Code section 214A.32 and is ineligible to be issued an E-15 incompatible infrastructure Class 2 waiver order.

*"Tier I site"* means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"b."*

*"Tier II site"* means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"c."*

*"Tier III site"* means a retail motor fuel site as described in Iowa Code section 159A.14(6)*"d."*

This rule is intended to implement Iowa Code chapter 159A.

DIVISION II
RENEWABLE FUEL INFRASTRUCTURE BOARD

**21—13.2(159A) Renewable fuel infrastructure board.**

**13.2(1)** *Duties.* The board exists to make awards for renewable fuel infrastructure programs and perform other functions as necessary.

**13.2(2)** *Staff.* Staff assistance is provided through the department. The department will market the renewable fuel infrastructure program throughout the state.

**13.2(3)** *Meetings.* Board meetings will generally be held at the department's offices, electronically, or by telephone. All meetings are to comply with Iowa Code chapter 21.

This rule is intended to implement Iowa Code section 159A.13.

**21—13.3** to **13.9** Reserved.

DIVISION III
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR RETAIL MOTOR FUEL SITES

**21—13.10(159A) Purpose.** The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail motor fuel site.

**21—13.11(159A) Eligible applicants.** To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

**13.11(1)** Be an owner or operator of a retail motor fuel site.

**13.11(2)** Submit an application to the department in form and content acceptable to the department and the board.

**13.11(3)** Meet the following eligibility requirements established by the board:

*a.* The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

*b.* The storage tank must, however, be used exclusively for retail delivery to the final consumer.

*c.* If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of ethanol blended gasoline classified as E-15 or higher, biodiesel or biodiesel blended fuel classified as B-5 or higher at retail. The compartment used exclusively for the storage of ethanol blended gasoline at E-15 or higher, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

*d.* The tank and ancillary equipment must be in compliance with Iowa Code sections 455G.32 and 455G.33, as evidenced by the most recent IDNR checklist.

*e.* The dispenser and dispenser components must be listed by an independent testing laboratory, approved by the manufacturer or approved by the department of inspections, appeals, and licensing as compatible with ethanol blended gasoline in accordance with Iowa Code section 455G.32. An Iowa-licensed installer has been identified to perform the installation.

*f.* Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the department of inspections, appeals, and licensing.

These rules are intended to implement Iowa Code section 159A.14.

**21—13.12** to **13.14** Reserved.

DIVISION IV
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR BIODIESEL TERMINALS

**21—13.15(159A) Purpose.** The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

**21—13.16(159A) Eligible applicants.** To be eligible to receive a biodiesel terminal grant, an applicant shall:

**13.16(1)** Be an owner or operator of a biodiesel terminal.

**13.16(2)** Submit an application to the department in form and content acceptable to the department and the board.

**13.16(3)** Meet the following eligibility requirements established by the board:

*a.* The terminal must not be a retail motor fuel site.

*b.* The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.

*c.* The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.

*d.* The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

These rules are intended to implement Iowa Code section 159A.15.

**21—13.17** to **13.19** Reserved.

DIVISION V
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

**21—13.20(159A) Form of award available; award amount.**

**13.20(1)** *Form of award.* Eligible applicants may apply for financial incentives on a cost-share basis. Funding is available in the form of a grant.

**13.20(2)** *Timing of application.* A grant may be awarded for an eligible project not yet commenced. However, a grant for an initial application may not be submitted more than one year after the project is put in service.

**13.20(3)** *Amount of award.*

*a. Retail site award.*

(1) Cost-share agreements are subject to the terms specified in Iowa Code section 159A.14, including the duration of the financing agreement and the award amount.

(2) Supplemental award for additional infrastructure. A person may request a supplemental financial incentive for motor fuel storage and dispensing infrastructure as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional motor fuel storage and dispensing infrastructure at an additional retail motor fuel site after an initial grant award is provided. Supplemental award amounts are subject to the limitations set forth in Iowa Code section 159A.14(8)*"b."*

*b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.*

(1) Biodiesel fuel B2 through B98. Cost-share agreements are subject to the terms specified in Iowa Code section 159A.15, including the duration of the financing agreement and the award amount.

(2) Biodiesel fuel B99/B100 for year-round distribution. Cost-share agreements are subject to the terms and limitations specified in Iowa Code section 159A.15, including the duration of the financing agreement and the award amount.

**13.20(4)** *Time of payment.* The grant will be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

*a.* The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

*b.* The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

*c.* The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

**13.20(5)** *Deadline for completion.* The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

**13.20(6)** *Multiple awards for multiple fuel types.*

*a. At a single fuel site.* A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

*b. At multiple fuel sites.* A person may receive multiple grants as described in paragraph 13.20(6) *"a"* for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the board will make awards fairly and properly among applicants and geographic areas.

**13.20(7)** *Exhaustion of funds.* In the event funding is exhausted, the board may approve remaining applications based on criteria implemented by the board.

**21—13.21(159A) Application process.**

**13.21(1)** *Application procedures.*

*a.* Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

*b.* Applications are to be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Agriculture and Land Stewardship, 502 East Ninth Street, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

**13.21(2)** *Contents of application.*

*a.* Statutory requirements. An application must include the information required in Iowa Code chapter 159A.

*b.* Other information required by the board:

(1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.

(2) Assurance that all equipment funded by the grant will be used to store or dispense E-15 or higher gasoline, biodiesel or biodiesel blended fuel classified as B-5 or higher, respectively, for the period specified in the agreement.

(3) An IDNR checklist indicating the current status of the site.

(4) Assurance of compliance with any and all federal requirements for financial responsibility.

(5) Assurance of compliance with any and all state and federal laws and regulations.

(6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).

**21—13.22(159A) Review process.**

**13.22(1)** The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board will determine the amount of financial incentives to be awarded to an applicant.

**13.22(2)** Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. The board will rank applications in accordance with Iowa Code section 159A.14(6)*"e."*

**13.22(3)** If the amount of funding requests exceeds available funds, the board will evaluate applications based upon criteria that include but are not limited to, in no particular order, the following:

*a.* Submittal of a completed application, including supporting documentation.

*b.* Priority status.

*c.* Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.

*d.* Projected annual sales volume.

*e.* Other sources of funding.

*f.* Previous grants awarded.

**21—13.23(159A) Contract administration.**

**13.23(1)** *Notice of award.* The department will notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

**13.23(2)** *Contract required.* The board will direct the department to prepare a cost-share agreement that includes the terms and conditions of the grant established by the board. The agreement shall:

*a.* Describe the project in sufficient detail to demonstrate the eligibility of the project.

*b.* State the total cost of the project expressed in a project budget that contains sufficient detail to meet the requirements of the infrastructure board.

*c.* State the project completion deadline.

*d.* State the project completion requirements that are preconditions for payment of the grant by the board.

*e.* Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.

(1) Awards for projects under construction or not yet started. The five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

*f.* Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

**13.23(3)** *Disbursement of funds.*

*a.* Beginning January 1, 2023, the department shall only reimburse an applicant for qualifying expenditures that comply with Iowa Code sections 455G.32 and 455G.33 unless a grant was awarded to the applicant with moneys appropriated in the 2022 fiscal year budget or prior.

*b.* In cases where both state and federal incentives are being utilized for a project at a retail motor fuel site, and those incentives, when combined, would exceed the total cost of the project at the retail motor fuel site, the department will reduce the state financial incentive to an amount that would not exceed the total cost of the project.

**13.23(4)** *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

**13.23(5)** *Repayment or board waiver.* A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

**13.23(6)** *Waiver criteria.* The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in

effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

*a. Permanent waiver.*

(1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-15 or E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds shall be repaid at 100 percent for months one through ten of a cost-share agreement or 2 percent of the grant amount for each month remaining on the cost-share agreement after month ten.

*b. Temporary waiver (temporary suspension of repayment and 25 percent penalty).* A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

These rules are intended to implement Iowa Code sections 159A.11 through 159A.16.

ITEM 2. Rescind and reserve **21—Chapter 14**.

ITEM 3. Rescind and reserve **21—Chapter 15**.

ITEM 4. Rescind and reserve **21—Chapter 16**.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

# ARC 8743C

# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

**Adopted and Filed**

**Rulemaking related to motor fuel and antifreeze tests and standards**

The Agriculture and Land Stewardship Department hereby amends Chapter 85, "Weights and Measures," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 214A.1A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 214A.2.

*Purpose and Summary*

This rulemaking incorporates recent updates made with the ASTM International fuel specifications as of July 9, 2024. These updates will provide uniformity for fuel manufacturers and suppliers across the region and nationwide.

Additionally, this rulemaking provides a narrow exception from ASTM International specifications during the month of March. This exception keeps Iowa at the same volatility class in the month of March that has been in place since 1988 and aligns Iowa fuel specifications with neighboring states. This will help to ensure that Iowa does not experience fuel availability issues or cost increases that would be experienced by consumers.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8328C**.

The industry requested minor adjustments to provide additional clarity. These changes have been incorporated into the final rulemaking as follows:

1. "E-5/D-4" was updated to say "E-5 or D-4".
2. Specified that paragraph 85.20(1)"b" applies to both gasoline and ethanol-blended gasoline (was previously just ethanol-blended gasoline).

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 17, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Amend subrule 85.20(1) as follows:

**85.20(1)** In the interest of uniformity, the tests and standards for motor fuel, including but not limited to renewable fuels such as ethanol blended gasoline, biodiesel, and biodiesel blended fuel, and components such as an oxygenate, raffinate natural gasoline and motor vehicle antifreeze shall be those established by ASTM International in effect on ~~June 30, 2023~~ July 9, 2024, with the following exceptions:

*a.* Biodiesel blended fuel classified as higher than B-20 but less than B-99.

*b.* For the month of March, the volatility class shall be E-5 or D-4 for gasoline or ethanol blended gasoline.

~~*b.*~~ *c.* Tests and standards that are otherwise required by statute.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8744C

# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

**Adopted and Filed**

**Rulemaking related to hemp**

The Agriculture and Land Stewardship Department hereby rescinds Chapter 96, "Hemp," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in 2024 Iowa Acts, House File 2641.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 2024 Iowa Acts, House File 2641.

*Purpose and Summary*

During the 2024 Legislative Session, legislation was passed that revised the Iowa Hemp Act (Iowa Code chapter 204) by removing the Department's authority to regulate the production of hemp, effective December 31, 2024. Without a state program for hemp production, the United States Department of Agriculture will assume these activities beginning in 2025. This rulemaking rescinds the Department's administrative rules to comply with the recently enacted legislation.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8326C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 17, 2024.

*Fiscal Impact*

2024 Iowa Acts, House File 2641, is expected to have a fiscal impact of $38,000 due to losing fees associated with hemp regulation.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **21—Chapter 96**.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8741C

# HUMAN SERVICES DEPARTMENT[441]

**Adopted and Filed**

**Rulemaking related to child care services**

The Department of Health and Human Services hereby amends Chapter 170, "Child Care Services," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 707, and 2024 Iowa Acts, House File 2658.

*Purpose and Summary*

This rulemaking implements the Child Care Assistance (CCA) program. The amendments to Chapter 170 update family income level to 160 percent of the federal poverty level (FPL), revises the provider reimbursement rates, and updates the minimum hours of participation from 28 to 32 for families who do not have a special needs child. Also, these amendments revise the CCA family fee chart to update annual FPL changes.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 21, 2024, as **ARC 7651C**. A public hearing was held on the following date(s):

- March 13, 2024
- March 21, 2024

An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2024, as **ARC 8192C**.

No one attended the public hearings. No public comments were received. No changes from the Amended Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 13, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa beyond that of the underlying legislation.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Amend subparagraph **170.2(1)"a"(1)** as follows:

(1) For initial eligibility, an applicant family's nonexempt gross monthly income as established in paragraph 170.2(1)*"c"* cannot exceed the amounts in this subparagraph.

1. ~~145~~ 160 percent of the federal poverty level applicable to the family size for children needing basic care; or

2. and 3. No change.

ITEM 2. Amend subparagraph **170.2(2)"b"(2)** as follows:

(2) The parent is employed ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) or an average of ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) during the month. Child care services may be provided for the hours of employment and for actual travel time between the child care location and the place of employment. If the parent works a shift consisting of at least six hours of employment between the hours of 8 p.m. and 6 a.m. and needs to sleep during daytime hours, child care services may also be provided to allow the parent to sleep during daytime hours.

ITEM 3. Amend subparagraph **170.2(2)"b"(8)** as follows:

(8) The parent is employed and participating in academic or vocational training for ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) or an average of ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) in the aggregate, during the month. Child care services may be provided for the hours of employment, the hours of participation in academic or vocational training and for actual travel time between the child care location and the place of employment or training. All of the requirements relating to academic or vocational training found at subparagraph 170.2(2)*"b"*(1), except for the requirement to be enrolled full-time, apply to the part-time training in this subparagraph.

ITEM 4. Amend paragraph **170.2(3)"a"** as follows:

*a. Priority groups.* As funds are determined available, families shall be served on a statewide basis from a service-area-wide waiting list as specified in subrule 170.3(4) based on the following schedule in descending order of prioritization.

(1) Families with an income at or below 100 percent of the federal poverty level whose members, for at least ~~28~~ 32 hours per week in the aggregate, are employed or are participating at a satisfactory level in an approved training program or educational program, and parents with a family income at or below 100 percent of the federal poverty level who are under the age of 21 and are participating in an educational program leading to a high school diploma or equivalent.

(2) No change.

(3) Families with an income of more than 100 percent but not more than ~~145~~ 160 percent of the federal poverty guidelines whose members, for at least ~~28~~ 32 hours per week in the aggregate, are employed or are participating at a satisfactory level in an approved training program or educational program.

(4) No change.

ITEM 5. Rescind paragraph **170.4(2)"a"** and adopt the following **new** paragraph in lieu thereof:

*a. Sliding fee schedule.*

(1) For families whose eligibility is established in subparagraphs 170.2(1)*"a"*(1) and 170.2(1)*"a"*(2), the child care assistance (CCA) and CCA plus programs fee schedule, dated July 2024, found on the department's website is effective for eligibility determinations made on or after July 1, 2024.

(2) For families whose eligibility is established in subparagraph 170.2(1)*"a"*(3), the CCA exit program fee schedule, dated July 2024, found on the department's website is effective for eligibility determinations made on or after July 1, 2024.

ITEM 6. Amend paragraph **170.4(7)"a"** as follows:

*a. Rate of payment.* The rate of payment for child care services, except for in-home care, which shall be paid in accordance with paragraph 170.4(7)*"d,"* shall be the actual rate charged by the provider for a private individual, not to exceed the maximum rates shown below. When a provider does not have a half-day rate in effect, a rate is established by dividing the provider's declared full-day rate by 2. When a provider has neither a half-day nor a full-day rate, a rate is established by multiplying the provider's declared hourly rate by 4.5. Payment shall not exceed the rate applicable to the provider type and age

group as shown in the tables below. To be eligible for the special-needs rate, the provider must submit documentation to the child's service worker that the child needing services has been assessed by a qualified professional and meets the definition for "child with special needs," and a description of the child's special needs, including, but not limited to, adaptive equipment, more careful supervision, or special staff training.

**Table 1**
**Half-Day Rate Ceilings for (Licensed Center)**

| | No Quality Rating | | Quality Rating 1 or 2 | | Quality Rating 3 or 4 | | Quality Rating 5 | |
|---|---|---|---|---|---|---|---|---|
| Age Group | Basic | Special Needs | Basic | Special Needs | Basic | Special Needs | Basic | Special Needs |
| Infant and Toddler | ~~$19.30~~ $25.66 | $51.94 | ~~$20.50~~ $25.66 | $51.94 | ~~$21.50~~ $25.66 | $51.94 | ~~$23.21~~ $27.00 | $51.94 |
| Preschool | ~~$17.00~~ $19.50 | $30.43 | ~~$18.00~~ $20.25 | $30.43 | ~~$18.98~~ $21.50 | $30.43 | ~~$20.00~~ $22.97 | $30.43 |
| School Age | ~~$13.50~~ $16.50 | $30.34 | ~~$14.75~~ $17.10 | $30.34 | ~~$15.00~~ $17.50 | $30.34 | ~~$16.00~~ $18.50 | $30.34 |

**Table 2**
**Half-Day Rate Ceilings for (Child Development Home A/B)**

| | No Quality Rating | | Quality Rating 1 or 2 | | Quality Rating 3 or 4 | | Quality Rating 5 | |
|---|---|---|---|---|---|---|---|---|
| Age Group | Basic | Special Needs | Basic | Special Needs | Basic | Special Needs | Basic | Special Needs |
| Infant and Toddler | ~~$12.98~~ $16.63 | ~~$19.47~~ $24.95 | ~~$13.50~~ $16.63 | ~~$20.25~~ $24.95 | ~~$13.75~~ $16.63 | ~~$20.63~~ $24.95 | ~~$14.00~~ $17.50 | ~~$21.00~~ $26.25 |
| Preschool | ~~$12.50~~ $15.00 | ~~$18.75~~ $22.50 | ~~$12.75~~ $15.50 | ~~$19.13~~ $23.25 | ~~$13.00~~ $16.00 | ~~$19.50~~ $24.00 | ~~$13.75~~ $17.00 | ~~$20.63~~ $25.50 |
| School Age | ~~$10.82~~ $15.00 | ~~$16.23~~ $22.50 | ~~$11.25~~ $15.25 | ~~$16.88~~ $22.88 | ~~$12.00~~ $15.50 | ~~$18.00~~ $23.25 | ~~$12.50~~ $15.75 | ~~$18.75~~ $23.63 |

**Table 3**
**Half-Day Rate Ceilings for (Child Development Home C)**

| | No Quality Rating | | Quality Rating 1 or 2 | | Quality Rating 3 or 4 | | Quality Rating 5 | |
|---|---|---|---|---|---|---|---|---|
| Age Group | Basic | Special Needs | Basic | Special Needs | Basic | Special Needs | Basic | Special Needs |
| Infant and Toddler | ~~$14.00~~ $18.00 | ~~$21.00~~ $27.00 | ~~$14.50~~ $18.00 | ~~$21.75~~ $27.00 | ~~$15.00~~ $18.00 | ~~$22.50~~ $27.00 | ~~$15.25~~ $18.50 | ~~$22.88~~ $27.75 |
| Preschool | ~~$13.75~~ $16.28 | ~~$20.63~~ $24.42 | ~~$14.50~~ $17.00 | ~~$21.75~~ $25.50 | ~~$14.75~~ $17.50 | ~~$22.13~~ $26.25 | ~~$15.00~~ $18.50 | ~~$22.50~~ $27.75 |
| School Age | ~~$11.25~~ $15.00 | ~~$16.88~~ $22.50 | ~~$12.50~~ $15.75 | ~~$18.75~~ $23.63 | ~~$13.00~~ $16.44 | ~~$19.50~~ $24.66 | ~~$14.50~~ $17.50 | ~~$21.75~~ $26.25 |

**Table 4**
**Half-Day Rate Ceilings for Child Care Home (Not Registered)**

| Age Group | Basic | Special Needs |
|---|---|---|
| Infant and Toddler | ~~$12.98~~ $16.63 | ~~$19.47~~ $24.95 |
| Preschool | ~~$12.50~~ $15.00 | ~~$18.75~~ $22.50 |
| School Age | ~~$10.82~~ $15.00 | ~~$16.23~~ $22.50 |

The following definitions apply in the use of the rate tables:

(1) to (9) No change.

[Filed 12/13/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

**ARC 8745C**

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to child labor**

The Labor Services Division hereby rescinds Chapter 32, "Child Labor," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 92.21.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking repromulgates Chapter 32. This chapter was recently amended to conform with 2023 Iowa Acts, Senate File 542, which was effective July 1, 2023, and codified in Iowa Code chapter 92, and with 2023 Iowa Acts, Senate File 514, which was effective July 1, 2023. Updates to the chapter do the following:

1. Change the definition of "operated by the child's parents" by eliminating "and is on the premises during the hours of the child's employment" in rule 875—32.1(92).
2. Cap civil penalties for time and hour violations to $2,500 per instance, a decrease from $10,000 per instance, in paragraphs 32.11(4)"a" and "b."
3. Increase the penalty deduction for small businesses from 25 percent to 35 percent in subrule 32.11(6).
4. Make certain language changes by eliminating unnecessary restrictive terms.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8266C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

A commenter at a public hearing objected to the change in the definition of "operated by the child's parents" in rule 875—32.1(92) that removes the requirement for a parent to be present when the child is working in order to qualify for the parental exemption. This change was made to better fit the Iowa Code section 92.17(2) exemption for "any work activity or business operated by the child's parents," so it remains in the adopted chapter.

A commenter at a public hearing expressed that the proposed definition of "willfully volunteering" in rule 875—32.1(92) could lead to minors inappropriately performing commercial activities. In response, and at the suggestion of the commenter, the adopted chapter is changed to allow only "commercial activities *incidental to* the stated purpose of a nonprofit organization" [italics added for emphasis].

There were comments on the civil penalties cap of $2,500 in paragraphs 32.11(4)"a" and "b." Those comments seem to have been based on misunderstanding $2,500 to be a cumulative cap on time and hours violations rather than a cap for each instance of a time or hours violation, so it remains in the adopted chapter.

Commenters thought small businesses of 25 or fewer employees should not get an enhanced penalty reduction from 25 to 35 percent in subparagraph 32.11(6)"a"(1). This change was consistent with the concern of the Regulatory Analysis for small businesses, so it remains in the adopted chapter.

Commenters objected to the removal of a particular example of how employers lose the "good faith" reduction in penalties. Accordingly, the chapter restores language in paragraph 32.11(6)"b" that an employer who has been previously warned about a practice may not receive a good faith penalty reduction when penalized for that same practice.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32
CHILD LABOR

**875—32.1(92) Definitions.**

*"Director"* means the director of the department of inspections, appeals, and licensing or the director's designee.

*"Filing date"* means the date a document is postmarked by the U.S. Postal Service, if the document is filed by mailing and the U.S. postmark is legible. For a document filed via facsimile transmission, "filing date" means the date the document is transmitted. For any other document, "filing date" means the date the document is received by the director.

*"Operated by the child's parents,"* as used in Iowa Code section 92.17(2), means a business operated by the child's parent or licensed foster parent who has control of the day-to-day operation of the business.

*"Serious injury or illness"* means an illness or injury requiring medical attention beyond first aid.

*"Week,"* as used in Iowa Code section 92.7, means Sunday through Saturday.

*"Willfully volunteering"* means performing service for a charitable or public purpose without promise, expectation, or receipt of compensation. A child is a volunteer only if services are offered freely and without direct or implied pressure or coercion from an employer. A child is not a volunteer if the child is otherwise employed by the same charitable or public organization to perform the same type

of services as those for which the child proposes to volunteer. A child is a volunteer while working in commercial activities incidental to the stated purpose of a nonprofit organization.

*"Working days,"* as used in rule 875—32.12(92), means Mondays through Fridays but does not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice is not included and the last day of the 15 working days is included.

This rule is intended to implement Iowa Code chapter 92.

**875—32.2** to **32.4** Reserved.

**875—32.5(92) Terms.** The terms used in Iowa Code section 92.5 are defined and applied as specified in this rule.

**32.5(1)** *Cleaning products that require personal protective equipment.* Prior to allowing a 14- or 15-year-old to use cleaning products that require personal protective equipment, the employer shall submit to the director the following:

*a.* The safety data sheets of all such chemicals the minor will use.

*b.* What personal protective equipment the minor will be using with each chemical that requires it.

*c.* Proof of training the minor on the use of the required personal protective equipment.

**32.5(2)** *Definitions.*

*"Car cleaning, washing, and polishing"* as used in Iowa Code section 92.5(9) does not include using chemicals that recommend personal protective equipment.

*"Laundering"* as used in Iowa Code section 92.5(12) includes laundering with residential-style machines and includes laundromats. It includes industrial laundering on the following conditions:

1. A parent or guardian gives written permission, to be kept on file by the employer, for the minor to do industrial laundering.
2. The minor is not exposed to any chemicals that recommend personal protective equipment.
3. The employer provides nonslip shoes.
4. The employer provides training on bloodborne pathogens.
5. The minor lifts loads of no more than 30 pounds.

*"Light tools"* as used in Iowa Code section 92.5(11) includes the listed tools that are up to 30 pounds.

This rule is intended to implement Iowa Code section 92.5.

**875—32.6(92) Terms.** The terms used in Iowa Code section 92.6A are defined and applied as specified in this rule.

**32.6(1)** *Definitions.*

*"Light assembly work"* means assembling with nonpower hand tools and does not include welding.

*"Properly licensed"* means a minor who holds a current license from the National Pool and Waterpark Lifeguard Training Program in one of the following programs:

1. National Pool and Waterpark Pool Lifeguard.
2. National Pool and Waterpark Lifeguard Training.
3. National Pool and Waterpark Deep Water Lifeguard.

If there is a question whether a specific training course meets the requirements of these rules, information about the course should be submitted to the director for evaluation.

**32.6(2)** *Waiver of weight limitation.* An employer may submit an application for waiver to allow a 15-year-old person to load, unload, or lift up to 50 pounds for work allowed under Iowa Code section 92.6A(1). The application shall:

*a.* Include information required by the director in an application form.

*b.* Be signed by the employer, the minor employee, and a parent or guardian.

*c.* Include documentation from a physician or physician's assistant that the minor is physically capable of this work activity.

**32.6(3)** *Waiver to unload lawn machines.* An employer may submit an application consistent with paragraphs 32.6(2)*"a"* through *"c"* for a waiver to allow a 15-year-old person to unload lawn machines under Iowa Code section 92.6A(3).

This rule is intended to implement Iowa Code section 92.6A.

**875—32.7** Reserved.

**875—32.8(92) Terms.** The terms used in Iowa Code section 92.8 are defined and applied as specified in this rule.

**32.8(1)** "Work activities in or about plants or establishments manufacturing or storing explosives or articles containing explosive components" means:

*a.* All activities in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in paragraph 32.8(1)*"b"*) manufacturing or storing explosives or articles containing explosive components except where the activities are performed in a nonexplosive area.

*b.* The following activities in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(1) All activities involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other activities requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(2) All activities involved in the manufacturing, transporting, or handling of primers and all other activities requiring the performance of any duties in the same building in which primers are manufactured.

(3) All activities involved in the priming of cartridges and all other activities requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(4) All activities involved in the plate loading of cartridges and in the operation of automatic loading machines.

(5) All activities involved in the loading, inspecting, packing, shipping and storage of blasting caps.

*c.* Definitions.

*"Explosives"* or *"articles containing explosive components"* means and includes ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR Parts 71-78, in effect July 1, 1987).

*"Nonexplosive area"* means an area where none of the work performed in the area involves the handling or use of explosives; the area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings; the area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant that does not meet the criteria of this definition.

*"Plant or establishment manufacturing or storing explosives or articles containing explosive components"* means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

*d.* Nothing in this subrule prohibits light assembly work that is away from machines, and nothing in this subrule prohibits selling or assisting in the sale of consumer fireworks in accordance with Iowa Code section 10A.519.

This subrule is intended to implement Iowa Code section 92.8(1).

**32.8(2)** "Logging and the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill" means all related activities with the following exceptions:

*a.* Exceptions applying to logging:

(1) Work in offices or in repair or maintenance shops.

(2) Work in the construction, operation, repair or maintenance of living and administrative quarters or logging camps.

(3) Work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining firefighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrol person away from the actual logging operations. This exception does not apply to the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles.

(4) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging activities prohibited by this subrule.

(5) Work in the feeding or care of animals.

*b.* Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill:

(1) Work in offices or in repair or maintenance shops.

(2) Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.

(3) Pulling lumber from the dry chain.

(4) Cleanup in the lumberyard.

(5) Piling, handling, or shipping of cooperage stock in yards or storage sheds, other than operating or assisting in the operation of power-driven equipment.

(6) Clerical work in yards or shipping sheds, such as done by order persons, tally persons, and shipping clerks.

(7) Cleanup work outside shake and shingle mills, except when the mill is in operation.

(8) Splitting shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover.

(9) Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover.

(10) Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury. The exceptions in subparagraphs 32.8(2)*"b"*(1) through 32.8(2)*"b"*(10) do not apply to a portable sawmill if the lumberyard of the sawmill is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained and work that entails entering the sawmill building.

Definitions.

*"All activities in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill"* means all work performed in or about any mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperage stock; storing, drying, and shipping lumber, laths, shingles, cooperage stock, or other products of the mills and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term does not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill.

*"Logging"* means all work performed in connection with the felling of timbers; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of these products in connection with logging; the constructing, repairing and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term does not apply to work performed in timber culture, to timber-stand improvement, or in emergency firefighting.

This subrule is intended to implement Iowa Code section 92.8(2).

**32.8(3)** "Operation of power-driven woodworking machines" means operating power-driven woodworking machines, including supervision or controlling the operation of the machines, feeding

material into the machines, and helping the operator to feed material into the machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding. Also included are activities of setting up, adjusting, repairing, oiling or cleaning power-driven woodworking machines and the operations of off-bearing from circular saws and from guillotine-action veneer clippers.

Definitions.

*"Off-bearing"* means the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this subrule include:

1. The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expansion roller, and

2. The following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation: the carrying, moving or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling or loading of materials.

*"Power-driven woodworking machines"* means all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing or printing wood or veneer.

This subrule is intended to implement Iowa Code section 92.8(3).

**32.8(4)** "Work activities involving exposure to radioactive substances and to ionizing radiations" means activity in any workroom in which radium is stored or used in the manufacture of self-luminous compound; self-luminous compound is made, processed or packaged; self-luminous compound is stored, used or worked upon; incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; and other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," June 5, 1959.

Also included is any other work that involves exposure to ionizing radiations in excess of 0.5 rem per year.

Definitions.

*"Ionizing radiations"* means alpha and beta particles, electrons, protons, neutrons, gamma and X-ray and all other radiations that produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and X-ray.

*"Self-luminous compound"* means any mixture of phosphorescent material and radium, mesothorium or other radioactive element.

*"Workroom"* means the entire area bounded by walls of solid material and extending from floor to ceiling.

This subrule is intended to implement Iowa Code section 92.8(4).

**32.8(5)** "Operation of elevators and other power-driven hoisting apparatus" means:

*a.* Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one-ton capacity.

*b.* Work that involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

*c.* Work of assisting in the operation of a crane, derrick or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like activities.

*d.* Exception. Iowa Code section 92.8(5) does not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all

hoistway openings at floor level have doors that are interlocked with the car door so as to prevent the car from starting until all doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device that will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices that will normally bring the car to rest at either terminal and a final limit switch that will prevent the movement in either direction and will open in case of excessive over-travel by the car.

Definitions.

*"Automatic elevator"* means any passenger elevator, a freight elevator or a combination passenger-freight elevator, the operation of which is controlled by push buttons in a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

*"Automatic signal operation elevator"* means an elevator that is started in response to the operation of a switch (such as a lever or push button) in the car that when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

*"Crane"* means any power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term includes all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.

*"Derrick"* means any power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term includes all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

*"Elevator"* means any power-driven hoisting or lowering mechanism equipped with a car or platform that moves in guides in a substantially vertical direction. The term includes both passenger and freight elevators (including portable elevators or tiering machines) but does not include dumbwaiters.

*"High-lift truck"* means any power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term means and includes high-lift trucks known as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but does not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.

*"Hoist"* means any power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term includes all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

*"Manlift"* means any device intended for the conveyance of persons that consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; the belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

This subrule is intended to implement Iowa Code section 92.8(5).

**32.8(6)** "Operation of power-driven metal forming, punching and shearing machines" means being the operator of or helper on the following power-driven metal forming, punching, and shearing machines:

*a.* All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

*b.* All pressing or punching machines, such as punch presses, except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

*c.* All bending machines, such as apron brakes and press brakes.

*d.* All hammering machines, such as drop hammers and power hammers.

*e.* All shearing machines, such as guillotine or squaring shears, alligator shears and rotary shears.

Also included are the occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

Definitions.

*"Forming, punching and shearing machines"* means power-driven metal-working machines, other than machine tools, that change the shape of or cut metal by means of tools, such as dies, rolls or knives that are mounted on rams, plungers or other moving parts. Types of forming, punching, and shearing machines enumerated in this subrule are the machines to which the designation is by custom applied.

*"Helper"* means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove them from the machine.

*"Operator"* means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

This subrule is intended to implement Iowa Code section 92.8(6).

**32.8(7)** "Mining" means all work performed underground in mines and quarries; in an underground working, open-pit, or surface part of any coal-mining plant that contribute to the extraction, grading, cleaning, or other handling of coal; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where the operations are performed as a part of a manufacturing process.

The term "mining" does not include:

*a.* Work performed in subsequent manufacturing or processing operations, such as work performed in smelters; electro-metallurgical plants; refineries; reduction plants; cement mills; plants where quarried stone is cut, sanded and further processed; or plants manufacturing clay, glass or ceramic products.

*b.* Work performed in connection with petroleum production, in natural gas production, or in dredging operations that are not a part of mining operations, such as dredging for construction or navigation purposes.

*c.* Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground.

*d.* Work in the operation and maintenance of living quarters.

*e.* Work outside the mine in surveying, in the repair and maintenance of roads, and in general cleanup about the mine property such as clearing brush and digging drainage ditches.

*f.* Work of track crews in the building and maintaining of sections of railroad track located in those areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that the building and maintenance work is being done.

*g.* Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.

*h.* Work in metal mills other than in mercury-recovery mills or mills using the cyanide process involving the operation of jigs, sludge tables, flotation cells, or drier-filters; hand-sorting at picking table or picking belts; or general cleanup.

Nothing in this subrule permits any employment of minors in any other activity otherwise prohibited by Iowa Code chapter 92.

This subrule is intended to implement Iowa Code section 92.8(7).

**32.8(8)** "Work activities in or about slaughtering and meat packing establishments and rendering plants" means:

*a.* All activities on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, hand truckers and similar activities that require entering workrooms or workplaces infrequently and for short periods of time.

*b.* All activities involved in the recovery of lard and oils, except packaging and shipping of the products and the operation of lard-roll machines.

*c.* All activities involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

*d.* All activities involved in the operation or feeding of the following power-driven meat processing machines, including setting up, adjusting, repairing, oiling, or cleaning the machines regardless of the product being processed by these machines (including, for example, the slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese):

(1) Meat patty forming machines, meat and bone cutting saws, knives (except bacon-slicing machines), head splitters, and guillotine cutters;

(2) Snout pullers and jaw pullers;

(3) Skinning machines;

(4) Horizontal rotary washing machines;

(5) Casing-cleaning machines such as crushing, stripping, and finishing machines;

(6) Grinding, mixing, chopping, and hashing machines; and

(7) Presses (except belly-rolling machines).

*e.* All boning activities.

*f.* All activities involving the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.

*g.* All activities involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse or any quarter carcass of beef or horse.

Definitions.

*"Boning"* means the removal of bones from meat cuts. It does not include cutting, scraping or trimming meat from cuts containing bones.

*"Curing cellar"* means the workroom or workplace that is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include the workroom or workplace where meats are smoked.

*"Hide cellar"* means the workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

*"Killing floor"* means the workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed and the carcasses are dressed prior to chilling.

*"Rendering plants"* means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients and similar products.

*"Slaughtering and meat packing establishments"* means places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses, poultry, rabbits or small game are killed, processed or butchered and establishments that manufacture or process meat products or sausage casings from these animals.

This subrule is intended to implement Iowa Code section 92.8(8).

**32.8(9)** "Operation of certain power-driven bakery machines" means operating, assisting to operate or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machines; or cake cutting band saw and setting up or adjusting a cookie or cracker machine. However, this definition does not apply to the operation of pizza dough rollers that are a type of dough sheeter that have been constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers, that have gears that are completely enclosed, and that have microswitches that disengage the machinery if the backs or sides of the rollers are removed, only when all the safeguards detailed in Iowa Code section 92.8(9) are present on the machinery, are operational, and have not been overridden.

This subrule is intended to implement Iowa Code section 92.8(9).

**32.8(10)** "Operation of paper-products machines" means operating or assisting to operate any of the following power-driven paper-products machines and includes:

*a.* An arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

*b.* A platen die-cutting press, platen printing press, or punch press that involves hand feeding of the machine.

*c.* The activities of setting up, adjusting, repairing, oiling, or cleaning the machines in paragraphs 32.8(10)*"a"* and *"b,"* including those that do not involve hand feeding.

*d.* Loading material into paper/cardboard balers, except when the machine is powered off and the key is stored in a separate area from the machine.

Definitions.

*"Operating or assisting to operate"* means all work that involves starting or stopping a machine covered by this subrule, placing materials into or removing them from the machine, or any other work directly involved in operating the machine except loading material into balers when the machine is powered off and the key is stored in a separate area from the machine.

*"Paper-products machine"* means power-driven machines used in:

1. The remanufacture or conversion of paper or pulp into a finished product, including the preparation of materials for recycling.

2. The preparation of materials for disposal. The term applies to the machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishments.

This subrule is intended to implement Iowa Code section 92.8(10).

**32.8(11)** "Manufacturing brick, tile and related products" means the manufacture of brick, tile and related products; includes the manufacture of clay construction products and of silica refractory products; and includes:

*a.* All work in or about establishments in which clay construction products are manufactured, except work in storage and shippings; work in offices, laboratories, and storerooms; and work in the drying departments of plants manufacturing sewer pipe.

*b.* All work in or about establishments in which silica brick or other silica refractories are manufactured, except work in offices.

Nothing in this subrule permits any employment of minors in any other activities otherwise prohibited by Iowa Code chapter 92.

Definitions.

*"Clay construction products"* means brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. It does not include nonstructural-bearing clay products such as ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor nonclay construction products such as sand-lime brick, glass brick, or nonclay refractories.

*"Silica brick or other silica refractories"* means refractory products produced from raw materials containing free silica as its main constituent.

This subrule is intended to implement Iowa Code section 92.8(11).

**32.8(12)** "Operation of circular saws, band saws, and guillotine shears" means:

*a.* Operator of or helper on power-driven fixed or portable circular saws, band saws, and guillotine shears except machines equipped with full automatic feed and ejection.

*b.* Setting up, adjusting, repairing, oiling, or cleaning circular saws, band saws, or guillotine shears.

Definitions.

*"Band saw"* means a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

*"Circular saw"* means a machine equipped with an endless steel disc and having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

*"Guillotine shear"* means a machine equipped with a movable blade operated vertically and used to shear materials. The term does not include other types of shearing machines using a different form of shearing action, such as alligator shears or circular shears.

*"Helper"* means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove materials from the machine.

*"Machines equipped with full automatic feed and ejection"* means machines covered by this subrule that are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any body part in the point-of-operation area.

*"Operator"* means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing materials from the machine, or any other function directly involved in the operation of the machine.

This subrule is intended to implement Iowa Code section 92.8(12).

**32.8(13)** "Wrecking, demolition and shipbreaking operations" means all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

This subrule is intended to implement Iowa Code section 92.8(13).

**32.8(14)** "Roofing operations" means all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch; asphalt prepared paper; tile; slate; metal; translucent materials; and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term also includes all work performed in connection with the installation of roofs, including related metal work such as flashing; and alterations, additions, maintenance and repair, including painting and coating, of existing roofs. The term does not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment or similar appliances attached to roofs.

This subrule is intended to implement Iowa Code section 92.8(14).

**32.8(15)** "Excavation" means all activities involved with:

*a.* Excavating, working in, or backfilling (refilling) trenches, except manually excavated or manually backfilling trenches that do not exceed four feet in depth at any point or working in trenches that do not exceed four feet in depth at any point.

*b.* Excavating for buildings or other structures or working in the excavations, except manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, working in an excavation not exceeding four feet in depth, or working in an excavation where the side walls are shored or sloped to the angle or repose.

*c.* Working within tunnels prior to the completion of all driving and shoring operations.

*d.* Working within shafts prior to the completion of all sinking and shoring operations.

This subrule is intended to implement Iowa Code section 92.8(15).

**32.8(16)** to **32.8(19)** Reserved.

**32.8(20)** Work activities prohibited by the director include the following:

*a.* Activities involved in the operation of power cutters on corn detasseling machines.

*b.* Activities involved in the driving of power-driven detasseling machines unless the driver has a valid driver's license or a certificate issued by the Federal Extension Service showing that the driver has completed a 4-H farm and machinery program.

This subrule is intended to implement Iowa Code section 92.8(21).

This rule is intended to implement Iowa Code section 92.8.

**875—32.9(92) Terms.** The terms used in Iowa Code section 92.8A are defined and applied as specified in this rule.

*"Incidental"* means not a primary activity of the minor.

*"Intermittent and for short periods of time"* may vary depending on the degree and type of hazard. The frequency and duration of an activity shall make it clear the employee is a learner rather than a production worker. The burden is on the employer to justify more than one hour per day or 20 percent of a shift.

*"Written permission"* includes a description of the activity that would otherwise be unlawful under Iowa Code section 92.8, including the expected frequency and duration of that activity.

This rule is intended to implement Iowa Code section 92.8A.

**875—32.10** Reserved.

**875—32.11(92) Civil penalty calculation.** An employer who violates this chapter or Iowa Code chapter 92 is subject to a civil penalty of not more than $10,000 per violation as set forth in this rule.

**32.11(1)** *Counting the number of violations.*

*a.* Each day that a child works too many hours, works at a prohibited time, or works in a prohibited occupation is a separate violation.

*b.* The director may waive or reduce the penalty if this method of counting the violations would result in a penalty that is disproportionate to the harm done to the minor(s), the size of the employer, or both.

**32.11(2)** *Determining whether a violation is a repeat violation.* The higher penalty amounts outlined in subrules 32.11(4) and 32.11(5) for repeat instances may be assessed by the director if citations regarding the earlier instance or instances are final action and occurred less than five years before.

**32.11(3)** Reserved.

**32.11(4)** *Hours violations.* If a child is killed while working at a prohibited time or for excessive hours, the civil penalty is $10,000 for each instance. For other time or hour violations, the penalties set forth in this subrule are applied.

*a.* The civil penalties for working less than 15 minutes before or after an allowed time are as set forth in the following schedule:

| Instance | Penalty |
|---|---|
| First | Warning letter |
| Second | $100 civil penalty |
| Third | $200 civil penalty |
| Fourth | $500 civil penalty |
| Fifth | $1,000 civil penalty |
| Each additional instance | $2,500 civil penalty |

*b.* For any time or hours violation not described elsewhere in this subrule, the following civil penalty schedule applies:

| Instance | Penalty |
|---|---|
| First | $100 civil penalty |
| Second | $250 civil penalty |
| Third | $500 civil penalty |
| Fourth | $1,000 civil penalty |
| Each additional instance | $2,500 civil penalty |

**32.11(5)** *Occupation violations.*

*a.* If no serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

| Instance | Penalty |
|---|---|
| First | $500 civil penalty |
| Second | $1,500 civil penalty |
| Third | $2,500 civil penalty |
| Fourth | 5,000 civil penalty |

| Instance | Penalty |
|---|---|
| Fifth | $7,500 civil penalty |
| Each additional instance | $10,000 civil penalty |

*b.* If a nonfatal but serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

| Instance | Penalty |
|---|---|
| First | $2,500 civil penalty |
| Second | $5,000 civil penalty |
| Each additional instance | $10,000 civil penalty |

*c.* If a fatality results from the work, the civil penalty for allowing or permitting a child to perform prohibited work is $10,000 for each instance.

**32.11(6)** *Penalty reduction factors.* Except for violations related to the death of a child while working, the director shall reduce the penalty calculated pursuant to subrules 32.11(1), 32.11(2), 32.11(4) and 32.11(5) by the appropriate penalty reduction percentages set forth in this subrule. However, if the director requests information relevant to the penalty assessment and the employer does not provide responsive information, the director will not reduce the penalty.

*a. Penalty reduction for size of business.* The director shall reduce a penalty as follows:

(1) Thirty-five percent if the employer has 25 or fewer employees.

(2) Fifteen percent if the employer has 26 to 100 employees.

(3) Five percent if the employer has 101 to 250 employees.

*b. Penalty reduction for good faith.* The director may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the director warned an employer in writing about a prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the director shall not reduce the penalty based on good faith.

*c. Penalty reduction for history.* The director shall reduce a penalty by 10 percent if the director has not assessed a civil penalty under this chapter within the past five years.

This rule is intended to implement Iowa Code section 92.22.

**875—32.12(92) Civil penalty procedures.**

**32.12(1)** *Notice of civil penalty.* The director shall serve a notice of proposed civil penalty by certified mail or in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure with a 15-day grace period before issuing the notice. The notice shall include the following:

*a.* A statement that the notice proposes a civil penalty assessment for violation of child labor laws.

*b.* Descriptions of the alleged violations including the provisions allegedly violated, the number of violations, and the proposed penalties.

*c.* A statement that the employer has the right to request a hearing by filing a notice of contest with the director within 15 working days from the receipt of the notice of proposed civil penalty and that if a notice of contest is not timely filed, the proposed civil penalty will become final agency action.

*d.* A reference to the applicable procedural provisions.

**32.12(2)** *Notice of contest.* The civil penalty proposed by the director is final agency action if the employer does not timely file a notice of contest. The filing date for a timely notice of contest is within 15 working days of the date the notice of proposed civil penalty was received by the employer. The notice of contest shall include the name, address, and telephone number of the employer's representative. If a notice of contest is filed by fax, the original shall be mailed to the director.

**32.12(3)** *Contested case procedures.* Contested case procedures are set forth in the director's rules and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 92.22.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

**ARC 8746C**

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to wage claims**

The Labor Services Division hereby rescinds Chapter 35, "Wage Payment Collection," and adopts a new Chapter 35, "Wage Claims," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91A.9.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 35 that provides procedures for investigating wage claims filed pursuant to Iowa Code chapter 91A.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8264C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A commenter asked for the rationale for certain deletions. Generally, the material was deleted because it is already in Iowa Code chapter 91A; repetition of statutes is discouraged under Executive Order 10.

No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35
WAGE CLAIMS

**875—35.1(91A) Definitions.**

*"Claimant"* means an employee who has submitted a wage claim form to the labor director.

*"Director"* means the director of the department of inspections, appeals, and licensing or the director's designee.

*"Employee"* includes a former employee and does not include an independent contractor.

*"Enforceable"* means eligible for the enforcement actions of the director.

*"Legal action"* means filing in a court of competent jurisdiction and subsequent activity pursuant to that filing.

*"Wage claim form"* means a document of the director that requests information pertinent to unpaid wages that an employee submits to the director to commence investigation.

**875—35.2(91A) Right of private action.** If a claimant wishes to pursue a private action after assigning a wage claim to the director, the claimant shall so notify the director in writing prior to commencing it.

**875—35.3(91A) Filing a claim.**

**35.3(1)** *Wage claim form.* An aggrieved employee shall supply such information as required by the director to commence the investigation of a claim. The claimant shall certify by signature that such information is true to the best of the claimant's knowledge and belief. A claim for wages may be sent to the director by mail, facsimile, or email.

**35.3(2)** *Assignment of claim.* By submitting a wage claim form to the director, a claimant assigns the claim to the director contingent on the director's determination that the claim is enforceable. A claimant may terminate the assignment by so notifying the director in writing. The director may terminate the assignment upon a determination that the claim is not enforceable.

**35.3(3)** *Denial of claim.* The director may deny claims within 14 days of receipt. Reasons for denying a claim without further investigation include but are not limited to the following:

*a.* The claim is received by the director more than one year after the date the wages became due and payable.

*b.* The claim must be heard in another forum or jurisdiction.

*c.* The claimant has begun a legal proceeding on the claim or has legal representation to pursue the claim.

*d.* The claim has been discharged in bankruptcy.

**875—35.4(91A) Investigation.**

**35.4(1)** *Receipt of wage claim form.* Upon receipt by the director of a completed and signed wage claim form, the director will review the claim. The director's review is not a contested case as defined in Iowa Code chapter 17A.

**35.4(2)** *Employer notification of wage claim.* The director will notify the employer in writing of the allegations of the claimant and request a response from the employer within 14 days from the date of the letter. This period may be extended by the director for good cause.

**35.4(3)** *Failure of employer to respond.* If the employer fails to answer the director's request for response within the 14-day period, or as extended by the director, the director may determine the claim to be enforceable.

**35.4(4)** *Additional information from claimant.* If the employer answers the director's request for response within the established time, the director may notify the claimant of the employer's response and afford the claimant an opportunity to present additional information.

**35.4(5)** *Additional information from employer.* Upon receipt of the requested additional information from the employee, the director may determine additional information is required from the employer.

**35.4(6)** *Determination of enforceability.* Upon receipt of sufficient information, the director may determine the claim for wages to be enforceable and notify the claimant and the employer of that determination.

**35.4(7)** *Determination of unenforceability.* The director may, at any time, determine a claim to be unenforceable. Should the director determine the claim is unenforceable, the director shall so notify the claimant. Reasons for the director to determine that a claim is unenforceable include but are not limited to the following:

*a.* Doubtful legal validity or complexity of the claim.

*b.* Doubtful ability to collect money from the employer.

*c.* The claim may require extensive discovery or involve protracted proceedings.

*d.* The potential value of the claim is such that the cost of the claimant's obtaining legal counsel for a private action would not be prohibitive.

*e.* The claimant is not responsive to the reasonable requests of the director, including but not limited to requests to provide information and to participate in a legal action.

*f.* The claimant fails to notify the director of an address change.

*g.* The inequity of the claim in the particular situation.

*h.* Another jurisdiction or forum is preferable for the claim.

*i.* A substantial probability that the claimant was not an employee.

*j.* The claim has been included in a bankruptcy estate.

**35.4(8)** *Settlement of claim.* The director may settle a claim at any time with the consent of the claimant. Such consent may be included on the wage claim form.

**875—35.5(91A) Legal action on wage claims.**

**35.5(1)** *Settlement opportunity.* The director will, in writing, afford the employer an opportunity to tender settlement 14 days prior to commencing a legal action.

**35.5(2)** *Counterclaims.* The director will not represent claimants on counterclaims or other legal actions brought by employers against claimants.

**35.5(3)** *Claimant participation.* The director may require the claimant to attend hearings and otherwise assist in the legal action as a condition of enforcing the claim.

These rules are intended to implement Iowa Code chapter 91A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

**ARC 8771C**

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to elevator safety board administrative and regulatory authority**

The Labor Services Division hereby rescinds Chapter 65, "Elevator Safety Board Administrative and Regulatory Authority," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89A.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking adopts a new Chapter 65 that describes the authority and conduct of the Elevator Safety Board.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8319C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received.

The Notice inadvertently retained three mentions of "commissioner." Those three have been changed to "director." No other changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 65 and adopt the following **new** chapter in lieu thereof:

*ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT*

## CHAPTER 65
## ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

**875—65.1(89A) Definitions.** The definitions contained in this rule apply to 875—Chapters 65 through 73.

*"Board"* means the elevator safety board.

*"Board office"* means the offices of the department of inspections, appeals, and licensing.

*"Conveyance"* means an elevator, construction personnel hoist, dumbwaiter, escalator, moving walk, lift or inclined or vertical wheelchair lift subject to regulation under Iowa Code chapter 89A and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.

*"Department"* means the department of inspections, appeals, and licensing.

*"Director"* means the director of the department of inspections, appeals, and licensing or the director's designee.

**875—65.2(89A) Authority of the board.** The authority and responsibilities of the board include but are not limited to:

**65.2(1)** Adopting rules necessary to protect public health, safety and welfare and to administer the duties of the board.

**65.2(2)** Hearing and deciding appeals concerning inspection reports that relate to the installation, alteration, operation, and maintenance of conveyances in the state.

**65.2(3)** Hearing and deciding appeals concerning actions by the director to deny, suspend or revoke operating permits.

**65.2(4)** Establishing fees.

**65.2(5)** Establishing committees of the board.

**875—65.3(21,89A) Board officers.** The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the director nor the director's designee may serve as chairperson. The chairperson presides at meetings, appoints members and chairpersons of committees, and performs all duties and exercises all powers of the chairperson. The vice chairperson, in the absence or incapacity of the chairperson, performs all duties and exercises all powers of the chairperson.

**875—65.4(21,89A) Public meetings.**

**65.4(1)** The board shall hold at least one meeting each calendar quarter.

**65.4(2)** Board meetings are governed in accordance with Iowa Code chapter 21 and conducted in accordance with Robert's Rules of Order.

**65.4(3)** The chairperson or the chairperson's designee prepares the agenda listing all matters to be discussed at the meeting.

**65.4(4)** A majority of the members of the board constitutes a quorum, and all final motions and actions must receive a majority of a quorum vote.

**65.4(5)** Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the board's website or the board office.

**65.4(6)** At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person when a particular topic comes before the board may be granted at the discretion of the chairperson. The chairperson may limit total public comment time to ten minutes.

**65.4(7)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**65.4(8)** Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

**875—65.5(89A) Official communications.** All official communications, including submissions and requests, are to be addressed to the Elevator Safety Board, Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

These rules are intended to implement Iowa Code chapters 21 and 89A.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8770C

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to administrative rules by the elevator safety board**

The Labor Services Division hereby rescinds Chapter 66, "Waivers from Administrative Rules by the Elevator Safety Board," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89A.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 sets forth procedures for the Elevator Safety Board to grant waivers.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8320C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 66 and adopt the following **new** chapter in lieu thereof:

CHAPTER 66
WAIVERS FROM ADMINISTRATIVE RULES BY THE ELEVATOR SAFETY BOARD

**875—66.1(17A,89A) Criteria for waiver.** In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

**66.1(1)** The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

**66.1(2)** The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

**66.1(3)** The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;

**66.1(4)** Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and

**66.1(5)** There is a reasonable relationship between the age of the conveyance and the waiver requested.

**875—66.2(17A,89A) Filing of petition.** A petition for a waiver must be submitted in writing to the board as follows:

**66.2(1)** *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

**66.2(2)** *Other.* If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

**66.2(3)** *Filing petition.* A petition is deemed filed when it is received in the board's office. A petition should be sent to the Elevator Safety Board, Department of Inspections, Appeals, and Licensing,

6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

**875—66.3(17A,89A) Content of petition.** The required form for a petition for waiver is available on the department's website. A petition for waiver includes the following information where applicable and known to the petitioner:

**66.3(1)** The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

**66.3(2)** A description of and citation to the specific rule from which a waiver is requested.

**66.3(3)** The specific waiver requested, including the precise scope and duration.

**66.3(4)** The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 875—66.1(17A,89A). 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.

**66.3(5)** A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the conveyance affected by the proposed waiver.

**66.3(6)** The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

**66.3(7)** The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

**66.3(8)** The state identification number of the conveyance.

**66.3(9)** The age of the conveyance.

**875—66.4(17A,89A) Waiver form.** Waiver applicants shall use the board's petition for waiver form. The board may request additional information from the petitioner.

**875—66.5(17A,89A) Notice.** The board shall acknowledge a petition within ten days of its receipt. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

**875—66.6(17A,89A) Board review procedures.**

**66.6(1)** Petitions for waiver will normally be heard at the next scheduled board meeting following timely submission of the petition.

**66.6(2)** The petitioner will be provided a reasonable opportunity to make a presentation to the board.

**875—66.7(17A,89A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a contested case and otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

**875—66.8(17A,89A) Ruling.** An order granting or denying a waiver shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**66.8(1)** *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

**66.8(2)** *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**66.8(3)** *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**66.8(4)** *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

**66.8(5)** *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. A waiver may be renewed if the board finds that grounds for a waiver continue to exist.

**66.8(6)** *Time for ruling.* The board will grant or deny a petition for a waiver as soon as practical but, in any event, within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**66.8(7)** *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

**66.8(8)** *Service of order.* Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**66.8(9)** *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the machine room corresponding to the conveyance. The order or a copy of the order granting a waiver that relates to a conveyance that does not have a machine room shall be posted in a protective sleeve attached to the inside of the controller cabinet door corresponding to the conveyance.

**875—66.9(17A,89A) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3.

**875—66.10(17A,89A) Summary reports.** Information about all orders granting or denying a waiver petition shall be submitted by the board staff to the legislative services agency within 60 days of granting or denying the petition.

**875—66.11(17A,89A) Cancellation of a waiver.** A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

**66.11(1)** The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

**66.11(2)** The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

**66.11(3)** The subject of the waiver order has failed to comply with all conditions contained in the order.

**875—66.12(17A,89A) Violations.** Violation of a condition in a waiver order will be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**875—66.13(17A,89A) Judicial review.** Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89A.

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**ARC 8772C**

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to contested cases before the elevator safety board**

The Labor Services Division hereby rescinds Chapter 69, "Contested Cases Before the Elevator Safety Board," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89A.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 69 that sets forth procedures for the Elevator Safety Board to conduct contested cases.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8321C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 69 and adopt the following **new** chapter in lieu thereof:

CHAPTER 69
CONTESTED CASES BEFORE THE ELEVATOR SAFETY BOARD

**875—69.1(17A,89A) Reconsideration of inspection report.** The owner or operator of a piece of equipment subject to a written inspection report may petition the director for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report is a waiver of all appeal rights. The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and codes adopted by reference rests upon the petitioning owner or operator.

**69.1(1)** A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's website. A petition for reconsideration specifies:

*a.* The party seeking reconsideration, including mailing address and telephone number;
*b.* The location of the equipment subject to the challenged inspection report;
*c.* The inspection date;
*d.* The inspector who issued the challenged inspection report;
*e.* The specific findings or conclusions to which exception is taken;
*f.* The relief sought.

**69.1(2)** A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents that the petitioning party desires the director to consider when evaluating the petition.

**69.1(3)** The director or a designee of the director is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the director deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the director to discover documents or other information that was not submitted with the petition for reconsideration.

**69.1(4)** Any petition for reconsideration that is not received by the office of the director within 30 days of the issuance of the challenged inspection report is untimely and will not be considered by the director.

**69.1(5)** The director will not consider any request for waiver of an administrative rule made as part of a petition for reconsideration. Requests for waivers of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 66.

**69.1(6)** The director shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the director may:

*a.* Affirm the inspection report as issued;
*b.* Issue an amended inspection report;
*c.* Rescind the inspection report;
*d.* Deny the petition as untimely.

**69.1(7)** Any petition for reconsideration that is not ruled upon by the director within 20 days of receipt by the office of the director shall be deemed denied and the challenged inspection report affirmed as issued.

**875—69.2(17A,89A) Appeal to the board.**

**69.2(1)** A decision by the director to deny, suspend, or revoke an operating permit; a deemed denial of a petition for reconsideration; and the director's ruling on a petition for reconsideration are subject to appeal to the board.

**69.2(2)** An appeal to the board is a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

**69.2(3)** The director has an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding.

**69.2(4)** Only those issues raised by the petitioner in the petition for reconsideration will be preserved for appeal to the board in an appeal from the deemed denial of a petition for reconsideration and an appeal from the director's ruling on a petition for reconsideration.

**69.2(5)** At a minimum, an appeal includes a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board's website.

**69.2(6)** The deadlines for filing an appeal are set forth below.

*a. Reconsideration of an inspection report.* An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the director's written ruling on a petition for reconsideration or the deemed denial of a petition for reconsideration.

*b. Notification of intent to deny, suspend, or revoke an operating permit.* An appeal must be filed in writing with the board within 30 calendar days of the appellant's receipt of the notification of intent to deny, suspend, or revoke an operating permit.

**875—69.3(17A,89A) Informal review.** If the appellant requests and the director does not object, the board may conduct an informal review of the facts and circumstances subject to the provisions of this rule.

**69.3(1)** In order to preserve the ability of board members to participate in decision making, a party who elects an informal review under this rule waives the party's right to seek disqualification of a board member as a presiding officer in a later contested case proceeding based on the board member's participation in the informal review. A party who elects informal review retains the right to seek disqualification of board members on any other ground pursuant to subrule 69.14(4).

**69.3(2)** The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

**69.3(3)** Rules 875—69.4(17A,89A) through 875—69.31(17A,89A) do not apply during informal review.

**875—69.4(17A,89A) Delivery of notice.** Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant; the appellant's attorney, if known; and the director.

**875—69.5(17A,89A) Contents of notice.** The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

**875—69.6** Reserved.

**875—69.7(17A,89A) File transmitted to the board.** Within 30 days of the issuance of a notice of hearing, the director shall forward to each board member and all parties of record to the appeal copies of the applicable documents set forth below:

1. Inspection report,

2. Petition for reconsideration with the appellant's attachments,
3. Documents obtained by the director in ruling on the petition for reconsideration,
4. Ruling on the petition for reconsideration,
5. Decision denying, suspending, or revoking an operating permit, and
6. Appeal to the board.

**875—69.8(17A,89A) Legal representation.** Any private party to a contested case is entitled to legal representation at the discretion and expense of that party.

**875—69.9(17A,89A) Presiding officer.**

**69.9(1)** The presiding officer in all contested cases is the board, a panel of board members, or an administrative law judge assigned by the department of inspections, appeals, and licensing. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 69.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

**69.9(2)** Any party to a contested case that wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing that identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

*a.* Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

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

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

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

*e.* Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.

*f.* The request was not timely filed.

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

**69.9(3)** The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a Juris Doctor degree unless this requirement is waived by the board.

**69.9(4)** The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

**69.9(5)** All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—69.26(17A,89A) and 875—69.27(17A,89A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

**69.9(6)** Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

**875—69.10(17A,89A) Service and filing.**

**69.10(1)** *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**69.10(2)** *Service—how made.* Service upon a party represented by an attorney is made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**69.10(3)** *Filing—when required.* All documents that are required to be served upon a party shall be filed simultaneously with the board.

**69.10(4)** *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**69.10(5)** *Proof of mailing.* Proof of mailing includes either:

*a.* A legible United States Postal Service postmark on the envelope;

*b.* A certified mail return receipt;

*c.* A notarized affidavit; or

*d.* A certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Elevator Safety Board, Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321 and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.
>
> (Date) (Signature)

**875—69.11(17A,89A) Time requirements.**

**69.11(1)** Time is computed as provided in Iowa Code section 4.1(34).

**69.11(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**875—69.12(17A,89A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

**875—69.13(17A,89A) Telephone and electronic proceedings.** The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, are filed with the board and served on all parties at least three business days in advance of hearing.

**875—69.14(17A,89A) Disqualification.**

**69.14(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

*a.* Has a personal bias or prejudice concerning a party or a representative of a party;

*b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

*c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case or a pending factually related contested case or controversy involving the same parties;

*d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;

*e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

*f.* Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

*g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**69.14(2)** The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information that is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 69.25(7).

**69.14(3)** In a situation where a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**69.14(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 69.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

**69.14(5)** If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

**69.14(6)** If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 875—69.26(17A,89A) and seek a stay under rule 875—69.30(17A,89A).

**875—69.15(17A,89A) Consolidation and severance.**

**69.15(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 party to those proceedings.

**69.15(2)** *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**875—69.16(17A,89A) Discovery.**

**69.16(1)** Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery are as provided in the Iowa Rules of Civil Procedure.

**69.16(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery are 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 by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

**875—69.17(17A,89A) Subpoenas in a contested case.** Pursuant to Iowa Code section 17A.13(1), the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records that are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

**69.17(1)** Upon the written request of a party, the presiding officer shall issue a subpoena to compel the attendance of witnesses or to obtain evidence that is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

**69.17(2)** A request for a subpoena shall include the following information, as applicable:

*a.* The name, address, and telephone number of the person requesting the subpoena;

*b.* The name and address of the person to whom the subpoena will be directed;

*c.* The date, time, and location at which the person shall be commanded to attend and give testimony;

*d.* Whether the testimony is requested in connection with a deposition or hearing;

*e.* A description of the books, papers, records, or other evidence requested;

*f.* The date, time and location for production or inspection and copying.

**69.17(3)** Each subpoena shall contain, as applicable:

*a.* The caption of the case;

*b.* The name, address, and telephone number of the person who requested the subpoena;

*c.* The name and address of the person to whom the subpoena is directed;

*d.* The date, time, and location at which the person is commanded to appear;

*e.* Whether the testimony is commanded in connection with a deposition or hearing;

*f.* A description of the books, papers, records, or other evidence the person is commanded to produce;

*g.* The date, time and location for production or inspection and copying;

*h.* The time within which a motion to quash or modify the subpoena must be filed;

*i.* The signature, address, and telephone number of the presiding officer;

*j.* The date of issuance;

*k.* A return of service attached to the subpoena.

**69.17(4)** The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

**69.17(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

**69.17(6)** Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be

scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

**69.17(7)** A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

**69.17(8)** If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

**875—69.18(17A,89A) Motions.**

**69.18(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**69.18(2)** Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**69.18(3)** The presiding officer may schedule oral argument on any motion.

**69.18(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

**69.18(5)** Motions for summary judgment shall comply with the requirements of the Iowa Rules of Civil Procedure and are subject to disposition according to its requirements 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 are filed and served at least 45 days prior to the scheduled hearing date or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—69.29(89A) and appeal pursuant to subrule 69.27(3).

**875—69.19(17A,89A) Settlements.** A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. All settlements are subject to approval by a majority of the board. No settlement shall be presented to the board for approval except in final, written form executed by the parties. If the board fails to approve the settlement, the settlement will be of no force or effect to either party.

**875—69.20(17A,89A) Prehearing conference.**

**69.20(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

**69.20(2)** Each party brings to the prehearing conference:

*a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

*b.* A final list of exhibits that the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

*c.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**69.20(3)** In addition to the requirements of subrule 69.20(2), the parties at a prehearing conference may:

*a.* Enter into stipulations of law or fact;

*b.* Enter into stipulations on the admissibility of exhibits;

*c.* Identify matters that the parties intend to request be officially noticed;

*d.* Enter into stipulations for waiver of any provision of law; and

*e.* Consider any additional matters that will expedite the hearing.

**69.20(4)** Prehearing conferences will be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

**875—69.21(17A,89A) Continuances.** Unless otherwise provided, applications for continuances are made to the presiding officer.

**69.21(1)** A written application for a continuance shall:

*a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may waive notice of such requests for a particular case or an entire class of cases.

**69.21(2)** In determining whether to grant a continuance, the presiding officer may consider:

*a.* Prior continuances;

*b.* The interests of all parties;

*c.* The likelihood of informal settlement;

*d.* The existence of an emergency;

*e.* Any objection;

*f.* Any applicable time requirements;

*g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;

*h.* The timeliness of the request; and

*i.* Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

**875—69.22(17A,89A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal is with prejudice.

**875—69.23(17A,89A) Hearing procedures.**

**69.23(1)** The presiding officer has the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

**69.23(2)** All objections shall be timely made and stated on the record.

**69.23(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

**69.23(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as

necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**69.23(5)** The presiding officer maintains the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**69.23(6)** Witnesses may be sequestered during the hearing.

**69.23(7)** The presiding officer shall conduct the hearing in the following manner:

*a.* The presiding officer will give an opening statement briefly describing the nature of the proceedings.

*b.* The parties will be given an opportunity to present opening statements.

*c.* The parties will present their cases in the sequence determined by the presiding officer.

*d.* Each witness will 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, the parties may be given the opportunity to present final arguments.

*f.* The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

**69.23(8)** The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

**69.23(9)** The hearing will be open to the public, except as otherwise provided by law.

**69.23(10)** Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the board for five years after the resolution of the case.

**69.23(11)** Default.

*a.* If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

*b.* Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

*c.* Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 69.27(3). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one attached, sworn affidavit of a person with personal knowledge.

*d.* The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

*e.* Properly substantiated and timely filed motions to vacate are granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

*f.* "Good cause" for purposes of this rule has the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

*g.* A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

*h.* If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case will proceed accordingly.

*i.* A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

**875—69.24(17A,89A) Evidence.**

**69.24(1)** The presiding officer rules on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**69.24(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**69.24(3)** Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

**69.24(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**69.24(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**69.24(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**875—69.25(17A,89A) Ex parte communication.**

**69.25(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, 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.

**69.25(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

**69.25(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**69.25(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**69.25(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**69.25(6)** 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.

*a.* If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under seal by protective order:

(1) A copy of any prohibited written communication,

(2) All written responses to the communication,

(3) A written summary stating the substance of any prohibited oral or other communication not available in written form and all responses made, and

(4) The identity of each person from whom the presiding officer received a prohibited ex parte communication; or

*b.* If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**69.25(7)** 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.

**69.25(8)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the director.

**875—69.26(17A,89A) Interlocutory appeals.**

**69.26(1)** Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy.

**69.26(2)** Any request for interlocutory review under this rule must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

**69.26(3)** This rule does not apply to the ruling of an administrative law judge after hearing on a motion to quash or modify a subpoena. The procedures for challenging such a ruling are set forth in subrule 69.17(7).

**875—69.27(17A,89A) Decisions.**

**69.27(1)** *Proposed decision.* Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

**69.27(2)** *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

**69.27(3)** *Appeals and review.*

*a. Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

*b. Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

*c. Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

*d. Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

*e. Scheduling.* The board shall issue a schedule for consideration of the appeal.

*f. Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

*g. Record.* The record on appeal or review will be the entire record made before the hearing panel or administrative law judge.

**875—69.28(17A,89A) Contested cases with no factual disputes.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**875—69.29(17A,89A) Applications for rehearing.**

**69.29(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**69.29(2)** *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

**69.29(3)** *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

**69.29(4)** *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

**69.29(5)** *Disposition.* The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

**875—69.30(17A,89A) Stays of board actions.**

**69.30(1)** *When available.*

*a.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed

with the notice of appeal and state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

*b.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

**69.30(2)** *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

**69.30(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

**875—69.31(17A,89A) Judicial review.** Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8773C

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to administration of the conveyance safety program**

The Labor Services Division hereby rescinds Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89A.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 71 that sets forth the authority of the Elevator, Boiler and Amusements Bureau to inspect, grant permits, enforce safety requirements, and assess fees for covered conveyances.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8322C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A comment asked to revise the definition of "conveyance" to exclude vertical reciprocating conveyors. However, this kind of change is better handled as a separate rulemaking.

A comment requested that the chapter reinstate "No rule contained in 875—Chapters 71-73 shall be interpreted as creating a waiver from any otherwise applicable regulation or statute."

One change from the Notice has been made to add rule 875—71.19(89A) to explain "No rule in 875—Chapters 71 through 73 shall be interpreted as creating a waiver from any otherwise applicable regulation or statute."

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 71 and adopt the following **new** chapter in lieu thereof:

CHAPTER 71
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

**875—71.1(89A) Definitions.** The definitions contained in this rule apply to 875—Chapters 71, 72, and 73.

*"Acceptance checklist"* means a checklist available on the website of the department that includes a list of major systems and components of conveyances.

*"AECO"* means an elevator/escalator certification organization accredited pursuant to ASME A17.7.

*"Approved"* means approved by the department.

*"CCD"* means code compliance documentation as described in ASME A17.7, Section 2.10.

*"CEI"* means a person who is a certified elevator inspector or certified elevator inspector supervisor and who received the certification from a certifying organization that holds a valid document of accreditation issued by an accreditation body in accordance with ANSI/ISO/IEC 17024.

*"Center of the elevator path"* means a vertical line through the center point of an elevator car top beginning two feet below the lower landing and ending ten feet above the highest landing of an elevator.

*"Control"* means the system governing the starting, stopping, direction of motion, acceleration, speed and deceleration of the moving member.

*"Conveyance"* means any elevator, escalator, material lift elevator installed on or after August 10, 2016, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A.

*"CPH"* means a construction personnel hoist.

*"CPH jump"* means the addition or removal of mast or tower allowing a change in the hoist service elevation of a CPH.

*"Department"* means the department of inspections, appeals, and licensing.

*"Director"* means the director of the department of inspections, appeals, and licensing or the director's designee.

*"Elevator"* means a hoisting and lowering mechanism equipped with a car or platform that moves in guides in a substantially vertical direction and that serves two or more floors of a building or structure. "Elevator" does not include a CPH.

*"Elevator mechanic"* means a person who meets the standard for "elevator personnel" found in ASME A17.1.

*"Hoistway-unit system"* means a series of hoistway-door interlocks, hoistway-door electric contacts or hoistway-door combination mechanical locks and electric contacts, or a combination thereof, the function of which is to prevent operation of the driving machine by the normal operating device unless all hoistway doors are in the closed position and, if required, locked.

*"Imminent danger"* means one or more conditions or practices exist that are reasonably expected to cause death or serious physical harm immediately.

*"Seal off"* means to place a conveyance controller in the off position and attach a wire seal with a tag warning that the conveyance must be rendered dormant or not used pending repairs.

*"Serious danger"* means one or more conditions or practices exist that create a substantial probability that death or serious physical harm could result.

*"Waiver"* means a waiver pursuant to Iowa Code section 17A.9A or an exception or variance pursuant to Iowa Code section 89A.11.

*"Wind tower lift"* means a conveyance designed and utilized solely for movement of trained and authorized people and small loads in wind towers built for the production of electricity.

**875—71.2(89A) Registration of conveyances.** The owner or authorized agent of each operable conveyance not previously registered shall register the conveyance. An application to install a new conveyance constitutes registration. All registrations are submitted to the director on forms available from the department and include all information requested by the director.

**875—71.3(89A) State identification number.** The director will assign an identification number to each conveyance that shall be stamped on a metal tag permanently attached to the controller, to the electrical disconnecting switch, or in a wind tower lift cage.

**875—71.4(89A) Responsibility for obtaining permits.** The procuring of all permits and the payment of all fees required by this chapter are the responsibility of the owner. Failure to obtain the appropriate permit prior to installation, alteration or operation may, at the discretion of the director, result in a referral to the attorney general for prosecution of criminal penalties.

**875—71.5(89A) Installation permit requirements.**

**71.5(1)** Installation will not begin until an installation permit has been issued by the department. A separate installation permit will be issued for each conveyance, except that a single installation permit will cover all identical wind tower lifts installed as the result of one construction contract in identical wind towers in a single wind farm.

**71.5(2)** Application for an installation permit shall be accompanied by the fee, in the format required by the director, and include the following, as applicable:

*a.* Sectional plan of car and hoistway.

*b.* Sectional plan of machine room.

*c.* Sectional elevation of hoistway and machine room including the pit, bottom and top clearance of car and counterweights.

*d.* Size and weight of rails and guide rail bracket spacing.

*e.* The estimated maximum vertical forces on the guide rails on application of the safety device.

*f.* In the case of freight elevators for class B or class C loading, the horizontal forces on the guide rail faces during loading and unloading and the estimated maximum horizontal forces in a post-wise direction on the guide rail faces on the application of the safety device.

*g.* The size and weight per foot of any rail reinforcements where rail reinforcements are provided.

*h.* Job specifications.

*i.* For a conveyance covered by ASME A17.7, a complete copy of the CCD with attachments and a complete copy of the Certificate of Conformance with attachments as described by ASME A17.7, Appendix I, Section 4.5.

*j.* For a CPH, the number of CPH jumps planned, the planned dates for each CPH jump, and the change in the number of floors anticipated with each CPH jump.

**71.5(3)** A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH jump. Each CPH jump will be considered an alteration. The fee for a CPH installation permit is the total of the CPH installation permit fee and the CPH alteration permit fee.

**71.5(4)** Issuance of an installation permit is not a waiver of any requirement of law.

**71.5(5)** The installation permit or a copy of the installation permit shall be conspicuously posted at the worksite. All the wind towers covered by a single installation permit are a single worksite, and posting one copy of the installation permit at the construction project office is sufficient compliance with this subrule.

**71.5(6)** Except as described here, the installation permit expires upon the earlier of the completion of the installation as described in the permit application or one year after issuance.

*a.* For a CPH, the installation permit expires upon completion of the last CPH jump.

*b.* For any conveyance, during the tenth month after issuance, and upon submission to the director of sufficient justification, the fee established by this chapter, and other required information, an extension may be granted at the discretion of the director.

**875—71.6(89A) Construction permits—requirements.** A construction permit authorizes the temporary, limited use of an elevator for purposes relating to construction or demolition.

**71.6(1)** Use of the elevator will not begin until a construction permit has been issued by the department.

**71.6(2)** Application for a construction permit will be in the format required by the director and must include all the information requested by the director and the fee specified by this chapter.

**71.6(3)** Upon submission of the completed application and fee, a state inspector will be scheduled to inspect the elevator. Construction permits will be issued only if the following criteria are met:

*a.* The elevator has been successfully tested pursuant to the requirements of ASME A17.1, Section 8.11.5.13; and

*b.* The applicable requirements of ASME A17.1, Section 5.10, are met.

**71.6(4)** The construction permit or a copy of the construction permit will be posted conspicuously in a protective sleeve in the elevator car.

**71.6(5)** The construction permit will expire 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the director of sufficient justification, the fee established by this chapter, and other required information, an extension of up to 90 days may be granted at the discretion of the director.

**71.6(6)** Elevators with a construction permit but without an operating permit will not be accessible to the general public.

**71.6(7)** Failure to comply with these provisions may result in the revocation of the construction permit.

**71.6(8)** An operating permit will not be issued before construction and an acceptance inspection are complete.

**875—71.7(89A) Operating permits—requirements.**

**71.7(1)** Operation of equipment covered by this chapter without a current operating permit is prohibited, except for construction permits, controller upgrade permits, and temporary removals from service, all defined in this chapter. If operation of a conveyance is prohibited under this rule, the director may post notice on the conveyance that it is not to be used. The conveyance may be returned to service only after an operating permit for the conveyance has been issued or reissued.

**71.7(2)** Operating permits will not be issued prior to successful completion of an inspection and payment of all permit and inspection fees owed to the department.

**71.7(3)** Current operating permits or copies of current operating permits will be conspicuously displayed as follows:

*a.* The operating permit for an elevator or CPH will be posted in the car.

*b.* The operating permit for an escalator, dumbwaiter, wind tower lift, moving walk, or wheelchair lift will be posted on or near the subject conveyance.

**71.7(4)** An operating permit expires 60 days after the first permit renewal inspection following the issuance of the operating permit, unless an earlier date is dictated by this rule.

**71.7(5)** An operating permit is automatically suspended when an alteration begins. The operating permit automatically resumes when the elevator passes an inspection.

**71.7(6)** An operating permit is automatically terminated when an imminent danger notice is posted on the conveyance.

**71.7(7)** Notwithstanding other provisions of this rule, at the discretion of the director, a temporary operating permit may be issued for up to 30 days provided the inspection has been completed and no code violations were identified. Issuance of a temporary operating permit does not extend the expiration date of the conveyance's operating permit.

**875—71.8(89A) Controller upgrade permits—requirements.** A controller upgrade permit may be issued to allow operation of an elevator while work to upgrade controls requires deactivation of the Phase I recall initiated by smoke sensing devices. Each elevator to be altered requires a separate controller upgrade permit. The duration of a controller upgrade permit will not exceed 90 days. Each elevator in the group will pass inspection prior to being placed back into service.

**71.8(1)** A controller upgrade permit will not be issued unless each of the following conditions is met:

*a.* Two or more elevators share a lobby at the level of the recall floor.

*b.* The project includes the installation of new elevator controllers in all of the elevators in the group.

*c.* Phase I fire recall initiated by a key-operated switch and all other controls will be properly functioning for each elevator available for use.

*d.* There is a current alteration permit for the project.

*e.* A complete application for the controller upgrade permit and the fee established by this chapter have been submitted and accepted.

**71.8(2)** A controller upgrade permit does not waive or excuse compliance with the requirements of any other governmental entity, including the department of public safety.

**71.8(3)** Upon the submission to the director of sufficient justification, the fee established by this chapter, and other required information, an extension of the permit for up to 60 days may be granted.

**875—71.9(89A) Alteration permits—requirements.**

**71.9(1)** Alteration will not begin until an alteration permit has been issued by the department.

**71.9(2)** Application for an alteration permit will be in the format required by the director and will include scope of work, drawings and specifications of all planned changes and the fee.

**71.9(3)** Issuance of an alteration permit is not a waiver of any requirement of law.

**71.9(4)** The alteration permit or a copy of the alteration permit will be conspicuously posted at the worksite.

**71.9(5)** If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days' advance notice of each CPH jump will be provided to the director.

**71.9(6)** The alteration permit expires upon the earlier of the completion of the alteration as described in the permit application or one year after issuance. However, during the tenth month after issuance and upon submission to the director of the fee set forth in this chapter, sufficient justification, and other required information, the director may grant an extension of the alteration permit.

**875—71.10(89A) Alteration requirements.**

**71.10(1)** Alterations or changes will comply with applicable rules.

**71.10(2)** A conveyance that is relocated will be brought into compliance with all codes that are applicable at the time of relocation.

**71.10(3)** Alterations of conveyances other than escalators and elevators require that the entire conveyance be brought into compliance with the current code.

**71.10(4)** Work required by ASME A17.3 (2011) qualifies as normal maintenance and does not require an alteration permit except for work performed to comply with ASME A17.3 (2011) 2.3.3, 3.4.4.1(a), 3.4.4.2, 3.5.3, 3.5.5(a) and (b), 3.5.7, 3.6.1, 3.6.2, 3.8.1(a), 3.8.3(a), 3.10.1, 3.10.4(b) through (g), 3.10.4(i) through (k), 3.10.4(m), 3.10.4(r), 3.10.4(w), 3.10.7, 3.10.9, 3.10.10, 4.4.2, 4.4.3, and 4.7.3.

**875—71.11(89A) Inspection requirements.** Pursuant to Iowa Code section 89A.12, inspections by the director will be permitted at reasonable times with or without prior notice.

**71.11(1)** *Scope of inspections.*

*a. Comprehensive.* Periodic inspections will be comprehensive. Elevators being transferred from construction permits to operating permits, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances will be inspected in their entirety prior to operation.

*b. Limited.* An alteration inspection is normally limited to the altered components. If the inspector notices a safety hazard in plain view during an inspection after alteration, or if the periodic inspection is due, the entire conveyance will be inspected.

**71.11(2)** *When inspections will occur.* When the timing of two different types of inspection on a single conveyance coincide, a state inspector may perform both inspections in one visit.

*a. Periodic inspections.*

(1) Each construction elevator and CPH will be inspected at intervals not to exceed three months. All other periodic conveyance inspections by state inspectors are conducted annually unless the director determines resources do not allow annual inspections. If the director determines quarterly inspections of construction elevators and CPHs and annual inspections of other state-inspected conveyances are not feasible due to insufficient resources, the director will determine the inspection schedule.

(2) Conveyance inspections by special inspectors will be conducted at least annually.

(3) The inspector will arrange to perform the periodic inspection of a broadcast tower elevator when the maintenance company is on site to perform the periodic tests. If the inspection is to be performed by employees of the director, the inspection will occur during the department's normal business hours, unless otherwise agreed to by the director.

*b. Acceptance inspections.* A CPH will be inspected pursuant to the schedule in ANSI A10.4 – 2007, Chapter 26. For all other conveyances, an acceptance inspection will occur:

(1) After each relocation,

(2) After each alteration,

(3) For a new installation, not less than two business days after a completed acceptance checklist is submitted by the conveyance installation company,

(4) Before an elevator subject to a construction permit receives an operating permit, and

(5) Before a previously dormant conveyance is returned to service.

*c. Other inspections.* Inspections may be made when the director reasonably believes that a conveyance is not in compliance with the rules. Accidents, complaints, or requests for consultative inspections may result in inspections by the director.

**71.11(3)** *Who may perform inspections.*

*a.* The director will inspect altered conveyances, construction elevators, CPHs, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances.

*b.* Except as noted in 71.11(3)*"c,"* annual inspections may be performed by state inspectors or special inspectors authorized by the director.

*c.* An inspection report by a special inspector will not be accepted as the required, annual inspection if the conveyance is under contract for maintenance, installation or alteration by the special inspector or the special inspector's employer, or if the property is owned or leased by the special inspector or the special inspector's employer.

**71.11(4)** *Inspection standards.* Inspections will be performed in accordance with applicable safety codes or documents such as:

*a.* CCD;

*b.* ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;

*c.* ANSI A10.4-2007; or

*d.* ASME A18.1.

**71.11(5)** *Inspection reports.*

*a.* All inspectors will file inspection reports on forms approved by the director within 30 days from the date of inspection and will provide owners of conveyances with copies of completed inspection reports. The inspection report must separately list each unsafe condition and the applicable, specific code citation. Up to 30 days will be allowed for correction of the unsafe conditions.

*b.* The owner may file a petition for reconsideration of an inspection report. The timely and proper filing of a petition for reconsideration extends the deadline for correction of the hazards that are subject to the petition for reconsideration.

**71.11(6)** *Extension of time.* The owner may petition the director for up to 60 additional days to make the necessary corrections. The time frames may be adjusted by the director as necessary to accommodate an extension of time.

**71.11(7)** *Correction of unsafe conditions.* In the absence of a determination on reconsideration or appeal that correction of hazards is not required, all unsafe conditions identified in the inspection report will be corrected. The director will verify correction of all unsafe conditions identified in the inspection report by sending a state inspector to reinspect the conveyance for the applicable fee, or by reviewing appropriate documentation such as a photograph, invoice, other verifiable document, or subsequent inspection report. The time frames set forth in this subrule may be accelerated at the request of the owner.

*a.* Promptly upon receipt of an inspection report listing unsafe conditions, the director will send to the owner and the special inspector, if any, an abatement order. A copy of the inspection report will be attached to the abatement order. Unless a special inspector conducted the inspection, the order may specify a period that ends no more than 45 days after the inspection during which the owner may submit written evidence that the unsafe conditions have been corrected. The abatement order will:

(1) Identify the equipment.

(2) Demand that the unsafe conditions be corrected within the period set forth in the inspection report.

(3) Set forth the consequences of failure to comply.

*b.* After the period specified on the inspection report has passed, the director may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the director may serve a notice of intent to suspend, deny or revoke the operating permit.

If there is a serious danger, the director may seal off the conveyance and post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

*c.* The director may issue an operating permit after receipt of the appropriate fee and verification that each unsafe condition identified in the inspection report has been corrected.

*d.* If written proof of correction was requested in the abatement order, but adequate proof was not received by the deadline set forth in the abatement order, the director may send a second abatement order or cause a state inspector to inspect the conveyance. If the director elects to send a second abatement order, it will notify the owner that, if written proof of abatement is not received within 20 days, a state inspector may be sent to the site. Copies of the abatement order and the inspection report will be attached to the second abatement order.

*e.* If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the director may:

(1) Contact the special inspector,

(2) Send a second abatement order to the owner with copies of the inspection report and first abatement order, or

(3) Send a state inspector to inspect the conveyance. If there is a serious danger, the director may seal off the conveyance and post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

*f.* If an inspection as described in paragraph 71.11(7)*"d"* or *"e"* reveals no significant progress toward correcting the unsafe conditions, and the remaining unsafe conditions create no significant safety concerns, the director may extend the time for abatement of the unsafe conditions an additional ten days or may serve a notice of intent to suspend, deny or revoke the operating permit. The director may also post a notice prohibiting use of the conveyance pending abatement of the unsafe conditions listed in the inspection report.

*g.* If an abatement order was provided and a conveyance is not in use and the owner does not intend to use the conveyance, repair the conveyance, or make the conveyance dormant, the director may seal off the conveyance.

**71.11(8)** *Imminent danger.* If the director determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the director may seal off the conveyance and post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the director may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

**71.11(9)** *Interference prohibited.* No person shall interfere with, delay or impede an inspector employed by the state during an inspection.

**71.11(10)** *Escalator inspections.* The owner will arrange for an escalator mechanic to be on site to assist with the inspection. The inspector will work with the owner to arrange an inspection time.

**875—71.12(89A,252J,272D) Special inspector commissions.**

**71.12(1)** *Definition.* As used in this rule, "certificate of noncompliance" means:

*a.* A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J; or

*b.* A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

**71.12(2)** *Qualifications.*

*a.* Each applicant will possess a high school diploma or general equivalency degree.

*b.* Each applicant will have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.

*c.* Each applicant will be a CEI.

*d.* Each applicant will satisfactorily pass the department's examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.

*e.* Each applicant will submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy will be in an

amount of not less than $1,000,000 for bodily injury to or death of one person in any one accident, and in an amount of not less than $5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than $100,000 for damage to or destruction of property in any one accident. The insurance coverage of the special inspector's employer complies with this requirement if the coverage provides equivalent coverage for each special inspector.

**71.12(3)** *Application.* An applicant for a commission will complete, sign, and submit to the department the form provided by the department with the required fee. The applicant will include with the application proof that the applicant is a CEI.

**71.12(4)** *Expiration.* The commission expires when the commission is suspended or revoked by the director or one year from issuance, whichever occurs earlier.

**71.12(5)** *Changes.* The special inspector shall notify the department at the time any of the information on the form or attachments changes.

**71.12(6)** *Denials.* The director may refuse to issue or renew a special inspector's commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) through 71.12(10).

**71.12(7)** *Investigations.* The director may investigate for any reasonable cause related to special inspectors or special inspector applicants. The director may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the director directs. The director may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

**71.12(8)** *Reasons for probation.* The director may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

**71.12(9)** *Reasons for suspension.* The director may issue a notice of commission suspension when an investigation reasonably reveals any of the following:

*a.* The special inspector failed to submit and report inspections on a timely basis;

*b.* The special inspector abused the special inspector's authority;

*c.* The special inspector misrepresented self as a state inspector or a state employee;

*d.* The special inspector used commission authority for inappropriate personal gain;

*e.* The special inspector failed to follow the department's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

*f.* The special inspector committed numerous violations;

*g.* The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

*h.* The special inspector is no longer a CEI;

*i.* The department received a certificate of noncompliance; or

*j.* The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed herein.

**71.12(10)** *Reasons for revocation.* The director may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

*a.* The special inspector filed a misleading, false or fraudulent report;

*b.* The special inspector failed to perform a required inspection;

*c.* The special inspector failed to file a report or filed a report that was not in accordance with the provisions of applicable standards;

*d.* The special inspector committed repeated violations;

*e.* The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

*f.* The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform acts or omissions listed herein;

*g.* The special inspector is no longer a CEI; or

*h.* The department received a certificate of noncompliance.

**71.12(11)** *Procedures.* The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J or 272D shall apply.

*a. Notice of actions.* The director will serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A.

*b. Emergency suspension.* If the director finds that the public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

*c. Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

*d. Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

*e. Revocation period.* A special inspector's commission that has been revoked will not be reinstated for five years.

*f. Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

*g. Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall surrender the special inspector's commission card to the director. The director may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.

**875—71.13(89A) Safety tests.** Only safety test reports submitted on approved forms from elevator mechanics who are employed by authorized companies meet the requirements of this rule. The alternative test methods set forth at ASME A17.1, Rule 8.6.11.10, are not allowed as a substitute for a full-load safety test.

**71.13(1)** *When safety tests will be performed.*

*a.* Safety tests are performed on new and altered installations before they are placed in service.

*b.* Category 1 safety tests of wind turbine tower elevators are conducted after two years of operation, and category 5 safety tests of wind turbine tower elevators are performed after ten years of operation. Safety tests shall be made on all other conveyances pursuant to the schedules and procedures set forth in:

(1) The maintenance control plan for wind tower lifts exempted from ASME A17.1;

(2) The CCD for conveyances covered by ASME A17.7-2007/CSA B44-07;

(3) The columns pertaining to "periodic tests" in Table N-1 in the edition of ASME A17.1 currently adopted for new conveyances;

(4) ASME A18.1(2003), Part 10; or

(5) ANSI A10.4-2007, Section 26.4.

**71.13(2)** *How safety tests will be reported.* Within 30 days after completion of a safety test, the elevator mechanic shall file with the director a report on an approved form and provide a copy of the form to the owner and to the witness, if applicable.

**71.13(3)** *How safety tests will be recorded.* The elevator mechanic shall attach a tag showing the date of the test, the elevator mechanic's name, and the type of test performed.

*a.* On electric traction elevators, the elevator mechanic attaches the tag to the safety-releasing carrier.

*b.* On hydraulic elevators, the elevator mechanic attaches the tag to the disconnecting switch or the controller.

*c.* On wheelchair lifts, the elevator mechanic attaches the tag to the disconnecting switch.

*d.* On other conveyances covered by these rules, the director witnessing the acceptance safety test will indicate the proper location of the tag. Subsequent test tags are attached in the same location.

**875—71.14(89A) Authorized companies—requirements.**

**71.14(1)** Each year, authorized companies will train their elevator mechanics who perform safety tests on safety test procedures.

**71.14(2)** For each conveyance owned by an authorized company, the owner will obtain the services of a CEI who is not employed by the authorized company or an inspector employed by the state to witness the safety test.

**71.14(3)** To become authorized to perform safety tests, a company will submit a copy of its procedures for performing safety tests. The director will review the procedures for adequacy and will request modifications to the procedures or grant or deny the authorization.

**71.14(4)** Every five years or within six months after the board adopts a new edition of ASME, whichever is earlier, authorized companies will submit revised safety test procedures for renewal of authorization. The director will review the procedures for adequacy and will request modifications to the procedures or grant or deny the authorization.

**71.14(5)** Investigations. Investigations will take place at the times and in the places the director directs. The director may investigate for any reasonable cause. The director may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

**71.14(6)** Suspension. If the director determines that a falsified safety test report was submitted by an elevator mechanic, the director will suspend the authorization of the elevator mechanic's employer for six months. During the suspension, all safety tests performed by any employee of the authorized company will be witnessed by a state inspector or a CEI who is not employed by the suspended authorized company.

**71.14(7)** Suspension procedures.

*a.* The director will notify an authorized company of its suspension by certified mail or by other service as permitted by Iowa Code chapter 17A.

*b.* The authorized company will have 20 days to file a written notice of contest with the director. If the authorized company does not file a written notice of contest in a timely manner, the suspension will automatically be effective. If the authorized company does file a written notice of contest in a timely manner, department hearing procedures govern.

*c.* If the director finds, pursuant to Iowa Code section 17A.18A, that public health, safety or welfare imperatively requires emergency action, the authorization may be summarily suspended.

**875—71.15(89A) Fees.** Except as noted in this rule, all fees are nonrefundable and due in advance.

**71.15(1)** *Operating permits.* The annual operating permit fee is $75 per conveyance.

**71.15(2)** *Periodic inspections.* Fees shall be remitted to the department within 30 days of the date of inspection. The fees for periodic inspections are as follows:

*a.* Construction elevator: $200.
*b.* Wind tower lift: $225.
*c.* Hand-powered elevator: $90.
*d.* Television tower elevator: $500.
*e.* Handicapped restricted use elevator: $100.
*f.* Other hydraulic elevator: $100.
*g.* Other traction elevator: $150.
*h.* Escalator: $150.
*i.* Dumbwaiter: $90.
*j.* Wheelchair lift: $90.
*k.* CPH:
(1) Annual: $500.
(2) Quarterly: $200.
*l.* Moving walk: $150.

**71.15(3)** *Installation permits.* The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the department is subject to an additional fee of $100. The fees for new installations are as follows:

*a.* Wind tower lift: $500.
*b.* Material lift elevators: $500.
*c.* Other hydraulic elevators: $750.
*d.* Other traction elevators: $1,000.
*e.* Escalator: $1,000.
*f.* Dumbwaiter: $500.
*g.* Wheelchair lift: $500.
*h.* CPH: $500.
*i.* Moving walk: $500.

**71.15(4)** *Alteration permits.*

*a.* Except as set forth below, the fee for any elevator alteration permit is $500 and covers the initial print review, alteration permit, and initial inspection.

*b.* The fee for each CPH extension is $150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application.

*c.* The fee for an alteration permit is $500 if the only alteration is the addition or replacement of an escalator skirt brush.

*d.* The fee for an initial print review, elevator alteration permit, and initial inspection is $250 if both of the following conditions are met:

(1) The only changes covered by the elevator alteration permit application are required by ASME A17.3 (2011) as adopted in 875—Chapters 372 and 373; and

(2) The elevator alteration permit application is submitted before or no later than 120 days after the issuance of an inspection report describing ASME A17.3 requirements.

*e.* For all other conveyances, the fees for new installations shall apply to alterations.

**71.15(5)** *Construction permits.* The construction permit fee is $200 per conveyance. This fee includes the fee for initial inspection.

**71.15(6)** *Controller upgrade permits.* The controller upgrade permit fee is $250. This fee includes one inspection.

**71.15(7)** *Consultative inspections* Consultative inspections may be performed at the discretion of the director for $125 per hour, including travel time, with a minimum charge of $250.

**71.15(8)** *Special inspector commission.* The special inspector commission fee is $60 annually.

**71.15(9)** *Witness of safety tests.* The fee for department employees to witness safety tests is $125 per hour, including travel time, with a minimum charge of $250.

**71.15(10)** *Permit extensions.* The fee to extend an installation permit, alteration permit, or construction permit is $100.

**71.15(11)** *Inspections outside of normal business hours.* Inspections outside the normal business hours may be performed at the discretion of the director. If the owner or contractor requests an inspection outside of normal business hours and the director agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of $200 per hour, including travel time, with a minimum charge of $400.

**71.15(12)** *Reinspections.* The fees for reinspections are $400 for television tower elevators and CPHs, $200 for wind tower lifts, and $300 for all other conveyances.

**71.15(13)** *Inspection for temporary removal from service.* The inspection fee for temporary removal from service is $125 per hour, including travel time, with a minimum charge of $250.

**71.15(14)** *Fee waiver.*

*a.* When a state inspector combines in one visit two different types of inspection on a single conveyance, the director may waive the lesser of the fees.

*b.* The fee for an alteration permit will be waived by the director if the only alterations covered by the permit application are required by 875—Chapter 372 or 373. The fee waiver set forth in this paragraph does not eliminate the requirement to pay for an acceptance inspection or for an operating permit.

**875—71.16(89A) Publications available for review.** Standards, codes, and publications adopted by reference in these rules are available for review in the department office.

**875—71.17(89A) Accidents and injuries—requirements.**

**71.17(1)** This rule applies to a conveyance in the event one of the following occurs:

*a.* A personal injury accident that requires the service of a physician;

*b.* A personal injury accident that causes disability exceeding one day; or

*c.* Damage that will require more than one hour of mechanic's time (excluding travel) to repair.

**71.17(2)** The owner will promptly notify the director if one of the events listed in subrule 71.19(1) occurs. Notification will be in writing and will include the state identification number, owner, and description of accident.

**71.17(3)** The removal of any part of the damaged conveyance or operating mechanism from the premises is forbidden until permission is granted by the director.

**71.17(4)** When an accident or injury involves the failure or destruction of any part of the conveyance or its operating mechanism, the use of the conveyance is forbidden until it has been inspected and approved by the director.

**875—71.18(89A) Temporary removal from service.** The requirements for an annual inspection, annual inspection fee, safety test, operating permit, and operating permit fee will be temporarily suspended for up to three years for an elevator in an unoccupied building if the requirements of this rule are met.

**71.18(1)** All elevator doors in unoccupied buildings shall be closed and locked. Hydraulic elevators are parked at the bottom of the hoistway. Traction elevators are parked at the top of the hoistway.

**71.18(2)** Upon request by the owner of an elevator in an unoccupied building, the director will send an inspector who is a state employee to confirm that the building is unoccupied and that the car and doors of the elevator have been properly secured. If the conditions set forth in subrule "1" are met, the inspector shall apply to the elevator a seal and a red tag marked with the words "Do Not Operate."

**71.18(3)** One year after the inspection, the owner must file with the director written confirmation that the status of the elevator and building have not changed, and the owner must file again two years after the inspection. Failure to comply with this requirement will result in termination of the temporary suspension of the requirements for safety tests, inspections, and operating permits.

**71.18(4)** Prior to returning the elevator to service, and upon request of the owner, the director may allow the elevator to be operated for 30 days for the sole purpose of performing safety tests and maintenance.

**71.18(5)** The owner must notify the director at least two weeks before placing an elevator back into service and must arrange for an inspector who is a state employee to witness a safety test.

**71.18(6)** If at the end of three years the building is still unoccupied, suspension of the requirements for safety tests, inspections, and operating permits end without possibility of renewal.

**875—71.19(89A) Other regulations affecting elevators.** No rule in 875—Chapters 71 through 73 shall be interpreted as creating a waiver from any otherwise applicable regulation or statute.

These rules are intended to implement Iowa Code chapters 89A, 252J, and 272D.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8774C

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to conveyances installed on or after January 1, 1975**

The Labor Services Division hereby rescinds Chapter 72, "Conveyances Installed On or After January 1, 1975," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89A.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 72 that adopts standards for conveyances installed since January 1, 1975, provides criteria for installation and inspection of wind tower lifts, regulates other conveyances, and requires child entrapment safeguards.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8323C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A comment wanted to reinstate that wind tower lifts must comply with a certain federal rule. However, it is beyond the scope of these rules to refer to rules of other jurisdictions that may apply to any given employer.

No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 72 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 72
## CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

**875—72.1(89A) Purpose and scope.** This chapter contains safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of conveyances installed on or after January 1, 1975. The rules of this chapter also apply to previously dormant conveyances that are being reactivated and to reinstalled or moved conveyances. As used in this rule, the word "installation" refers to the date on which a conveyance contractor enters into a contractual agreement pertaining to a conveyance.

**72.1(1)** For installations between January 1, 1975, and December 31, 1982, ANSI A17.1 means ANSI A17.1 (1971).

**72.1(2)** For installations between January 1, 1983, and December 31, 1992:

*a.* ANSI A17.1 means ANSI A17.1 (1981); and

*b.* ANSI A117.1 means ANSI A117.1 (1980).

**72.1(3)** For installations between January 1, 1993, and December 31, 2000:

*a.* ASME A17.1 means ASME A17.1 (1990) and in addition means the following:

(1) ASME A17.1b (1992), Rule 110.11h, for electric elevators installed between July 1, 1993, and December 31, 2000, and

(2) ASME A17.1b (1992), Rule 110.11h that is referenced by Rule 300.11, for hydraulic elevators installed between July 1, 1993, and December 31, 2000.

*b.* ANSI/NFPA 70 means ANSI/NFPA 70 (1990); and

*c.* ANSI A117.1 means ANSI A117.1 (1980).

**72.1(4)** For installations between January 1, 2001, and December 31, 2003:

*a.* ASME A17.1 means ASME A17.1 (1996 through the 1999 addenda);

*b.* ASME A18.1 means ASME A18.1 (1999), except Chapters 4, 5, 6, and 7;

*c.* ANSI A117.1 means ANSI A117.1 (1998); and

*d.* ANSI/NFPA 70 means ANSI/NFPA 70 (1999).

**72.1(5)** For installations between January 1, 2004, and April 4, 2006:

*a.* ASME A17.1 means ASME A17.1 (2000 through the 2003 addenda);

*b.* ASME A18.1 means ASME A18.1 (1999 through the 2001 addenda), except Chapters 4, 5, 6, and 7;

*c.* ANSI A117.1 means ANSI A117.1 (1998); and

*d.* ANSI/NFPA 70 means ANSI/NFPA 70 (2002).

**72.1(6)** For installations between April 5, 2006, and July 22, 2008:

*a.* ASME A17.1 means ASME A17.1-2004, A17.1a-2005 and A17.1S-2005;

*b.* ASME A18.1 means ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

*c.* ANSI A117.1 means ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*d.* ANSI/NFPA 70 means ANSI/NFPA 70 (2005).

**72.1(7)** For installations between July 23, 2008, and July 18, 2012:

*a.* ASME A17.1 means ASME A17.1-2007/CSA B44-07;

*b.* ASME A17.7 means ASME A17.7-2007/CSA B44-07;

*c.* ASME A18.1 means ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

*d.* ANSI A117.1 means ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*e.* ANSI/NFPA 70 means ANSI/NFPA 70 (2005).

**72.1(8)** For installations between July 19, 2012, and January 30, 2014:

*a.* ASME A17.1 means ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;

*b.* ASME A17.7 means ASME A17.7-2007/CSA B44-07;

*c.* ASME A18.1 means ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

*d.* ANSI A117.1 means ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*e.* ANSI/NFPA 70 means ANSI/NFPA 70 (2008).

**72.1(9)** For installations between January 31, 2014, and January 14, 2015:

*a.* ASME A17.1 means ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;

*b.* ASME A17.7 means ASME A17.7-2007/CSA B44-07;

*c.* ASME A18.1 means ASME A18.1 (2011), except Chapters 4, 5, 6, and 7;

*d.* ANSI A117.1 means ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*e.* ANSI/NFPA 70 means ANSI/NFPA 70 (2008).

**72.1(10)** For installations between January 15, 2015, and May 16, 2018:

*a.* ASME A17.1 means ASME A17.1-2013/CSA B44-13;

*b.* ASME A17.7 means ASME A17.7-2007/CSA B44-07;

*c.* ASME A18.1 means ASME A18.1 (2011), except Chapters 4, 5, 6, and 7;

*d.* ANSI A117.1 means ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*e.* ANSI/NFPA 70 means ANSI/NFPA 70 (2011).

**72.1(11)** For installations between May 17, 2018, and May 31, 2021:

*a.* ASME A17.1 means ASME A17.1-2016/CSA B44-16;

*b.* ASME A17.7 means ASME A17.7-2012/CSA B44.7-12;

*c.* ASME A17.8 means ASME A17.8-2016/CSA B44.8-16;

*d.* ASME A18.1 means ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;

*e.* ANSI A117.1 means ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and

*f.* ANSI/NFPA 70 means ANSI/NFPA 70 (2017).

**72.1(12)** For installations on or after June 1, 2021:

*a.* ASME A17.1 means ASME A17.1-2019/CSA B44-19, except that,

(1) Approaching object detection as described in 2.13.5 is optional; and

(2) ASME A17.1-2016/CSA B44-16, requirement 2.13.5, applies if approaching object detection is not installed;

*b.* ASME A17.7 means ASME A17.7-2012/CSA B44.7-12;

*c.* ASME A17.8 means ASME A17.8-2016/CSA B44.8-16;

*d.* ASME A18.1 means ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;

*e.* ANSI A117.1 means ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and

*f.* ANSI/NFPA 70 means ANSI/NFPA 70 (2017).

**875—72.2(89A) Definitions.** The definitions contained in ASME A17.1, ASME A18.1, and ANSI A117.1 and any other standard adopted herein by reference are applicable as used in this chapter to the extent that the definitions do not conflict with the definitions contained in Iowa Code chapter 89A and these rules. However, the definition of "building code" in ASME A17.1 is modified to exclude the Building Construction and Safety Code (NFPA 5000) and the National Building Code of Canada (NBCC) for any installation after March 1, 2008.

**875—72.3(89A) Accommodating the physically disabled.** All passenger elevators installed between January 1, 1975, and December 31, 1982, that are available and intended for public use shall be usable by the physically disabled. All passenger elevators will have control buttons with identifying features for the benefit of the blind and will allow for wheelchair traffic. All passenger elevators and wheelchair lifts installed on or after January 1, 1983, that are accessible to the general public shall comply with Accessible and Usable Buildings and Facilities ANSI A117.1, sections 407 and 408.

**875—72.4(89A) Electric elevators.** The provisions contained in ASME A17.1, Part 2, are adopted by reference.

**875—72.5(89A) Hydraulic elevators.** The provisions contained in ASME A17.1, Part 3, are adopted by reference.

**875—72.6(89A) Power sidewalk elevators.** The provisions contained in ASME A17.1, section 5.5, are adopted by reference.

**875—72.7(89A) Performance-based safety code.** Conveyances may comply with ASME A17.7, in whole or in part, as an alternative to ASME A17.1.

**875—72.8(89A) Hand and power dumbwaiters.** The provisions contained in ASME A17.1, sections 7.1, 7.2, 7.3, and 7.8, are adopted by reference.

**875—72.9(89A) Escalators and moving walks.** The provisions contained in ASME A17.1, Part 6, are adopted by reference, except for those portions that allow an operating or safety device to reset automatically.

**875—72.10(89A) General requirements.**

**72.10(1)** The provisions contained in ASME A17.1, Part 8, are adopted by reference unless specifically excluded herein.

**72.10(2)** Except as noted in this rule, the American Society of Mechanical Engineers Safety Code for Existing Elevators and Escalators, A17.3 (2011), is adopted by reference with an enforcement date of May 1, 2021.

*a.* If a code provision that is more restrictive than A17.3 (2011) applied to a conveyance when the conveyance was installed, the more restrictive provision remains in effect.

*b.* A17.3 (2011) Part X applies to handicapped restricted use elevators without regard to the scope provisions set forth in A17.3 (2011) Part X.

*c.* Provisions of A17.3 (2011) that require installation of a new controller to implement Phase 1 and Phase 2 fire service or car top operation are not adopted by reference and are not be enforced in Iowa.

*d.* A17.3 (2011), Rule 2.3.2, is intended to prevent the accumulation of sewer gas in an elevator pit and does not require the addition of a drain pipe in an existing pit. An air gap in an existing drain pipe is adequate compliance.

*e.* An elevator that was legally installed with guide rails made of materials other than steel will not be required to replace the guide rails due to the adoption of A17.3 (2011).

**72.10(3)** Permanent lighting shall be installed in the hoistway of an elevator contracted after March 1, 2019. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

**72.10(4)** For conveyances contracted after March 1, 2019, all electrical wiring in a machine room, control space, control room, machinery space, and hoistway shall comply with ANSI/NFPA 70 and be enclosed in metal conduit, flexible conduit, or metal raceways. However, this subrule does not apply in applications such as traveling cables and car top work lights where movement is required for proper function or to operating devices and control equipment where adjustment may be needed.

**875—72.11(89A) Wind tower lifts.** Wind tower lifts authorized by this rule shall not be installed in grain elevators, high-rise buildings, water towers, television towers or any facility other than a wind tower built for the production of electricity. This rule applies to all wind tower lifts, whether installed before or after May 28, 2008; however, this exception does not apply to a wind tower lift if the contract for its installation is executed after an AECO is accredited.

**72.11(1)** Wind tower lifts that meet the requirements of subrules 72.11(2) through 72.11(9) are exempt from the requirements of ASME A17.1. This temporary exemption terminates for a wind tower lift upon the occurrence of at least one of the following events:

*a.* Three weeks have passed since the accreditation of at least one AECO, and the manufacturer of the wind tower lift has not filed with the director an affidavit attesting that a request for Certificate of Conformance as described by ASME A17.7 (2007) was submitted to an AECO.

*b.* The AECO has reviewed a request pursuant to ASME A17.7 and refused to issue a Certificate of Conformance for the model or series of lifts.

*c.* The AECO has determined that modifications to the wind tower lift are necessary, and the modifications have not been made with reasonable diligence.

*d.* The AECO has determined that modifications to the wind tower lift are necessary, and the director determines the wind tower lift is not safe to operate prior to completion of the modifications.

*e.* The AECO has reviewed an application pursuant to ASME A17.7 and issued a Certificate of Conformance for the model or series of lifts.

**72.11(2)** A wind tower lift placed in operation on or before May 28, 2008, shall be registered by the owner with the director no later than July 1, 2008, and shall pass an installation inspection by inspectors employed by the director according to the schedule set by the director. The wind tower lift shall receive a periodic inspection by the director annually thereafter.

**72.11(3)** The owner of a wind tower lift installed after May 28, 2008, shall register the wind tower lift with the director prior to its installation. A wind tower lift installed after May 28, 2008, shall pass an installation inspection by the director prior to its being placed into operation. The wind tower lift will receive a periodic inspection annually thereafter.

**72.11(4)** Registration pursuant to this rule requires submission of the following information to the director:

*a.* The unique identifier of the wind tower.

*b.* The name of the wind tower owner and contact information for the owner's representative.

*c.* The name of the wind tower lift manufacturer and contact information for the manufacturer's representative.

*d.* The location of the wind farm.

*e.* Three copies of the prints and design documents that are certified by a professional engineer duly licensed in the state of Iowa and that bear the professional engineer's P.E. stamp for the lifts.

*f.* The manufacturer's complete test procedures, inspection checklists, operating manual, service manual, and related documents as determined necessary by the director.

**72.11(5)** The owner shall notify the director within 30 days of any change in the information provided pursuant to paragraphs 72.11(4)*"b"* and *"c."*

**72.11(6)** The manufacturer of a lift must notify the director in writing within one week if one of its wind tower lifts anywhere in the world is involved in a personal injury accident requiring the service of a physician, a personal injury accident causing disability exceeding one day or death, or an incident causing property damage exceeding $2,000. The notification shall specifically identify the model number, serial number, and owner of the lift, and a description of the incident or accident. The director shall determine and require necessary inspections, tests, changes or enhancements to prevent a similar incident or accident in this state.

**72.11(7)** The manufacturer shall notify the director within seven days of notification to the manufacturer that an AECO has:

*a.* Issued a Certificate of Conformance for the model or series of wind tower lifts,

*b.* Refused to issue a Certificate of Conformance for the model or series of wind tower lifts, or

*c.* Determined that modifications to the wind tower lifts are necessary.

**72.11(8)** Wind tower lifts shall pass an inspection covering the following criteria:

*a.* Ascending speed, descending speed, and emergency descending speed will not exceed the manufacturer's recommendations.

*b.* Stop switch, interior lighting, cage entry door, door contact, operating controls, and remote operating controls will operate according to manufacturer's recommendations.

*c.* Interior floor and cage framework will appear to be structurally sound.

*d.* Enclosure signage recommended by the manufacturer will be in place.

*e.* Manufacturer's data plate will be visible.

*f.* Hoisting mechanism will appear to be structurally sound and intact from inside and outside the car.

*g.* Guide shoes will appear to be structurally sound and undamaged.

*h.* Suspended power cords and strain relief devices will reveal no visible damage.

*i.* Upper and lower normal and final limits will operate according to the manufacturer's recommendations.

*j.* Overspeed device will successfully pass a full-load test.

*k.* Overload device will successfully pass an overload test according to the manufacturer's recommendations.

*l.* Wire rope, safety rope, and guide rope will show no evidence of wear.

*m.* Guide rope attachments, suspension attachment beam, beam tower attachments, suspension rope attachment, suspension rope secondary attachment (if present), and guide wire rope attachments will show no evidence of wear or fatigue.

*n.* The wind tower lift will not drift when subjected to a static full load.

*o.* Maintenance logs, tags, and other necessary documentation will be available in sufficient detail to establish that maintenance is occurring pursuant to the manufacturer's schedule.

*p.* Guide rope tension device, safety rope tension device, and suspension rope tension device will pass a visual test for proper tension.

*q.* Power cord catch basket will pass a visual inspection.

*r.* Safety set distance, overspeed trip speed, overload limit setting, and maximum overload allowed will not exceed manufacturer's recommendations.

*s.* A communication device, if installed in the car, will be operable.

*t.* Any other items on the manufacturer's recommended inspection checklist will pass inspection.

**72.11(9)** The owner or owner's representative shall provide weights as needed to perform necessary tests during inspections.

**875—72.12(89A) Alterations, repairs, replacements and maintenance.**

**72.12(1)** *General.* Except as set forth in this rule, all maintenance, repairs, replacements, and alterations comply with the edition of ASME A17.1 currently adopted for new conveyances or ASME A17.7-2007/CSA B44-07, as applicable. "Alterations" in 875—Chapter 71 describes alterations that require that the entire conveyance be brought into compliance with the most current codes.

**72.12(2)** *Exemption for button renumbering.* All maintenance, repairs and alterations to devices covered by ANSI A117.1 comply with ANSI A117.1 (2017), except for requirement 407.4.7.1.2.

**72.12(3)** *Sump pump exemption.* The provisions of ASME A17.1 that require a pit sump or drain do not apply to an elevator alteration when all of the following criteria are met:

*a.* No other code or rule requires that the pit be excavated or lowered.

*b.* The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

*c.* There is evidence that groundwater has not entered the pit previously.

*d.* The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.

*e.* A description of alternative means to maintain the pit in a dry condition is provided to the director with the alteration permit application.

*f.* The director approves the alternative means to maintain the pit in a dry condition.

*g.* The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

**72.12(4)** *Pit excavation exemption.* For elevators altered before August 1, 2018, the full length of the platform guard set forth in ASME A17.1, Rule 2.15.9.2(a), will not be required if all of the following criteria are met:

*a.* No other code or rule requires that the pit be excavated or lowered.

*b.* The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

*c.* A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

*d.* The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

**72.12(5)** *Sprinkler retrofits and shunt trip breakers.* When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

*a.* The installation complies with the applicable version of ASME A17.1, Rule 2.8.3.3.

*b.* The elevator controls comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

*c.* The applicable version of ASME A17.1 is determined by reference to rule 875—72.1(89A). For purposes of this subrule, the relevant subrule of rule 875—72.1(89A) applies based on the date the sprinkler is installed instead of the date the conveyance was installed.

**72.12(6)** *Alterations of handicapped restricted use elevators.* A component of a handicapped restricted use elevator being altered will comply with the portions of ASME A17.1, section 5.3, applicable to the component. The edition of ASME A17.1 adopted by reference in rule 875—72.1(89A) will be applied.

**72.12(7)** *Hoistway lighting.* If the controller for an elevator is being replaced, permanent lighting shall be installed in the hoistway of the elevator. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting will be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

**875—72.13(89A) Power-operated special purpose elevators.** The provisions contained in ASME A17.1, section 5.7, are adopted by reference.

**875—72.14(89A) Inclined and vertical wheelchair lifts.** The provisions contained in ASME Safety Standard for Platform Lifts and Stairway Chairlifts A18.1, sections 1, 2, 3, 8, 9, and 10, are adopted by reference for all inclined and vertical wheelchair lifts.

**875—72.15(89A) Hand-powered elevators.** Hand-powered elevators shall not be installed after January 1, 1983.

**875—72.16(89A) Limited-use/limited-application elevators.** The provisions contained in ASME A17.1, section 5.2, are adopted by reference.

**875—72.17(89A) Rack and pinion, screw-column elevators.** The provisions contained in ASME A17.1, sections 4.1 and 4.2, are adopted by reference.

**875—72.18(89A) Inclined elevators.** The provisions contained in ASME A17.1, section 5.1, are adopted by reference.

**875—72.19(89A) Material lift elevators.** The provisions contained in ASME A17.1, Sections 7.4 through 7.7 and 7.9 through 7.11, are adopted by reference for material lift elevators installed on or after August 10, 2016.

**875—72.20(89A) Elevators used for construction.** The provisions contained in ASME A17.1, section 5.10, are adopted by reference only as they pertain to elevators utilizing permanent equipment in a permanent location.

**875—72.21(89A) Construction personnel hoists.** The provisions of ANSI A10.4-2007 are adopted by reference for construction personnel hoists as defined by ANSI A10.4-2007. Notwithstanding the ANSI definition, these conveyances may be used only temporarily during construction.

**875—72.22(89A) Alarm bell.** An automatic passenger elevator shall be provided with an alarm bell that is activated by a switch marked "ALARM" located in or adjacent to the car operating panel. The alarm bell shall be audible inside the car and outside the hoistway.

**875—72.23(89A) Child entrapment safeguards.** This rule applies to a passenger elevator unless it has a car door consisting of a solid panel.

**72.23(1)** For purposes of this rule, "distance with deflection between the doors or gates" means the distance between the closed car door or gate and the closed hoistway door or gate measured at the greatest perpendicular distance with deflection.

**72.23(2)** For purposes of this rule, measurements of door or gate deflection are made in the manner described by ASME A17.1, section 2.14.4.6.

**72.23(3)** Door or gate deflection shall not exceed .75 inch.

**72.23(4)** If the distance with deflection between the doors or gates exceeds 5 inches, a means shall be provided to disable the elevator if a person is in the space between the closed doors or gates.

**875—72.24(89A) Handicapped restricted use elevators.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Additionally, the elevators shall comply with the following limitations:

1. The elevator will be used only by a maximum of one disabled person and one attendant at a time. Where a disabled person cannot operate the elevator in a manner that will ensure access to all operating controls and safety features, an attendant will accompany the disabled person.
2. The elevator will be key-operated and will not be capable of being called by buttons or switches but may be called by a key operator.
3. Keys to operate the elevator will be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.
4. A list will be maintained at the location indicating the persons holding keys for the operation of the elevator.
5. Each landing and the elevator car will be posted to indicate that the elevator is only for the use of disabled persons.
6. The travel distance of the elevator will not exceed 50 feet.

**875—72.25(89A) Elevators in broadcast towers.** This rule applies to special purpose elevators located in broadcast towers.

**72.25(1)** *Anchorages.* Anchorages shall be attached inside the car and on the car top.

**72.25(2)** *Emergency stop switch.* An emergency stop switch compliant with ASME A17.1, sections 2.26.2.8 and 5.7.19, shall be installed on the car top.

These rules are intended to implement Iowa Code chapter 89A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8777C

# LABOR SERVICES DIVISION[875]

### Adopted and Filed

### Rulemaking related to conveyances installed prior to January 1, 1975

The Labor Services Division hereby rescinds Chapter 73, "Conveyances Installed Prior to January 1, 1975," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89A.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking adopts a new Chapter 73 that adopts standards for certain conveyances installed prior to January 1, 1975, provides criteria for their installation and inspection, and requires child entrapment safeguards.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8324C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 73 and adopt the following **new** chapter in lieu thereof:

CHAPTER 73
CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975

**875—73.1(89A) Scope, definitions, and schedule.**

**73.1(1)** This chapter establishes minimum safety standards for all conveyances installed prior to January 1, 1975, except material lift elevators. Conveyances installed on or after January 1, 1975, shall conform with the requirements set forth in 875—Chapter 72. Material lift elevators installed prior to January 1, 1975, are not subject to regulation pursuant to Iowa Code section 89A.2.

**73.1(2)** The definitions contained in American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, A17.1 (1971), are applicable as used in this chapter to the

extent that they do not conflict with the definitions contained in Iowa Code chapter 89A or 875—Chapter 71.

**73.1(3)** Except as noted in this rule, the American Society of Mechanical Engineers Safety Code for Existing Elevators and Escalators, A17.3 (2011), is adopted by reference with an enforcement date of May 1, 2021.

*a.* If a code provision that is more restrictive than A17.3 (2011) applied to a conveyance when the conveyance was installed, the more restrictive provision remains in effect.

*b.* A17.3 (2011) Part X applies to handicapped restricted use elevators without regard to the scope of provisions set forth in A17.3 (2011) Part X.

*c.* Provisions of A17.3 (2011) that require installation of a new controller to implement Phase 1 and Phase 2 fire service or car top operation are not adopted by reference and will not be enforced in Iowa.

*d.* A17.3 (2011), Rule 2.3.2, is intended to prevent the accumulation of sewer gas in an elevator pit and does not require the addition of a drain pipe in an existing pit. An air gap in an existing drain pipe is adequate compliance.

*e.* The following substitutes for the final sentence of A17.3 (2011), Rule 2.1.5(b): "Previously installed 60-inch chains are deemed to be in compliance."

*f.* An elevator that was legally installed with guide rails made of materials other than steel is not required to replace the guide rails due to the adoption of A17.3 (2011).

*g.* Electrical protective devices required by A17.3, requirement 3.10.4, shall cause the electric power to be removed from the elevator driving-machine motor and brake.

*h.* Control panels that are designed with a door or cover and lock shall be locked when service is not being performed if equipment unrelated to the elevator is in the machine room. Group 1 security as set forth in A17.1, section 8.1, shall be utilized.

*i.* A car top emergency exit pursuant to A17.3 (2011), requirement 3.4.4.1(a), is not required for a hydraulic elevator if the elevator has manual lowering and it is not equipped with a plunger gripper or safety as described in ASME A17.1 (2013), requirement 8.6.5.8.

**73.1(4)** The American Society of Mechanical Engineers Safety Code for Elevators and Escalators, A17.1-2013/CSA B44-13 (2013), Rule 2.14.7.1.4, concerning car top lighting and car top electrical outlets, is adopted by reference with an effective date of May 1, 2021. However, if a car top already has a single outlet, installation of a duplex outlet will not be required.

**875—73.2(89A) Electrical protective devices.** All electrical equipment pertaining to the elevator shall conform to ANSI C1-1975 (NFPA 70-1975).

**875—73.3(89A) Maintenance, repair and alteration requirements.**

**73.3(1)** *General.* Except as set forth in this rule, all maintenance, repairs and alterations comply with the edition of ASME A17.1, Part 8, currently adopted for new conveyances or ASME A17.7-2007/CSA B44-07, as applicable. Alterations that require that the entire conveyance be brought into compliance with the most current code are described in 875—Chapter 71.

**73.3(2)** *Exemption for button numbering.* All maintenance, repairs and alterations to devices covered by ANSI A117.1 comply with ANSI A117.1 (2017), except for requirement 407.4.7.1.2.

**73.3(3)** *Sump pump exemption.* The provisions of ASME A17.1 that require a pit sump or drain do not apply to an elevator alteration when all of the following criteria are met:

*a.* No other code or rule requires that the pit be excavated or lowered.

*b.* The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

*c.* There is evidence that groundwater has not entered the pit previously.

*d.* The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.

*e.* A description of alternative means to maintain the pit in a dry condition is provided to the director with the alteration permit application.

*f.* The director approves the alternative means to maintain the pit in a dry condition.

*g.* The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

**73.3(4)** *Pit excavation exemption.* The full length of the platform guard set forth in ASME A17.1, Rule 2.15.9.2(a), is not required if all of the following criteria are met:

*a.* No other code or rule requires that the pit be excavated or lowered.

*b.* The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

*c.* A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

*d.* The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

**73.3(5)** *Sprinkler retrofits and shunt trip breakers.* When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

*a.* For installations, the applicable version of ASME A17.1, Rule 2.8.3.3.

*b.* For elevator controls, the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

*c.* The applicable version of ASME A17.1 is determined by reference to rule 875—72.1(89A). For purposes of this subrule, the relevant subrule of rule 875—72.1(89A) applies based on the date the sprinkler is installed instead of the date the conveyance was installed.

**73.3(6)** *Safety bulkheads.* Documentation from the manufacturer establishing that a safety bulkhead was installed shall establish compliance with ASME A17.1, Rule 8.6.5.8.

**73.3(7)** *Alterations of handicapped restricted use elevators.* A component of a handicapped restricted use elevator being altered complies with the portions of ASME A17.1, section 5.3, applicable to the component. The edition of ASME A17.1 adopted by reference in rule 875—32.1(89A) is applied.

**73.3(8)** *Hoistway lighting.* If the controller for an elevator is being replaced, permanent lighting is installed in the hoistway of the elevator. Three-way switches to control the hoistway lighting are installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

**875—73.4(89A) Existing hand elevators.** A sign reading "Danger—Elevator Hoistway—Keep Closed" shall be mounted on each hoistway door with letters at least 2 inches high.

**875—73.5(89A) Dumbwaiters.** All dumbwaiters whether electric or hand powered conform to ANSI A17.1 (1971), section 700. Exceptions: Required rules for hoistway construction as set forth in ANSI A17.1 (1971), do not apply to existing installations.

**875—73.6(89A) Child entrapment safeguard requirements.** This rule applies to a passenger elevator unless it has a car door consisting of a solid panel.

**73.6(1)** For purposes of this rule, "distance with deflection between the doors or gates" means the distance between the closed car door or gate and the closed hoistway door or gate measured at the greatest perpendicular distance with deflection.

**73.6(2)** For purposes of this rule, measurements of door or gate deflection are made in the manner described by ASME A17.1, section 2.14.4.6.

**73.6(3)** Door or gate deflection do not exceed .75 inch.

**73.6(4)** If the distance with deflection between the doors or gates exceeds 5 inches, a means will be provided to disable the elevator if a person is in the space between the closed doors or gates.

**875—73.7(89A) Elevators in broadcast towers.** This rule applies to special purpose elevators located in broadcast towers.

**73.7(1)** *Anchorages.* Anchorages shall be attached inside the car and on the car top.

**73.7(2)** *Emergency stop switch.* An emergency stop switch compliant with ASME A17.1, sections 2.26.2.8 and 5.7.19, shall be installed on the car top.

**875—73.8(89A) Handicapped restricted use elevator requirements.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Additionally, the elevators will comply with the following limitations:

1. The elevator is used only by a maximum of one disabled person and one attendant at a time. Where a disabled individual cannot operate the elevator in a manner that will ensure access to all operating controls and safety features, an attendant accompanies the disabled individual.
2. The elevator is key-operated and not capable of being called by buttons or switches but may be called by a key operator.
3. Keys to operate the elevator are in the control of the disabled person, the attendant or persons in positions of responsibility at the location.
4. A list is maintained at the location indicating the persons holding keys for the operation of the elevator.
5. Each landing and the elevator car will be posted to indicate that the elevator is only for the use of disabled persons.
6. The travel distance of the elevator will not exceed 50 feet.

These rules are intended to implement Iowa Code chapter 89A.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8751C

# LABOR SERVICES DIVISION[875]

### Adopted and Filed

### Rulemaking related to community right to know hazardous chemicals

The Labor Services Division hereby rescinds Chapter 130, "Community Right to Know," and adopts a new Chapter 130, "Community Right to Know Hazardous Chemicals," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89B.12.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 130 that requires employers that store hazardous chemicals to provide information about those chemicals to certain interested persons in the community.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8272C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A comment requested that "trade secret" continue to be defined by a specific federal rule. However, there is not a compelling reason to define the term by another jurisdiction's law.

No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 130 and adopt the following **new** chapter in lieu thereof:

CHAPTER 130
COMMUNITY RIGHT TO KNOW HAZARDOUS CHEMICALS

**875—130.1(89B) Employer's duty.** Upon request, an employer has a duty to inform the public of the presence of hazardous chemicals in the community and the potential health and environmental hazards that the chemicals pose. Requests shall be made during normal office hours of the employer. The employer shall provide the information or reason for refusal within ten days. If the request is from a health professional, the information shall be provided immediately.

**875—130.2(89B) Records accessibility.**

**130.2(1)** Accessible records include safety data sheets. The employer shall also provide information concerning the quantity of each hazardous chemical stored or used. Quantity information may include the manner of purchase, such as in gallon containers, barrels, tankers, etc. Additionally, the employer shall provide information specifying the quantity as less than 500 pounds, between 500 pounds and 1,000 pounds, between 1,000 pounds and 5,000 pounds, or in excess of 5,000 pounds.

**130.2(2)** An employer is not required to make a copy of a safety data sheet if the interested person is given an opportunity to review and make notes regarding the safety data sheet. If an employer provides a copy of a safety data sheet at the request of the interested person, a reasonable fee can be charged for the actual cost of copying.

**875—130.3(89B) Application for exemption.** An employer shall make a written application to the commissioner setting forth the specific grounds for a claimed exemption. Upon receipt of an application, the commissioner will give the applicant notice and opportunity to be heard at a full evidentiary hearing before the commissioner.

**875—130.4(89B) Burden of proof and criteria.**

**130.4(1)** *Trade secrets.* The employer-applicant has the burden of proof in showing that the information claimed as exempted qualifies as a trade secret. The commissioner may take official notice that similar information of the employer-applicant has been deemed a trade secret and may summarily grant the exemption based on the official notice.

**130.4(2)** *Relevance of public health and safety/damage to employer.* The employer-applicant has the burden of proof in showing that the information is not relevant to public health and safety or that the release of the information would damage the employer. Notification in writing by the employer is not, in and of itself, sufficient to allow the employer to obtain the exemption.

**875—130.5(89B) Formal ruling.** The commissioner will issue a formal ruling upon application. The ruling will set forth findings of fact and conclusions of law and grant or deny the application. The ruling is the final agency action for purposes of Iowa Code chapter 17A.

**875—130.6(89B) Request for information.** An interested person may request information from an employer. If the request is denied by the employer, the requesting party may then file an application for information with the division. The application will set forth the information being requested and that the information was refused by the employer or that the employer denies access or that the employer alleges that no records were kept. The applicant shall state the interest in the information requested to be received.

**875—130.7(89B) Filing with division.** Upon receipt of application for information, the division will determine if the applicant has a legitimate interest, and if so, the division will make a written demand upon the employer to provide the requested information to the division. If the employer complies, the division will forward copies to the interested person. Requests for the information under rule 875—130.6(89B) will be kept confidential. The division shall not disclose the name of the interested person to any person.

**875—130.8(89B) Grounds for complaint against the employer.** The commissioner may cite the employer on a formal written complaint on any of the following grounds:

**130.8(1)** The division has not received a reply within 30 days of the request for information pursuant to rule 875—130.7(89B); or

**130.8(2)** The division finds on an occupational safety and health inspection that the employer's records materially distort the information given to the public or an emergency response department so as to pose a serious hazard to community health, environment, or emergency response personnel.

**875—130.9(89B) Investigation or inspection upon complaint.** Within 15 days of determining that there are grounds for a complaint, the commissioner shall either notify the employer in writing of the grounds for the complaint and request information or conduct an unannounced inspection of the employer's workplace at reasonable times and in a reasonable manner. Within 30 days of initiating an investigation or inspection, the division may find that the complaint is invalid and unfounded and so inform the interested person and the employer in writing.

**875—130.10(89B) Order to comply.**

**130.10(1)** If, after conducting an investigation or inspection of the employer's workplace, the commissioner finds that the complaint is meritorious, the commissioner shall issue an order to comply to the employer that shall set forth with specificity the employer's noncompliance with Iowa Code chapter 89B or these rules. The commissioner shall give the employer a period of 30 days to take remedial steps

for compliance. The commissioner may establish a shorter period of time if justification is provided in the order to comply.

**130.10(2)** An employer may request an administrative hearing on the order to comply at any time prior to the time set forth for compliance in the order to comply.

**130.10(3)** If the employer has not requested a hearing, the commissioner, after the time set forth for compliance with the order to comply, may reexamine records submitted by the employer or may reinspect the premises. If the employer has not taken the necessary remedial steps required by the order to comply, the commissioner, upon notice and administrative hearing, may issue a decision on the order to comply that is a final agency action pursuant to Iowa Code chapter 17A.

**130.10(4)** In the event that the employer fails to comply with a decision on the order to comply, the commissioner may commence an action in the Iowa district court for injunctive and other equitable relief that may be just and equitable.

These rules are intended to implement Iowa Code section 30.7 and chapter 89B.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8752C

# LABOR SERVICES DIVISION[875]

### Adopted and Filed

### Rulemaking related to public safety/emergency response right to know

The Labor Services Division hereby rescinds Chapter 140, "Public Safety/Emergency Response Right to Know," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 89B.17.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 140 that enhances the safety of fire departments by requiring certain employers to communicate information on their hazardous chemicals.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8273C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 140 and adopt the following **new** chapter in lieu thereof:

CHAPTER 140
PUBLIC SAFETY/EMERGENCY RESPONSE RIGHT TO KNOW

**875—140.1(89B) Employer waiver applications.**

**140.1(1)** An employer may, in writing, apply to the commissioner for a waiver for less stringent sign posting requirements.

**140.1(2)** The employer has the burden of proof to show that compliance imposes an undue hardship and that the less stringent sign posting requirements as proposed by the employer offer substantially the same degree of notice and protection to emergency responders as if Iowa Code section 89B.14 were strictly applied.

**875—140.2(89B) Agreement between an employer and fire department.**

**140.2(1)** In instances where the posting of a sign for each hazardous chemical would be ambiguous or repetitive or where space is limited by the physical characteristics of the structure, or in situations, such as in a building, structure, or location where a wide variety of materials may be stored having varying degrees of hazards, the identifying symbol shall indicate the most severe degree of hazard in each category except when a high hazard rating would be misleading because of the presence of an insignificant quantity of the material requiring the rating.

**140.2(2)** The employer and the local fire department may enter into a written agreement providing for the posting of signs for the most hazardous chemical in each principal category. The agreement is subject to the approval of the division pursuant to the procedure for a waiver. If the waiver is approved, the employer shall post in the same location as the required posted signs a sign stating: "Signs not posted for all hazardous chemicals" in block letters at least three inches in height.

**875—140.3(89B) Information submitted to local fire department.** The employer shall submit to the local fire department a list of hazardous chemicals that the employer's facility consistently generates,

uses, stores, or transports. The employer shall submit updated information as it becomes available to the employer.

**140.3(1)** This rule applies to any amount of a hazardous chemical that meets at least one of the following criteria:

*a.* Is a U.S. Department of Transportation Division 1.1, Division 1.2, or Division 1.3 explosive;

*b.* Is a U.S. Department of Transportation Division 2.3 toxic gas;

*c.* Is a U.S. Department of Transportation Division 6.1 toxic substance;

*d.* Is a U.S. Department of Transportation Division 4.3 material;

*e.* Is a U.S. Department of Transportation Radioactive Yellow III material;

*f.* Has a National Fire Protection Association (NFPA) 704-2022 health rating of greater than or equal to 3;

*g.* Has an NFPA 704-2022 flammability rating of 4; or

*h.* Has an NFPA 704-2022 reactivity rating of 4.

**140.3(2)** This rule applies to a hazardous chemical that is present in aggregate quantities of 25 gallons of liquid, 250 pounds of nonliquid, or 250 combined pounds of liquid and nonliquid and has:

*a.* An NFPA 704-2022 health rating of greater than or equal to 2;

*b.* An NFPA 704-2022 flammability rating of greater than or equal to 3; or

*c.* An NFPA 704-2022 reactivity rating of greater than or equal to 2.

**140.3(3)** In addition to a list of the hazardous chemicals, the employer shall provide the following:

*a.* The employer's name;

*b.* The name, phone number, and email address of the employer's contact person;

*c.* The employer's mailing address;

*d.* The address of the facility where hazardous chemicals are present;

*e.* The NFPA numerical hazard rating in health, flammability, and reactivity for each hazardous chemical;

*f.* Any information that constitutes a special hazard pursuant to NFPA 704-2022, Chapter 5, for each listed chemical; and

*g.* Any other special hazard information from the safety data sheets that may be relevant.

**140.3(4)** If requested by the fire department, the employer shall provide to the fire department the information listed in this subrule, unless the fire department tours the facility annually.

*a.* A diagram that shows the permanent location of each hazardous chemical within the employer's facility, as well as easily recognizable reference points such as doorways, stairs, and windows; and

*b.* A copy of the safety data sheets.

**875—140.4(89B) Procedure for noncompliance.** If an employer fails to comply with the requirements of this chapter, the fire chief in the jurisdiction of the employer may file a written complaint with the commissioner.

**875—140.5(89B) Notice of noncompliance.** The commissioner may rely on the information provided by the fire chief and immediately issue a notice of noncompliance to the employer.

**140.5(1)** Opportunity for hearing. The notice of noncompliance shall be sent by certified mail and set forth that the employer may have an opportunity to be heard upon demand by the employer. In the event the employer demands a hearing, the commissioner may conduct an investigation or an inspection.

**140.5(2)** In the event the employer does not demand a hearing within 30 days of the receipt of notice of noncompliance, the commissioner shall, without further notice, issue an order for compliance that is a final agency action pursuant to Iowa Code chapter 17A.

**140.5(3)** In the event the issue of noncompliance comes for hearing before the commissioner, the commissioner may, at the conclusion of the hearing, issue an order for compliance that is final agency action pursuant to Iowa Code chapter 17A or dismiss the complaint.

These rules are intended to implement Iowa Code section 30.7 and chapter 89B.

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**ARC 8753C**

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to employer requirements for non-English speaking employees**

The Labor Services Division hereby rescinds Chapter 160, "Employer Requirements Relating to Non-English Speaking Employees," and adopts a new Chapter 160, "Employer Requirements for Non-English Speaking Employees," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91E.5.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 160 that requires employers to give language assistance to certain non-English speaking employees so that the employees may understand the terms of employment, safety issues, and health issues.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8274C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. A comment asked that rule 875—160.1(91E) be retained to clarify what employers are covered. Another comment asked that original rule 875—160.8(91E), "inspections," also be retained.

Two changes from the Notice have been made. Rule 875—160.1(91E) is reinstated to explain that the rules "apply to employees employed on an hourly basis. These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100." The language relating to inspections has been retained in rule 875—160.6(91E).

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 160 and adopt the following **new** chapter in lieu thereof:

CHAPTER 160
EMPLOYER REQUIREMENTS FOR
NON-ENGLISH SPEAKING EMPLOYEES

**875—160.1(91E) Purpose and scope.** These rules apply to employees employed on an hourly basis. These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100.

**875—160.2(91E) Definitions.** The definitions in Iowa Code section 91E.1 are adopted with the following clarifications or additions:

*"Act"* means the non-English speaking employee services Act, Iowa Code chapter 91E.

*"Applicant"* means an employer, employee, or non-English speaking employee as those terms are defined in the Act.

*"Business day"* means those days an office is open and staffed with the person(s) capable of processing employees' requests for transportation provided in Iowa Code section 91E.3(2).

*"Director"* means the director of the department of inspections, appeals, and licensing or the director's designee.

*"Work site"* means a single physical location where business is conducted or where services or industrial operations are performed (e.g., a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office).

**875—160.3(91E) Knowledge of English.** An employee who can understand the following in English is not covered by these rules:

**160.3(1)** The hours of work.
**160.3(2)** The hourly wage.
**160.3(3)** All mandatory and elective benefits.
**160.3(4)** The job duties.
**160.3(5)** The safety and health risks of the job and appropriate methods of protection.
**160.3(6)** Information and training on hazardous chemicals in the employee's work area.
**160.3(7)** Safety signs and symbols that warn of potential dangers and hazards at the work site.
**160.3(8)** The purpose of forms used by the employer including:

*a.* Orientation,
*b.* Insurance,

*c.* Accidents at the work site, and

*d.* Other forms the employee is required to complete or answer.

**160.3(9)** The employer's requirement to provide an interpreter if more than 10 percent of the employer's employees speak the same non-English language.

**160.3(10)** Communication with a nurse or other medical personnel at the work site.

**875—160.4(91E) Community services referral agent requirements.**

**160.4(1)** *Referral agent available.* The employer provides to employees at each work site the name of the person who is designated as having the primary responsibility as the referral agent. The information shall be provided in the language of the non-English speaking employees.

**160.4(2)** *Referral agent's responsibilities.* The primary responsibility of the person employed as the employer's referral agent is to develop and maintain a list of contact persons and agencies, telephone numbers, and addresses of the community services provided in the work site's community. The referral agent assists non-English speaking employees in working with and through those services.

**875—160.5(91E) Exemptions.**

**160.5(1)** An applicant desiring an exemption may file a written application with the director that shall include:

*a.* The name, address and telephone number of the applicant;

*b.* The address or location of the work site affected;

*c.* A description of the operation or type of work site;

*d.* A listing of the section of the Act or rules to which the exemption would apply;

*e.* A representation of the impact of compliance on the part of the applicant;

*f.* A representation of why the exemption would be reasonable;

*g.* If the applicant is an employer, a description of how employees and non-English speaking employees have been informed of the application and their rights to petition the director for a hearing;

*h.* If the applicant is an employee or non-English speaking employee, a description of how the employer has been informed of the application and the employer's rights to petition the director for a hearing;

*i.* A request for a hearing if one is desired; and

*j.* Any other information the director may request.

**160.5(2)** At the time the application is received, the director shall promptly provide the applicant with a notice of receipt of application that shall be posted where notices are customarily posted for employees. If the applicant is an employee or non-English speaking employee, the employer shall post the notice when provided to the employer.

**160.5(3)** If the applicant is an employer, any affected employee or an affected non-English speaking employee may request a hearing. If the applicant is an employee or a non-English speaking employee, the affected employer may request a hearing. Any request for a hearing on the application is made by notifying the director within 14 calendar days of posting the notice.

**875—160.6(91E) Inspections.** This rule pertains to enforcement of the Act.

**160.6(1)** Inspections shall take place at the times and places directed by the commissioner.

**160.6(2)** Inspections may be conducted without prior notice.

**160.6(3)** The commissioner may interview persons at the work site and utilize other reasonable inspection techniques including but not limited to correspondence, telephone conversation, review of written materials, and physical inspection of the work site.

**160.6(4)** Unnecessary disruptions to the operations at the work site will be avoided.

**160.6(5)** In the event the commissioner is not permitted to fully conduct an inspection, an administrative warrant may be sought.

**875—160.7(91E) Enforcement and penalties.** If the director finds a violation subject to a civil penalty, the director will issue a notice of violation to the employer and propose a civil penalty that shall be sent to the employer by certified mail. The employer has 14 calendar days from receipt of the notice of

violation or proposed civil penalty to inform the director by mail of the intent to contest the notification or proposed penalty. After receipt of the employer's notification, the director will afford the employer the opportunity for a hearing.

These rules are intended to implement Iowa Code chapter 91E.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8747C

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to minimum wage scope and coverage**

The Labor Services Division hereby rescinds Chapter 215, "Minimum Wage Scope and Coverage," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 215 that primarily provides definitions and exceptions for subsequent wage chapters.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8267C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

Several comments asked why certain rules have been deleted from the original Chapter 215. They were deleted because they refer to exemptions and are therefore of no effect because Iowa Code chapter 91D adopted the federal exemptions as of January 1, 2007.

Iowa honors subminimum wage certificates issued by the U.S. Department of Labor. This was inadvertently deleted from the chapter. It is being replaced in subrule 215.3(4). No other changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 215 and adopt the following **new** chapter in lieu thereof:

*MINIMUM WAGE*

## CHAPTER 215
## MINIMUM WAGE SCOPE AND COVERAGE

**875—215.1(91D) Initial employment wage rate.**

**215.1(1)** The 90-calendar-day period set forth in Iowa Code section 91D.1(1)*"d"* is counted from the employee's initial day of work.

**215.1(2)** If the state minimum initial employment wage rate changes during the 90-calendar-day period, the employer shall pay the new effective rate.

**215.1(3)** If, after less than 90 calendar days from the initial day of work, the employee's employment is terminated and the employee is rehired by the same employer within three years of the initial hiring, the initial employment wage rate in effect at rehiring may be paid until the 90-calendar-day employment period is reached. If, after 90 calendar days from the initial day of work, the employee's employment is terminated and the employee is rehired in less than three years from the last date of employment, the employee shall not be employed at the initial employment wage rate.

**875—215.2(91D) Definitions.** As used in 875—Chapters 216 through 220:

*"Agriculture"* includes farming in all its branches and among other things includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities; the raising of livestock, bees, furbearing animals, or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

*"Commerce"* means trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof.

*"Director"* means the director of the department of inspections, appeals, and licensing or the director's designee.

*"Employee"* means any individual employed by an employer. In the case of an individual employed by a public agency, the term means any individual employed by the state, political subdivision of the state, or an interstate governmental agency, other than the individual:

1. Who is not subject to the civil service laws of the state, political subdivision, or agency that employs the individual; and
2. Who:

- Holds a public elective office of that state, political subdivision, or agency,
- Is selected by the holder of the office to be a member of the holder's personal staff,
- Is appointed by the officeholder to serve on a policy-making level,
- Is an immediate adviser to the officeholder with respect to the constitutional or legal powers of the office, or
- Is an employee in the legislative branch or legislative body of that state, political subdivision, or agency and is not employed by the legislative library of the state, political subdivision, or agency.

*"Employee"* does not mean:

1. For purposes of the definition of "person-day," any individual employed by an employer engaged in agriculture if the individual is the parent, spouse, child, or other member of the employer's immediate family.

2. Any individual who volunteers to perform services for a public agency that is the state, a political subdivision of the state, or an interstate government agency, if:

- The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
- The services are not the same type of services that the individual is employed to perform for the public agency.

However, an employee of a public agency that is the state, a political subdivision of the state, or an interstate governmental agency may volunteer to perform services for any other state, political subdivision, or interstate governmental agency, including a state, political subdivision or agency with which the employing state, political subdivision, or agency has a mutual aid agreement.

*"Employer"* includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of the labor organization.

*"Enterprise"* means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements. Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of the owner is considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of an enterprise.

*"Industry"* means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

*"Person"* means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

*"Person-day"* means any day during which an employee performs any agricultural labor for not less than one hour.

*"Produced"* means produced, manufactured, mined, handled, or in any other manner worked on in any state; and an employee is engaged in the production of goods if the employee is employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on the goods, or in any closely related process or occupation directly essential to the production thereof, in any state.

*"Public agency"* means the government of the state of Iowa, its various departments and agencies, and any political subdivision of the state.

*"Resale"* does not include the sale of goods to be used in residential or farm building construction, repair, or maintenance, provided that the sale is recognized as a bona fide retail sale in the industry.

*"Sale"* or *"sell"* includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

*"Tipped employee"* means any employee engaged in an occupation in which the employee customarily received more than $30 a month in tips.

*"Wage"* paid to any employee includes the reasonable cost, as determined by the director, to the employer of furnishing the employee with board, lodging, or other facilities. SOURCE: 29 U.S.C. 203.

**875—215.3(91D) Exceptions.** The rules contained in 875—Chapters 216 through 220 do not apply with respect to:

**215.3(1)** Any employee employed by an establishment that is an amusement or recreational establishment, organized camp, or religious or nonprofit education conference center, if:

*a.* It does not operate for more than seven months in any calendar year, or

*b.* During the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 percent of its average receipts for the other six months of the year, except that the exemption provided does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.

**215.3(2)** Any employee employed in agriculture:

*a.* If the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 person-days of agricultural labor;

*b.* If the employee is the parent, spouse, child, or other member of the employer's immediate family;

*c.* If the employee:

(1) Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

(2) Commutes daily from the employee's permanent residence to the farm on which the employee is employed, and

(3) Has been employed in agriculture less than 13 weeks during the preceding calendar year;

*d.* If the employee (other than an employee described in paragraph 215.3(2)*"c"*):

(1) Is 16 years of age or under, is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

(2) Is employed on the same farm as the employee's parent or person standing in the place of the employee's parent, and

(3) Is paid at the same piece rate as employees over age 16 are paid on the same farm; or

*e.* If the employee is principally engaged in the range production of livestock.

**215.3(3)** Any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.

**215.3(4)** Any employee to the extent that the employee is exempted by a certificate of the Secretary of Labor.

SOURCE: 29 U.S.C. 213.

**875—215.4(91D) Interpretative guidelines.** The rules contained in 875—Chapters 216 through 220 are based on the federal rules indicated at the end of each rule. The federal rules contained illustrative examples of the application of the rule. The examples are not adopted, but the commissioner will be guided in enforcement by the examples provided in the rules. The Secretary of Labor has adopted statements of general policy and interpretations not directly related to regulations at 29 CFR Parts 776, 779, 780, and 785. The commissioner will follow these statements and interpretations in the application and enforcement of Iowa Code chapter 91D.

These rules are intended to implement Iowa Code chapter 91D.

[Filed 12/5/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

**ARC 8748C**

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to records to be kept by employers**

The Labor Services Division hereby rescinds Chapter 216, "Records to be Kept by Employers," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 216 that details records that must be maintained by employers to prove compliance with wage law, doing so with 8 rules rather than 33.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8268C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A comment asked for original subrule 216.1(3) to be retained. The same commenter made a number of other comments, mostly wanting to retain deleted citations to federal law, but numerous citations to federal law are neither necessary nor consistent with the goals of Executive Order 10, so no changes have been made in response to these comments.

One change from the Notice has been made to add rule 875—216.9(91D) to retain the original language to clarify this chapter's relationship to other recordkeeping and reporting requirements.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 216 and adopt the following **new** chapter in lieu thereof:

CHAPTER 216
RECORDS TO BE KEPT BY EMPLOYERS

**875—216.1(91D) Employees subject to minimum wage.**

**216.1(1)** *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:

*a.* Name in full, as used for social security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

*b.* Home address, including ZIP code;

*c.* Basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis;

*d.* Hours worked each workday and total hours worked each workweek (for purposes of this rule, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays);

*e.* Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;

*f.* Date of payment and the pay period covered by payment.

**216.1(2)** Reserved.

SOURCE: 29 CFR 516.2.

**875—216.2(91D) Exempt employees.** With respect to each exempt employee, employers shall maintain and preserve records containing all the information and data required by subrule 216.1(1), except paragraphs 216.1(1)*"c"* and *"d,"* and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment, including fringe benefits and perquisites.

SOURCE: 29 CFR 516.3.

**875—216.3(91D) Posting of notices.** Every employer employing any employees subject to the minimum wage provisions of the Iowa minimum wage Act shall post and keep posted a notice explaining the Act, as prescribed by the director, in conspicuous places in every establishment where such employees are employed so as to permit them to readily observe a copy.

SOURCE: 29 CFR 516.4.

**875—216.4(91D) Records to be preserved three years.** Each employer shall preserve payroll records for at least three years from the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable rules.

SOURCE: 29 CFR 516.6.

**875—216.5(91D) Records to be preserved two years.**

**216.5(1)** *Supplementary basic records.* Each employer required to maintain records under this chapter shall preserve for a period of at least two years basic employment and earnings records. From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay-period basis (for example, units produced) when those amounts determine, in whole or in part, the pay-period earnings or wages of those employees.

**216.5(2)** *Records.* Records of additions to or deductions from wages paid include those records relating to individual employees referred to in paragraph 216.1(1)*"e."*

SOURCE: 29 CFR 516.6.

**875—216.6(91D) Tipped employees.**

**216.6(1)** With respect to each tipped employee whose wages are determined pursuant to the definition of "wage" in Iowa Code section 91D.1(1)*"c,"* the employer shall maintain and preserve payroll or other records containing all the information and data otherwise required and the following:

*a.* Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070);

*b.* Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of 40 percent of the applicable statutory minimum wage);

*c.* Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and

*d.* Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.

SOURCE: 29 CFR 516.28.

**216.6(2)** Federal special minimum wage certificates will be honored at the applicable Iowa minimum wage rate as applied to the certificate.

SOURCE: 29 CFR 516.30.

**875—216.7(91D) Industrial homeworkers.**

**216.7(1)** *Definitions.*

*"Industrial homework,"* as used in this rule, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in production.

*"Industrial homeworker"* or *"homeworker,"* as used in this rule, means any employee employed or suffered or permitted to perform industrial homework for an employer.

**216.7(2)** *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to every industrial homeworker employed:

*a.* Name in full, and on the same record, the employee's identifying symbol or number if used in place of name on any time, work, or payroll records. This shall be the same as that used for social security purposes.

*b.* House address, including ZIP code.

*c.* Date of birth, if under 19.

*d.* With respect to each lot of work:

(1) Piece rates paid,

(2) Hours worked on each lot of work turned in,

(3) Wages paid for each lot of work turned in, and

(4) Date of wage payment and pay period covered by payment.

*e.* With respect to each week:

(1) Hours worked each week,

(2) Wages earned for each week at regular piece rates,

(3) Extra pay due each week for overtime worked, and
(4) Total wages earned each week.

SOURCE: 29 CFR 516.31.

**875—216.8(91D) Employees in agriculture.** No records need to be maintained by an employer who did not use more than 500 days of agricultural labor in any quarter of the preceding calendar year unless it can be reasonably anticipated that more than 500 days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500-day test includes the work of agricultural workers supplied by crew leaders, or farm labor contractors, if the farmer is an employer of the workers, or a joint employer of the workers with the crew leader or farm labor contractor. However, members of the employer's immediate family are not included. A "day" is any day during which an employee does agricultural work for one hour or more.

SOURCE: 29 CFR 516.33.

**875—216.9(91D) Relationship to other recordkeeping and reporting requirements.** Nothing in this chapter shall excuse any party from complying with any recordkeeping or reporting requirement imposed by any other federal, state, or local law, ordinance, regulation or rule.

These rules are intended to implement Iowa Code chapter 91D.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8749C

# LABOR SERVICES DIVISION[875]

### Adopted and Filed

### Rulemaking related to wages

The Labor Services Division hereby rescinds Chapter 217, "Wage Payments," and adopts a new Chapter 217, "Wages," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 217 that details tip income, kickbacks, and reasonable cost for purposes of minimum wage determination. This rulemaking removes 22 rules from the prior chapter.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8269C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

Numerous comments asked for the rationale for deleting rules that are similar to federal rules. Iowa is not required to systematically mirror federal recordkeeping rules, and the Division believes Chapter 217 contains sufficient recordkeeping requirements without them.

A comment requested that the chapter make it clear that anything not covered is addressed in applicable federal law and regulations.

One change from the Notice has been made to include the following language in rule 875—217.1(91D): "Nothing in this chapter shall excuse any party from complying with any requirement imposed by any other federal, state, or local law, ordinance, regulation, or rule."

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 217 and adopt the following **new** chapter in lieu thereof:

CHAPTER 217
WAGES

**875—217.1(91D) Purpose and scope.** This chapter addresses the definition of wages. Wages include the reasonable cost, as determined by the director, to an employer of furnishing any employee with board, lodging, or other facilities. Nothing in this chapter shall excuse any party from complying with any requirement imposed by any other federal, state, or local law, ordinance, regulation, or rule.

**875—217.2(91D) Reasonable cost.**

**217.2(1)** Reasonable cost is determined to be not more than the actual cost to the employer of the board, lodging, or other facilities furnished by the employer to the employees.

**217.2(2)** The cost of furnishing facilities found by the director to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not be included in computing wages.

**217.2(3)** The following is a list of facilities found by the director to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive:

*a.* Tools of the trade and other materials and services incidental to carrying on the employer's business.

*b.* The cost of any construction by and for the employer.

*c.* The cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

SOURCE: 29 CFR 531.3.

**875—217.3(91D) Free and clear payment; kickbacks.** Whether in cash or in facilities, wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or free and clear. The wage requirements will not be met where the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the kickback is made in cash or in other than cash.

SOURCE: 29 CFR 531.35.

**875—217.4(91D) General characteristics of tips.** A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. The payment is to be distinguished from payment of a charge, if any, made for the service. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to that employee, which the employee may freely use absent of any control by the employer, may be counted in determining whether the employee is a tipped employee and in applying the provisions that govern wage credits for tips.

SOURCE: 29 CFR 531.52.

**875—217.5(91D) Payments that constitute tips.** In addition to cash sums presented by customers that an employee keeps, tips received by an employee include amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of this chapter.

SOURCE: 29 CFR 531.53.

**875—217.6(91D) Tip pooling.** Where employees practice tip splitting, as where food servers give a portion of their tips to the bussers, both the amounts retained by the food servers and those given the bussers are considered tips of the individuals who retain them. Similarly, where an accounting is made to an employer for information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each employee as the individual's own are counted as the employee's tips.

SOURCE: 29 CFR 531.54.

**875—217.7(91D) Dual jobs.** When an employee is employed in two occupations, no tip credit can be taken for hours of employment in the occupation for which the employee does not meet the tip qualification.

SOURCE: 29 CFR 531.56.

These rules are intended to implement Iowa Code chapter 91D.

[Filed 12/5/24, effective 2/12/25]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

# ARC 8750C

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to employees employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesperson**

The Labor Services Division hereby rescinds Chapter 218, "Employees Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesperson," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 rescinds Chapter 218, which was a State recapitulation of federal rules on exemptions from the Fair Labor Standards Act at the time it was implemented. Since that time, Iowa Code chapter 91D has adopted federal exemptions, making this chapter of no effect. Accordingly, this chapter is being rescinded without repromulgation.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8275C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A comment objected to the rescission of Chapter 218 absent a provision stating that federal rules apply. However, it is beyond the power and scope of this chapter to say what laws of other jurisdictions may apply to any given employer.

No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **875—Chapter 218**.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8754C

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

**Rulemaking related to domestic service**

The Labor Services Division hereby rescinds Chapter 219, "Application of the Fair Labor Standards Act to Domestic Service," and adopts a new Chapter 219, "Domestic Service," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 219 that details wage obligations owed to domestic service employees in a way that is more than 500 words shorter than the original Chapter 219.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8270C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

One comment asked for the calculation of meal and lodging credits to be retained to be consistent with specified federal regulations.

Another comment asked that original rule 875—219.110(91D) be retained because it is similar to a federal requirement. However, it is not necessary for state regulations to extensively repeat federal requirements, so no change has been made based on this comment.

One change from the Notice has been made to add specific federal citations to meal and lodging credits in subrules 219.6(2) and 219.6(3).

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 219 and adopt the following **new** chapter in lieu thereof:

CHAPTER 219
DOMESTIC SERVICE

**875—219.1(91D) Purpose and scope.**

**219.1(1)** Employees employed on a casual basis in domestic service employment to provide babysitting services and domestic service employees employed to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves are exempt from minimum wage.

**219.1(2)** The minimum wage protection applies to employees employed as domestic service employees under either of the following circumstances:

*a.* If the employee's compensation for services from the employer would constitute wages, that is, if the compensation during a calendar year totaled $100 or more, or

*b.* If the employee was employed in such domestic service work by one or more employers for more than eight hours in the aggregate in any workweek.

SOURCE: 29 CFR 552.2.

**875—219.2(91D) Domestic service employment.** Domestic service employment refers to services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom the employee is employed.

SOURCE: 29 CFR 552.3.

**875—219.3(91D) Babysitting services.** As an exemption, the term "babysitting services" means the custodial care and protection, during any part of the 24-hour day, of infants or children in or about the private home in which the infants or young children reside. The term "babysitting services" does not include services relating to the care and protection of infants or children that are performed by trained personnel, as registered, vocational, or practical nurses. While trained personnel do not qualify as babysitters, this fact does not remove them from the category of a covered domestic service employee when employed in or about a private household.
SOURCE: 29 CFR 552.4.

**875—219.4(91D) Casual basis.** "Casual basis," when applied to babysitting services, means employment that is irregular or intermittent and that is not performed by an individual whose vocation is babysitting. Casual babysitting services may include the performance of some household work not related to caring for the children, provided that the work is incidental (i.e., does not exceed 20 percent of the total hours worked on the particular babysitting assignment).
SOURCE: 29 CFR 552.5.

**875—219.5(91D) Companionship services for the aged or infirm.** "Companionship services" means those services that provide fellowship, care, and protection for persons who, because of advanced age or physical or mental infirmity, cannot care for their own needs. The services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that such work is incidental (i.e., does not exceed 20 percent of the total weekly hours worked). The term "companionship services" does not include services relating to the care and protection of the aged or infirm that require and are performed by trained personnel, as a registered or practical nurse. While trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.
SOURCE: 29 CFR 552.6.

**875—219.6(91D) Application of minimum wage provisions.**

**219.6(1)** Employers may take appropriate credit for the reasonable cost or fair value of food, lodging and other facilities customarily furnished to the employee by the employer such as drugs, cosmetics, dry cleaning, etc. Credit may be taken for the reasonable cost or fair value of these facilities only when the employee's acceptance of them is voluntary and uncoerced. Where uniforms are required by the employer, the cost of the uniforms and their care may not be included in the credit.

**219.6(2)** The department will accept meal credit taken by the employer consistent with 29 CFR §552.100(c) (2024).

**219.6(3)** The department will accept lodging credit taken by the employer consistent with 29 CFR §552.100(d) (2024).
SOURCE: 29 CFR 552.100.

**875—219.7(91D) Domestic service employment.** In determining the total hours worked, the employer must include all time the employee is required to be on the premises or on duty and all time the employee is suffered or permitted to work.
SOURCE: 29 CFR 552.101.

**875—219.8(91D) Live-in domestic service employees.** Domestic service employees who reside in the household where they are employed are entitled to the same minimum wage as domestic service employees who work by the day. In determining the number of hours worked by a live-in worker, the employee and the employer may exclude, by agreement between themselves, the amount of sleeping time, mealtime and other periods of complete freedom from all duties when the employee may either leave the premises or stay on the premises for purely personal pursuits. For periods of free time (other than those relating to meals and sleeping) to be excluded from hours worked, the periods must be of sufficient duration to enable the employee to make effective use of the time. If the sleeping time, meal

periods or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked.

**875—219.9(91D) Babysitting services in general.** Babysitting is a form of domestic service, and babysitters other than those working on a casual basis are entitled to the same benefits as other domestic service employees.
SOURCE: 29 CFR 552.103.

**875—219.10(91D) Babysitting services performed on a casual basis.**

**219.10(1)** Employees performing babysitting services on a casual basis are excluded from the minimum wage provisions.

**219.10(2)** Employment in babysitting services would usually be on a casual basis, whether performed for one or more employers, if the employment by all employers does not exceed 20 hours per week in the aggregate. Employment in excess of these hours may still be on a casual basis if the excessive hours of employment are without regularity or are for irregular or intermittent periods. Employment in babysitting services is on a casual basis (regardless of the number of weekly hours worked by the babysitter) in the case of individuals whose vocations are not domestic service who accompany families for a vacation period to take care of the children if the duration of employment does not exceed six weeks.

**219.10(3)** If the individual performing babysitting services on a casual basis devotes more than 20 percent of the individual's time to household work during a babysitting assignment, the exemption for "babysitting services on a casual basis" does not apply during that assignment and the individual must be paid in accordance with the minimum wage requirement. This does not affect the application of the exemption for previous or subsequent babysitting assignments where the 20 percent tolerance is not exceeded.

**219.10(4)** Individuals who engage in babysitting as a full-time occupation are not employed on a casual basis.
SOURCE: 29 CFR 552.104.

**875—219.11(91D) Individuals performing babysitting services in their own homes.**

**219.11(1)** The coverage of domestic service employees is limited to those persons who perform such services in or about the private household of the employer.

**219.11(2)** An individual in a local neighborhood who takes four or five children into the individual's home, which is operated as a day care home, and who does not have more than one employee or whose only employees are members of that individual's immediate family is not covered by Iowa Code chapter 91D.
SOURCE: 29 CFR 552.105.

**875—219.12(91D) Companionship services for the aged or infirm.** Persons who provide care and protection for babies and young children, who are not physically or mentally infirm, are considered babysitters, not companions. The companion must perform the services with respect to the aged or infirm persons and not generally to other persons. The casual limitation does not apply to companion services.
SOURCE: 29 CFR 552.106.

**875—219.13(91D) Yard maintenance workers.** Persons who mow lawns and perform other yard work in a neighborhood community generally provide their own equipment, set their own work schedule and occasionally hire other individuals. These persons will be recognized as independent contractors who are not covered by Iowa Code section 91D.1 as domestic service employees.
SOURCE: 29 CFR 552.107.

**875—219.14(91D) Third-party employment.**

**219.14(1)** Employees who are engaged in providing companionship services and who are employed by an employer or agency other than the family or household using their services are exempt

from the minimum wage requirement. Assigning an employee to more than one household or family in the same workweek would not defeat the exemption for that workweek, provided that the services rendered during each assignment come within the definition of companionship services.

**219.14(2)** Employees who are engaged in providing babysitting services and who are employed by an employer or agency other than the family or household using their services are not employed on a casual basis for purposes of the exemption. The employees are engaged in this occupation as a vocation.

SOURCE: 29 CFR 552.109.

These rules are intended to implement Iowa Code chapter 91D.

[Filed 12/5/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8755C

# LABOR SERVICES DIVISION[875]

### Adopted and Filed

### Rulemaking related to employees of state and local governments

The Labor Services Division hereby rescinds Chapter 220, "Application of the Fair Labor Standards Act to Employees of State and Local Governments," and adopts a new Chapter 220, "Employees of State and Local Governments," Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Executive Order 10.

*Purpose and Summary*

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 220 that requires certain wage practices for government employees and describes exemptions, including volunteers.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8271C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

A comment requested that Chapter 220 retain original subrule 220.27(4) in defining "regular rate" by a federal rule. However, the Division does not believe that "regular rate" is unduly confusing and the federal definition in 29 CFR 778.108 is not helpful.

A comment asked why the description of compensable hours in original 220.221(2) was deleted.

A change from the Notice has been made to reinstate the chapter's original description of "compensable hours" in subrule 220.16(1).

*Adoption of Rulemaking*

This rulemaking was adopted by the Division on December 4, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 220 and adopt the following **new** chapter in lieu thereof:

CHAPTER 220
EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

**875—220.1(91D) Definition.**

*"Public agency"* means the state of Iowa or political subdivision of the state.

**875—220.2(91D) Exclusion for elected officials and their appointees.**

**220.2(1)** Elected officials are excluded from minimum wage. Also excluded under this provision are personal staff members and officials in policymaking positions who are selected or appointed by the elected public officials and certain advisers to such officials.

**220.2(2)** The statutory term "member of personal staff" generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with the official.

**220.2(3)** In order to qualify as personal staff members or officials in policymaking positions, the individuals in question must not be subject to the civil service laws of their employing agencies. The term "civil service laws" refers to a personnel system established by law that is designed to protect employees from arbitrary action, personal favoritism, and political coercion, and that uses a competitive or merit examination process for selection and placement. Continued tenure of employment of employees under civil service, except for cause, is provided. In addition, personal staff members must be appointed by, and serve solely at the pleasure or discretion of, the elected official.

**220.2(4)** The exclusion for "immediate adviser" to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

SOURCE: 29 CFR 553.11.

**875—220.3(91D) Exclusion for employees of legislative branches.**

**220.3(1)** Individuals who are not subject to the civil service laws of their employing agencies and are employed by legislative branches or bodies of the state and its political subdivisions are excluded from minimum wage.

**220.3(2)** Employees of the state or local legislative libraries do not come within this statutory exclusion. Also, employees of school boards, other than elected officials and their appointees, do not come within this exclusion.

SOURCE: 29 CFR 553.12.

**875—220.4(91D) Introduction.** A public agency that is the state or a political subdivision of the state is authorized to provide compensatory time off in lieu of monetary overtime compensation.

SOURCE: 29 CFR 553.20.

**875—220.5(91D) Compensatory time and compensatory time off.** The terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

SOURCE: 29 CFR 553.21.

**875—220.6(91D) Payments for unused compensatory time.**

**220.6(1)** Payments for accrued compensatory time may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

**220.6(2)** Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation not less than:

*a.* The average regular rate received by the employee during the last three years of the employee's employment, or

*b.* The final regular rate received by the employee, whichever is higher.

**220.6(3)** The phrase "last three years of employment" means the three-year period immediately prior to termination. Where an employee's last three years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. However, a break in service must have been intended to be permanent and any accrued compensatory time must have been cashed out at the time of initial separation. Where the final period of employment is less than three years, the average rate still must be calculated based on the rate(s) in effect during the period.

SOURCE: 29 CFR 553.27.

**875—220.7(91D) Other compensatory time.**

**220.7(1)** Compensatory time that is earned and accrued by an employee for employment in excess of a nonstatutory requirement is considered "other" compensatory time. The term "other" compensatory time off means hours during which an employee is not working and that are not counted as hours worked during the period when used.

**220.7(2)** The rate at which "other" compensatory time is earned is not required to be at a rate of one and one-half hours for each hour of employment. The rate at which "other" compensatory time is earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

SOURCE: 29 CFR 553.28.

OTHER EXEMPTIONS

**875—220.8(91D) Substitution.**

**220.8(1)** Individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. Where one employee substitutes for another, each employee will be credited as if the employee had worked the normal work schedule for that shift.

**220.8(2)** An employee's decision to substitute will be considered to have been made at the employee's sole option when it has been made:

*a.* Without fear of reprisal or promise of reward by the employer, and

*b.* Exclusively for the employee's own convenience.

SOURCE: 29 CFR 553.31.

RECORDKEEPING

**875—220.9(91D) Records to be kept of compensatory time.** For each employee subject to the compensatory time and compensatory time off provisions of the federal Fair Labor Standards Act, 29 U.S.C. 207(o) as amended to January 1, 2007, a public agency shall maintain and preserve the following records:

**220.9(1)** The number of hours of compensatory time earned each work period, by each employee at the rate of one and one-half hour for each overtime hour worked;

**220.9(2)** The number of hours of compensatory time used each workweek, or other applicable work period, by each employee;

**220.9(3)** The number of hours of compensatory time compensated in cash, the total amount paid and the date of payment; and

**220.9(4)** Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off.

SOURCE: 29 CFR 553.50.

VOLUNTEERS

**875—220.10(91D) General.** Individuals performing volunteer services for units of the state and local governments will not be regarded as "employees."

SOURCE: 29 CFR 553.100.

**875—220.11(91D) Volunteer defined.**

**220.11(1)** An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered, is considered to be a volunteer.

**220.11(2)** Individuals are considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

**220.11(3)** An individual is not to be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

SOURCE: 29 CFR 553.101.

**875—220.12(91D) Employment by the same public agency.** An individual may not perform hours of volunteer service for a public agency when the hours involve the same type of services that the individual is employed to perform for the same public agency.

SOURCE: 29 CFR 553.102.

**875—220.13(91D) Same type of services defined.** The duties and all the facts and circumstances in a particular case will be considered in determining whether the volunteer activities constitute the "same type of services" as the employment activities.

SOURCE: 29 CFR 553.103.

**875—220.14(91D) Private individuals who volunteer services to public agencies.** Individuals who are not employed in any capacity by state or local government agencies are considered volunteers and not employees of such public agencies if the individual's hours of service are provided with no promise, expectation, or receipt of compensation for the services rendered.

SOURCE: 29 CFR 553.104.

**875—220.15(91D) Payment of expenses, benefits, or fees.**

**220.15(1)** Individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services; for example, payment for the cost of meals and transportation expenses.

**220.15(2)** Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them to perform efficiently the services they provide or will provide as volunteers. Likewise, the volunteer status of individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

**220.15(3)** Individuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plans or length of service awards, commonly or traditionally provided to volunteers of government agencies.

**220.15(4)** Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and shall not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal:

*a.* The distance traveled and the time and effort expended by the volunteer;

*b.* Whether the volunteer has agreed to be available around the clock or only during certain specified time periods; and

*c.* Whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

**220.15(5)** Whether the furnishing of expenses, benefits, or fees would result in individuals losing their status as volunteers can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.

SOURCE: 29 CFR 553.106.

FIRE PROTECTION AND LAW ENFORCEMENT
EMPLOYEES OF PUBLIC AGENCIES

**875—220.16(91D) Compensable hours of work.**

**220.16(1)** Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. The time includes all preshift and postshift activities that are an integral part of the employee's principal activity or that are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and reracking fire hoses.

**220.16(2)** Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work.

**220.16(3)** Normal home-to-work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

**220.16(4)** A police officer, who has completed the tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time, even where the radio must be left on so that the officer can respond to emergency calls.

SOURCE: 29 CFR 553.221.

**875—220.17(91D) Sleep time.**

**220.17(1)** Sleep time cannot be excluded from the compensable hours of work where:

*a.* The employee is on a tour of duty of less than 24 hours, and

*b.* Where the employee is on a tour of duty of exactly 24 hours.

**220.17(2)** Sleep time can be excluded from compensable hours of work in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude the time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least five hours), the entire time must be counted as hours of work.

SOURCE: 29 CFR 553.222.

**875—220.18(91D) Early relief.** It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. This practice will not have the effect of increasing the number of compensable hours of work where it is voluntary on the part of the employees. If the practice is required by the employer, the time involved must be treated as compensable hours of work.

SOURCE: 29 CFR 553.225.

**875—220.19(91D) Training time.**

**220.19(1)** While time spent in attending training required by an employer is normally considered compensable hours of work, the following are situations where time spent by employees of governments in required training is considered to be noncompensable.

*a.* Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

*b.* Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

**220.19(2)** Police officers or firefighters who are in attendance at a police or fire academy or other training facility are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits.

SOURCE: 29 CFR 553.226.

These rules are intended to implement Iowa Code chapter 91D.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8756C

# PUBLIC HEALTH DEPARTMENT[641]

### Adopted and Filed

### Rulemaking related to smokefree air

The Department of Health and Human Services hereby rescinds Chapter 153, "Smokefree Air," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code chapter 142D.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 142D.

*Purpose and Summary*

This chapter defines procedure in implementing Iowa's Smokefree Air Act. This includes the duty of employers, owners, or other persons having control of an area where smoking is prohibited to inform employees and persons accessing the site of that prohibition through proper signage. The rules also describe the procedure for receiving complaints and implementing enforcement actions against persons who fail to comply with provisions of the Act. Enforcement action may be taken against a person who smokes in an area where smoking is prohibited or a person who owns, operates, manages, or otherwise has custody or control of a place where smoking is prohibited and fails to properly prohibit smoking.

This chapter describes procedure to support the requirements for signage, complaints, and enforcement detailed in the Iowa Code. This chapter does not create additional, substantive requirements to be complied with.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7366C**. A public hearing was held on the following date(s):

- February 14, 2024

An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on September 18, 2024, as **ARC 8215C**. No one attended the public hearing. No public comments were received. No changes from the Amended Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on November 22, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on July 1, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 641—Chapter 153 and adopt the following **new** chapter in lieu thereof:

CHAPTER 153
SMOKEFREE AIR

**641—153.1(142D) Definitions.** For the purposes of this chapter, definitions found in Iowa Code section 142D.2 and the following definitions apply:

*"Ashtray"* means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs. However, "ashtray" shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter of school grounds, or the perimeter of any other outdoor space subject to the prohibition in Iowa Code chapter 142D.

*"Entrance"* means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. "Entrance" also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.

*"Grounds of any public building"* means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of an area that is exempt from the prohibitions of Iowa Code chapter 142D from declaring the entire area or property a nonsmoking place.

*"Public building"* means an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

*"Solid wall"* means any physical barrier, whether temporary or permanent, covering more than 75 percent of the combined surface area of the vertical planes constituting the perimeter of the area. Solid walls also include the floor and ceiling of the enclosed area.

**641—153.2(142D) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D or outdoor areas where smoking is prohibited.**

**153.2(1)** The employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall:

*a.* Not permit smoking in a public place, place of employment, outdoor area where smoking is prohibited, or area declared nonsmoking pursuant to Iowa Code chapter 142D.

*b.* Inform all current employees and all prospective employees upon application for employment of the prohibitions of Iowa Code chapter 142D.

*c.* Not retaliate against any employee, applicant for employment, or customer who exercises any rights, registers a complaint, or attempts to prosecute a violation pursuant to Iowa Code chapter 142D.

*d.* Post signs in and at every entrance to the public place, place of employment, area declared nonsmoking, and outdoor area where smoking is prohibited that inform persons that they are entering a "no smoking" facility or area.

(1) The signs shall be clear and conspicuous in or at the entrance where posted.

(2) The signs shall be at least 24 square inches in size (for example, 4 inches by 6 inches) and shall be in legible font type.

(3) The signs shall contain the words "No Smoking" or the international "no smoking" symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department website, hhs.iowa.gov/smokefreeair.

*e.* Place "no smoking" signs in every vehicle that constitutes a public place, place of employment, or area declared nonsmoking pursuant to Iowa Code section 142D.5.

(1) Such signs shall be clear and conspicuous from the exterior of the vehicle.

(2) The signs shall be at least 9 square inches (for example, 3 inches by 3 inches) and shall be in legible font type.

(3) The signs shall contain the words "No Smoking" or the international "no smoking" symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department's website, hhs.iowa.gov/smokefreeair.

(4) Nothing in this rule requires the placement of a sign in any vehicle that the director of the department of administrative services or the director of transportation orders to receive a regular registration plate pursuant to Iowa Code section 321.19.

*f.* Remove all ashtrays from areas where smoking is prohibited.

**153.2(2)** The owner or operator of a building or facility that contains more than one public place, place of employment, or area declared nonsmoking pursuant to Iowa Code chapter 142D that is controlled by other employers, owners, or operators shall comply with the provisions of these rules for the area of the building or facility under the owner's or operator's control.

**153.2(3)** An employer, owner, or operator of a public place, place of employment or area declared nonsmoking pursuant to Iowa Code chapter 142D that is within a public place that is owned or operated by another person shall comply with the provisions of these rules for the area under the control of the employer, owner, or operator within that public place.

**153.2(4)** An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the smokefree air Act and shall request that the individual stop smoking immediately.

*a.* If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may discontinue service to that individual.

*b.* If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.

*c.* If the individual refuses to leave the area where smoking is prohibited, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

**641—153.3(142D) Leases.** Any lease entered into by the state or its political subdivisions shall require that all areas where smoking is prohibited pursuant to Iowa Code chapter 142D comply with the provisions of these rules and Iowa Code chapter 142D.

**641—153.4(142D) Complaints and enforcement.**

**153.4(1)** *Duties of department.* The department will maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of Iowa Code chapter 142D.

*a.* The department may designate one or more public agencies through a 28E agreement or other written contract to assist with enforcement.

*b.* The department may refer complaints regarding a violation to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

**153.4(2)** *Enforcement against a person who smokes in an area where smoking is prohibited.* Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3) for each violation.

**153.4(3)** *Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited.* Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay the applicable civil penalty pursuant to Iowa Code chapter 142D.

**153.4(4)** *Manner of filing a complaint.* Any person may register a complaint with the department by calling the toll-free number, 1.888.944.2247, or on the department's website, hhs.iowa.gov/smokefreeair.

**153.4(5)** *Contents of the complaint.* A complaint filed with the department shall include:

*a.* The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to Iowa Code chapter 142D, or outdoor area where smoking is prohibited that is the subject of the complaint;

*b.* A description of the occurrence that prompted the complaint; and

*c.* Any other information relevant to the occurrence.

**153.4(6)** *Review of complaint by department.* Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

**153.4(7)** *Information from inspections.* Information received by the department of one or more violations of Iowa Code chapter 142D as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

**153.4(8)** *Notice of potential violation.* If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D, or outdoor areas where smoking is prohibited is credible:

*a.* For the first complaint, the department shall:

(1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.

(2) Include in the notice educational materials about how to comply with Iowa Code chapter 142D, and information on whom to contact for further information and assistance for compliance.

*b.* For the second and subsequent complaints within one year, the department:

(1) Shall issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.

(2) May authorize one or more public agencies to conduct a compliance check of the location.

(3) May pursue any remedy authorized by Iowa Code chapter 142D, including the enforcement of civil penalties.

**641—153.5(142D) Limitation of rules.** Nothing in these rules is intended to limit any other state administrative rule or federal regulation that prohibits smoking.

These rules are intended to implement Iowa Code chapter 142D.

[Filed 12/9/24, effective 7/1/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

# ARC 8778C

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

**Rulemaking related to public records and fair information practices**

The Transportation Department hereby rescinds Chapter 4, "Public Records and Fair Information Practices," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 8A.615, 22.3, 22.11, 307.12(1)"j" and 321.11.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 22, 553 and 692; sections 8A.615, 17A.2, 21.5, 72.3, 80G.2, 80G.3, 313.10, 321.11, 321.11A, 321.19, 321.186, 321.189A, 321.266, 321.271, 422.20, 452A.63, 622.10, 622.11, 804.29 and 808.13; 5 U.S.C. §552 and 552a; 18 U.S.C. §2721 et. seq.; and 42 U.S.C. §405.

*Purpose and Summary*

This rulemaking repromulgates Chapter 4 in compliance with Executive Order 10. Chapter 4 facilitates broad public access to open records and sound determinations with respect to the handling of confidential records.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8261C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any

individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

**761—4.1(8A,22) General provisions.**

**4.1(1)** *Purpose and scope.* It is the policy of the department that free and open examination of public records is generally in the public interest. The purpose of this chapter is to facilitate broad public access to open records and sound determinations with respect to the handling of confidential records. This chapter:

*a.* Describes the provisions governing public access to records that are owned by or in the physical possession of the department. However, access to personnel and payroll records may also be subject to the rules of the department of administrative services.

*b.* Does not affect the policy of the department to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

*c.* Does not make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of these records to the public or to any individual or party to such litigation or proceedings is governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.

**4.1(2)** *Custodian.* The custodian of a record is the person who heads the departmental office responsible for that record. The department's electronic Records Management Manual identifies the offices that are responsible for particular records.

*a.* As used in this chapter, the term "custodian" includes the custodian's superiors and the custodian's designees.

*b.* A custodian's designee may include but is not limited to the records center.

*c.* The custodian of a record is authorized to provide or deny access to that record in accordance with the provisions of this chapter. However, the custodian's authority to provide access to a confidential record is limited to the persons listed in subrule 4.3(2).

**4.1(3)** *Address of records center.* The address of the department's records center is: Records Center, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**4.1(4)** *Records Management Manual.*

*a.* The department's electronic Records Management Manual contains the records management information required by Iowa Code section 8A.615, including descriptions of department records and their formats, management, maintenance, storage, retention, security, and disposal.

*b.* The manual also contains the descriptive information on records that is required by Iowa Code section 22.11. The manual is updated as needed, and its provisions are made a part of these rules.

*c.* The manual is available for examination and copying at the department's records center and at various other departmental offices located throughout the state. A copy of the manual may also be obtained, upon request, from the records center.

**4.1(5)** *Availability of open records.* Open records of the department are available to the public for examination and copying unless otherwise provided by state or federal law, regulation or rule.

**4.1(6)** *Warranty.* No warranty of the accuracy or completeness of a record is made.

**4.1(7)** *Existing records.* A request for access applies only to records that exist at the time the request is made and access is provided. The department is not required to create, compile or procure a record solely for the purpose of making it available. EXCEPTIONS: See Iowa Code section 22.3A and subrule 4.3(3).

**4.1(8)** *Definitions.* As used in this chapter:

*"Confidential record"* means a record that 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 department 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 another provision of law, but that may be disclosed upon order of the court, the 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.

*"Director"* means the director of transportation or the director's designee.

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

*"Personally identifiable information"* means information about an individual in a record that identifies the individual and is retrievable by a unique personal identifier associated with the individual.

*"Public"* means those persons who are not officials, employees or agents of the department.

*"Record"* means the whole or a part of a "public record" as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

*"Requester"* means a member of the public.

This rule is intended to implement Iowa Code chapter 22 and section 8A.615.

**761—4.2(22) Access to records.**

**4.2(1)** *Submission of request for access.*

*a.* Submit a request for access to a record to the custodian of the record. If the requester does not know the identity of the custodian, the request may be submitted to the records center at the address in subrule 4.1(3). The records center will forward the request to the custodian.

*b.* Notwithstanding paragraph 4.2(1)*"a,"* any request that may be related to a potential or an actual tort claim or other litigation is to be submitted to: Attorney General's Office, Transportation Section, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. If the custodian receives a request of this nature, the custodian is to forward the request to the Attorney General's Office, Transportation Section.

*c.* If a request for access is misdirected, department personnel will forward the request to the custodian.

**4.2(2)** *Form of request.* A requester shall not be required to give reasons for requesting an open record.

**4.2(3)** *Response to request.* The custodian is to provide access to an open record promptly upon request. However, if the size or nature of the request makes prompt access infeasible, the custodian is to fill the request as soon as feasible and give the requester an estimate of when the record will be available.

**4.2(4)** *Delay.* Access to a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian will inform the requester of the reason for the delay and the estimated length of the delay.

**4.2(5)** *Copies.* A photocopy of an open record may be made on department photocopiers. If a photocopier is not available in the office where an open record is kept, the custodian may permit the open record's examination in that office and, if requested, arrange to have a copy made elsewhere. Most department records are stored in electronic formats; therefore, if the requested record is electronic, an electronic copy will be provided. If the requester is unable to open and read an electronic copy, or if the record does not exist in electronic form, a hard copy may be provided.

**4.2(6)** *Fees.* The department may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether electronic or hard copy, is not to exceed the cost of providing the service.

This rule is intended to implement Iowa Code sections 22.2, 22.3, 22.4, 22.8, 22.10 and 22.11.

**761—4.3(22) Access to confidential records.** The following provisions are in addition to those specified in rule 761—4.2(22) and are minimum requirements. A statute or another department rule may impose additional requirements for access to certain classes of confidential records. A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The department will not refuse to release the nonconfidential information simply because of the manner in which the record is compiled or stored.

**4.3(1)** *Procedure.*

*a. Form of request.* The custodian is to ensure that there is sufficient information to provide reasonable assurance that access to a confidential record may be granted. Therefore, the custodian may require the requester to:

(1) Submit the request in writing.

(2) Provide proof of identity and authority to secure access to the record.

(3) Sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

*b. Response to request.* The custodian is to notify the requester of approval or denial of the request for access. If the requester indicates to the custodian that a written notice is desired if the request for access is denied, the custodian will provide such notice promptly. The notice is to be signed by the custodian and include:

(1) The name and title or position of the custodian, and

(2) A brief statement of the grounds for denial, including a citation to the applicable statute or other provision of law.

*c. Reconsideration of denial.* A requester whose request is denied by the custodian may apply to the director for reconsideration of the request.

**4.3(2)** *Release of confidential records by the custodian.* The custodian may release a confidential record or a portion of it:

*a.* To the legislative services agency pursuant to Iowa Code section 2A.3.

*b.* To the ombudsman pursuant to Iowa Code section 2C.9.

*c.* To other governmental officials and employees only as needed to discharge their duties.

*d.* To those persons as permitted or required by rule 761—4.9(22).

*e.* To persons authorized by the subject of the record in accordance with rule 761—4.4(22).

*f.* To the public information board pursuant to Iowa Code section 23.6.

**4.3(3)** *Information released.* If a person is provided access to less than an entire record, the department will take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released or a copy of the record from which the information not to be released has been deleted.

This rule is intended to implement Iowa Code section 22.11.

**761—4.4(22) Consent to release a confidential record to a third party.** To the extent permitted by law, the subject of a confidential record may consent to the confidential record's release to a third party. The consent must be in writing and must identify the particular record that may be disclosed and the particular person or class of persons to whom the record may be disclosed. The subject of the record may be required to provide proof of identity. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record may be deemed to constitute consent for the department to disclose records about that person to the person's counsel.

This rule is intended to implement Iowa Code section 22.11.

**761—4.5(22) Requests for confidential treatment.**

**4.5(1)** A person may request that all or a portion of a record be confidential. The request must be submitted in writing to the custodian and:

*a.* Identify the information for which confidential treatment is sought.

*b.* Cite the legal basis that justifies confidential treatment.

*c.* Demonstrate that disclosure of the information would clearly not be in the public interest.

*d.* Give the reasons why any person or persons would be substantially and irreparably injured by disclosure of the information. The requester may be required to provide any proof necessary to support these reasons.

**4.5(2)** The custodian is to notify the requester in writing of the granting or denial of the request and, if denied, the reasons therefor.

**4.5(3)** If the request is denied, the requester may apply to the director for reconsideration of the request.

This rule is intended to implement Iowa Code sections 22.8 and 22.11.

**761—4.6(22) Procedure by which additions, dissents, or objections may be entered into records.** Except as otherwise provided by law, the person who is the subject of a record may have a written statement of additions, dissents or objections entered into that record and be filed with the custodian. The statement must be dated and signed by the person who is the subject of the record and include the person's current address and telephone number. This rule does not authorize the person who is the subject of the record to alter the original record or to expand the official record of any agency proceeding.

This rule is intended to implement Iowa Code section 22.11.

**761—4.7(22) Notice to suppliers of information.** When the department requests a person to supply information about that person, the department will notify the person of the use that will be made of the information, which persons outside the department 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 or other rules of the department, 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, orally, or by other appropriate means.

This rule is intended to implement Iowa Code section 22.11.

**761—4.8** Reserved.

**761—4.9(22) Confidential records.** This rule describes the types of departmental information or records that are confidential. This rule is not exhaustive. A citation of the legal authority for confidentiality follows each description. The following records will be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

Descriptions:

**4.9(1)** Records that are exempt from disclosure under Iowa Code section 22.7.

**4.9(2)** Records that constitute attorney work product, attorney-client communications, or are otherwise privileged. (Attorney work product is confidential under Iowa Code sections 22.7, 622.10 and 622.11; Iowa R.C. P. 1.503; 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 Iowa Rules of Professional Conduct, and case law.)

**4.9(3)** Those portions of the department's staff manuals, instructions or other statements issued by the department that set forth criteria or guidelines to be used by its departmental staff in auditing, making inspections, 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 the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the department. (Iowa Code section 17A.2)

**4.9(4)** The detailed minutes and recordings of closed sessions of the commission. However, if a closed session regards a real estate purchase or sale, the minutes and recording are to be available for public inspection when the transaction discussed is completed. (Iowa Code section 21.5)

**4.9(5)** Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code sections 321.266 and 321.271)

*a.* However, access will be granted to those persons authorized by Iowa Code section 321.271.

*b.* Reserved.

**4.9(6)** Unless otherwise ordered by the court, all information filed with the court for the purpose of securing a warrant for an arrest, including but not limited to a citation and affidavits, until such time as a peace officer has made the arrest and has made the officer's return on the warrant, or the defendant has made an initial appearance in court. (Iowa Code section 804.29)

*a.* However, the information in the record may be disseminated without court order during the course of official duties to the persons authorized in Iowa Code section 804.29 unless access to such information is expressly denied by court order.

*b.* Reserved.

**4.9(7)** All information filed with the court for the purpose of securing a warrant for a search, including but not limited to an application and affidavits, until such time as a peace officer has executed the warrant and has made return thereon. (Iowa Code section 808.13)

*a.* During the period of time that information is confidential, it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, magistrate or other court employee, in the course of official duties.

*b.* Reserved.

**4.9(8)** Information obtained by the department from the examining of reports, returns or records required to be filed or kept under the provisions of Iowa Code chapter 452A, except where disclosure is authorized by Iowa Code chapter 452A. (Iowa Code section 452A.63)

**4.9(9)** Sealed bids, until the time set for the public opening of bids, whereupon bids are unsealed and no longer confidential. (Iowa Code section 72.3)

**4.9(10)** Those records that, if disclosed, would diminish competition or would give an improper advantage to persons who are in an adverse position to the department. These records are to be kept confidential until the transaction to which they relate is consummated. However, if disclosure would reveal information that would hinder future competition, the records will be kept confidential. (Iowa Code sections 17A.2, 22.7 and 313.10; Iowa Code chapter 553; and 761—Chapter 20)

*a.* Examples of records that could, in the proper circumstances, be determined to be within this category include but are not limited to:

(1) Detailed estimates of the cost of a proposed contract.

(2) Economic analyses for determining pavement types.

(3) Negotiations for a proposed contract.

(4) Methodology for determining unfair bidding practices or bid rigging.

(5) Price quotations solicited.

(6) The value of points assigned to a bid rating formula prior to the time set for public opening of bids.

(7) Laboratory testing reports of suppliers' products. These may also be trade secrets. The subject of the report has the right of access to it.

*b.* Reserved.

**4.9(11)** Audit reviews for determining equal employment opportunity contract compliance. (Iowa Code section 22.7 and 5 U.S.C. §552 and 552a)

*a.* The subject of the audit review has the right of access to it.

*b.* Reserved.

**4.9(12)** All financial records and any information contained within them that are made available to the department, unless otherwise expressly permitted to be divulged by federal or state law. (Iowa Code sections 22.7 and 422.20 and 5 U.S.C. §552 and 552a)

**4.9(13)** Personal information in any motor vehicle record, including personal information contained on electronic driver's license or nonoperator's identification card records that is provided by the licensee or card holder to the department for use by law enforcement, first responders, emergency medical service providers, and other medical personnel responding to or assisting with an emergency. (Iowa Code sections 22.7 and 321.11 and 18 U.S.C. §2721 et seq.)

*a.* Information other than personal information contained on electronic driver's license or nonoperator's identification card records that is provided by the licensee or card holder to the department for use by law enforcement, first responders, emergency medical service providers, and other medical personnel responding to or assisting with an emergency may be disclosed only as provided in Iowa Code sections 321.11 and 321.11A, 18 U.S.C. §2721 et seq., and 761—Chapter 301.

*b.* The subject of the personal information has the right of access to the information.

**4.9(14)** A report received by the department from a physician licensed under Iowa Code chapter 148, an advanced registered nurse practitioner licensed under Iowa Code chapter 152 and licensed with the board of nursing, a physician assistant licensed under Iowa Code chapter 148C or an optometrist licensed under Iowa Code chapter 154 regarding a person who has been diagnosed as having a physical or mental condition that would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. (Iowa Code section 321.186)

**4.9(15)** Privileged and personnel records or information of law enforcement officers and undercover law enforcement officers, as specified in Iowa Code sections 80G.2 and 80G.3, as well as certain records regarding undercover driver's licenses issued to certified peace officers employed by a local authority or by the state or federal law enforcement officers, as specified in 761—Chapter 625. (Iowa Code sections 22.7, 80G.2, 80G.3 and 321.189A)

*a.* The subject of the record and the head of the law enforcement agency employing the subject have the right of access to the record.

*b.* Reserved.

**4.9(16)** Records related to confidential plates issued for government vehicles. (Iowa Code section 321.19)

*a.* The head of the agency to which the vehicle is assigned has the right of access to the record.

*b.* Reserved.

**4.9(17)** Certified transcripts of labor payrolls (also known as certified payroll records) filed by contractors for federal-aid construction contracts, in accordance with the following paragraphs. (Iowa Code section 22.7, 5 U.S.C. §552 and 552a, and 42 U.S.C. §405)

*a.* The social security numbers in a certified payroll record are confidential. The record itself may be confidential if its release would give advantage to competitors and serve no public purpose.

*b.* The prime contractor and subcontractor, if applicable, that filed the record have the right of access to it.

*c.* Certified payroll records are to be released to the U.S. Department of Labor and Federal Highway Administration during investigations.

*d.* The custodian may release a certified payroll record with social security numbers withheld to representatives of the Iowa Labor Management Work Preservation Fund.

*e.* The custodian may release a certified payroll record with social security numbers withheld to persons outside the department other than the persons listed in paragraphs 4.9(17)*"b"* through *"d"* according to the following procedure:

(1) The request for the record must be in writing.

(2) The custodian is to send a copy of the request by registered mail to the prime contractor. If the request is for subcontractor information, the custodian is to send copies of the request to both the subcontractor and prime contractor.

(3) The requested record may be released after 14 calendar days have expired from receipt of the request by the contractor(s) to give the contractor(s) an opportunity to seek an injunction.

**4.9(18)** Information concerning an open or pending railroad accident investigation conducted on behalf of or in conjunction with the Federal Railroad Administration or National Transportation Safety

Board to the extent necessary to prevent denial of funds, services or essential information from the United States government. (Iowa Code section 22.9)

**4.9(19)** A geographic computer database, except upon terms and conditions acceptable to the department. (Iowa Code section 22.2)

**4.9(20)** Confidential information, as defined in Iowa Code section 86.45, filed with the workers' compensation commissioner. (Iowa Code section 22.7)

**4.9(21)** An intelligence assessment and intelligence data under Iowa Code chapter 692, except where disclosure is required or authorized by the Iowa Code. (Iowa Code chapter 692 and section 22.7)

**4.9(22)** Information in a record that would permit the commission, subject to Iowa Code chapter 21, to hold a closed session pursuant to Iowa Code section 21.5 in order to avoid public disclosure of that information, until such time as final action is taken on the subject matter of that information or unless otherwise authorized by the Iowa Code. (Iowa Code section 22.7)

**4.9(23)** All other information or records that by law are or may be confidential.

This rule is intended to implement Iowa Code chapters 22, 553 and 692; Iowa Code sections 17A.2, 21.5, 72.3, 80G.2, 80G.3, 313.10, 321.11, 321.11A, 321.19, 321.186, 321.189A, 321.266, 321.271, 422.20, 452A.63, 622.10, 622.11, 804.29 and 808.13; 5 U.S.C. §552 and 552a; 18 U.S.C. §2721 et seq.; and 42 U.S.C. §405.

[Filed 12/17/24, effective 2/12/25]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8779C

# TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

### Rulemaking related to contested cases

The Transportation Department hereby rescinds Chapter 13, "Contested Cases," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and section 307.12(1)"j."

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and section 10A.801.

*Purpose and Summary*

This rulemaking repromulgates Chapter 13 in compliance with Executive Order 10. Chapter 13 explains the minimum procedural requirements for Department involvement in contested cases and informal settlements in accordance with Iowa Code chapter 17A. The intended benefit is to provide clarity and transparency on the process that aggrieved parties (including both individuals and entities) may use to dispute a decision of the Department. Another intended benefit is to provide consistency across the Department's many bureaus that are a party to or a facilitator of such dispute.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8245C**. A public hearing was held on the following date(s):

- November 7, 2024
- November 8, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
CONTESTED CASES

**761—13.1(17A) Definitions.** The definitions in Iowa Code section 17A.2 are hereby adopted. In addition:

*"Department"* means the Iowa department of transportation.

*"Director"* means the director of transportation or the director's designee.

**761—13.2(17A) Applicability.**

**13.2(1)** This chapter provides the minimum procedural requirements for department involvement in contested cases under Iowa Code chapter 17A.

**13.2(2)** Rules that apply to a particular type of contested case take precedence over this chapter. If there are no other rules applicable to a particular type of contested case, it will be conducted in accordance with this chapter.

**761—13.3(17A) Submission of request for informal settlement or hearing.**

**13.3(1)** A person who is aggrieved by an action of the department and who is entitled to a contested case hearing may:

*a.* Unless prohibited by statute, request an informal settlement.

*b.* Initiate a contested case by submitting a request for a contested case hearing.

*c.* Use both procedures.

**13.3(2)** A request for an informal settlement or a contested case hearing shall be submitted in writing to the director of the bureau or division of the department that administers the matter at issue.

**13.3(3)** The request shall include complete names, mailing addresses to be used for communications with the department, and telephone numbers for all persons involved and any attorneys representing them.

**13.3(4)** A statute or rule may provide for submission of requests within a specified time period. A request shall be considered timely submitted if it is postmarked or delivered to the appropriate bureau or division of the department within the time period specified. Timely submission of a request shall be jurisdictional.

**761—13.4(17A) Informal settlement.**

**13.4(1)** An informal settlement may be handled by telephone.

**13.4(2)** If an informal settlement cannot be reached within a reasonable period of time, the department will notify the person in writing that there has been a failure to reach an informal settlement, that the department's action or decision is sustained, and that the person may request a contested case hearing.

**761—13.5(17A) Contested case.**

**13.5(1)** *Procedures.*

*a.* The department may initiate a contested case proceeding. Prior to initiating the contested case proceeding, the department, unless disallowed by statute, may attempt to settle the matter informally.

*b.* After a contested case hearing, a written decision will be issued by the presiding officer.

**13.5(2)** *Hearing.*

*a.* The department may be represented by legal assistants, paralegals, or designated attorney general staff at contested case hearings. Any such person is under the supervision of the attorney general transportation section chief.

*b.* The department may designate staff not under the supervision of the attorney general's office to appear at contested case hearings as witnesses. Staff so designated may appear to testify about matters including but not limited to clarifying the record, providing additional information, providing justification for the department's action, or answering questions of the appellants and presiding officer.

*c.* The department may submit certified copies of records admitted pursuant to Iowa Code section 321.10 in lieu of either legal representation or participation by a department employee.

**13.5(3)** *Appeal of contested case decision.*

*a.* A decision by a presiding officer shall become the final decision of the department and is binding on the department and the party whose legal rights, duties and privileges are being determined unless either appeals the decision as provided in this subrule.

*b.* No additional evidence is to be presented on appeal that is decided on the basis of the record made before the presiding officer in the contested case hearing.

*c.* The appeal is to include a statement of the specific issues presented for review and the precise ruling or relief requested.

*d.* An appeal of a presiding officer's decision is to be submitted in writing to the director of the bureau or division that administers the matter being contested. The appeal is deemed timely submitted if it is postmarked or delivered to the director of the appropriate bureau or division of the department within 20 days after the date of the presiding officer's decision unless otherwise provided in rule or statute.

*e.* The director of the administering bureau or division will forward the appeal to the director.

*f.* Failure to timely appeal a presiding officer's decision is considered a failure to exhaust administrative remedies.

*g.* The director may make a decision affirming, modifying or reversing the presiding officer's decision, or may remand the case to the presiding officer.

*h.* The decision of the director is the final decision of the department and constitutes final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

**761—13.6(17A) Motion for review.** The director may, on the director's own motion, review the presiding officer's decision. The motion for review is subject to the same time limits as an appeal from a presiding officer's decision. If there is a motion for review, paragraphs 13.5(3)*"g"* and *"h"* apply.

**761—13.7(17A) Rehearings.** An application for rehearing of a final decision under Iowa Code section 17A.16 shall be filed with the director.

**761—13.8(17A) Maintenance of records.** The department shall retain for at least five years from the date of the final decision copies of the record made before the presiding officer, the decision received from the presiding officer, the decision issued by the director, and related correspondence.

**761—13.9(17A) Communications.**

**13.9(1)** Each party to a contested case is to keep the department informed of the party's current address and telephone number; the name, address and telephone number of the party's attorney, if any; and the mailing address to be used for communications from the department.

**13.9(2)** Mailed notices, communications and decisions regarding the contested case are to be sent by first class or certified mail to the latest address that each party has provided to the department.

**13.9(3)** Notwithstanding subrule 13.9(2), the department of inspections, appeals, and licensing may communicate with the party or the party's attorney by email and may file and serve documents through the division of administrative hearings' administrative electronic management system.

**761—13.10(17A) Default.**

**13.10(1)** A party may move for default against another party that has requested the contested case proceeding and that has failed to appear after proper service is served.

**13.10(2)** Notwithstanding subrule 13.10(1), no default may be entered against the department for failure to appear; rather, the presiding officer may either continue the matter or proceed with the hearing and render a decision in the absence of the department.

**13.10(3)** A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within 20 days after the date of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with rule 761—13.5(17A). A motion to vacate is to state all facts relied upon by the moving party that establish that good cause existed for that party's failure to appear or participate.

**13.10(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**13.10(5)** Timely filed motions to vacate are to be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties have ten days to respond to a motion to vacate.

**13.10(6)** "Good cause," for the purpose of this rule, means surprise, excusable neglect or unavoidable casualty.

**13.10(7)** A decision denying a motion to vacate is subject to further appeal in accordance with rule 761—13.5(17A).

**13.10(8)** A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 13.5(3).

**13.10(9)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer is to issue another notice of hearing and the contested case will proceed accordingly.

**761—13.11(17A) Additional procedures when the department is not a party.**

**13.11(1)** *Jurisdiction.* When the department is obligated by statute to administer a controversy to which it is not a party, the following additional procedures apply:

**13.11(2)** *Request.*

*a.* A person who has an interest in a controversy and who is entitled to a contested case hearing may submit a written request to the department to resolve the controversy.

*b.* An acceptable request will contain a statement of facts alleged and the relief sought by the requestor, the name and address of the persons involved and any attorneys representing them, the requestor's telephone number, and the mailing address to be used for all communications to the requestor from the department.

**13.11(3)** *Informal settlement.*

*a.* The department will contact the persons involved, either by telephone or letter, and will offer to assist the parties to reach an informal settlement of the controversy.

*b.* A controversy may be settled informally by the persons involved.

*c.* When a controversy is settled informally, the persons involved will each notify the department by telephone and confirming letter that the controversy has been resolved.

**13.11(4)** *Contested case.* When the department is notified by a person involved in the controversy that there has been a failure to reach an informal settlement, or when the department determines that no progress toward a settlement is being made, the department will send a written notice to the persons involved specifying that if the department is not notified of a settlement within 20 days after the notice is mailed, the department will initiate a contested case proceeding.

These rules are intended to implement Iowa Code chapter 17A and section 10A.801.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8780C

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

**Rulemaking related to holiday rest stops**

The Transportation Department hereby rescinds Chapter 105, "Holiday Rest Stops," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 307.12(1)"j" and 314.27.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 314.27.

*Purpose and Summary*

This rulemaking repromulgates Chapter 105 in compliance with Executive Order 10. Chapter 105 provides nonprofit organizations an opportunity to promote their products at Iowa rest areas during holiday periods in compliance with Iowa Code section 314.27.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8246C**. A public hearing was held on the following date(s):

- November 6, 2024
- November 7, 2024

No one attended the public hearings.

The Department received a written comment from the Department for the Blind requesting a change to include within the rules that the Department for the Blind, Business Enterprise Program, and the current vendors be notified of any approved rest area sponsorship. The Department plans not to make any changes to Chapter 105. However, the Maintenance Bureau will notify the Department for the Blind via email once any sponsorship approvals have been sent.

No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 105 and adopt the following **new** chapter in lieu thereof:

CHAPTER 105
HOLIDAY REST STOPS

**761—105.1(314) Purpose.** The purpose of this chapter is to establish the requirements and procedures for approving requests for rest stops on primary and interstate highways during holiday periods.

**761—105.2(314) General.**

**105.2(1)** *Definitions.*

*"Free refreshments"* means the same as defined in Iowa Code section 314.27.

*"Holiday periods"* means the same as defined in Iowa Code section 314.27.

*"Holiday rest stop"* means a location where a sponsor serves free refreshments to motorists during holiday periods to provide a break from driving monotony, promote safer driving, and reduce the potential for highway accidents.

*"Sponsor"* means the nonprofit organization that is providing the free refreshments and staffing the holiday rest stop.

**105.2(2)** *Information.* Information regarding this chapter is available from the Maintenance Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department's website at www.iowadot.gov.

**761—105.3(314) Conditions.** The sponsor of a holiday rest stop shall comply with the following general conditions:

**105.3(1)** Not request or accept payment for the refreshments served. The sponsor may accept voluntary donations using containers clearly labeled with a sign stating "donations." If the sponsor uses donation containers, the sponsor needs to place signs within the immediate area of the operation at locations designated by the department stating "free refreshments."

**105.3(2)** Not distribute any literature or other promotional material.

**105.3(3)** Clean up the area and remove all signs the sponsor has erected promptly after the holiday rest stop is discontinued.

**105.3(4)** No permit parking on the highway shoulders.

**105.3(5)** Agree to indemnify, defend and hold the department of transportation and the state of Iowa harmless from any liability that may result from the directing of traffic to the holiday rest stop area, and as a result of changes of traffic patterns caused by the activities of the sponsor in or about the holiday rest stop area, and all other liability related to the operation of the special holiday rest stop and the refreshments provided.

**761—105.4(314) Holiday rest stops.**

**105.4(1)** *Site.*

*a.* A holiday rest stop along an interstate highway shall be in an established interstate rest area. Running water is available at each rest area. The department will provide electricity if requested.

*b.* The proposed site of a holiday rest stop along a primary highway will be inspected by the department to ensure it meets the following requirements:

(1) The site is large enough to provide parking space for at least 15 vehicles and located so that all parked vehicles will be at least 50 feet from the edge of the traveled way of the primary highway.

(2) An access drive from the primary highway shoulder to the parking area has a top width of at least 20 feet and provides a clear view of the primary highway for at least 900 feet in each direction.

*c.* The department will designate an appropriate spot within the requested holiday rest stop location that will not include rest area restroom buildings or welcome center buildings. The sponsor may use the information kiosk where available. A tent or canopy may be used in areas without a kiosk during inclement weather.

**105.4(2)** *Signs.* The sponsor shall:

*a.* Not place any signs directing highway traffic to the holiday rest stop.

*b.* Not place any signs for an interstate holiday rest stop along the interstate highway or interchange ramps. The department will place signs stating "free refreshments" adjacent to the interstate highway and will remove these signs when the holiday rest stop is discontinued.

*c.* Provide two signs approximately four feet by four feet announcing the holiday rest stop, one for each highway approach to the site for holiday rest stops on primary highways. The department will install these signs and will remove them when the holiday rest stop is discontinued.

*d.* Take responsibility for any signs posted at the actual holiday rest stop site. Signs provided or placed by the sponsor shall not include any advertising but may include the sponsor's name. Signs shall not be mounted on objects (including vehicles) that contain the name of any organization or individual except the sponsor. The sponsor is responsible for the removal of all signs the sponsor has erected promptly after the holiday rest stop is discontinued.

**105.4(3)** *Request.*

*a.* A request to sponsor a holiday rest stop will be made on Form 810023. This form is available from the maintenance bureau or the department's website.

*b.* The request will include the name and address of the requesting sponsor, a detailed description of the proposed holiday rest stop location, and the requested hours of operation.

*c.* The request will be submitted to the maintenance bureau and must be submitted at least 90 days prior to the beginning date of the holiday period and may be accepted up to 12 months in advance.

**105.4(4)** *Approval of request.*

*a.* The maintenance bureau will notify the potential sponsor of approval or disapproval of the request within the time frame specified in Iowa Code section 314.27.

*b.* If there is more than one qualifying request for the same site and date, the sponsor will be selected by lottery.

These rules are intended to implement Iowa Code section 314.27.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8781C

# TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

### Rulemaking related to real property acquisition and relocation assistance

The Transportation Department hereby rescinds Chapter 111, "Real Property Acquisition and Relocation Assistance," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 307.12(1)"j" and 316.9.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 316 and sections 6B.42, 6B.45, 6B.54, 6B.55 and 310.22.

*Purpose and Summary*

This rulemaking repromulgates Chapter 111 in compliance with Executive Order 10. Chapter 111 complies with Iowa Code section 316.9 to ensure compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). To comply with this federal act, the Department adopts by reference Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance." This manual, which is published by the Department and is available on its website, is based on federal regulations, 49 CFR Part 24, which implement the Uniform Act.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8250C**. A public hearing was held on the following date(s):

- November 7, 2024
- November 8, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 111 and adopt the following **new** chapter in lieu thereof:

CHAPTER 111
REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

**761—111.1(316) Acquisition and relocation assistance manual.** The September 2017 edition of Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance" is adopted by reference.

**111.1(1)** *Contents.* Section II establishes uniform rules and procedures that comply with Iowa law and the Federal Uniform Relocation Act for the acquisition of real property and for the provision of relocation assistance to persons who are displaced from real property as a result of programs and projects. Relocation assistance is not compensation for real property acquired nor is it compensation for damages to remaining property. Rather, relocation assistance is assistance and compensation provided to a displaced person for making the move and relocating.

**111.1(2)** *Applicability.*

*a.* In general, Section II applies to any program or project that involves the acquisition of real property or that causes a person to be a displaced person if the program or project:

(1) Is undertaken with federal financial assistance, or

(2) Is a road or street program or project undertaken with state financial assistance from the primary road fund, including primary road funds allocated for state park and institutional roads, or

(3) Is a public road or highway eligible for federal aid.

*b.* In general, Section II applies to any of the following entities that acquire real property or displace a person for a program or project described in paragraph 111.1(2)*"a"*:

(1) The state of Iowa.

(2) A political subdivision of the state.

(3) A department, agency or instrumentality of one or more states or political subdivisions.

(4) A utility or railroad subject to Iowa Code section 327C.2 or chapter 476, 478, 479, 479A or 479B authorized by law to acquire property by eminent domain.

(5) Any other person who has the authority to acquire property by eminent domain under state law.

(6) Any other person who acquires real property or displaces a person for a program or project described in paragraph 111.1(2)*"a."*

*c.* Any exceptions to paragraphs 111.1(2)*"a"* and *"b"* are set out in Section II.

*d.* In accordance with Iowa Code section 316.9(3), an entity that provides relocation assistance benefits for any program or project is to provide an appeal process, regardless of the source of funding for the program or project. The appeal process provided is not to diminish the rights of the appellant or the scope of the appeal as described in Section II.

**111.1(3)** *Availability of manual.* Copies of the manual are available from the Right of Way Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or on the department's website at www.iowadot.gov/rightofway/brochures-and-manuals.

**111.1(4)** *Future programs or projects.* Failure to comply with Section II when acquiring real property or displacing persons for a program or project may preclude the receipt of future federal financial assistance for the program or project area.

This rule is intended to implement Iowa Code chapter 316 and sections 6B.42, 6B.45, 6B.54, 6B.55 and 310.22.

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## ARC 8782C

# TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

### Rulemaking related to primary highway access control

The Transportation Department hereby rescinds Chapter 112, "Primary Highway Access Control," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 307.12(1)"j."

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and sections 306.19, 306A.1 through 306A.8, 307.12(1)"j," 318.3, 318.5 and 318.8.

*Purpose and Summary*

This rulemaking repromulgates Chapter 112 in compliance with Executive Order 10. Chapter 112 controls access for all primary highways for efficient and safe highway operations and to utilize the full potential of the highway investment. Effective controlled access on all primary highways protects the safety and welfare of the traveling public.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8251C**. Public hearings were held on the following date(s):

- November 7, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 112 and adopt the following **new** chapter in lieu thereof:

CHAPTER 112
PRIMARY HIGHWAY ACCESS CONTROL

**761—112.1(306A,318) Scope and contact information.**

**112.1(1)** *Statement of policy.* All primary highways are controlled access facilities. The efficiency and safety of a highway depend to a large extent upon the amount and character of interruptions to the movement of traffic. The primary cause of these interruptions is vehicular movement to and from public roadways, businesses, residences, and other developments along the highway. Regulation and overall control of highway access are necessary to provide efficient and safe highway operation and to utilize the full potential of the highway investment. Each highway access connection should be located and designed to achieve the least adverse impact to traffic operations and public safety. Accordingly, the department hereby establishes rules for control of access for all primary highways.

**112.1(2)** *Contact information.* Information regarding this chapter may be obtained from the department's website at: www.iowadot.gov/traffic/Access-Management/Access-Management-Resources; any of the department's six district offices; or the Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**761—112.2(306A,321) Definitions.** As used in this chapter:

*"Access"* means a way or means of egress from or ingress to a highway.

*"Access connection"* means any point of motor vehicle ingress to or egress from a highway. It is the physical connection between the edge of the traveled way and the abutting property and is exclusive of the roadway and median.

*"Average annual daily traffic"* or *"AADT"* means the total volume of traffic passing a point or segment of a highway facility in both directions for one year divided by the number of days in the year.

*"Functional area"* includes any area upstream or downstream of an intersection where intersection operation and conflicts significantly influence driver behavior and vehicle operations. The functional area of an intersection is a calculated value based on the intersection's geometrics, posted speed limit, traffic volume, type of traffic control used and perception-reaction-time values determined by the American Association of State Highway and Transportation Officials.

*"Highway"* means the same as "street" or "highway" as defined in Iowa Code section 321.1(78).

*"Intersection"* means the same as defined in Iowa Code section 321.1(33).

*"Necessity"* means the access is required or indispensable to the property because of circumstances that cannot be sufficiently mitigated by other means. Proof of necessity refers to documents, data, maps and other information submitted to illustrate and verify the claim of necessity.

*"Primary highway"* means a highway that is under department jurisdiction.

*"Ramp"* means a special lane, usually a short section of one-way roadway, that provides an access connection between two roads to enter or exit a major highway. The term "ramp" includes but is not limited to entrance ramps, roadway ramps, loop roads and collector-distributor roads.

*"Roadway"* means the same as defined in Iowa Code section 321.1(65). A divided highway has two or more roadways.

*"Traveled way"* means the portion of a roadway used for the through movement of vehicles, excluding shoulders, gutters and auxiliary turn lanes.

*"Trip"* means a single or one-directional vehicle movement. A vehicle leaving the highway and entering a property is one trip, and the vehicle leaving the property and entering the highway is a second trip.

**761—112.3(306A) General provisions.** The following provisions govern access encroachments onto a primary highway:

**112.3(1)** Access connection construction activity on a highway shall not begin until an access permit has been issued by the department.

**112.3(2)** A new access permit is required when there will be a change in use of the access connection. A change in access use includes but is not limited to:

*a.* A change in the predominant vehicle types using the access.

*b.* An increase in traffic volumes using the access.

*c.* The original design and engineering limitations have been exceeded by the current use.

*d.* The current use has not been authorized by the terms and conditions of the existing access permit.

**112.3(3)** A person shall not drive a motor vehicle to or from a highway at a location that is not an authorized access connection.

**112.3(4)** Access rights shall not accrue from, nor will additional access be provided upon, the splitting or dividing of existing parcels of land or contiguous parcels under the same ownership or controlling interest unless the proposed access complies with access category and design requirements and is permitted. Adjacent properties under common ownership or control, consolidated for development, or part of a phased development plan are considered one unit, and a unified access and circulation plan must be established for the site.

**112.3(5)** No rights of access are conveyed when the department provides a new access connection or modifies an existing access connection.

**112.3(6)** The terms and conditions of any permit are binding upon the applicant, the property owner and all assigns, successors-in-interest, heirs and occupants. If an assign, successor-in-interest, heir or occupant does not accept the terms and conditions of an existing permit, the assign, successor-in-interest, heir or occupant shall apply for a new access permit or a permit to close the access.

**112.3(7)** A property owner not wanting to assume responsibility for an access or the access's requirements may apply for access removal at the property owner's expense. An exception may be made for removals during highway projects.

**112.3(8)** A permit grants no property rights or interests in state right-of-way.

**112.3(9)** Where there are multiple accesses to the same parcel, the department may consolidate existing access connections during a highway project.

**112.3(10)** The department has the authority regarding operational modifications to the highway and all access connections.

**761—112.4(17A,306A,318) Permitting process.** An access permit is required for an encroachment onto a public right-of-way for the construction, reconstruction or modification of an access connection or any of its related appurtenances.

**112.4(1)** *Application for an access permit.*

*a.* To obtain an access permit, applicants will use the web-based system found at eps.iowadot.gov. If the applicant cannot use or connect to this electronic system, the applicant may contact the appropriate district office that is responsible for the area in which the proposed access is located. An applicant may be the property owner or the owner's authorized agent.

*b.* A separate access application and permit are required for each access connection.

*c.* Intentional misrepresentation of existing or future conditions or providing false information is considered sufficient grounds for denial or revocation of a permit.

*d.* The applicant is responsible for providing any location and design plans that describe the access.

*e.* The applicant is responsible for providing an estimate of the traffic volume of the access and the property as a whole. The estimate will include the anticipated average daily or hourly use and the anticipated access use upon the full development of the property.

*f.* For access types A and B as defined in subrule 112.5(2) and public intersections, the department requires a traffic impact analysis from the applicant during the processing of a permit request, except when the appropriate district engineer determines an analysis is not necessary. Such traffic impact analysis must be prepared by a professional engineer licensed in Iowa and at the cost of the applicant. The analysis will address a current and 20-year projection of traffic activity and impacts at and near the proposed access connection, including the full-development traffic volumes of the access connection.

*g.* It is the responsibility of the applicant to comply with all local ordinances and any other regulations.

**112.4(2)** *Processing an access application.*

*a.* Upon receipt of an application, the department will begin processing the application using the electronic permitting system. The department will apply the criteria as required by this chapter, including access type, access category, location, design, public safety and traffic operations.

*b.* The department may issue an access permit with terms and conditions or deny the application if it fails to meet this chapter's requirements. The department representative will notify the applicant of the determination.

*c.* The department will not act on an application it deems incomplete and will notify the applicant of additional information needed to complete the request.

*d.* Upon mutual agreement by the department and applicant, the department may suspend or extend the process period.

*e.* The applicant may withdraw the application.

**112.4(3)** *Permit terms and conditions.*

*a.* An access permit will include terms and conditions necessary to meet the requirements of this chapter and include consideration of the following:

(1) Safety of the traveling public.

(2) The access category pursuant to rule 761—112.5(306A).

(3) The access location and design pursuant to rule 761—112.6(306A).

(4) The traffic-carrying capacity of the highway.

(5) Protection of the public investment in the highway.

(6) Topography and geometric limitations and constraints.

*b.* The department may restrict turning movements as necessary to reduce adverse impacts. The department will consider the 20-year projection of traffic volumes on the roadway and the full-development traffic volumes of the access connection.

*c.* Access permits expire after one year if construction of the access is not initiated and no extension of time has been requested and granted by the department.

*d.* The property owner and the owner's authorized agent agree by accepting the permit to indemnify, defend and hold harmless the state of Iowa and its employees from all claims arising out of construction or use of the access.

*e.* The property owner and applicant assume liability for the construction and ongoing use of the access.

*f.* The permittee shall maintain the access in good repair at all times.

*g.* If the department has not received the signed copy of the permit within 60 days of the date of transmittal to the applicant, the permit is deemed withdrawn.

**112.4(4)** *Permits where department owns access rights.*

*a.* This subrule applies only where the department has determined there is no longer the necessity for the controlled access line at the proposed location. The department may issue an access permit if all design and location criteria are met.

*b.* If it becomes necessary to close the access, the property owner will be notified in advance and any permit will be revoked. The access application and permitting process do not include any rights of appeal where the department is the owner of the access rights.

**112.4(5)** *Appeals.*

*a.* An applicant or permittee who objects to any terms or conditions placed on an access permit, the denial of a permit, or the closure or revocation of an access may appeal the department's decision. If the department owns the access rights, this subrule does not apply.

(1) The appeal shall be submitted to the appropriate district engineer at the department.

(2) An appeal concerning the closure or revocation of an access or the denial of a permit must be submitted within 60 days of receipt of the department's notification.

(3) An appeal concerning the terms or conditions placed on an access permit must be submitted within 60 days of when the department sends the applicant the signed copy of the permit with terms or conditions for signature.

(4) The appeal must include reasons for the request and may include changes, revisions or conditions that would be acceptable to the applicant or permittee.

*b.* The district engineer will issue a written decision to the applicant or permittee within 60 days of receipt of the appeal or within 60 days after receipt of requested additional information.

*c.* Upon receipt of the written decision, the applicant or permittee may appeal the district engineer's decision by submitting the appeal along with background information to the director of transportation. The director will issue a written decision within 60 days of receipt of the appeal. The director's decision is final agency action.

**112.4(6)** *Waivers.* The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the rules administrator, either by mail to Rules Administrator, Government and Community Relations, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.

**112.4(7)** *Waivers involving interstate highways.* The director of transportation shall not waive these rules in access situations involving the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

**761—112.5(306A) Access types and the primary highway category system.** This rule manages access connections according to highway function, design, traffic volumes, speed and roadside conditions.

**112.5(1)** *General.*

*a.* The department will assign access categories to all highways according to the descriptions in subrule 112.5(3).

*b.* There are no minimum or maximum distance criteria for the length of a category assignment.

*c.* The department may assign a specific category to a segment of highway based on operational needs and to maintain consistency along a specific route.

*d.* The department will maintain an access category assignment schedule for the highway system.

*e.* Municipal access categories are for primary highway extensions within municipalities where concurrent jurisdiction applies pursuant to Iowa Code section 306.4(4).

*f.* For all access categories, access connections should be kept to the minimum necessary to provide reasonable access. A second access to a parcel may be provided only if it meets spacing criteria, internal circulation is not feasible, and there is a necessity for the access.

*g.* If the category allows type D access, an additional type D access may be granted to a parcel if the necessity due to topography problems or ongoing agricultural activities is demonstrated. A change in use of the parcel of land serviced by the type D access requires a new permit and may result in closure of the access if the location will not meet access category requirements for another type.

*h.* A secondary access for emergency fire services needed to meet local fire safety regulations may be permitted on all categories except for the categories interstate and freeway (I/F), expressway (E), and municipal expressway (ME) and across controlled access lines. Such emergency access may be permitted only if it is not feasible to provide the emergency access to a secondary roadway. A written explanation with references to local standards from an appropriate government safety official must be included with the application. The access shall be maintained by the permittee as a closed access except during emergencies. Hidden pavement structures are acceptable.

*i.* Access connections to government parcels will be treated the same as private access types based on volume with the exception of egress access connections used specifically for emergency response services such as fire stations.

**112.5(2)** *Access types.* Access connections are distinguished by the following four types of private access based on access connection traffic volume:

*a.* Type A is a private access connection with traffic volumes equal to or greater than 100 trips in a peak hour. Traffic volume estimates are to be based on a 20-year projection or the build-out of the development, whichever is greater.

*b.* Type B is a private access connection with traffic volumes between 11 and 99 trips in a peak hour. Traffic volume estimates are to be based on a 20-year projection or the build-out of the development, whichever is greater.

*c.* Type C is a private access connection with traffic volumes between one and ten trips in a peak hour.

*d.* Type D is a private access connection with an AADT of less than one per day.

**112.5(3)** *Access categories for highways.* Access categories are distinguished as follows:

*a.* The interstate and freeway (I/F) category applies to highways with full access control. Access to the roadway, when allowed, shall be provided by ramps. Direct access to the main roadway and all ramps is prohibited.

*b.* The expressway (E) category applies to nonfreeway multilane highways outside municipal boundaries where the department has acquired the associated access rights. Access that has not already been authorized shall not be permitted across existing access control lines. An access management plan is required to authorize a new public intersection. New direct access connections will not be permitted for utilities that have not been previously authorized.

*c.* The rural-600 (R-600) category applies to two-lane and multilane highways outside municipal boundaries that are on the Iowa commercial industrial network as most recently approved by the commission or are where roadway traffic volume will be equal to or greater than 3,000 AADT within 20 years. Access types A, B and C may be permitted where the applicant can prove necessity and the access has a minimum spacing distance of 600 feet from other connections. Access type D must meet sight distance requirements. Private access connections should not be permitted within the functional area of any public intersection. Public intersections should be located at survey section lines when feasible. Each

full-movement access connection should serve as many properties and interests as possible to reduce the need for additional direct access to the highway.

*d.* The rural safety and need (R-S/N) category applies to two-lane highways outside municipal boundaries that will not exceed 3,000 AADT within 20 years. This category includes frontage roads, service roads and access ways. All private access types may be permitted where the applicant can prove necessity and meet sight distance requirements. Private access connections should not be permitted within the functional area of any public intersection. Public intersections should be located at land survey section lines when feasible.

*e.* The municipal expressway (ME) category applies to nonfreeway multilane highways inside municipal boundaries where arterial performance is necessary to provide high mobility and through traffic capacity. In the absence of an access management plan, private access shall not be permitted that has not already been authorized. An access management plan is required to authorize a new public intersection and may only be allowed if the public roadway is adopted by the city.

*f.* The municipal-1000 (M-1000) category applies to important regional and intracity highways that are within a municipality. Designation of M-1000 must include consideration of system continuity and preservation of a high level of mobility and through traffic capacity. The department recommends the installation of restrictive medians between full-movement intersections. Access to an M-1000 may be granted under the following conditions:

(1) All access types are eligible for a full-movement access connection at 1,320 feet (one-quarter mile) locations based on section lines where feasible, and these access connections may be restricted to right-in and right-out turns or directional left-in-only as access volumes increase. If there is a documented necessity to permit access connections at locations less than 1,320 feet, then a minimum access spacing interval of 1,000 feet may be used. No access connection should be allowed within the functional area of a public intersection.

(2) Each full-movement location should serve as many properties and interests as possible to reduce the need for additional direct access to the highway.

(3) All access types are eligible for limited movement connections at minimum spacing intervals of 600 feet if a restrictive median is present.

*g.* The municipal-600 (M-600) category applies to highways within municipalities that have been determined to have a need to maintain a moderate level of mobility and through traffic capacity. Minimum spacing for all access types is 600 feet.

*h.* The municipal-300 (M-300) category applies to highways within municipalities where a low level of mobility and through traffic capacity is acceptable. Minimum spacing for all access types is 300 feet.

*i.* The municipal safety and need (M-S/N) category applies to highways within municipalities where motor vehicle mobility and through traffic capacity are low priorities. The permitting of access and the determination of access connection locations is based only on safety and need.

**112.5(4)** *Category revisions.*

*a.* From time to time, it may be necessary for the department to change an assigned access category because of changes in roadway conditions, traffic growth or highway reconstruction. Reassignment must be consistent with subrule 112.5(3). A report will be prepared presenting why the current category should not be used and the reasons for and benefits of making the category revision.

*b.* If the highway is identified as a future freeway or expressway, the department may suspend the issuance of new access permits.

*c.* If a highway utilizing at-grade intersections is intended to be improved to accommodate traffic growth or safety considerations, the access category of the future improvement will be applied.

**112.5(5)** *Interchange and intersection access control.*

*a.* When it is necessary for an at-grade access connection to be near an interchange on an access category E or ME, the first access connection location will be determined by calculating the functional areas of the expressway ramp and the first at-grade access connection. The two functional areas shall not overlap. The functional area of the ramp shall be considered no less than 1,500 feet from the end of the

taper. The first access should be a public intersection. Access turning movements may be restricted for operational reasons.

*b.* Access is prohibited to all elevated structures and ramps on or connected to any highway.

*c.* When the interchange crossroad AADT will exceed 10,000 in the twentieth year, the first full-movement access connection should be at least 1,320 feet as measured from the ramp bifurcation point. A minimum of 1,000 feet may be allowed for a full-movement intersection if there is a proven necessity and no reasonable alternative. A restrictive median may be required between the ramps and the full-movement intersection. If the first full-movement intersection is at least 1,200 feet from the ramp bifurcation and a restrictive median is present, a right-in and right-out access may be permitted at a minimum of 600 feet from the ramp bifurcation. The ramp functional area should not overlap with the functional area of any access connection.

*d.* When the interchange crossroad AADT will be between 3,000 and 10,000 within 20 years, the first full movement should be at least 1,000 feet away from the ramp. All access types may have a restricted right-in and right-out access at a minimum of 600 feet from the ramp bifurcation point.

*e.* When the interchange crossroad AADT will not exceed 3,000 within 20 years, access public intersections and private access types A and B should be at least 600 feet away from the ramp bifurcation point. Types C and D should be at least 300 feet from the bifurcation point and may be subject to operational restrictions.

*f.* For any new interchange or interchange reconstruction, access rights should be acquired and extend a minimum of 600 feet away from the ramp bifurcation point. If the AADT will exceed 10,000 within 20 years, a minimum of 1,000 feet of access rights should be acquired.

*g.* Where a free-flow turning movement from a roadway or ramp merges onto another roadway, an analysis is to be completed to determine the functional area and the preferred placement of the first access connection. The functional area of the merge lane of the roadway and the functional area of the first access connection should not overlap. Access rights are to be acquired along the identified functional area length.

*h.* An at-grade intersection is defined by the determination of its functional area. Access should not be allowed within this functional area. Access beyond the functional area remains subject to the requirements of the access category location standards.

*i.* When acquiring access rights as part of a highway project, the department may acquire access rights along intersecting public roadways to protect the operation of the intersection at the highway. Acquisition of access rights should extend a distance of 150 feet from the near edge of the highway traveled way. If the intersecting public roadway AADT is predicted to exceed 3,000 within 20 years, the department should acquire access rights for a distance of 300 feet from the near edge of the highway traveled way. The department may lengthen or shorten the distance of access rights required after considering the intersection functional area, traffic volumes, traffic operations, acquisition costs and other factors.

**112.5(6)** *Access management plans and agreements.*

*a.* Access management plans may be developed to determine how access will be managed on select sections of high-priority corridors, around freeway interchanges, and within municipalities and high-growth corridors. Each plan will apply access management techniques, identify acceptable traffic control features, and establish the necessary operational restrictions to ensure the long-term functional performance and safety of the highway. The scope of each access plan may vary depending on what is determined necessary by the parties of the agreement to manage current and predicted future highway conditions and local land use.

*b.* To apply an access management plan within a municipality, it must be adopted by joint agreement in accordance with Iowa Code sections 306.4(4) and 306A.7.

*c.* Highway projects and corridor plans may include access management techniques and improvements to bring a section of highway into conformance with its current access category without adopting an access management plan and agreement.

**761—112.6(306A) Location and design.** This rule sets criteria for the location and design of access connections to primary highways.

**112.6(1)** Each access connection authorized must be located and designed in accordance with this rule. Terms and conditions for location, design, construction and use of the access connection shall be established by permit.

**112.6(2)** The priority of the primary highway system is to provide highway corridors with the goal of maintaining traffic capacity by limiting disruptions to through traffic. Direct access from abutting land is therefore subordinate. Where an adjacent lower traffic volume road is available, the access should connect to that roadway.

**112.6(3)** Private access connections may only be considered when there is a reasonable necessity for the access and should be separated from other private access connections at a minimum distance equal to the sight distance at the posted speed. The burden of proving necessity is on the applicant.

**112.6(4)** An access connection must be consistent with the requirements of the assigned access category.

**112.6(5)** Access location considerations must include traffic operations, public safety, sight distance, distance to other access locations, traffic speed and volumes, the design vehicle for the access, and turning movements.

**112.6(6)** Restrictive medians may be installed and access connection turning movements may be restricted to right turns or directional left turns for operational reasons when determined necessary and at the sole discretion of the department.

**112.6(7)** Minimum design criteria may be used only when there is a proven and documented necessity that higher standards are not feasible at the specific site.

**112.6(8)** When there are access connections on opposite sides of the highway and left turns are allowed from both directions, the access connections should be opposite each other or have sufficient offset distance so as to prevent overlapping left turn maneuvers.

**112.6(9)** If the access connection requires a turn lane, the access connection should be located so the turn lane can be installed and no other access connections occur along the turn lane. An access should not be installed along a turn lane or taper.

**112.6(10)** Private access connections should not be located within the functional area of a public intersection.

**112.6(11)** All access connections must meet sight distance.

**112.6(12)** The access must be designed to facilitate the movement of vehicles from the highway to prevent the queuing of vehicles on the roadway.

**112.6(13)** If a proposed access location does not comply with this chapter, the access permit shall be denied.

**112.6(14)** If the department determines that the literal application of these rules to a specific situation will create or result in an unsafe situation or an unreasonable design, the department will use sound engineering practices to determine the appropriate location and design for the specific situation. The department will include justification for the design in the permit or the highway project file, as applicable.

**761—112.7(306A) Access construction.** This rule sets criteria for the construction of access connections.

**112.7(1)** *Overall stipulations.*

*a.* Unless part of a public construction project, the construction of the access and its appurtenances as stated in the terms and conditions of the permit shall be completed at the expense of the permittee.

*b.* The access connection must be constructed according to the department's standards and specifications. The applicant will be provided with the necessary standards and specifications with the issued permit.

*c.* The access shall be completed in an expeditious and safe manner and must be finished within 30 days from initiation of construction within the highway right-of-way unless otherwise stated on the access permit.

*d.* The department may restrict work within the highway right-of-way, restrict lane closure periods and require preapproval of all aspects of construction phasing and traffic control. The permittee shall provide work zone traffic control at all times during access construction. Work in the highway right-of-way is not allowed on legal holidays, at night, during peak traffic hours or during adverse weather conditions without specific department permission.

*e.* Any damage to the primary highway, appurtenances or any utility or any permitted private encroachment shall be repaired immediately at the direction of the affected owner. All costs associated with repair or relocation are to be borne by the permittee. If a survey monument is modified or damaged, repair and replacement shall be done at the direction of the owner of the monument.

*f.* The relocation, removal or modification of any traffic control device or public or private utilities shall be accomplished by the permittee without cost to the department or utility and at the direction of the department or utility owner.

*g.* An access permit may require installation of traffic control features or devices, but such requirements do not create any type of private interest in such features. Traffic control features and devices in the right-of-way, such as traffic signals, channelizing islands, medians, median openings, and turn lanes, are operational and safety characteristics of the highway and are not means of private access. The department may install, remove or modify any traffic control feature or device in the right-of-way to promote traffic safety or efficient traffic operations.

*h.* The department is not obligated to permit or approve any connection, traffic control feature or device or any other site-related improvement that has been specified in a development approval process separate from the permitting criteria and approval process described in this chapter.

*i.* If any construction element of the permitted access fails within three years following construction, the permittee shall be responsible for all repairs. Failure to make such repairs may result in suspension of the permit and closure of the access.

*j.* The property owner or occupants are responsible for maintaining the access. Where the access connection has a paved surface, the property owner or occupants are responsible for maintaining the access connection from the paved edge of the roadway to the right-of-way line. Where the access connection does not have a paved surface, the property owner or occupants are responsible for maintaining the access from the outer shoulder line of the roadway to the right-of-way line. The department is not responsible for the removal of debris, snow or ice on the access, including debris deposited by the department during maintenance operations.

*k.* Drainage structures located along the highway are maintained by the department except for concrete box culverts and bridges constructed by the property owner for access to the property, which shall be maintained by the property owner or occupants.

**112.7(2)** *Temporary access.*

*a.* When an access is needed in temporary situations for a limited period of time, a temporary access connection may be allowed, but it is subject to special stipulations as determined by the department.

*b.* The location of the temporary access shall comply with all safety and sight distance requirements.

*c.* Temporary access, if authorized, may be permitted up to but not exceeding 24 consecutive months.

*d.* The permittee is responsible for all costs incurred, including removal of the access and restoration of the right-of-way at the end of the permit period.

*e.* An application for temporary access is not needed if the temporary access is for department purposes and has been approved in department internal documents and, when required, by the Federal Highway Administration.

**761—112.8(306A) Drainage requirements for access connection approvals.**

**112.8(1)** The permittee shall provide, at the permittee's expense, drainage structures for access connections that will become an integral part of the existing drainage system.

**112.8(2)** The type, size and condition of the drainage structures provided by the permittee must meet the requirements of the department in unincorporated areas and the requirements of both the department and the municipality in incorporated areas. The design and construction of drainage structures for access shall not adversely impact the highway right-of-way, a storm sewer system or a drainage-way.

**112.8(3)** The construction of an access shall not impair the drainage or stability of the highway subgrade, nor shall it cause water to flow across the roadway pavement or pond on the shoulders or in the ditch or result in erosion within the highway right-of-way.

**112.8(4)** Drainage systems designed and constructed by the department within the highway right-of-way are designed to serve the drainage needs of the highway and adjoining properties based on the basin conditions at the time of the design of the highway.

**761—112.9(306A,318) Violations at access connections.**

**112.9(1)** It is the responsibility of the property owner and permittee to ensure that the access is not in violation of this chapter or the terms and conditions of the permit.

**112.9(2)** When an authorized access is constructed or used in violation of this chapter or the terms and conditions of the permit, the department may suspend the access permit and may order the immediate closure of the access. Notwithstanding the preceding sentence or any other provision of this chapter, the department may proceed as authorized under Iowa Code chapter 318 at any time.

These rules are intended to implement Iowa Code chapter 17A and sections 306.19, 306A.1 through 306A.8, 307.12(1)*"j,"* 318.3, 318.5 and 318.8.

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## ARC 8783C

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

**Rulemaking related to junkyard control**

The Transportation Department hereby rescinds Chapter 116, "Junkyard Control," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 306C.2 through 306C.4, 306C.6 and 307.12(1)"j."

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 306C and 23 U.S.C. Section 136.

*Purpose and Summary*

This rulemaking repromulgates Chapter 116 in compliance with Executive Order 10. Chapter 116 continues existing practices for the handling of junkyards that are visible to the national highway system. No new restrictions are being placed upon owners of junkyards. Chapter 116 complies with 23 U.S.C. Section 136 and preserves highway funding. The Department follows the minimum standards accepted by the Federal Highway Administration in order to avoid a 7 percent reduction on the annual federal highway apportionment to the State of Iowa.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8247C**. A public hearing was held on the following date(s):

- November 6, 2024
- November 8, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 116 and adopt the following **new** chapter in lieu thereof:

CHAPTER 116
JUNKYARD CONTROL

**761—116.1(306C) Definitions.** The definitions in Iowa Code section 306C.1 apply to this chapter. In addition:

*"Adjacent area"* means an area that is contiguous to and within 1,000 feet of the nearest edge of the right-of-way of any highway on the national highway system.

*"Automobile graveyard,"* as used in Iowa Code section 306C.1, means any site that is maintained, used, or operated for storing, keeping, buying, or selling ten or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles, but does not include any location where motor vehicle bodies are placed along stream banks for purposes of bank stabilization and soil erosion control, if such placement conforms with guidelines established by the department of natural resources.

*"Industrial activities"* means activities that are generally permitted only in industrial or heavier zone classifications by zoning authorities within the state, except that none of the following are considered to be industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming and related activities, including but not limited to wayside fresh produce stands.
3. Activities normally and regularly in operation less than three months of the year.
4. Transient or temporary activities.
5. Activities not visible from the main traveled way.
6. Activities more than 300 feet from the nearest edge of the main traveled way within the corporate limits of cities.
7. Activities more than 1,000 feet from the nearest edge of the main traveled way outside the corporate limits of cities.
8. Activities conducted in a building principally used as a residence.
9. Railroad tracks, minor sidings, and passenger depots.
10. Junkyards.

*"Industrial zone"* means a zone established by zoning authorities as being most appropriate for industry or manufacturing. A zone that simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone.

*"Inoperative motor vehicle"* means any of the following:

1. A motor vehicle that does not have a valid title.
2. A motor vehicle that does not have a current registration unless the motor vehicle is in the inventory of a motor vehicle dealer licensed under Iowa Code chapter 322.
3. A motor vehicle with one or more of the following items missing or in need of substantial repair: windshield, driver's seat, steering wheel or steering system, battery, ignition system, fuel tank or fuel supply system, engine, transmission, drive shaft, differential, axle, suspension system, brake system, or frame.
4. A motor vehicle that is not immediately capable of legal operation on a public road or street.

However, any one of the following by itself does not render a motor vehicle inoperative: a battery that can be recharged, one tire and wheel missing or in need of repair, or lack of fuel.

*"Main traveled way"* means the portion of the roadway for movement of vehicles on which through traffic is carried, exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main traveled way includes each of the separated roadways for traffic moving in opposite directions, exclusive of shoulders, auxiliary lanes, frontage roads, turning roadways, and parking areas.

*"Nonconforming junkyard"* means a junkyard located in an area not exempted by Iowa Code section 306C.2 and that was lawfully established:

1. Prior to July 1, 1972, and is located within the adjacent area of an interstate highway.
2. Prior to May 6, 2015, and is located within the adjacent area of a noninterstate highway on the national highway system.
3. Prior to the effective date of a zoning change that caused nonconformity with these rules.
4. Prior to the departure or closure of an industrial activity that caused nonconformity with these rules.
5. Prior to the establishment of a highway as part of the national highway system.

*"Right-of-way"* means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes but does not include temporary easements or rights for supplementary highway appurtenances.

*"Unzoned industrial area,"* as used in Iowa Code sections 306C.2 and 306C.3, means land occupied by a regularly used building, parking lot, storage area or processing area of an industrial activity, and land within 1,000 feet thereof that is:

1. Located on the same side of the highway as the activity,
2. Not predominantly used for residential or commercial purposes, and
3. Not zoned by state or local law, regulation, or ordinance.

This rule is intended to implement Iowa Code sections 306C.1 through 306C.9 and 23 U.S.C. Section 136 as implemented through 23 CFR 751.

**761—116.2(306C) Screening or removal costs.** Screening or removal shall be paid for and provided by the following:

**116.2(1)** The department, only for nonconforming junkyards and subject to Iowa Code sections 306C.3 and 306C.5.

**116.2(2)** The owner, for junkyards established within the adjacent area of a highway on the national highway system in an area not exempted by Iowa Code section 306C.2, or for nonconforming junkyards that have expanded in size since becoming nonconforming.

This rule is intended to implement Iowa Code sections 306C.3 and 306C.5.

**761—116.3(306C) Screening standards.**

**116.3(1)** *Composition.* Screens may be natural or manmade, but all screens shall be of a height and type to provide year-round obscurement of the contents.

*a.* Natural screens may consist of nondeciduous plantings, provided the variety, size, and growth rate will obscure the site within a reasonable time period. Earthen berms or existing natural features on the site may also be incorporated into the screening solution.

*b.* Manmade screens may consist of any variety of materials, provided the screen is constructed in a sturdy, permanent manner and blends with the natural surroundings. Buildings may be incorporated into the screening solution, but inoperative motor vehicles may not be stacked or arranged as a component of the screening feature.

**116.3(2)** *Screening plan.* For junkyards that are not exempted by Iowa Code section 306C.2, a screening plan should be submitted to the department for review before investing in plants, materials, and labor. This allows for the department to review the plan to ensure that the proposed screen will completely obscure the contents of the site from view, will be structurally sound, and will blend in with the natural surroundings for the area. While submitting a screening plan is not required, doing so adds confidence that investments made will yield the desired result.

This rule is intended to implement Iowa Code sections 306C.3 and 306C.4 and 23 U.S.C. Section 136 as implemented through 23 CFR 751.

**761—116.4(306C) Removal.** Removal or relocation of contents to areas not viewable from the highway may be necessary for the following reasons:

**116.4(1)** The difference in elevation between the highway and junkyard is such that a screen tall enough to completely obscure the site is not cost-effective.

**116.4(2)** The owner is financially unwilling or otherwise unable to complete the installation of or maintain a screen that can pass review by the department.

**116.4(3)** Local regulations do not permit the construction of screening of such type that would provide complete obscurement.

This rule is intended to implement Iowa Code sections 306C.2, 306C.3 and 306C.5.

**761—116.5(306C) Notice and enforcement.**

**116.5(1)** *Notice.* The department may provide a 30-day written notice by certified mail to the owner of a junkyard and, if not the same person or entity, the owner of the property, demanding that steps be taken to bring a site into compliance. Steps may include but are not limited to the submission of a screening plan, completion of a screen, and extending or repairing a screen.

**116.5(2)** *Enforcement.* If the junkyard remains out of compliance after notice is served and steps toward compliance are not accomplished within the time frames prescribed by the department, the department may apply for an injunction to abate the public nuisance as provided in Iowa Code section 306C.6.

This rule is intended to implement Iowa Code sections 306C.4 and 306C.6.

**761—116.6(17A) Hearings and appeals.** A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision pursuant to 761—Chapter 13.

This rule is intended to implement Iowa Code chapter 17A.

**761—116.7(306C) Contact information.** Inquiries regarding this chapter may be directed to the Advertising Management Section, Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1255.

This rule is intended to implement Iowa Code sections 306C.1 through 306C.9.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8784C

# TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

### Rulemaking related to outdoor advertising

The Transportation Department hereby rescinds Chapter 117, "Outdoor Advertising," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 306B.4 through 306B.6, 306C.11, 306C.18, 306C.24, 306D.4 and 307.12(1)"j."

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 306B, 306C and 306D; 23 U.S.C. 131; and 23 CFR Part 750.

*Purpose and Summary*

This rulemaking repromulgates Chapter 117 in compliance with Executive Order 10. Chapter 117 eliminates redundancies and any unnecessary restrictions that are not contained in federal requirements or that do not directly further the legislative intent of Iowa Code chapter 306B, 306C, or 306D.

The Highway Beautification Act, 23 U.S.C. Section 131, was passed in 1965 and was intended to protect the public's investment in the primary highway system, promote the safety and recreational value of public travel, and preserve natural beauty alongside the roadway. The prohibition on outdoor advertising signs in rural, residential, and other areas not considered commercial or industrial was a key element to this law. This chapter and Iowa Code establish and maintain "effective control" of outdoor advertising signs adjacent to the primary highway system in Iowa.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8248C**. A public hearing was held on the following date(s):

- November 6, 2024
- November 8, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 117 and adopt the following **new** chapter in lieu thereof:

CHAPTER 117
OUTDOOR ADVERTISING

**761—117.1(306B,306C) Definitions.** The definitions in Iowa Code section 306C.10 are adopted. In addition:

*"Abandoned sign"* means an advertising device for which the owner has failed to timely apply for the required outdoor advertising permit(s) or has failed to timely pay the required fee(s).

*"Blank sign"* means an advertising device for which any of the following conditions exist:

1. The face does not display advertising copy.
2. The face has been removed.
3. The entire advertising device has been removed or does not exist at the permitted location.

*"Daylight area"* means a triangular area formed by a line connecting two points each back (50 feet in city, 100 feet in unincorporated area) from the point where the right-of-way lines of the main traveled way and an intersecting street meet or would meet if extended.

*"Destroyed"* means that at least 60 percent of the supports are broken, if wooden, or broken, bent or twisted, if metal, such that normal repair practices would call for the replacement of the damaged supports.

*"Face"* means that part of an advertising device that is devoted to the display of advertising and that is visible to traffic proceeding in any one direction.

*"Interchange"* means the entire area constructed for a junction of two or more public streets or highways by a system of separate levels that permit traffic to pass from one level to another without the crossing of traffic streams. This includes all acceleration and deceleration lanes constructed to accommodate this movement of traffic.

*"LED display"* means a face, as defined herein, displaying a message that is formed by light-emitting diodes and that is changed by an electronic process. An LED display is a single face.

*"Modification"* means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions is a modification. However, the addition of extensions or cutouts, including forward projecting, is not a

modification if the extensions or cutouts are added for a period of 90 days or less and if they are illuminated only by existing sign lighting and do not contain internal lighting.

2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.

3. On an advertising device that conforms to all current requirements, the replacement of one metal-framed face with another metal-framed face of the same size, using dissimilar component parts or assembly methods, or both, is not a modification.

4. The addition of LED display capabilities to an advertising device is a modification.

5. The elimination of trim surrounding the area used for advertising copy is not a modification, provided the advertising copy retains the same dimensions as the original advertising copy.

*"Nonconforming sign"* means an advertising device that was lawfully erected and continues to be lawfully maintained, but that does not comply with current requirements due to changed conditions, such as a change in zoning, establishment of a new highway, or a similar change that affects compliance.

*"Regularly used"* means open for business and staffed by an owner or employee for at least 20 hours per week, on property assessed as commercial or industrial by the jurisdiction having authority, and with the hours of operation visibly posted on the premises. The department may delay action on the permit application for up to 180 days from the date of the application in order to conduct periodic checks on the site as necessary to determine whether the purported commercial or industrial activity meets this definition. A rental storage business is excepted from the staffing requirement if it has 24-hour access for customers and a minimum of 50 units, each occupying at least 50 square feet, individually separated, and enclosed by walls.

*"Scenic area,"* as used in Iowa Code section 306C.13, means any area of particular scenic beauty or historical significance, as determined by the federal, state or local officials having jurisdiction of the area. It includes real property interests that have been acquired for the restoration, preservation and enhancement of scenic beauty.

*"Tri-face device"* means an advertising device with three singular faces attached to one common structure in a triangular configuration.

*"Tri-vision device"* means an advertising device that has an advertising face with a mechanical device that allows three advertising messages to be alternately visible to traffic proceeding in any one direction. Each message is attached to individual vertical or horizontal louvers, which are mechanically rotated to change the message.

*"Widening,"* as used in Iowa Code section 306C.13, means the point at which it is detectable that a deceleration or exit ramp is beginning to form alongside the main traveled way, or an acceleration or merging ramp has tapered to a close alongside the main traveled way. In the case where an entrance ramp becomes an auxiliary lane and the auxiliary lane becomes an exit ramp at the adjacent interchange, the widening shall be the point at which a deceleration ramp completely separates from the main traveled way as evidenced by the inside lane marking of such ramp, or an acceleration ramp joins with the main traveled way as evidenced by the inside lane marking of the ramp intersecting with the outside lane marking of the main traveled way.

**761—117.2(306B,306C) General provisions.**

**117.2(1)** *Scope.* This chapter pertains to all advertising devices that are visible from the main traveled way of any primary highway, except for the following:

*a.* Advertising devices within incorporated areas that are beyond 660 feet from the nearest edge of the right-of-way.

*b.* Official traffic control devices, logo signing and tourist-oriented directional signing.

*c.* Advertising devices erected within the right-of-way of any primary highway; such devices are subject to Iowa Code chapter 318.

**117.2(2)** *Rebuttable presumption.* The department may regulate signs as advertising devices except when sufficient documentation from persons reasonably identified as potential payors or receivers of remuneration is available to the department showing or certifying that remuneration does not exist.

**117.2(3)** *Contact information.* Inquiries, requests for forms, and applications regarding this chapter may be directed to the Advertising Management Section, Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Similar information is also available at www.iowadot.gov/iowaroadsigns/sign-programs-and-applications/advertising-signs.

**117.2(4)** *Advertising devices permitted under the private directional sign program between May 26, 1983, and July 1, 2021.* Any advertising device permitted as a private directional sign by the department between May 26, 1983, and July 1, 2021, may continue to exist, even if nonconforming to this chapter, under the following conditions:

*a.* The permit is renewed each year by payment of a $15 fee on or before July 1.

*b.* The permit remains issued to the owner of the permit on record with the department on July 1, 2021.

*c.* The advertising device is not modified or destroyed.

*d.* The advertising device is properly maintained with legible copy.

*e.* The design and display of the advertising device meet federal standards contained in 23 CFR Section 750.154 as amended to October 1, 2024.

**761—117.3(306B,306C,306D) General criteria.**

**117.3(1)** *Limitations.* In addition to the standards contained in Iowa Code section 306C.13, advertising devices shall not be erected or maintained:

*a.* That attempt or appear to attempt to direct the movement of traffic.

*b.* That move or have any animated or moving parts in areas subject to Iowa Code chapter 306B.

*c.* That contain LED displays, unless each advertisement remains in a fixed position on the display screen for at least eight seconds, transitions between advertisements occur within one second, and advertisements are not flashed, rolled, scrolled, or moved in any way on the display screen.

*d.* Within the adjacent area of a designated scenic byway, unless the erection occurred prior to the date of designation, in which case subsequent permitting may occur in accordance with Iowa Code section 306C.18.

**117.3(2)** *Measurements of distance.* Measurements of distance for general spacing purposes are conducted in a horizontal manner parallel with the highway centerline. However, when determining the limits of the adjacent area defined in Iowa Code section 306C.10, measurements from the edge of the right-of-way are conducted in a horizontal manner perpendicular to the highway centerline.

**117.3(3)** *Measurement of size.* The size of an advertising device is determined by measuring the smallest square, rectangle, triangle, circle or combination thereof that will encompass the entire display area including border and trim, but excluding temporary cutouts and extensions, base, apron, support, and other structural members.

**117.3(4)** *Zoning exclusions.* The following zoning actions are not commercial or industrial zones for advertising control purposes:

*a.* A zone in which limited commercial or industrial activities are permitted incidental to other primary land uses.

*b.* Action that is not a part of comprehensive zoning in accordance with Iowa Code chapter 335 or 414.

*c.* Action taken primarily to permit advertising devices.

**761—117.4** Reserved.

**761—117.5(306B,306C) Location, size and spacing requirements.**

**117.5(1)** *Advertising devices lawfully in existence prior to July 1, 1972.*

*a.* An advertising device that was lawfully in existence prior to July 1, 1972, including a device located beyond the adjacent area in unincorporated areas, may remain in existence without conforming to the location, size and spacing requirements in this rule provided that a permit is maintained in accordance with rule 761—117.6(306C).

*b.* If the advertising device is located in an adjacent area that is neither a zoned nor an unzoned commercial or industrial area, the device may remain in existence as described in paragraph 117.5(1)*"a"*

only until such time as the device is acquired by the department. The permit issued for the device will be a provisional permit in accordance with Iowa Code section 306C.18(3) and subject to acquisition in accordance with rule 761—117.9(306B,306C).

**117.5(2)** *Advertising devices erected after July 1, 1972.* Except as otherwise provided in subrule 117.2(4), advertising devices shall not be erected after July 1, 1972, or subsequently maintained except for those that comply with Iowa Code chapters 306B and 306C and the following criteria:

*a. Commercial or industrial area.* Eligible areas for permitting are limited to the following three areas:

(1) Adjacent to interstate highways; areas that are zoned and used for commercial or industrial purposes in accordance with Iowa Code section 306B.2; within 750 feet of the regularly used portion of a commercial or industrial activity visible from the main traveled way; and on the same individual, platted parcel of land as that commercial or industrial activity.

(2) Adjacent to noninterstate primary highways; areas that are zoned commercial or industrial.

(3) Adjacent to noninterstate primary highways; areas that meet the definition of an unzoned commercial or industrial area.

*b. Spacing.* In addition to the standards contained in Iowa Code sections 306B.2 and 306C.13, the following requirements apply:

(1) Spacing standards apply to advertising devices for all highways from which the devices are visible, when more than one highway is in the vicinity of the advertising device.

(2) Spacing standards default to unincorporated spacing when both incorporated and unincorporated areas exist within the adjacent area on either side of the highway. However, daylight spacing may be determined by whether the subject location itself is within or outside of the incorporated municipality.

(3) Advertising devices subject to the daylight area spacing exemption in Iowa Code section 306C.13(5) are considered in conformity with that Iowa Code section if the catwalk or light ballasts extend out further than the 12 inches specified, provided such parts do not overhang the right-of-way. If the building from which the device is mounted is removed, the permit is revoked.

(4) Applications for advertising devices proposed in a location that meets the spacing requirements for that location, but that create a nonconformity to exist with another permitted advertising device, will be denied or adjusted so that the nonconformity is not created.

*c.* The following types of advertising devices are eligible for permits:

(1) Single face devices; one permit required.

(2) Back-to-back devices; two permits required.

(3) V-type devices with the inside angle formed by the two faces not exceeding 60 degrees so that both faces are not readable upon approach; two permits required.

(4) Devices commonly referred to as side-by-sides or double-decks are classified as either single face, back-to-back, or v-type, as provided in this paragraph. However, provisions do not exist for panels of copy that may be oriented in the same direction, but that are not lined up on the same vertical and horizontal planes, or that are not physically connected to the same structure with more than two feet of distance between them, or that are owned by different entities.

(5) Tri-face devices are classified as v-type devices for permitted purposes from the primary highway in which the two faces are visible. If visibility of the third face exists due to a turn in the highway or another primary highway exists in the vicinity, a third permit is required.

(6) Tri-vision devices, with a rotation occurring not more rapidly than four seconds for each display, are classified as either single face, back-to-back, or v-type, as provided in this paragraph, depending upon the structure.

**761—117.6(306C) Outdoor advertising permits and fees required.**

**117.6(1)** *Application.* Application for a permit for any advertising device subject to subrule 117.2(1) shall be made in accordance with Iowa Code section 306C.18 within the following time frames:

*a.* On or before July 31, 1972, for advertising devices in existence on July 1, 1972.

*b.* Prior to the erection of the advertising device, if erected after July 1, 1972.

*c.* Within 30 days of receiving notice from the department that a lawfully erected advertising device that was not subject to subrule 117.2(1) has become subject to subrule 117.2(1) for reasons including but not limited to the establishment of a new primary highway or a change in the designation of a roadway to a primary highway.

**117.6(2)** *Fees.* Fees are applicable to all advertising devices measuring over 32 square feet in size.

*a.* The initial fee, payable at the time of application, is $100 per permit. This fee is not refundable unless the application is withdrawn prior to the department's field review of the proposed location.

*b.* The annual renewal fee for each permit, due on or before June 30 of each year, is as follows:

| Area of Sign | Annual Renewal Fee |
|---|---|
| 33 to 375 square feet | $15 |
| 376 to 999 square feet | $25 |
| 1,000 square feet or more | $50 |

*c.* The payment of an annual renewal fee, if postmarked on or before June 30 of each year or otherwise delivered to the department on or before June 30 of each year, automatically renews the existing permit for the device for which the fee was paid.

*d.* A permit for which the fee was not paid in a timely manner expires on July 1 of each year. If an advertising device is still in existence, it is considered abandoned. If the owner wishes to reapply for a permit to retain the device, the device and location will be reviewed in the same way that a review is conducted for a newly proposed advertising device.

*e.* Renewal fees are not refundable and are not prorated.

**117.6(3)** *Highway improvement projects.* The department shall not prevent nor unnecessarily delay the issuance of a permit for the reason of a proposed future highway improvement project, except under any of the following conditions:

*a.* The property upon which the advertising device is proposed has been appraised for the purposes of acquisition.

*b.* Contact by department staff has been made with the property owner regarding compensation for the affected area.

*c.* The placement of the advertising device would fail to meet the requirements of an existing corridor preservation plan in effect for the proposed location.

*d.* A construction contract for the project has been initiated by the department.

**117.6(4)** *Permit plate.* Upon approval of the application, the department will issue a numbered metal permit plate for the advertising face. This permit plate shall be securely attached to the advertising device in a manner that the plate is unobstructed from view from the highway. If the plate is not displayed, the department may provide notice to the owner that the plate is to be displayed within 90 days. If after that period of time the plate is not displayed, the department may cancel the permit.

**117.6(5)** *Reconstruction or modification.* A new permit is required from the department prior to the reconstruction or modification of a permitted advertising device.

*a.* Permit applications will be reviewed for compliance with Iowa Code chapter 306C and this chapter; nonconforming signs are not eligible for permit approval for reconstruction or modification.

*b.* Reconstruction or modification of an advertising device prior to the issuance of the permit needed to conduct such action shall result in revocation of the existing permit that has been issued for the advertising device. This may result in the removal of the advertising device in the manner specified in subrule 117.8(1) if the device is not eligible for permitting in accordance with this chapter or Iowa Code chapter 306B or 306C.

**117.6(6)** *Access.* Access to the private property upon which an advertising device is located shall be gained only from legal accessways through private property, local streets, secondary roads, or from the primary highway right-of-way through access points designated or allowed by the department in accordance with 761—Chapter 112. Unauthorized use of the primary highway right-of-way for the purpose of constructing or maintaining an advertising device may be cause for permit revocation and removal of the device. The department will issue a warning letter to the owner of the permit following the first instance of unauthorized use; a second instance will result in the revocation of the permit

followed by a 12-month period where no new permits may be issued to that person or entity in the same location, or within 500 feet of the same location. The existing device for which the permit was revoked is subject to removal in accordance with Iowa Code section 306C.19.

**117.6(7)** *Vegetation in the right-of-way.* No vegetation in the right-of-way may be removed, trimmed, poisoned, or altered so that the viewing time can be improved for an advertising device, unless written authorization is received from the department and the conditions included in the authorization are followed. Proceeding to remove, trim, poison, or alter vegetation without such authorization may result in the revocation of the permit for the device and the removal of the device in accordance with subrule 117.8(1). In addition, the department may suspend permit approvals for a 12-month period for any location within 500 feet of the location of the former permit.

**117.6(8)** *Use and condition.*

*a.* The maximum period of time in which an advertising device may qualify as a blank sign is six months.

*b.* The maximum period of time in which an advertising device may have illegible copy or be in a state of disrepair is 90 days.

*c.* If the department determines that an advertising device has been blank for a period of time exceeding six months, or has illegible copy or is in a state of disrepair for a period of time exceeding 90 days, the department may issue a notice pursuant to rule 761—117.8(306B,306C) in which the owner has 30 days to either cause it to conform or to remove it.

**117.6(9)** *Destroyed sign.*

*a.* The permit for an advertising device that has been destroyed will automatically be revoked.

*b.* An advertising device that has been destroyed is in a condition that, if repaired, would meet the definition of reconstruction in Iowa Code section 306C.10 and is subject to subrule 117.6(5). Whether the device can be reconstructed will depend upon whether it conforms to this chapter and Iowa Code chapters 306B and 306C.

*c.* An advertising device that has been damaged, but not destroyed, may be repaired. The repair is not deemed an act of reconstruction.

**761—117.7** Reserved.

**761—117.8(306B,306C) Removal procedures.**

**117.8(1)** Advertising devices subject to this chapter that have been abandoned, or illegally erected or maintained, may be removed, or caused to be removed, by the department after 30 days' notice in accordance with Iowa Code section 306C.19.

**117.8(2)** Advertising devices removed by the department may be reused, scrapped or disposed of by the department with no compensation paid to the owner.

**117.8(3)** Revocation of a permit may be included as part of the 30 days' notice, if served by restricted certified mail or by personal service.

**761—117.9(306B,306C) Acquisition of advertising devices that have been issued provisional permits.**

**117.9(1)** The department will acquire an advertising device for which a provisional permit has been issued only if all of the following conditions are met:

*a.* Acquisition is required by federal law.

*b.* All necessary federal and state funding is available for the purpose.

*c.* The permit has not been revoked.

**117.9(2)** If the advertising device will be acquired, the department will use the following procedure:

*a.* A written notice of the department's intent to revoke the provisional permit and acquire the device will be mailed or delivered to the owner of the advertising device and to the owner of the land upon which the device is located. The notice will include an offer to purchase the advertising device. If good-faith negotiations with the owner of the device and the owner of the land upon which the device is

located do not result in a mutually agreeable sale price, the department may revoke the provisional permit and initiate condemnation proceedings as provided in Iowa Code chapter 6B.

*b.* In the event of condemnation, possession will be taken of the advertising device as soon as the award has been deposited with the sheriff.

**761—117.10(17A,306C) Contested cases.**

**117.10(1)** An applicant who has been denied an outdoor advertising permit by the department may timely contest the decision in accordance with 761—Chapter 13. A request is considered timely if submitted in writing to the director of the traffic and safety bureau at the address in subrule 117.2(3) and delivered or postmarked within 30 days of the department's mailing of the letter denying the application.

**117.10(2)** The owner of an outdoor advertising permit that has been revoked or canceled by the department may timely contest the decision in accordance with 761—Chapter 13. A request is considered timely if submitted in writing to the director of the traffic and safety bureau at the address in subrule 117.2(3) and delivered or postmarked within 30 days of the owner's receipt of the revocation notice issued by the department.

**117.10(3)** Failure to timely request a hearing on the denial, revocation, or cancellation of a permit is a waiver of the right to a hearing and a failure to exhaust administrative remedies.

These rules are intended to implement Iowa Code chapters 306B and 306C and section 306D.4 and 23 U.S.C. Section 131 and 23 CFR Section 750.705.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8785C

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

**Rulemaking related to logo signing**

The Transportation Department hereby rescinds Chapter 118, "Logo Signing," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 306C.11 and 307.12(1)"j."

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 306C.

*Purpose and Summary*

This rulemaking repromulgates Chapter 118 in compliance with Executive Order 10. Chapter 118 establishes standards and conditions for the placement of logo signs along the interstate system in Iowa in accordance with Iowa Code section 306C.11. The logo signing program operates within certain guidelines contained in the federal Manual on Uniform Traffic Control Devices (MUTCD), which contains national standards for the placement of official traffic signs placed within the public rights-of-way.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8249C**. A public hearing was held on the following date(s):

- November 6, 2024
- November 8, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 118 and adopt the following **new** chapter in lieu thereof:

CHAPTER 118
LOGO SIGNING

**761—118.1(306C) Introduction.** Logo signing consists of individual business signs attached to specific service signs erected by the department within the right-of-way of interstate and freeway-primary highways. The purpose of logo signing is to provide specific motorist service information of interest to the traveling public in accordance with the "Manual on Uniform Traffic Control Devices," (MUTCD) as adopted in rule 761—130.1(321). The department will perform all installation, maintenance, removal and replacement services for business signs within the right-of-way. The business signs are provided by the applicants.

**761—118.2(306C) Definitions.**

*"Business"* means an entity that provides a gas, food, lodging, or camping service or that is an attraction site.

*"Business sign"* means a separate sign attached to a specific service sign; the business sign shows the name, symbol or trademark of a business that provides the type of motorist service identified on the specific service sign.

*"General service sign"* means an official guide sign that identifies general road user services, such as gas, food, lodging and camping. This sign does not provide for the placement of business signs.

*"Main line"* means the main-traveled way of an interstate or a freeway-primary highway.

*"Meal"* means the service of food entrees and beverages between the hours of 8 a.m. to 10 a.m., 11 a.m. to 1 p.m., or 5 p.m. to 7 p.m.

*"Motorist service"* means one of the following five types of services: gas, food, lodging, camping or attraction.

*"Ramp"* means the exit lane that carries decelerating traffic away from the main line of an interstate or a freeway-primary highway.

*"Specific service sign"* means an official guide sign that identifies one or more types of motorist services, provides directional information, and has spaces for the attachment of business signs to identify businesses providing those services.

*"Trailblazing sign"* means a specific service sign erected on the road network accessed from an interchange that has logo signing; the sign directs motorists to a particular business signed on the main line and has spaces for the attachment of business signs.

*"Visible"* means able to be identified or comprehended by a person of visual acuity sufficient to be issued an Iowa driver's license.

**761—118.3(306C) Erection and location of specific service signs and placement of business signs.**

**118.3(1)** *General.*

*a.* The department may erect specific service signs at rural interchanges if the requirements of this chapter are met and sufficient space is available. The department may also erect specific service signs at urban or nonrural interchanges if the requirements of this chapter are met and sufficient space is available. If sufficient space is not available for more than one specific service sign, the department may install a general service sign in lieu of a specific service sign.

*b.* Specific service signs may be erected at an interchange only when the motorist can conveniently reenter the interstate or freeway-primary highway and continue in the same direction of travel.

**118.3(2)** *Main line specific service signs and placement of business signs.* Following are the requirements for main line specific service signs erected in advance of an interchange, in a single direction of travel, and limitations regarding the number and types of business signs attached to these service signs:

*a.* A maximum of four main line specific service signs may be erected in advance of an interchange from which motorist services are available.

*b.* On the main line, the minimum spacing between specific service signs and between specific service signs and other official guide or destination signs is 800 feet.

*c.* If spacing limitations exist, preference may be given to available gas, food, lodging, camping or attraction services, in that order.

*d.* If services are displayed, the order of display of services in the direction of travel on successive main line specific service signs is as follows: attraction, camping, lodging, food, and gas.

*e.* Depending upon factors such as limited space for the placement of signs, limited interest from businesses, or limited availability of businesses, the department may combine up to three service types on one sign as provided in the MUTCD.

*f.* A maximum of six business signs may be displayed on a specific service sign, regardless of whether it displays a single service type or multiple service types.

**118.3(3)** *Specific service signs erected along interchange ramps.*

*a.* The department may erect specific service signs along interchange ramps to accommodate the placement of business signs similar to but smaller than the business signs used along the main lines, along with arrows and mileage indicators. Specific service signs along interchange ramps are available

for the participating businesses that are not visible or that are only marginally visible from the traveled portion of the interchange area.

*b.* The department may opt to erect general service signs in lieu of specific service signs along interchange ramps, or not erect any service signs at all in cases where insufficient spacing exists for signs or where the ramps are directional with no turning decision to be made at a terminal.

**118.3(4)** *Trailblazing signs.*

*a.* Businesses that are not visible from the intersecting roadway will need to provide additional smaller versions of their business signs for installation on trailblazer service signs erected in advance of intersections where turns would be necessary.

*b.* If the proposed placement of a trailblazer service sign is not on the primary road system, the appropriate local jurisdiction will be provided with an opportunity to review the placement before the department proceeds with any specific service signing for the business. If the placement is approved, the department will route the appropriate signs to the local authority for installation.

*c.* If a trailblazer service sign is necessary, but the location is not conducive for placement or the local ordinance prevents such placement, an official traffic control device from another sign program or a lawfully placed outdoor advertising device may be used as a substitute, provided the sign is positioned to be effective at the intersection where it is needed.

*d.* If signing at the intersections where turns are necessary cannot be accomplished, the business does not qualify for participation in the logo program.

**761—118.4(306C) Eligibility for placement of business signs on specific service signs.** Participation in the logo program is limited to businesses that meet the following conditions:

**118.4(1)** The business is open to the general public; does not restrict entrance based on age; and conforms to all applicable laws concerning discrimination based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, and disability.

**118.4(2)** The business is located within three driving miles of the beginning of the exit ramp for the interchange. In commercially developed areas, the department may reduce the qualifying distance to one mile. In areas where services are limited, the department may increase the qualifying distance to 15 miles.

**118.4(3)** Service types. The business provides one of the following types of services in accordance with the associated criteria:

*a. Gas.* Provision for the sale of gasoline, oil, and potable water; the use of restroom facilities; and access to a public telephone or a cell phone. The business' operating times should be at least 16 hours per day, seven days per week. For 24-hour fuel dispensers, operable with the use of a widely accepted credit card, the provision of gas or alternative fuels is considered sufficient for qualification purposes.

*b. Food.* A restaurant or food service that provides all of the following: at least two meals per day, six days per week; employees, menu, cash register or point-of-sale, seating for at least ten customers, and an exterior sign, all of which are designated exclusively for the business being represented on the service sign; and the display of a state food service establishment license or, if operating within tribal lands, compliance with food service standards established by the local authority.

*c. Lodging.* A lodging facility, appropriately licensed, with bathrooms and telephones for each unit.

*d. Camping.* A campground with at least 20 available camping spaces, with a 24-hour contact for staff, and for which all state and local health and sanitation standards are met.

*e. Attractions.* One of the following attraction sites providing public restrooms and parking spaces for at least 30 customers, and being open at least five days per week totaling 40 hours or more per week, except if otherwise specified below:

(1) Area of natural beauty or phenomena.
(2) Historic site.
(3) Cultural site or museum.
(4) Scientific site.
(5) Four-year accredited college or university.

(6) Religious site.

(7) Area of outdoor recreation.

(8) Winery, brewery or distillery with on-site production, tours, gift shop, and tasting room.

(9) Amusement park.

(10) Botanical park or zoological facility.

(11) Casino.

(12) Stadium, coliseum, arena or racetrack with a seating capacity of at least 5,000 and open during scheduled events.

(13) Antique mall with at least 20,000 square feet devoted to retail sales.

(14) Area containing eight or more antique shops within a three-block radius.

(15) Shopping mall or retail outlet with a minimum, active store count of 50, excluding kiosks and temporary booths within the common areas, and including only those stores that occupy owned or leased areas whose boundaries are defined by permanent walls with doors or gates.

(16) Sporting goods store or recreational retail outlet with at least 100,000 square feet devoted to retail sales.

(17) Cultural and entertainment district as officially designated by the department responsible for state economic development provided that the local jurisdiction implements a signing plan to direct motorists to the various cultural and entertainment sites within the district.

**118.4(4)** The business maintains all outdoor advertising signs in a manner that conforms to Iowa Code sections 306C.11 and 306C.13.

**118.4(5)** The business premises includes a sign identifying the business in a manner visible to traffic approaching the entrance from a public roadway.

**118.4(6)** The business remains eligible to participate in the signing program in accordance with this chapter. If it is determined that a business is no longer eligible, the department may remove the business sign immediately or provide notice allowing for a 30-day period for the business to make the necessary adjustments to restore eligibility.

**761—118.5(306C) Application, drawing, and fees.**

**118.5(1)** *Application.*

*a.* A business may request placement of a business sign upon a main line specific service sign by submitting a completed application form, provided by the department, along with the application fee, to the Advertising Management Section, Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

*b.* The department will review the application and site for compliance with this chapter. If the application is approved, the department will advise on how many business signs will be needed to fulfill the request.

*c.* The business signs will be provided by the business or applicant in accordance with rule 761—118.6(306C). The department may offer a noncomprehensive list of known sign fabricators as a courtesy to the applicant.

*d.* Approved applications are valid for the fiscal year (July 1 to June 30) and expire on June 30. If the fees, as billed by the department, are paid by the business in accordance with subrule 118.5(4), the application is renewed on July 1.

**118.5(2)** *Drawing to select applicants.* If the number of applicants for businesses exceeds the number of vacant spaces on a main line specific service sign, the department will hold a lottery drawing among these applicants to select the applicants to fill the vacant spaces.

**118.5(3)** *New application required for business name change.* If a business participating in the logo signing program changes its name or franchise affiliation from that which appears on its business sign, a new application is required. If the new application is received by the department prior to the change on the business premises, the business will retain its position on the specific service sign, the department will approve the application, and no application fee is due.

**118.5(4)** *Fees.*

*a. Application fee.* A fee of $100 is required for an application submitted in accordance with subrule 118.5(3). The application fee is a one-time fee and is nonrefundable once the department has performed an on-site review to verify compliance with the requirements of this chapter.

*b. Annual fee.* The annual fee is $230 for each business sign posted on a specific service sign and is due on or before July 1 of each fiscal year. However, for a new application, the annual fee will be prorated based on the remaining months left in the fiscal year.

*c. Service fee.* If business signs are replaced for any reason, including at the request of the business to reflect an updated design or at the request of the department in accordance with rule 761—118.7(306C), a service fee of $50 per sign is due upon completion of the work by the department. If business signs need to be replaced, the department recommends supplying new business signs for replacement rather than refurbishing existing signs. If existing signs are to be removed, refurbished, and then reinstalled, the $50 service fee is applied per sign, per service trip.

**118.5(5)** *Failure to pay annual fee or service fee.* Applications terminate when annual fees are not paid in full by July 1 of each year or when service fees are not paid within 30 days of receiving the invoice from the department. In the event of termination, the business signs may be removed by the department, although such removal may occur at some point after the date of termination, depending upon the department's schedule and work priorities. If the termination was not voluntary, the business may reapply, subject to the requirements of this chapter, including payment of the application fee and a lottery drawing, where applicable.

**118.5(6)** *Fee options for seasonal operations.* Subject to subrule 118.5(5), a business that operates on a seasonal basis and is permitted to do so by this chapter has the following payment options:

*a.* Pay the annual fee for a full year. The department removes and reinstalls each business sign once each year, free of additional charge, coinciding with the dates of operation, if possible.

*b.* Pay the annual fee for a prorated year, based on the calendar months in which the business is in operation, plus a $50 annual service fee per business sign for removal and reinstallation services performed. The department removes and reinstalls each business sign once each year, coinciding with the dates of operation, if possible.

*c.* Pay the annual fee for a prorated year, based on the calendar months in which the business is in operation, and provide business signs that contain a supplemental message indicating the dates of operation.

**118.5(7)** *Fees for temporary specific service signs.* In cases where the specific service sign is lacking or insufficient in size, and the projected date for installation or enlargement of the specific service sign by the department's contractor is undesirable for the applicant, the applicant may pay a special fee to expedite the installation of the business sign by having a small temporary specific service sign erected to provide a surface for the mounting of the business sign. The fee for the performance of this work is $700 per main line specific service sign if none exists for that service type, $400 per main line specific service sign if the existing sign is full, and $300 per ramp specific service sign if similar work is needed along the ramp. The business signs furnished by the applicant will be the standard size and reused for placement on the primary specific service sign when it is available. Subject to availability of department resources, small temporary specific service signs will be installed within three months.

**761—118.6(306C) Business sign fabrication.** Upon approval of an application, the department will supply the necessary specifications for fabrication of the business signs to the applicant or applicant's sign fabricator. The applicant or applicant's sign fabricator shall submit a design proof to the department for approval before creating the business signs. If the department approves the submitted design, the sign fabricator may proceed to fabricate the signs and deliver them to the department's sign shop for inspection. All installation services are performed by the department or contractor on behalf of the department.

**761—118.7(306C) Business sign replacement.**

**118.7(1)** *Damaged business signs.* If a business sign is destroyed due to an errant vehicle or act of nature, the business, at its own expense, will need to furnish a replacement business sign. The

department, due to an errant vehicle or act of nature, will waive any service fee associated in the work to replace the sign. If the specific service sign for which the business sign is attached can safely be repaired or re-erected while permanent repairs are on order through a contractor, the department will perform this work.

**118.7(2)** *Faded business signs.* The department may remove business signs that are faded or peeling after providing 60 days' notice to the business. If the business furnishes replacement business signs to the department in advance, the department may remove and replace business signs in the same service trip. This ensures continuity of signing and reduces department expenses.

**118.7(3)** *Updating a design.* If a business wants to update the design of a business sign, the process described in rule 761—118.6(306C) applies. The business will be billed in accordance with paragraph 118.5(4)*"c."*

These rules are intended to implement Iowa Code section 306C.11.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8786C

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

**Rulemaking related to tourist-oriented directional signing**

The Transportation Department hereby rescinds Chapter 119, "Tourist-Oriented Directional Signing," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 307.12(1)"j" and section 321.252 as amended by 2024 Iowa Acts, Senate File 2385, section 317.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 321.252 as amended by 2024 Iowa Acts, Senate File 2385, section 317.

*Purpose and Summary*

This rulemaking repromulgates Chapter 119 in compliance with Executive Order 10 and 2024 Iowa Acts, Senate File 2385, section 17. Chapter 119 contains provisions and limitations for the erection of blue directional signs for businesses that are located within ten miles of a primary highway intersection in the nonurban areas of the state. The signs are installed by the Department within the right-of-way in advance of the intersection.

This chapter was significantly revised in early 2023, relaxing many of the entry qualifications for business owners interested in the program. The relaxed entry qualifications remain unchanged in the proposed repromulgated chapter, but an additional change is the elimination of the Tourist Signing Committee. This Committee has provided a benefit for the program over the years by the Committee's diverse representation and input during rulemaking and review of applications. However, with the more relaxed entry qualifications from the 2023 rulemaking in place, and because 2024 Iowa Acts, Senate File 2385, section 317, amends Iowa Code section 321.252(3) to eliminate the Tourist Signing Committee, this additional layer of review and associated processing time is eliminated.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 16, 2024, as **ARC 8252C**. A public hearing was held on the following date(s):

- November 6, 2024
- November 8, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 119 and adopt the following **new** chapter in lieu thereof:

CHAPTER 119
TOURIST-ORIENTED DIRECTIONAL SIGNING

**761—119.1(321) Definitions.**

*"At-grade intersection,"* for the purpose of this chapter, means an intersection of a primary highway and a secondary roadway, municipal street, or other primary highway, in which traffic may pass through the intersection at the same grade level as the intersecting roadway, or turn directly onto the intersecting roadway without the use of a ramp.

*"Destination,"* for the purpose of this chapter, means a business, service, activity, or site that meets the program requirements established in rule 761—119.3(321).

*"Primary highway,"* for the purpose of this chapter, means those roads and streets both inside and outside the boundaries of municipalities that are under department jurisdiction but does not include an interstate highway or a freeway primary highway as defined in Iowa Code section 306C.10.

*"Tourist-oriented directional signing"* means a system of guide signs with one or more sign panels that display the identification of and directional information for an eligible destination.

**761—119.2(321) General.**

**119.2(1)** *Conformance to MUTCD.* The department administers the tourist-oriented directional signing program in conformance with the "Manual on Uniform Traffic Control Devices" (MUTCD), as adopted in rule 761—130.1(321).

**119.2(2)** *Spacing and location.*

*a.* Tourist-oriented directional signing may be installed only when sufficient space is available. The determination of whether sufficient space is available is the responsibility of the department in accordance with the MUTCD and department policies.

*b.* Tourist-oriented directional signing may be installed only in advance of at-grade intersections where the motorist leaves the primary highway system to travel to the destination. Tourist-oriented directional signs may also be placed on a higher-classified highway to direct motorists onto a lower-classified highway, or on a greater-traveled highway to direct motorists onto a lesser-traveled highway, provided the signs are placed in advance of an at-grade intersection.

*c.* Tourist-oriented directional signing is limited to the rural areas and towns that are located outside of any urban areas established by the U.S. Census Bureau for incorporated municipalities with a population that meets or exceeds 5,000.

**119.2(3)** *Message.* The message on a tourist-oriented directional sign is limited to a descriptive name, a directional arrow, the travel distance to the destination, and in some cases for motorist services, an additional short word or acronym indicating an essential fuel type such as diesel, E-85, or EV (electric vehicle-charging station).

**761—119.3(321) Eligibility for participation.** Participation in this signing program is limited to destinations that meet the following criteria:

**119.3(1)** The destination is open to the general public for a minimum of four days per week and 20 hours per week. These hours are exclusive of any hours of operation that are by appointment, reservation or membership. The hours are conspicuously posted on the premises except for destinations that are open 24 hours per day.

**119.3(2)** Entrance to the destination is not granted based on age.

**119.3(3)** The destination derives a major portion of income or visitors from road users not residing in the area of the destination.

**119.3(4)** The destination is properly licensed by governing authorities relative to the nature of the activity engaged in by the destination.

**119.3(5)** The destination is located within ten miles of the intersection on the primary highway where the tourist-oriented directional signs will be placed.

**119.3(6)** The destination is located outside the boundaries of any urban area established by the U.S. Census Bureau for an incorporated municipality with a population that meets or exceeds 5,000.

**119.3(7)** The destination is not visible from the primary highway in a way that allows motorists time to safely react and make the turn. This program is not intended for businesses that enjoy adequate highway frontage for the placement of on-site signing.

**119.3(8)** The destination consists of buildings, facilities, and grounds that are safe, suitable, and appropriately designed and maintained for the intended purpose. If residential quarters co-exist in the same building, a convenient, well-marked, and separate entrance is available for patrons to access the activity identified on the sign.

**119.3(9)** The destination complies with all applicable laws concerning public accommodations without regard to age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability.

**119.3(10)** The destination complies with Iowa Code chapters 306B, 306C and 306D.

**119.3(11)** The destination, if seasonally operated, is open for a minimum of four consecutive weeks.

**761—119.4(321) Application and approval procedure.**

**119.4(1)** Applications for tourist-oriented directional signing may be submitted to: Advertising Management Section, Traffic and Safety Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Information regarding the program may be accessed at www.iowadot.gov/iowaroadsigns or 515.239.1746.

**119.4(2)** The department may conduct measurements, take photographs, and collect information about destinations as necessary for evaluation purposes.

**119.4(3)** Applications that meet the requirements of this chapter will be approved.

**119.4(4)** Applications that do not meet the requirements of this chapter will be denied. The applicant will be informed of the reason for the denial.

**761—119.5(321) Installation, maintenance, replacement and removal.**

**119.5(1)** *Installation and maintenance of tourist-oriented directional signs.* Except as provided in subrule 119.5(4), the department will fabricate and perform the installation, maintenance, removal and replacement of tourist-oriented directional signs that are located within the right-of-way.

*a.* Upon approval of an application, the department will design the tourist-oriented directional sign and provide a scaled drawing of the tourist-oriented directional sign to the applicant, allowing the applicant to reconfirm interest before proceeding with fabrication.

*b.* Upon payment of the initial fee specified in subrule 119.5(3), the department will fabricate and install the tourist-oriented directional sign.

**119.5(2)** *Installation and maintenance of trailblazing signs.* Trailblazing signs are necessary when the destination is not located adjacent to the intersecting roadway.

*a.* The department may fabricate trailblazing signs and provide them to cities and counties for installation on secondary roads and city streets, if such placement does not violate any local ordinance, policy, or traffic manual.

*b.* The department will consult with the local authority to confirm that placement of a trailblazing sign is possible to guide the motorist to the destination.

*c.* Tourist-oriented directional signs may be installed only when all trailblazing signs may also be installed.

**119.5(3)** *Initial and renewal fees.* The initial fee, payable once an application is approved, is $350 for each 72″ × 18″ sign placed along the primary highway and $26 for each trailblazing sign placed along a nonprimary highway. These fees include the cost of sign fabrication and installation but do not include any additional requested fees by local jurisdictions for the placement of trailblazing signs along local road systems. The annual renewal fee, payable on or before June 30 of each year, is $50 per sign, excluding trailblazing signs. This fee covers the administrative costs and normal maintenance.

**119.5(4)** *Seasonal destination.*

*a.* Seasonal destinations may be approved for the program if "closed" panels are installed over the directional information when the destinations are not open for the season or when the hours of operation are not meeting the minimum listed in subrule 119.3(1).

*b.* Destinations such as golf courses and Christmas tree farms where the expected seasonal period is generally known by motorists may forego the use of "closed" panels.

*c.* Destinations using "closed" panels may arrange to remove or reinstall the panels on their own through an agreement with the department or pay a fee to the department to perform the service. The fee is $40 per trip and includes all signs associated with the destination that are located along the primary highway system.

**119.5(5)** *Replacement.* Tourist-oriented directional signs are constructed with high-quality materials designed to last many years. The department may, however, determine that a tourist-oriented directional sign needs to be replaced due to damage from vehicles, deterioration from age, or loss due to theft. In these cases, the cost for replacing the sign is the responsibility of the destination.

**119.5(6)** *Not-for-profit organizations.* A not-for-profit destination is exempted from all fees and costs associated with the installation and maintenance of a single set of signs at a location determined by the department to be the most reasonable approach to the destination. Additional locations may be

requested by the not-for-profit organization, and, if approved, such locations are subject to the associated fees and costs described in this chapter.

**119.5(7)** *Removal.* The department may remove a tourist-oriented directional sign if the destination no longer qualifies for tourist-oriented directional signing. As official signs, all removed tourist-oriented directional signs are retained as property of the department unless released to the destination for purposes other than display along any public roadway.

These rules are intended to implement Iowa Code section 321.252 as amended by 2024 Iowa Acts, Senate File 2385, section 317.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8787C

# TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

### Rulemaking related to special mobile equipment

The Transportation Department hereby rescinds Chapter 410, "Special Mobile Equipment," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 307.12(1)"j" and 321E.15.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 321.1, 321.18, 321.20, 321E.12 and 321E.15.

*Purpose and Summary*

This rulemaking repromulgates Chapter 410 in compliance with Executive Order 10. Chapter 410 provides information on special mobile equipment (SME) for customers in two main areas: (1) titling and registering SME attached to a motor vehicle and (2) requirements when transporting SME on a registered vehicle. These rules provide transparency on some of the common scenarios that arise for customers who own or transport SME.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8262C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has a minimal fiscal impact to the State of Iowa. Although the volume of SME owners seeking title and registration under this optional process is low (approximately 20 vehicles annually), if title and registration are issued, the Department estimates a revenue increase of approximately $10,200 annually ($490 annual reg fee + $20 title fee x 20 vehicles). There is no fiscal impact to the State of Iowa for issuing permits for vehicles required to be moved by permit under Iowa Code chapter 321E that was not already required as a result of underlying statute.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 410 and adopt the following **new** chapter in lieu thereof:

CHAPTER 410
SPECIAL MOBILE EQUIPMENT

**761—410.1(321) General.**

**410.1(1)** "Special mobile equipment" means the same as defined in Iowa Code section 321.1.

**410.1(2)** Special mobile equipment is exempt from titling and registration pursuant to Iowa Code sections 321.18 and 321.20. However, a certificate of title and registration may be obtained in accordance with Iowa Code chapter 321 for a motor truck, trailer or semitrailer with special mobile equipment permanently attached.

**410.1(3)** Questions about special mobile equipment may be directed by mail to the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.237.3268; or by email at omcs@iowadot.us.

This rule is intended to implement Iowa Code sections 321.1, 321.18 and 321.20.

**761—410.2(321E) Special mobile equipment transported on a registered vehicle.** The movement of special mobile equipment or component parts of special mobile equipment transported on a vehicle registered for the gross weight of the vehicle without load, as provided in Iowa Code section 321E.12, is subject to the following:

**410.2(1)** If the special mobile equipment is leased, the lease agreement or a certified copy of the lease agreement is to be carried in the cab of the transporting vehicle.

**410.2(2)** The size and weight limits in Iowa Code chapter 321 are applicable unless a permit to exceed these limits is obtained in accordance with Iowa Code chapter 321E.

This rule is intended to implement Iowa Code sections 321E.12 and 321E.15.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8788C

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

**Rulemaking related to transportation network companies**

The Transportation Department hereby rescinds Chapter 540, "Transportation Network Companies," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 307.12(1)"j" and 321N.2.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 321N and sections 321.515 and 321.519.

*Purpose and Summary*

This rulemaking adopts a new Chapter 540 in compliance with Executive Order 10. The chapter implements Iowa Code chapter 321N by outlining the procedures for Transportation Network Companies (TNCs) to obtain a permit to offer rideshare services in Iowa. A TNC permit allows the company to provide transportation by a TNC driver to a TNC rider through a digital network controlled by the TNC. TNCs offer Iowans the ability to receive transportation services other than by driving their own personal vehicle, taking public transportation, or using a taxicab service.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8278C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Department on December 10, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 761—Chapter 540 and adopt the following **new** chapter in lieu thereof:

CHAPTER 540
TRANSPORTATION NETWORK COMPANIES

**761—540.1(321N) Purpose and applicability.** This chapter implements the permitting and regulation requirements of Iowa Code chapter 321N and applies to transportation network companies and transportation network company drivers.

**761—540.2(321N) Definitions.** The definitions in Iowa Code section 321N.1 are hereby incorporated in this chapter.

**761—540.3(321N) General information.**

**540.3(1)** *Information and location.* Applications, forms, and information regarding transportation network company permits are available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.237.3156; by email at central.vehicle@iowadot.us; or on the department's website at www.iowadot.gov/mvd/paid-rideshare.

**540.3(2)** *Complaints.* Complaints against transportation network companies pertaining to the provisions of Iowa Code chapter 321N and this chapter that are within the regulation and jurisdiction of the department may be submitted in writing to the motor vehicle division via the methods listed in subrule 540.3(1).

**761—540.4(321N) Application for transportation network company permit and supporting documents.**

**540.4(1)** *Application.* An application for a transportation network company permit is to be made to the motor vehicle division using Form 432070 and is to contain the information required in Iowa Code section 321N.2, as well as the following:

*a.* If incorporated or otherwise organized, the transportation network company's state of incorporation or organization and a statement confirming the transportation network company is in good standing with the transportation network company's state of incorporation or organization.

*b.* A statement confirming the transportation network company's agreement to comply with all applicable requirements of Iowa Code chapter 321N and this chapter, signed by the transportation network company's authorized representative.

*c.* The name by which the transportation network company will do business in the state of Iowa, if different from the transportation network company's full legal name.

*d.* A description of the transportation network company's digital network and the means or manner by which the network may be accessed by the transportation network company's drivers and riders. This paragraph is not intended to and shall not be construed as requiring the disclosure of information proprietary to the transportation network company.

*e.* A description of how the transportation network company has established a means of informing persons seeking approval to serve as transportation network company drivers of the driver's notification obligations under Iowa Code section 321N.3(2).

*f.* A description of how the transportation network company has established a means of making the automobile insurance disclosures required by Iowa Code section 321N.5 to persons serving as transportation network company drivers.

*g.* A description of how the transportation network company has established a means of making the driver and vehicle disclosures required by Iowa Code section 321N.7 to transportation network company riders.

*h.* A description of how the transportation network company has established a means of transmitting an electronic receipt to transportation network company riders as required by Iowa Code section 321N.8.

*i.* Such other information as may be required by the department.

**540.4(2)** *Application fee.* The application fee in Iowa Code section 321N.2(2) shall be made payable to the Iowa Department of Transportation in the form and manner prescribed by the department.

**540.4(3)** *Supporting documents.* The proof required in Iowa Code section 321N.2(2) includes the following:

*a.* Proof under Iowa Code section 321N.2(2)*"a"*(4): a valid certificate of coverage from an insurer governed by Iowa Code chapter 515 or from a surplus lines insurer governed by Iowa Code chapter 515I. An acceptable certificate of coverage will demonstrate coverage in the amounts and circumstances required by Iowa Code section 321N.4 and will certify that, if insurance maintained by a transportation network company driver under Iowa Code chapter 321N lapses or does not provide coverage in the amounts or types required by Iowa Code section 321N.4(2) or 321N.4(3), the insurance certified in the certificate of coverage will provide coverage in the amounts and types required by Iowa Code section 321N.4(2) or 321N.4(3), beginning with the first dollar of the claim, and the insurer providing such coverage shall defend the claim. An acceptable certificate of coverage will also certify that the coverage therein is not dependent on the insurer of a transportation network company driver's personal vehicle first denying a claim, and does not require the insurer of a personal automobile insurance policy to first deny a claim to trigger coverage and defense under the coverage certified.

*b.* Proof under Iowa Code section 321N.2(2)*"a"*(5): a written copy of the applicable policy and an explanation of the manner or means by which the policy is made known to transportation network company drivers and the manner or means by which the policy is enforced.

*c.* Proof under Iowa Code section 321N.2(2)*"a"*(7): a written copy of each applicable policy and an explanation of the manner or means by which the policy is made known to transportation network company drivers and the manner or means by which the policy is enforced. As used herein, "nondiscrimination policy" means a policy that prohibits discrimination against transportation network company riders on the basis of race, age, disability, religion, color, sex, or national origin. "Accessibility policy" means a policy that prohibits discrimination against and ensures equal opportunity and access to transportation network company riders who are persons with disabilities under the Americans with Disabilities Act of 1990 (ADA) as amended by the ADA Amendments Act of 2008 (P.L.110-325), codified at 42 U.S.C. 12101 et seq.

*d.* Proof under Iowa Code section 321N.2(2)*"a"*(8): a written copy of the applicable policy and an explanation of the manner or means by which the policy is made known to the designated records retention officer or responsible staff and the manner or means by which the policy is enforced.

*e.* All applicable documents identified in 761—subrule 380.7(2) and any other documentation, if required by the department, necessary to assess the operational capabilities of any driverless-capable

vehicles the transportation network company intends to operate, including for the purpose of determining whether to impose operational restrictions as authorized under rule 761—400.21(321).

**761—540.5(321N) Issuance of permit.** Upon submission of a completed application as set forth in rule 761—540.4(321N), the department shall process the application and inform the transportation network company of the package's status no later than 30 days after the department receives the application. Application statuses for the purpose of this rule are as follows: "in process," "granted," and "denied." If the department informs a transportation network company that the application is "in process," then the department shall also inform the transportation network company of the reason for the status.

**761—540.6(321N) Amendment to transportation network company permit.** If during the period the permit is valid any information required and presented in the application under subrule 540.4(1) changes, the transportation network company is to notify the motor vehicle division of the change in writing within 30 days after the change. Notification is to include the permit number and a description of the information that has changed and needs to be updated in the department's records. Submission of amended information is not a request for a new permit or for permit approval and does not extend the period the permit is valid. Upon determination that the information submitted is complete and correct, the department shall update its records and issue an amended permit, if the department determines it is necessary.

**761—540.7(321N) Suspension and revocation procedures.**

**540.7(1)** *Suspension.* If the department determines that the transportation network company has violated Iowa Code chapter 321N or this chapter, the department may issue to the transportation network company a written notice of the violation. The written notice shall specify the violation and advise the transportation network company that failure to remedy the violation and to comply with the applicable requirements within 30 days will result in suspension of the permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa. If the transportation network company fails to remedy the violation within 30 days, the department shall issue to the transportation network company a written notice of suspension of the permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa, which will take effect 30 days after service of the written notice of suspension. Once effective, the suspension will remain in effect until the transportation network company demonstrates to the department that the transportation network company is in compliance with the applicable requirements or the permit is revoked or expires, whichever occurs first.

**540.7(2)** *Revocation.* If the department determines that the transportation network company is in continued noncompliance with Iowa Code chapter 321N or this chapter, the department shall revoke the transportation network company's permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa for a minimum of 90 days. Notice of revocation shall be in writing and specify the continued noncompliance. The revocation will take effect 30 days after service of the written notice of revocation and will remain effective until the following criteria are satisfied:

*a.* The transportation network company submits a new application, application fee, and supporting documents under rule 761—540.4(321N).

*b.* The department determines a new permit should be issued under this chapter.

**540.7(3)** *Continued noncompliance.* As used in this rule, "continued noncompliance" means a violation of Iowa Code chapter 321N or this chapter for which a notice of suspension has become effective and has remained in effect for a period of at least 180 days.

**761—540.8(321N) Appeal.**

**540.8(1)** A transportation network company whose permit has been suspended, revoked, or denied may request an informal settlement or a contested case proceeding as provided in 761—Chapter 13.

**540.8(2)** To be timely, the request must be submitted within 20 days of service of the notice of suspension or revocation. A request to appeal a denial may be submitted at any time.

**540.8(3)** The department will stay the suspension or revocation pending resolution of the informal settlement, contested case, or appeal.

**761—540.9(321N) Renewal.**

**540.9(1)** A transportation network company that holds a valid permit may renew the permit by submitting, at minimum, the following: (1) the application, (2) the application fee, (3) current proof of insurance as specified in subrule 540.4(3), and (4) any supporting documents as set forth in rule 761—540.4(321N) that have changed since the documents were last approved by the department. Any required documentation that has not changed, other than current proof of insurance, does not need to be resubmitted for a permit renewal. The application for renewal must be submitted no more than 60 days before the expiration date of the existing permit and no fewer than 30 days before the expiration date of the existing permit.

**540.9(2)** Pursuant to Iowa Code section 17A.18(2), when a transportation network company has made a timely and sufficient application for the renewal of a valid permit, the existing permit does not expire until the application has been finally determined by the department and, in case the application is denied or the terms of the new permit are limited, until the last day for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court.

**540.9(3)** If the application for renewal is submitted fewer than 30 days before the expiration date of the existing permit, then the application will be considered a new application and Iowa Code section 17A.18(2) shall not apply. If a transportation network company does not file a renewal application pursuant to this rule, then the original application will expire on the expiration date set forth on the original permit.

**540.9(4)** If a transportation network company initiates an appeal, informal settlement, or contested case proceeding pursuant to rule 761—540.8(321N) and the original application expires pursuant to the expiration date of the application, then the transportation network company is required to submit a renewal application pursuant to subrule 540.9(1) if the transportation network company intends to hold a valid permit under this chapter once the appeal, informal settlement, or contested case proceeding has been finally determined.

**761—540.10(321N) Record review.**

**540.10(1)** When the department examines the records of a transportation network company as authorized under Iowa Code section 321N.2(5), the department may request the transportation network company to provide a list of all prearranged rides for a seven-day period or all transportation network company drivers in Iowa for a specific date. The transportation network company shall provide the required information to the department within 30 days of the request.

**540.10(2)** For the records provided under subrule 540.10(1), the department may identify a random sample of rides or drivers, or rides and drivers, for review for the specified period. The transportation network company must provide additional information for each driver and each rider for each ride as requested by the department. The department may also require:

*a.* A copy of the driver's license for the transportation network company driver.

*b.* A copy of the driver's state-issued vehicle registration, including year, make, model, VIN and license plate number.

*c.* A copy of proof of the driver's financial liability coverage, including the driver's insurance company name, address, and policy number. In addition, a copy of proof of financial liability coverage maintained to comply with Iowa Code sections 321N.4(2) and 321N.4(3) that includes coverages and limits may be satisfied by any of the following:

(1) Insurance maintained by the transportation network company driver.

(2) Insurance maintained by the transportation network company.

(3) A combination of subparagraphs 540.10(2)*"c"*(1) and (2).

*d.* A copy of or a verification that all necessary disclosures were supplied to the driver by the transportation network company, including the lienholder, vehicle owner, insurance and motor vehicle equipment requirements.

*e.* A copy of all complaints received by the transportation network company from any rider who received a ride from the driver. This includes but is not limited to complaints related to drug or alcohol use, vehicle safety, motor vehicle equipment safety, driver behavior, driver ability or operation of the vehicle.

*f.* A summary or other documentation that shows how the transportation network company resolved any complaint from a rider.

*g.* Documentation or verification of the background and sex offender registry check on the driver.

*h.* The electronic ride receipt provided to each rider.

**540.10(3)** Notwithstanding any provision of subrule 540.10(1) to the contrary, the department and the transportation network company may agree to an alternative process or format for the transportation network company to provide the requested records if the records otherwise include the information required in subrule 540.10(2).

**540.10(4)** Records submitted by the transportation network company to the department pursuant to this rule shall maintain the same status, including confidentiality and disclosure requirements as provided in Iowa Code section 321N.2(5).

These rules are intended to implement Iowa Code sections 321.515 and 321.519 and chapter 321N.

[Filed 12/17/24, effective 2/12/25]
[Published 1/8/25]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.

## ARC 8789C

# WORKFORCE DEVELOPMENT DEPARTMENT[871]

### Adopted and Filed

### Rulemaking related to claims and benefits

The Director of the Workforce Development Department hereby rescinds Chapter 24, "Claims and Benefits," Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A, 84A, and 96.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 84A, and 96.

*Purpose and Summary*

Chapter 24 provides administrative rules for individuals and employers regarding claims and receipt of unemployment insurance benefits pursuant to Iowa Code chapter 96.

As part of the Department's review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicated statutory language and used restrictive terms. This text has been removed from the chapter.

This rulemaking also adds language regarding departmental practice concerning reemployment and work search activities.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on November 13, 2024, as **ARC 8327C**. Public hearings were held on the following date(s):

- December 3, 2024

Public comments were received via email. These comments were considered, but no changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Director of the Department on December 18, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 871—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
CLAIMS AND BENEFITS

**871—24.1(96) Definitions.** Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms that are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

**24.1(1)** Reserved.

**24.1(2)** *Administrative office (state).* The state administrative office of the division of unemployment insurance services of the department of workforce development.

**24.1(3)** *Agent state.* The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency.

**24.1(4)** *Applicant.* Any individual applying for work at a workforce development center.

**24.1(5)** *Average weekly wages.*

*a.* For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period.

*b.* For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period, and then dividing by the average monthly employment during the period.

**24.1(6)** *Base period.* See Iowa Code section 96.1A(3).

**24.1(7)** *Base period employer and chargeable employer.* See Iowa Code section 96.3.

**24.1(8)** *Benefit eligibility conditions.* Statutory requirements that must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

**24.1(9)** *Claim.* A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment.

*a.* A claim may be filed under any one or more of the following programs:

(1) The state program of unemployment insurance (UI),

(2) The federal program of unemployment compensation for federal employees (UCFE) established by Title V of the United States Code, and

(3) The federal program of unemployment compensation for ex-military personnel (UCX) established by Title V of the United States Code.

*b.* Unless otherwise specified, the term claim as used in the following definitions is applicable equally to each of the three programs.

(1) Additional claim. An application for determination of eligibility filed on an established claim that follows a period of employment.

(2) Additional interstate claim. A claim filed by an interstate claimant within the benefit year of a liable state in which insured status has already been established, after a break in the continuity of filing continued interstate claims, or to establish a new series of claims against that liable state from a new agent state.

(3) Additional UI, UCFE, or UCX claim. A notice filed at the beginning of a second or subsequent series of claims within a benefit year, when a break in job attachment has occurred since the last claim was filed, concerning which state procedures require that separation information be obtained.

(4) Combined wage claim. A claim filed according to an interstate agreement that allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

(5) Compensable claim. A request for benefit payment that certifies the completion of a week of total or partial unemployment to satisfy a claim benefit for a compensable week.

(6) Contested claim. A claim that has been protested by an employer, the department or an interested party regarding the claimant's right to benefits.

(7) Continued claim. A continued claim is a request for benefit payment. A continued claim is a compensable claim. It is an electronic, oral or written application that certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(8) Initial claim. An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year.

(9) Initial interstate claim. A new or an additional interstate claim.

(10) Interstate claim. A claim filed in one state (agent state) against another state (liable state).

(11) Intrastate claim. A claim filed in the state of residence against wages earned in that state or by an interstate commuter.

(12) Mail claim. Reserved.

(13) New claim. An application for the establishment of a benefit year.

(14) New interstate claim. The first interstate claim filed by a claimant against a liable state that serves as a request for determination of insured status.

(15) New intrastate extended benefits claim. The first intrastate claim filed for extended benefits in a new extended benefits period by a claimant in state having extended benefits provisions in its law. Each time such provisions become effective it is considered a new extended benefit period. Such first claims will include those that become effective, without any break in the benefit series, for the week following the week in which regular benefits are exhausted or are terminated by the end of the benefit year.

(16) New UI, UCFE, or UCX claim. A request for determination of insured status for purposes of establishing a new benefit year.

(17) Reopened claim. The first continued claim in a second or subsequent series of claims in a benefit year when no additional claim is reportable. An application for determination of eligibility for

benefits and that certifies to the beginning date of a period of unemployment that falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a previously established claim, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(18) Second benefit year claim. A new claim with an effective date for a second benefit year that is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified of the expiration of the previous benefit year.

(19) Transitional claim. Reserved.

(20) Valid UI, UCFE or UCX claim. A new claim on which a determination has been made that the individual has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year.

**24.1(10)** *Claimant.*

*a.* An individual who has filed a request for determination of insured status or a new claim, or

*b.* An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

**24.1(11)** *Compensable week.* A week for which benefits have been claimed.

**24.1(12)** *Covered worker.* An individual who has earned wages in insured work.

**24.1(13)** *Department.* The department of workforce development, the chief executive officer of which is the director, who is appointed by the governor with the approval of two-thirds of the members of the senate. The director is responsible for administering Iowa Code chapter 96.

**24.1(14)** *Determination.*

*a. Benefit determination.* A decision with respect to a request for determination of insured status, a notice of unemployment, or a claim for benefits.

*b. Initial determination.* The first determination with respect to a claim or a request for determination of insured status.

*c. Monetary determination.* A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

*d. Nonmonetary determination.* A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

*e. Redetermination.* A determination made with respect to a claimant after reconsideration by the initial determining authority.

*f. Status determination.* A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under a state employment security law.

**24.1(15)** *Disqualification provisions.* Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

**24.1(16)** *Employment security law.* Iowa Code chapter 96.

**24.1(17)** *Fact-finding interview.* A discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement regarding a specific eligibility or disqualification issue.

**24.1(18)** *Insured unemployment.* Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

**24.1(19)** *Insured work.* Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

**24.1(20)** *Insured worker.* An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

**24.1(21)** *Liable state.* Any state against which a worker claims benefits through the facilities of a workforce development center or the job service division of another (agent) state.

**24.1(22)** *Maximum benefit amount.* The maximum total amount of benefits an individual may receive during the individual's benefit year.

**24.1(23)** *Opening.* A single job for which a workforce development center has on file a request to select and refer an applicant or applicants.

**24.1(24)** *Partial benefits.* Benefits payable to an individual for a week of partial unemployment.

**24.1(25)** *Partial earnings allowance.* The amount of earnings that are disregarded in calculating a claimant's benefit for a week.

**24.1(26)** *Part-time worker.* See Iowa Code section 96.3.

**24.1(27)** *Placement.* An acceptance by an employer of a person for a job as a direct result of workforce development center activities, provided the employment office has completed all of the following four steps: receipt of an order, prior to referral; selection of the person to be referred without designation by the employer of any particular individual or group of individuals; referral; and verification from a reliable source, preferably the employer, that a person referred has been hired by the employer and has entered on the job.

**24.1(28)** *Qualifying wages.* The amount of wages a worker must have earned in insured work within a specified period in order to be an insured worker. See also benefit eligibility conditions.

**24.1(29)** *Referral.* The act of arranging to bring to the attention of an employer (or another workforce development center) the qualifications of an applicant who is available for a job opening on file for which the applicant has been selected by a workforce development center.

**24.1(30)** *Registration.* The process of applying for work through an office of the department of workforce development.

**24.1(31)** *Request for determination of insured status.* A request by an individual for a determination of insured status.

**24.1(32)** *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

*a. Layoff.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

*b. Quit.* A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

*c. Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

*d. Other separation.* Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

**24.1(33)** *Social security number.* The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

**24.1(34)** *Taxable wages.* Wages subject to contribution under a state employment security law, or wages subject to tax under the federal Unemployment Tax Act.

**24.1(35)** *Total unemployment.* See week of unemployment.

**24.1(36)** *Verification.* The determination from a reliable source, preferably the employer, whether an applicant referred by a workforce development center has been hired by the employer and has entered on the job. In the case of applicants referred to seasonal agricultural openings, verification is considered complete when it is confirmed that a referred worker has been hired, even though confirmation of the worker's entry on the job may be lacking.

**24.1(37)** *Wage credits.* Wages earned in insured work.

**24.1(38)** *Week of unemployment.* A week during which an individual performs no work and earns no wages, except as indicated and has earnings that do not exceed the earnings limit.

This rule is intended to implement Iowa Code sections 96.3(5), 96.3(7), 96.4(3), 96.5(5)*"c,"*96.6, 96.7(2)*"a"*(2), 96.11, 96.1A and 96.23.

**871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance.**

**24.2(1)** Filing a benefit claim.

*a.* In order to establish a benefit year during which an individual may receive unemployment benefits, the individual, once separated from employment, must file an initial claim, verify their identity, and register for work. The claim may be filed electronically or by other means prescribed by the department. A claim filed in accordance with this rule is considered filed as of Sunday of the week in which the claim is filed.

*b.* When filing an initial claim for benefits, an individual must provide the following information to the department:

(1) The name and complete mailing address of the individual's last employing unit or employer.

(2) Work history for all employers within the individual's base period.

(3) The location of the last job.

(4) The last day of work.

(5) The reason for separation from work.

(6) Certification that the individual is unemployed.

(7) Certification that the individual registers for work.

(8) The individual's last occupation.

(9) Number, full name, social security number, date of birth, and relationship of any dependents claimed.

1. *"Spouse"* is defined as an individual who does not earn more than $120 in gross wages in one week. The reference week for this monetary determination is the gross wages earned by the spouse in the calendar week immediately preceding the claim's effective date.

2. *"Dependent"* means an individual who has been claimed for the preceding tax year on the claimant's income tax return. The same dependent may not be claimed on two separate monetarily eligible concurrent established benefit years. An individual may not claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(10) The individual's social security number and alien registration number, if applicable.

(11) Such other information as requested by the department.

*c.* All claimants on an initial claim must state that they are registered for work and list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments are based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group "3" claimants are those "temporarily unemployed" as defined in Iowa Code section 96.1A(37)*"c."* After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6."

(2) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code does not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained, and weekly contact to check for available work is required. Loss of membership will result in an assignment to group "6."

(4) Group "6" claimants are those individuals who do not otherwise meet the qualification group code "3," "4," or "5." This group must complete and document re-employment activities, as established by the department.

(5) Group "7" claimants are workers who are employed on a reduced workweek with an employer who is under a department-approved voluntary shared work contract. This group pertains to those individuals who worked full- or part-time and will again work full- or part-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(6) Group "8" claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

*d.* In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual must report as directed by the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department or to an account specified by the claimant.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

*e.* After the initial claim has been filed, the claimant will receive a notice of monetary eligibility. If the claimant is eligible for benefits, this notice will state the date on which the benefit year will begin, the amount per week, and the maximum amount for which the claimant is eligible.

*f.* No benefit payment is allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

(1) The claim must be submitted between 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual using the weekly continued claim system is to personally file the claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The claim must include the following:

1. That the individual continues the claim for benefits;

2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, and was able and available for work;

3. That the individual has performed a minimum of four work search activities and documented and reported each activity to the department.

- At least three of the four work search activities for the purpose of this paragraph shall consist of one of the following:
  - Applying for a potential job opening by submitting a resume or application through any of the following means:
    - Online.
    - In person.
    - Electronic mail.
    - Facsimile.
    - Mail.
  - Completing a civil service examination.
- Additional work search activities for the purpose of this paragraph consist of any of the following:

- Registering with a placement facility of a school or college.
- Interviewing for a job virtually, in person, or at a job fair.
- Attending an employment workshop organized or approved by the department, which may include completing an online or in-person job search workshop, job club, or job search networking meeting.
- Attending a job fair sponsored or approved by the department.
- Attending a scheduled career networking meeting with the department.
- With the assistance and guidance of the department, completing a reemployment plan, which may include completing career direction research or work such as a job search plan or a targeted employer list.
- Participating in job search counseling with a department career planner.
- Attending an appointment with a core program partner authorized by the federal Workforce Innovation and Opportunity Act, Public Law 113-128.
- Participating in online or in-person mock interviews organized or approved by the department.
- Completing career-related assessment approved by the department and reviewed with a department career planner.

4. That the individual understands there are penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;

6. That the individual understands the individual's responsibility to review the claim records to ensure there is no delay in filing the weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;

7. Other information required by the department.

*g.* Effective starting date for the benefit year.

(1) Filing for benefits is effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may only be backdated prior to the first day of the calendar week in which the claimant does report and file a claim if the claimant filed an interstate claim against another state that has been determined as ineligible.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating is not allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

*h.* An individual is entitled to partial benefits for partial unemployment as per Iowa code section 96.1A(37)*"b."* If the individual has been placed on reduced employment the individual may be entitled to partial benefits and should file a claim in accordance with the instructions pertaining to the partial claims procedure.

*i.* Any individual who is disqualified for benefits because of the individual's failure to report may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request, and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed, the petitioner will be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

**24.2(2)** Filing a claim for unemployment insurance benefits (not applicable to interstate claims).

*a.* A notice of claim filing, which includes the name and social security number of the individual claiming benefits, will be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.

*b.* Even though the claims taker may believe that the claimant cannot meet the eligibility conditions established by statute, the claims taker will in no instance refuse to accept a claim from any

unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim will be accepted without hesitance. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, union membership card or supply personally identifying information.

*c.* If a claim filed in a previous quarter was ineligible because of no wage records or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker will notify the claimant that another claim filed in the same quarter would also be ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.

*d.* If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim will be taken.

*e.* Partially unemployed claims.

(1) A partially unemployed individual will:

1. File a claim for benefits in the same manner as an initial claim for unemployment insurance.
2. Report all wages that are earned for each week benefits are claimed.

(2) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus $15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

*f.* If the check of the files does not disclose a monetarily valid claim in another state, a new claim will be taken.

**24.2(3)** Filing a claim for unemployment insurance benefits (interstate only).

*a.* All interstate claimants must file an Iowa claim.

*b.* When the department is acting as an agent for another state unemployment insurance agency with respect to the filing of an initial claim for benefits, the interstate claimant must complete and file an Initial Interstate Claim unless otherwise directed by the interstate handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

**24.2(4)** Cancellation of unemployment insurance claim.

*a.* An individual may direct a request for cancellation of an unemployment insurance claim to the benefits bureau of the unemployment insurance services division. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made. A notice with the result of the request will be sent.

*b.* A cancellation request that is the result of employer coercion or intimidation will be denied and the employer may be subjected to serious misdemeanor charges.

*c.* If a cancellation request is received within the ten-day protest period and before payment is made, the benefits bureau may upon review cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

*d.* Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance that was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) If the Iowa wages are erroneous and deleted, and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

*e.* If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state may not be reestablished with the same effective date.

*f.* If it is determined a claim has been filed under an incorrect social security number, the claim will be voided rather than canceled.

*g.* All unemployment insurance claims canceled will be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1) *"h,"*96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.1A and 96.20.

**871—24.3(96) Social security number needed for filing.** A claim will not become valid until the identity of the claimant has been verified by the department.

**24.3(1)** If the agency is unable to verify the claimant's identity in the claim application, the department will notify the claimant, who must provide approved documents, one of which must contain a social security number. The department will determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.

**24.3(2)** The claimant's identity will not be considered verified until approved documents have been provided. The claim will remain locked, and the claimant will remain ineligible for benefits, until the claimant provides approved documents.

**24.3(3)** Approved documents must be provided or postmarked by the due date provided on the notification. Once the approved documents are verified, the claim will be unlocked for all weeks following the most recent effective date of the claim application.

**24.3(4)** If a claimant provides approved documents after the due date, the claimant will be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

This rule is intended to implement Iowa Code section 96.6.

**871—24.4(96) Benefit rights information.**

**24.4(1)** *Intrastate benefits.* Benefit rights information is available online to explain those provisions in the law and rules that govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program.

**24.4(2)** *Interstate benefits.* Benefit rights information is not required for each individual who files an initial claim for interstate benefits. Claimants will be advised to contact the liable state that will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

This rule is intended to implement Iowa Code section 96.4.

**871—24.5(96) Mass separation—definition and procedure.**

**24.5(1)** A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for a specific duration by one or more employers in the same area, at approximately the same time, and for the same common reason.

*a.* Special procedures for mass claim filing may be applied by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.

*b.* If outside facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

(1) Interested employer involved.

(2) Bona fide union representing the workers.

(3) Public facility (e.g., courthouse, city hall).

**24.5(2)** To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center will coordinate between the affected parties. This information should include:

*a.* The number of workers to be separated.

*b.* The date of separation and, if staggered, the number on each date.

*c.* Reason for layoff.

*d.* Its probable duration.

*e.* If recall is anticipated, the date it will begin and, if staggered, the number to be recalled on each date.

*f.* If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rule 871—24.12(96).

This rule is intended to implement Iowa Code section 96.6(1).

**871—24.6(96) Reemployment services and eligibility assessment procedure.**

**24.6(1)** The department will provide a program that consists of providing reemployment services.

**24.6(2)** Purpose. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

**24.6(3)** Reemployment services and eligibility assessment may include but are not limited to the following:

*a.* An assessment of the claimant's skillset, work history, and interest.

*b.* Employment counseling regarding reemployment approaches and plans.

*c.* Job search assistance and job placement services.

*d.* Labor market information.

*e.* Job search workshops or job clubs and referrals to employers.

*f.* Résumé preparation.

*g.* Other similar services.

**24.6(4)** As part of the initial intake procedure, each claimant is to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

**24.6(5)** The referral of a claimant and the provision of reemployment services is subject to the availability of funding and class size limitations.

**24.6(6)** A claimant must participate in reemployment services when referred by the department unless the claimant has previously completed such training or services or demonstrates to the department of other good cause prior to the appointment or service.

*a.* Failure to participate without good cause will disqualify the claimant from receiving benefits until the claimant participates in the reemployment services or eligibility assessment.

*b.* Good cause for failure to participate is an important and significant reason that a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

**24.6(7)** Eligibility assessment procedure.

*a.* Before an individual has claimed five weeks of intrastate benefits, the workforce development center will receive a computer-selected list of individuals claiming benefits within the target population for review.

*b.* No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.

*c.* Once selected for an initial or subsequent eligibility assessment, claimants are required to participate.

*d.* A Notice to Report will be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department will issue an appropriate failure to report decision and lock the claim to prevent payment.

*e.* Selected claimants must participate in staff-assisted services for the initial assessment.

**24.6(8)** Conducting the first eligibility assessment interview.

*a.* All available evidence will be examined to detect potentially disqualifying issues.

*b.* The individual's need for advice, assistance or instructions will be determined and conveyed to the individual.

*c.* The interview will convey to the individual the requirements that must be satisfied to maintain eligibility.

*d.* This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment that otherwise would result in referral for adjudication.

*e.* The individual will be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

*f.* The final objective of the interview is to determine whether a subsequent interview is needed. This determination is based on expected return to work date, job openings in the area, local labor market conditions, and other relevant factors.

This rule is intended to implement Iowa Code section 96.4(7).

**871—24.7(96) Workers' compensation or indemnity insurance exclusion and substitution.**

**24.7(1)** An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and who has insufficient wage credits in the base period may qualify for unemployment insurance benefits as explained in Iowa Code section 96.23.

**24.7(2)** An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

**24.7(3)** The department shall make an initial determination of eligibility for unemployment insurance benefits as explained in Iowa Code section 96.23 using the following criteria for allowances and disqualifications.

*a. Allowances.* When the allowance criteria are met, the department will always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:

(1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings; the department will exclude and substitute all four quarters of the base period.

(2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

*b. Disqualifications.* The request for retroactive substitution of base period quarters will be denied if the individual received workers' compensation or indemnity insurance benefits in:

(1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.

(2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.

(3) Less than three base period quarters.

**24.7(4)** The individual will be asked to complete the Affidavit and Questionnaire, which requests the following information:

*a.* Individual's name and social security number.

*b.* Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.

*c.* Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.

*d.* Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.

*e.* Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

**24.7(5)** The department will provide the individual with the monetary redetermination. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits will be notified and will be responsible for the charges on the redetermined claim that are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits maintains the right to protest as provided in rule 871—17.8(96).

This rule is intended to implement Iowa Code section 96.23.

**871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.**

**24.8(1)** Issuing a notice of the filing of an initial claim or a request for wage and separation information to employing units.

*a.* Notice of Claim and Request for Wage and Separation Information shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange System (SIDES).

*b.* A notice of the filing of an initial claim or a request for wage and separation information will be sent to an owner, a partner, an executive officer, a departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

**24.8(2)** Employing units' response to a notice of the filing of an initial claim or a request for wage and separation information and protesting benefit payment.

*a.* The employing unit that receives a Notice of Claim or Request for Wage and Separation Information must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts disclosing that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

*b.* The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. If the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the department's next working day. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report will be considered as a protest to the payment of benefits.

*c.* If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit will be deemed to have not been properly notified and the employing unit will again be provided the opportunity to respond to the notice of the filing of the initial claim.

*d.* The employing unit has the option of notifying the department under conditions that, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation must be postmarked or received before or within ten days of the date that the Notice of Claim was mailed to the employer. If the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) On the Notice of Separation, the employer must indicate the dates of the last day worked, the separation date and the reason the worker was separated.

**24.8(3)** Completing and signing of forms by an employing unit that may affect the benefit rights of an individual.

*a.* A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, is accomplished by properly completing the form or computerized format provided by the department.

*b.* The form must be signed by, or the computerized form completed by, an authorized agent, individual proprietor, partner, executive officer, department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment.

*c.* Failure to timely submit any notice or response requested by the department will result in the department basing its determination of the individual's rights to benefits on the information available.

**24.8(4)** Issuing determinations, redeterminations and decisions to employing units.

*a.* An employing unit that has filed a timely response or protest to the notice of the filing of an initial claim will be notified in writing of the determination as to the individual's rights to benefits. If an individual's employing unit has submitted timely information affecting the individual's rights to benefits, including facts disclosing that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit will be notified in writing of the department's decision as to the cause of termination of the individual's employment.

*b.* Any notice of determination or decision must contain a statement establishing the employing unit's right of appeal.

*c.* Determinations regarding an individual's right to benefits, the cause of termination of the individual's employment, an employing unit's experience record and correspondence related thereto will be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was sent; or

(2) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative will comply, and the department has approved authorization (power of attorney) designating the agent to represent the employing unit.

This rule is intended to implement Iowa Code section 96.6.

**871—24.9(96) Determination of benefit rights.**

**24.9(1)** *Monetary determinations.* When an initial claim for benefits is filed, the department will send to the individual claiming benefits a notification consisting of a statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

**24.9(2)** *Fact-finding.* Each interested party will be afforded the opportunity to provide information to the department regarding pending eligibility matters. A telephone fact-finding interview may be scheduled upon request of either interested party. Interested parties may request an in-person fact-finding interview as a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department reserves the right to call any interested party in for an in-person fact-finding interview.

**24.9(3)** *Notice of benefit determination.*

*a.* This notice of benefit determination will be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potentially disqualifying issues relevant to the determination. If a claimant is ineligible, this notice will advise of the reason.

*b.* The department will promptly notify the claimant or any other party filing the request of its decision via a notice of benefit determination that specifies the claimant's appeal rights. Unless the claimant or any such other party entitled to notice, within ten days after such notification was sent to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final, and benefits will be paid or denied in accordance therewith.

**24.9(4)** *Reconsideration of determination.*

*a.* The department, upon receiving a timely written request for reconsideration or, on its own initiative and based on newly discovered facts it may have in its possession or may acquire, and that may affect the validity of the original determination, may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. In such case, an unemployment insurance representative will examine the facts or request and promptly issue a redetermination. The redetermination of the monetary record will constitute a final decision unless the individual files a written appeal to an administrative law judge within ten days of the date on the redetermination specifying the grounds of objection.

*b.* For the purposes of this subrule, the appeal period is extended to the next working day of the department if the tenth day falls on a Saturday, Sunday, or holiday.

**24.9(5)** *Nonmonetary determinations.*

*a.* When a protest of an initial claim for benefits is filed, the department will mail to the individual claiming benefits, and the most recent or any other base period employing unit, an Unemployment Insurance Decision, which affects the individual's right to benefits.

*b.* When an issue could result in a decision detrimental to an interested party, the interested party will be afforded the opportunity to present facts and evidence that may include an informational fact-finding interview scheduled by the department. An interested party, at the party's expense and with the party's equipment, may record (video or audio) the proceedings. All participants will be informed of the recording of the interview, which must not be disruptive or distracting.

*c.* Interested parties are afforded review, reconsideration, and appeal rights in the same manner as those provided for monetary determinations as established in subrule 24.9(4).

This rule is intended to implement Iowa Code section 96.6.

**871—24.10(96) Employer and employer representative participation in fact-finding interviews.**

**24.10(1)** "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6(2), means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of

discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.24(7). Written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

**24.10(2)** "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6(2), as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator will notify the employer's representative in writing after each such appeal.

**24.10(3)** If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6(2) has engaged in a continuous pattern of nonparticipation, the division administrator will suspend the representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on any subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

**24.10(4)** "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6(2), means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)*"b."*

**871—24.11(96) Deductible and nondeductible payments.**

**24.11(1)** *Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits will be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay that is deductible in the manner prescribed in rule 871—24.12(96) will be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer. The individual claiming benefits is required to designate the last day paid that may indicate payments made under this rule. The employer is required to designate on the Notice of Claim response the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, the unemployment insurance representative will determine the days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) will be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.14(96). If the claimant received vacation pay under rule 871—24.12(96), the procedure established in Iowa Code section 96.5(7)*"c"* will govern. The maximum number of days the vacation pay will be applied is five workdays following the separation date. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) will be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

**24.11(2)** *Deductible payments from benefits.* The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual's weekly benefit payment provided in rule 871—24.14(96):

*a. Holiday pay.* However, if the employer does not pay holiday pay, the individual may request an underpayment adjustment from the department.

*b. Commissions.* The commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

*c. Incentive pay.* Incentive pay is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

*d. Strike pay.* Strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.

*e. Remuneration other than cash.* The cash value of all remuneration payable in any medium other than cash, e.g. board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

*f. Stand-by pay.* When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay that is deductible from benefits when earned by the individual during the period in which the individual is claiming benefits.

*g. Tips or gratuity.* Tips or gratuity are only deductible when based on service performed by the individual during the period in which the individual is claiming benefits.

**24.11(3)** *Fully deductible payments from benefits.* The following payments are considered as wages, but are fully deductible from benefits on a dollar-for-dollar basis:

*a.* Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

*b.* Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It is treated as vacation and fully deductible in the manner prescribed in rule 871—24.12(96).

*c.* Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

*d.* Workers' compensation, temporary disability only. The payment is fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

*e.* Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced if the base period employer has made 100 percent of the contributions to the plan that is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

**24.11(4)** *Nondeductible payments from benefits.* The following payments are not considered as wages and are not deductible from benefits:

*a.* Self-employment income. However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).

*b.* Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

*c.* Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.

*d.* Payment for unused sick leave.

*e.* National guard duty pay. This includes reserve unit drill pay for any branch of the armed services.

*f.* Supplemental unemployment benefit plans approved by the department. See 871—paragraph 16.3(1)*"e"* for criteria and employer procedure for obtaining department approval.

*g.* Pension to the blind.

*h.* Payment for terminal leave. Any payment received by military personnel for unused leave upon discharge.

*i.* Compensation for military service-connected disability from the department of veterans affairs.

*j.* Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.

*k.* Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits will not be deductible during the period in which the individual is claiming benefits.

*l.* Witness and jury fees. These fees are reimbursement for expenses and are not considered as wages.

*m.* Supplemental security income. This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.

*n.* Federal social security benefit and social security disability payments.

*o.* Payments conditional upon the release of any rights.

*p.* Payments requiring the individual to work through a specific day to be eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.1A.

**871—24.12(96) Vacation pay.**

**24.12(1)** If the employer properly notifies the department that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted, not to exceed five workdays. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.12(96), the term "vacation pay" includes paid time off and annual leave payments.

**24.12(2)** If the employer fails to properly notify the department regarding the application of vacation pay to a specific vacation period, the vacation pay will be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

**24.12(3)** Unless otherwise specified by the employer, the amount of the vacation pay will be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

This rule is intended to implement Iowa Code section 96.5(7).

**871—24.13(96) Vacation pay procedure.**

**24.13(1)** The Notice of Claim, Request for Federal Wage and Separation Information, and Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, will be used as notification to the department that vacation pay is applicable. Upon receipt of these forms, the department will:

*a.* Compare the amount of vacation reported by the employer with the computer record. If there are any discrepancies that would affect the claimant's eligibility for unemployment insurance benefits for any week claimed, the claimant will be afforded the opportunity to present facts and evidence. The department may then allow the employer to present additional facts and evidence. If the employer is afforded an opportunity to provide additional facts and evidence, the unemployment insurance representative will likewise afford the claimant the opportunity to present additional facts and evidence.

*b.* Consider all information submitted by the interested parties and issue to the employer and claimant the appropriate decision concerning the vacation pay. The department will then check the current status of the claim to ascertain if any weeks have been reported.

*c.* If the record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, take no further action on the weeks not claimed.

**24.13(2)** The claimant is instructed to only report vacation pay applicable to the five workdays following the last date worked and that vacation pay designated by the employer in excess of the vacation pay the claimant reported may result in an overpayment of benefits.

This rule is intended to implement Iowa Code section 96.5(7).

**871—24.14(96) Wage-earnings limitation.** Partial unemployment is defined in Iowa Code section 96.1A(37)*"b."* If an individual is partially unemployed, the formula for wage deduction is a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.1A.

**871—24.15(96) Benefit eligibility conditions.** To be eligible to receive benefits, the individual bears the burden of establishing, and the department must find, that the individual is able to work, available for work, and earnestly and actively seeking work.

**24.15(1)** *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation.

*a. Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

*b. Interpretation of ability to work.* The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

**24.15(2)** *Available for work.* The availability requirement is satisfied when an individual is genuinely attached to the labor market (e.g. the individual is willing, able, and ready to accept suitable work that the individual does not have good cause to refuse). Under unemployment insurance laws, it is the availability of an individual who is tested, and the labor market is therefore described in terms of the individual. A labor market for an individual means a market for the type of service the individual offers in the geographical area in which the individual offers the service. It does not mean that job vacancies must exist. It means only that the type of services that an individual is offering is generally performed in the geographical area in which the individual is offering the services.

*a. Shift restriction.* The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

*b. Intermittent employment.* An individual cannot limit employability to only temporary or intermittent work until recalled by a regular employer.

*c. Jury duty.* The individual is considered available for work while serving on jury duty because time spent in jury service is not a personal service performed under a contract of hire in an employment situation but rather a public duty required by law. Jury duty does not render the individual as employed and ineligible for benefits even though it may involve the individual full-time.

*d. Work release program while incarcerated.* For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3), but the department will review any situation concerning an incarcerated individual who can meet the requirements of Iowa Code section 96.4(3).

*e. Available for part of week.* Each case is decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

*f. On-call workers.*

(1) Substitute workers (e.g., post office clerks, railroad extra board workers) who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and is determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. A substitute teacher is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits from on-call work, such as a banquet worker, railway worker, or substitute school teacher, is not considered an unemployed individual within the meaning of Iowa Code section 96.1A(37)*"a"* and *"b."* An individual who is willing to accept only on-call work is not considered to be available for work.

*g. Leave of absence.* A leave of absence negotiated with the consent of both employer and employee is deemed a period of voluntary unemployment for the employee who is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee, the individual is considered laid off and eligible for benefits.

(2) If the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

*h. Effect of religious convictions on Sabbath day work.* An individual is considered as available for work if the precepts of the individual's religion prohibit work on the Sabbath. An individual who refuses to work on the Sabbath designated by the individual's religion because of conscientious observance of the Sabbath as a matter of religious conviction is also deemed to have good cause for refusing the work.

*i. Available for work.* To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist. If that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

*j. Reasonable expectation of securing employment.* An individual may not be eligible for benefits if the individual has imposed limitations that leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

*k. Corporate officers.* To be considered available, the corporate officer must meet the same tests of availability as are met by other individuals.

*l. Lawfully authorized work.* An individual who is not lawfully authorized to work within the United States is considered unavailable for work.

**24.15(3)** *Earnestly and actively seeking work.* Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts that might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

*a. Basic requirements.* An individual will be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The

department makes determinations on a case-by-case basis. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if the department finds each constitutes a reasonable means of securing work by the individual:

(1) Applying with employers reasonably expected to have suitable openings.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Applying or testing for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work that appear suitable to the individual if the response is made in writing, in person, or electronically.

(5) Any other action that the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility that charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

*b. Number of employer contacts.* "Earnestly and actively" may be interpreted in different manners, depending on the estimate of employment opportunities in an area. The number of employer contacts appropriate in an area of limited opportunities might be totally unacceptable in another area. The number of required contacts is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary. Reemployment activities must be recorded as directed by the department.

*c. Exceptions.*

(1) Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession, or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession, or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient, except when all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program. Mere registration at a union or reporting to a union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and individuals complete reemployment activities.

(2) The requirement for seeking work is waived if all of the following conditions apply:

1. The individual is attached to a regular job or industry.

2. The individual is a high-skilled worker. For purposes of this numbered paragraph, "high-skilled worker" means a worker whose job or position requires licensing, credentials, or specialized training.

3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions that impacts the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

4. The individual otherwise qualifies for unemployment insurance benefits.

*d. Week-to-week disqualification.* Disqualification due to failure to conduct reemployment activities is made on a week-to-week basis and is not permanent.

*e. Seniority rights.* An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to individuals receiving extended benefits or similar federal program benefits.

*f. Search for work.*

(1) The group code is used to determine which individuals are required to make personal applications for work. Other factors, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(2) Individuals receiving partial benefits are exempt from making personal applications for work in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors that may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

*g. Job search assistance.* Attendance at job search assistance classes, including reemployment services, that are sponsored by the department may be counted as one of the individual's reemployment activities for that week.

This rule is intended to implement Iowa Code section 96.4(3).

**871—24.16(96) Availability disqualifications.** The following are reasons for disqualifying a claimant for being unavailable for work:

**24.16(1)** An individual who is ill and presently not able to work due to illness.

**24.16(2)** An individual presently in the hospital. If there is a change in status, the individual is to renew the claim at once if unemployed.

**24.16(3)** If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work.

**24.16(4)** If the individual loses the means of transportation from the residence to the area of usual employment. However, an individual will not be disqualified for restricting employability to the geographic area of usual employment. More information is contained in subrule 24.20(7).

**24.16(5)** Full-time students devoting the major portion of their time and efforts to their studies except for students available to the same degree and to the same extent as when they accrued wage credits.

**24.16(6)** If an individual has a medical report on file submitted by a physician or a physician assistant, stating the individual is not presently able to work.

**24.16(7)** Where an individual devotes time and effort to becoming self-employed.

**24.16(8)** Where availability for work is unduly limited because of not having made adequate arrangements for child care.

**24.16(9)** The claimant requested and was granted a leave of absence.

**24.16(10)** Failure to report as directed to the department in response to a notice sent to the claimant.

**24.16(11)** If a claimant is in jail or prison.

**24.16(12)** If an individual cannot be contacted by the department for referral to possible employment.

**24.16(13)** Where a claimant has demanded a wage in excess of the wages most commonly paid for suitable work the individual is seeking in the locality.

**24.16(14)** Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

**24.16(15)** Where work is unduly limited because the claimant is not willing to work the number of hours necessary in the claimant's occupation.

**24.16(16)** Where availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

**24.16(17)** Where availability for work is unduly limited because the claimant is not willing to accept work in the claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

**24.16(18)** Where availability for work is unduly limited because the claimant is waiting to be recalled by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

**24.16(19)** Where a claimant does not want to earn wages that may adversely affect receipt of social security.

**24.16(20)** Where availability is unduly limited because claimant is working to such a degree that removes the claimant from the labor market.

**24.16(21)** Reserved.

**24.16(22)** If the claimant is out of town for personal reasons for the major portion of the workweek and is not fulfilling reemployment requirements.

**24.16(23)** Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

**24.16(24)** Failure to report any effort to find employment.

**24.16(25)** Failure to make an adequate work search after having been previously warned and instructed to expand the work search.

**24.16(26)** Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

**24.16(27)** Failure to attend the major portion of the scheduled workweek for department-approved training.

**24.16(28)** Where the claimant spent the major portion of the period traveling while relocating.

**24.16(29)** The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.1A(37)*"c"* are met.

**24.16(30)** Where the claimant left employment prior to a scheduled layoff when claimant could have remained in employment. No disqualification may be imposed in accordance with Iowa Code section 96.5(1)*"g"* for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

**24.16(31)** Where the claimant is not able to work due to personal injury.

**24.16(32)** Where the claimant is not able to work, is under the care of a medical practitioner, and has not been released as being able to work.

**24.16(33)** An individual who follows a course of action designed to discourage prospective employers from hiring the individual will be deemed to have failed to make an effort to secure work.

**24.16(34)** Where the work search has been deliberately falsified for the purpose of obtaining benefits, the recommended penalty is:

*a.* First offense—denial of benefits for six weeks.

*b.* Second offense—denial of benefits for nine weeks.

*c.* Third offense—total disqualification for the remainder of the benefit year and the department may consider filing fraud charges.

The penalties are a mere guide and not a substitute for the subjective judgment of the department.

**24.16(35)** Where claimant became temporarily unemployed but was unavailable for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499 and Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.1A and 96.29.

**871—24.17(96) Failure to accept work and failure to apply for suitable work.** A claimant's failure to accept work and failure to apply for suitable work will be removed when the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

**24.17(1)** *Bona fide offer of work.*

*a.* In deciding whether or not a claimant failed to accept or apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter is deemed to be sufficient as a personal contact.

*b.* Upon notification of a job opening for a claimant, a representative of the department will notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant will be disqualified until such time as the claimant contacts the department.

**24.17(2)** *Job within claimant's capabilities.*

*a.* To be suitable, the job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training the claimant does not already possess. As the period of unemployment lengthens, work that might originally have been unsuitable may become suitable.

*b.* A refusal of suitable work occurs when a claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department. The claimant will be disqualified for failure to apply for or accept an offer to work until such time as the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

**24.17(3)** *Each case decided on its own merits.* The department will investigate and determine whether the work was suitable and whether the claimant had good cause for refusal. Each case will be determined on its own merits as established by the facts. Good cause for refusing suitable work may nevertheless disqualify a claimant as being unavailable for work.

**24.17(4)** *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).* Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant will not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

**24.17(5)** *Bumping rights to a job.* A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits.

**24.17(6)** *Claimant physically unable to perform job.* A medical practitioner must submit certification to support the claimant's statement that work offered is unsuitable because of the claimant's physical condition.

**24.17(7)** *Gainfully employed outside of area where job is offered.* Two reasons that generally constitute good cause for not accepting an offer of work are if the claimant is gainfully employed elsewhere or the claimant does not reside in the area where the job is offered.

**24.17(8)** *Refusal disqualification jurisdiction.* Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code section 96.5(3) disqualification can be imposed. It is not

necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

**24.17(9)** *Distance to new job.* Without a prior specific agreement between the employer and employee, the employee's refusal to follow the employer to a distant new job site may not be reason for a refusal disqualification.

**24.17(10)** *Bulletin board notice of work.* A bulletin board notice for employees to work during a plant shutdown does not constitute an offer of work by the company.

**24.17(11)** *Claimant discourages prospective employers.* When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant will be deemed to have refused suitable work.

**24.17(12)** *Claimant moved to another state.* A claimant who moves to another state will not be subject to disqualification for refusal to return to a previously held job.

**24.17(13)** *Employment offer from former employer.*

*a.* A claimant will be disqualified for refusing work with a former employer if the work offered is reasonably suitable, comparable, and within the purview of the claimant's usual occupation. The provisions of Iowa Code section 96.5(3)*"b"* control the determination of suitability of work.

*b.* An employment offer will not be considered suitable if the claimant had previously quit the former employer and the conditions that caused the claimant to quit are still in existence.

**24.17(14)** *Suitable work.* In determining what constitutes suitable work, the department will consider, among other relevant factors, the following:

*a.* Any risk to the health, safety and morals of the individual.

*b.* The individual's physical fitness.

*c.* Prior training.

*d.* Length of unemployment.

*e.* Prospects for securing local work by the individual.

*f.* The individual's customary occupation.

*g.* Distance from the available work.

*h.* Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.

*i.* Whether the work offered meets the percentage criteria established for suitable work that is determined by the number of weeks that have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

*j.* Whether the position offered is due directly to a strike, lockout, or other labor dispute.

*k.* Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.

*l.* Whether employment is contingent on joining or resigning from a labor organization.

**24.17(15)** *Disabled accessibility to job.* A job offer is not suitable if a disabled individual has no access to a building or its facilities.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(2), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.11(1), 96.16, 96.1A, and 96.29.

**871—24.18(96) Voluntary quit without good cause.** In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits, but the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code sections 96.5(1)*"a"* through *"i"* and 96.5(10). The following reasons for a voluntary quit are be presumed to be without good cause attributable to the employer:

**24.18(1)** Claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

**24.18(2)** Claimant moved to a different locality.

**24.18(3)** Claimant left to seek other employment but did not secure employment.

**24.18(4)** Claimant was absent for three days without giving notice to employer in violation of company rule.

**24.18(5)** Claimant left due to an inability to work with other employees.

**24.18(6)** Claimant failed to return to work upon the termination of a labor dispute.

**24.18(7)** Claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant is considered to be on leave from employment. Voluntary quit in this context will occur when upon release from military service the claimant does not return to the claimant's employer to apply for employment within 90 days, provided the claimant provides evidence to the employer of satisfactory completion of the military service and further provided that the claimant is still qualified to perform the duties of the position.

**24.18(8)** Claimant left employment to accompany a spouse to a new locality. No disqualification will be imposed when Iowa Code section 96.5(1)*"b"* is applicable.

**24.18(9)** Claimant left to get married.

**24.18(10)** Claimant left without notice during a mutually agreed upon trial period of employment.

**24.18(11)** Claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

**24.18(12)** Claimant becomes incarcerated.

**24.18(13)** Claimant left because of lack of child care.

**24.18(14)** Claimant left because of a dislike of the shift worked.

**24.18(15)** Claimant left to enter self-employment.

**24.18(16)** Claimant left for compelling personal reasons and the period of absence exceeded ten working days.

**24.18(17)** Claimant left because of dissatisfaction with the work environment.

**24.18(18)** Claimant left because of a personality conflict with the supervisor.

**24.18(19)** Claimant left voluntarily due to family responsibilities or serious family needs.

**24.18(20)** Claimant left employment to accept retirement when such claimant could have continued working.

**24.18(21)** Claimant left to take a vacation.

**24.18(22)** Claimant left to go to school.

**24.18(23)** Claimant left rather than perform the assigned work as instructed.

**24.18(24)** Claimant left after being reprimanded.

**24.18(25)** Claimant left in anticipation of a layoff in the near future, but work was still available at the time claimant left.

**24.18(26)** Claimant left due to the commuting distance to the job and was aware of the distance when hired.

**24.18(27)** Claimant left work to keep from earning enough wages during the year to adversely affect receipt of social security.

**24.18(28)** Claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required.

**24.18(29)** Claimant left because claimant felt that the job performance was not to the satisfaction of the employer provided the employer had not requested claimant leave and continued work was available.

**24.18(30)** Claimant left because work was irregular due to weather conditions that were not unusual in claimant's type of employment.

**24.18(31)** Claimant left because of illness or injury that was not caused or aggravated by the employment or pregnancy and failed to:

*a.* Obtain the advice of a licensed and practicing physician or physician assistant;

*b.* Obtain certification of release for work from a licensed and practicing physician or physician assistant;

*c.* Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician or physician assistant; or

*d.* Fully recover so that the claimant could perform all of the duties of the job.

**24.18(32)** Where claimant maintained that the claimant left due to an illness or injury that was caused or aggravated by the employment but the employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

**24.18(33)** Where claimant gives the employer notice of an intention to resign and the employer accepted such resignation. This rule also applies to a claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

**24.18(34)** Where claimant gave the employer an advance notice of resignation, causing the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation. Benefits will be denied effective the proposed date of resignation.

**24.18(35)** Where claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.6(2), 96.16, and 96.1A.

**871—24.19(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits.** In addition to the reasons established in Iowa Code section 96.5(1), the following are reasons for a claimant leaving employment with good cause attributable to the employer:

**24.19(1)** An employer's willful breach of contract of hire is not a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and may involve changes in working hours, shifts, remuneration, location of employment, or drastic modification in type of work. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

**24.19(2)** Claimant left due to unsafe working conditions.

**24.19(3)** Claimant left due to unlawful working conditions.

**24.19(4)** Claimant left due to intolerable or detrimental working conditions.

**24.19(5)** Claimant was laid off by the employer for being pregnant; however, availability must still be determined.

**24.19(6)** Separation because of illness, injury, or pregnancy.

*a. Nonemployment related separation.* For purposes of Iowa Code section 96.5(1)*"d,"* recovery is defined as the ability of the claimant to perform all the duties of the previous employment.

*b. Employment related separation.* The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment that caused or aggravated the illness, injury, allergy, or disease to the employee that made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph, an individual must present competent evidence showing adequate health reasons to justify termination, before quitting have informed the employer of the work-related health problem and informed the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work that is not injurious to the claimant's health and for which the claimant must remain available.

**24.19(7)** For purposes of Iowa Code section 96.5(1)*"c,"* immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family are related by blood or by marriage.

**24.19(8)** For purposes of Iowa Code section 96.5(1)*"e,"* family is defined as wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.

**24.19(9)** A claimant who underwent a mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.

**24.19(10)** The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

**24.19(11)** When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee is eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

**24.19(12)** A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date is deemed to be unavailable for work until the future separation date designated by the employer. After the employer-designated date, the separation will be considered a layoff.

**24.19(13)** For purposes of Iowa Code section 96.5(1)*"g,"* good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business, blinding snowstorm, telephone lines down, employer closed for vacation, hospitalization of the claimant, and other substantial reasons.

Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications.

**24.19(14)** For purposes of Iowa Code section 96.5(1)*"f,"* working days means the normal days in which the employer is open for business.

**24.19(15)** Separation due to incarceration.

*a.* The claimant is eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the absence;

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two working days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

*b.* If the claimant fails to satisfy the requirements of subparagraph 24.19(17)*"a"*(1), the claimant is considered to have voluntarily quit the employment if the claimant was absent for three working days or more under subrule 24.18(4). If the absence was two days or less, the separation is considered a discharge under rule 871—24.24(96). If all of the conditions of subparagraphs 24.19(17)*"a"*(2), 24.19(17)*"a"*(3) and 24.19(17)*"a"*(4) are not satisfied, the separation is considered a discharge under rule 871—24.24(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

**24.19(16)** The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work is not construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable will shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 871—24.17(96) are controlling in the determination of suitability of work. However, this subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or

reasonable assurance of continued employment status. Under this circumstance, the substitute school employee is considered to have voluntarily quit employment.

**24.19(17)** The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

**24.19(18)** When a claimant was compelled to resign when given the choice of resigning or being discharged, it is not considered a voluntary leaving.

**24.19(19)** The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. This subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees are considered to have voluntarily quit employment.

**24.19(20)** The claimant left work because the type of work was misrepresented at the time of acceptance of the work assignment.

**24.19(21)** A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service is entitled to a leave of absence during the period of such duty. The employer will restore the person to the position held prior to such leave of absence, or employ the person in a similar position provided that the person provides evidence to the employer of satisfactory completion of the training or duty and further provided that the person remains qualified to perform the duties of the position.

**24.19(22)** The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account will immediately become chargeable for the benefits paid that are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification will be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.1A.

**871—24.20(96) Voluntary quit of part-time employment and requalification.** An individual who voluntarily quits without good cause part-time employment and who has not requalified for benefits following the voluntary quit of part-time employment, but is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, will not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer that was voluntarily quit will be notified that benefit payments will not be made that are based on the wages paid by the part-time employer, and benefit charges will not be assessed against the part-time employer's account. However, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment will be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer will be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

**871—24.21(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.**

**24.21(1)** A claimant is eligible for benefits even though having voluntarily left employment, if after leaving the employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

**24.21(2)** The claimant is eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if, after the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

**24.21(3)** The claimant will be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant

did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be insured work and does not include self-employment.

**24.21(4)** The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

**24.21(5)** The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

**24.21(6)** The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1)*"a."*

**871—24.22(96) Business closing.**

**24.22(1)** Whenever an employer at which the individual was last employed and is laid off goes out of business, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to 26 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because the employer goes out of business within the same benefit year. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the claim for benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

**24.22(2)** Going out of business is when an employer closes its door and ceases to function as a business. An employer is not considered to have gone out of business if it sells or otherwise transfers the business to another employer that continues to operate the business.

**24.22(3)** When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business, the representative completes a verification of business closing form and refers it to the field audit section for verification. Upon return of the form from the field audit section, a representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing.

This rule is intended to implement Iowa Code section 96.3(5).

**871—24.23(96) Subsequent benefit year condition.**

**24.23(1)** The claimant must have been paid benefits on a previous claim.

**24.23(2)** Qualifications for a second benefit year are established in Iowa Code section 96.4(4)*"c."* Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

**24.23(3)** Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

**24.23(4)** Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work will be removed upon verification that the claimant worked in and received wages for insured work totaling eight times the claimant's weekly benefit amount from the previous benefit year during or after the previous benefit year.

This rule is intended to implement Iowa Code section 96.4(4).

**871—24.24(96) Discharge for misconduct.**

**24.24(1)** *Definition.*

*a.* "Misconduct" is defined in Iowa Code section 96.5(2)*"d."*

*b.* Back pay awards are not considered when calculating wages for qualification under Iowa Code section 96.5(2)*"a."*

**24.24(2)** *Gross misconduct.*

*a.* "Gross misconduct" is defined in Iowa Code section 96.5(2)*"c."*

*b.* An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than $500 or by imprisonment in the county jail for more than 30 days.

*c.* If gross misconduct is established, the department will cancel the individual's wage credits earned, prior to the date of discharge, from all employers regardless of when the act occurred during the benefit year.

**24.24(3)** *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence are not sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct is resolved.

**24.24(4)** *Trial period.* A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work are not issues of misconduct.

**24.24(5)** *False work application.* It is an act of misconduct when a willfully and deliberately false statement, made on a work application, may or does result in endangering the health, safety or morals of the applicant or others, result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy.

**24.24(6)** *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the claimant's duty to the employer and is considered misconduct except for illness or other reasonable grounds so long as properly reported to the employer.

**24.24(7)** *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

**24.24(8)** *Suspension or disciplinary layoff.* Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

**871—24.25(96) Labor disputes.**

**24.25(1)** *Definition.* As used in sections 96.5(3)*"b"*(1) and 96.5(4), the term "labor dispute" shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual is disqualified for benefits if unemployment is due to a labor dispute.

**24.25(2)** *Initial requirements—workforce development center.*

*a.* As soon as a workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a Labor Dispute Report will be sent to the administrative office of the department advising of the labor dispute or work stoppage.

*b.* If the labor dispute or work stoppage is terminated before the report is transmitted, the information concerning the termination of the dispute and the date of the worker's return to work must also be entered on the Labor Dispute Report.

*c.* When the labor dispute or work stoppage is terminated after the filing of the initial Form 68-0535, the department must be notified of the termination and return to work dates.

*d.* In those instances where an association represents a group of employers, the report will contain the names and addresses of the employers who are involved in the labor dispute, as well as the name and

address of the association and the name of the association official who can furnish information about the work stoppage.

*e.* In taking initial claims in which there is a labor dispute, the workforce development center will process an initial application for unemployment, Application for Job Placement Assistance and/or Job Insurance, in the normal manner, which will include the union name and local union number.

*f.* If there is a work stoppage at the premises of an employer and it is a known fact that there has not been a union and that at present there is no union representation nor any attempt by a union to organize the workers of the plant, a statement will be taken from each individual claiming benefits. Each individual's statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

*g.* Statements from each individual claiming benefits are not required on the labor dispute issue whenever there is union representation even though some of the individuals may not be union members.

*h.* When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the legal counsel, unemployment insurance services division. The report will include the:

(1) Date on which an agreement was reached on the issues that caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

*i.* The requirements in subrules 24.25(1) and 24.25(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the benefits bureau to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

*j.* During the period of a labor dispute, the claims involved in the labor dispute are processed as though no separation from the employer had occurred. Therefore, if an individual is still unemployed after the termination of the labor dispute, such individual has either been laid off, voluntarily left, or has been discharged from employment, and an additional claim will be taken if the individual continues in claim status.

*k.* When the employer or the union requests advice and information pertaining to what action should be taken in regard to the labor dispute, the workforce development center, at that time, should obtain all the information possible from the requester for inclusion in the labor dispute report to the unemployment insurance services division.

*l.* The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on the Notice of Claim. The employer will receive a copy of the decision that may be appealed.

*m.* The employer will use the Notice of Separation or Refusal of Work to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal, but not labor disputes.

**24.25(3)** *Initial determination.* In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the unemployment insurance services division will promptly review the evidence submitted and issue a decision to interested parties, who have ten days from the date of mailing the decision to the last known address of record to appeal the decision.

This rule is intended to implement Iowa Code section 96.5.

**871—24.26(96) Labor dispute—policy.**

**24.26(1)** Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

**24.26(2)** The relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee.

*a.* If the relationship is severed by the employer, Iowa Code section 96.5(2) governs.

*b.* If the relationship is severed by the employee, Iowa Code section 96.5(1) governs.

**24.26(3)** An individual who is unemployed because of a labor dispute and accepts employment elsewhere during the period of the labor dispute must return to the previous employer when said labor dispute is settled or be subject to a determination on the issue of voluntary leaving.

**24.26(4)** Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute is considered as involved in such labor dispute.

**24.26(5)** Appeals of the department's initial determination of a labor dispute issue are heard by an administrative law judge, whose decision may be appealed to the employment appeal board.

**24.26(6)** An individual not involved in or participating in a labor dispute who failed to report to work because of a picket line shall be deemed to have voluntarily left employment. However, if the individual was subjected to hostility or violence in an attempt to cross a picket line, then the individual will be held to have involuntarily left employment.

*a.* The division presumes that any strike or lockout is being conducted in a lawful manner unless there is evidence to the contrary. The division presumes that any picketing is being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

*b.* If an injunction request for actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct is denied due to such conduct not being established, the division presumes that the picket line is peaceful absent evidence to the contrary.

*c.* If an injunction is obtained, the division presumes the picket line is peaceful as of the date the injunction is issued unless evidence is introduced that proves the contrary proposition.

**24.26(7)** A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.

*a.* The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout, and the claimants are not disqualified because of a labor dispute.

*b.* A cessation of employment by the employer is not a lockout if:

(1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or

(2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or

(3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

**24.26(8)** A labor dispute involves a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment is deemed to have voluntarily quit.

**24.26(9)** When individuals, not as a group, union, or under union direction or suggestion but individually, left their work voluntarily in protest against the discharge of a fellow employee by their employer, in an unauthorized strike, it is held to be a voluntary quit.

**24.26(10)** Employment offered by an employer involved in a labor dispute or an employer who becomes involved in a labor dispute prior to acceptance by the claimant is considered:

*a.* Not suitable if the offer is made to a person who would be a new employee or a former employee who was laid off before the labor dispute and the vacancy was created by the strike, lockout, or other labor dispute.

*b.* Suitable if the offer was made to a former employee who was previously laid off, provided the position offered is not vacant because of the strike, lockout, or other labor dispute and the provisions of section 96.5(4) will apply.

*c.* Suitable if the offer is made to a new employee who was not previously laid off by the same employer, and the vacancy was not created by a labor dispute.

**24.26(11)** Other employment accepted during periods of labor disputes does not free the claimant from the labor dispute section of the Iowa employment security law unless the claimant severs the relationship with the employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

**871—24.27(96) Date of submission and extension of time for payments and notices.**

**24.27(1)** Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division will be considered received by and filed with the division:

*a.* If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

*b.* If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

*c.* If transmitted by any means other than those outlined in paragraphs 24.27(1)*"a"* and *"b,"* on the date it is received by the division.

**24.27(2)** The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period will be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

*a.* For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

*b.* The division will designate personnel who are to decide whether an extension of time will be granted.

*c.* No submission will be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

*d.* If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division will issue an appealable decision to the interested party.

**24.27(3)** Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division will be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last-known address. The date mailed is presumed to be the date of the document, unless otherwise indicated by the facts.

**24.27(4)** Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system is considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted is presumed to be the date of the document, unless otherwise indicated by the facts.

This rule is intended to implement Iowa Code section 96.7.

**871—24.28(96) Interstate benefits.**

**24.28(1)** An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states. Interstate benefits are payable under the plan approved by the national association of state workforce agencies to unemployed individuals who do not reside in the state(s) in which wage credits were earned.

**24.28(2)** The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state and federal law.

This rule is intended to implement Iowa Code section 96.20.

**871—24.29(96) Payment of benefits to interstate claimants.**

**24.29(1)** Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

*a. Applicability.* This regulation shall govern the department in its administrative cooperation with other states.

*b. Definitions.* In addition to terms defined in 17.1, the following definitions apply to this rule unless the context clearly requires otherwise:

(1) "Interstate benefit payment plan." The plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals who do not reside in the state (or states) in which benefit credits have been accumulated.

(2) "Interstate claimant." This is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(3) "State." This includes the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

*c. Registration for work.*

(1) Each interstate claimant will be registered for work as legally required by the agent state. This registration will be deemed to meet the registration requirements of the liable state.

(2) Each agent state will report to the respective liable state whether each interstate claimant meets the registration requirements of the agent state.

*d. Benefit rights of interstate claimants.*

(1) If a claimant files a claim against any state, and it is determined that the claimant has available benefit credits in that state, then claims will be filed only against that state as long as benefit credits are available there. Thereafter, the claimant may file claims against any other state having available benefit credits.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state's requalification criteria.

(3) The effective date of an interstate claim is the Sunday of the week the claim was filed, unless proof is obtained from another state that the claimant should have filed in Iowa.

*e. Claim for benefits.* Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

*f. Determination of claims.*

(1) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

*g. Appellate procedure.*

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified representative of the agent state.

**24.29(2)** Extended benefits interstate claims. When extended benefits are in effect and a claimant is filing for extended benefits, an eligible individual shall be limited to a maximum of two weeks of the extended benefit entitlement if the individual moves from this state, before or during an extended benefit period triggered by this state's "on" indicator, to another state in which an extended benefit period is not in effect.

This rule is intended to implement Iowa Code sections 96.6(1) and 96.29(3).

**871—24.30(96) Combined wage claim.**

**24.30(1)** Purpose of plan. The combined wage program enables an unemployed worker with covered employment or wages in more than one state to combine all employment and wages in one state to qualify for benefits or to receive increased benefits.

*a.* Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations.

*b.* The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the agent state is applicable to a combined wage claimant.

*c.* The rights of the individual under the combined wage claim plan are determined by the paying state after the combining of all wages available from the liable states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department will respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

*d.* All other provisions of the unemployment compensation laws and rules of the state agency of the paying state will be applied to the combined wage claim.

*e.* The paying state is the state in which the claim is filed unless the individual does not qualify after the transfer has been completed or the claimant is a commuter, meaning that the person travels on a daily or regular basis from the state of residence to a separate state where the person works.

**24.30(2)** Exception to combining wage credits. Wages and employment are not transferable to the paying state if:

*a.* Any employment and wages have been transferred to any other paying state and not returned unused,

*b.* Wages have been used by the transferring state as the basis of a monetary determination that established a benefit year, and

*c.* Any employment and wages have been canceled or are unavailable due to a transferring state determination made prior to the request for transfer.

**24.30(3)** The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done electronically, by cash, by check, by money order, or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits that said claimant will be paid.

This rule is intended to implement Iowa Code section 96.20.

**871—24.31(96) Department-approved training.** Department-approved training allows claimants to return to the labor market after attending vocational training while being paid unemployment insurance

benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. It includes technical, skill-based, or job readiness training intended for pursuing a career. Upon departmental approval, the claimant is exempt from the work search requirement for continued benefit eligibility benefits. To be eligible for department-approved training programs and to maintain continuing participation therein, the individual must meet the following requirements:

**24.31(1)** The claimant applies to the department demonstrating:

*a.* The educational establishment at which the claimant would receive training;

*b.* The estimated time required for such training;

*c.* The date the training will be complete or the degree obtained;

*d.* The occupation the training is allowing the claimant to maintain or pursue; and

*e.* The training plan, indicating the requirements needed to complete the certification or degree.

**24.31(2)** A claimant may receive unemployment insurance while attending a training course approved by the department if:

*a.* The educational establishment is a college, university or technical training institution;

*b.* The training is completed 104 weeks or less from the start date; and

*c.* The individual is enrolled and attending as a full-time student, as defined by the institution.

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, to continue eligibility for unemployment insurance, the claimant may place no restriction on employability. The claimant must be able to work, available for work, and actively searching for work. The claimant may be subject to disqualification for any refusal of work without good cause after completing training.

**24.31(3)** The claimant must show satisfactory attendance and progress in the training course to be considered for a subsequent approval.

This rule is intended to implement Iowa Code section 96.4.

**871—24.32(96) Training extension benefits.**

**24.32(1)** Training extension benefits provide continued benefit eligibility, allowing an individual to pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who voluntarily quit with good cause attributable to the employer or who was laid off or from full-time employment in a declining occupation or who was involuntarily separated from full-time employment due to a permanent reduction of operations.

**24.32(2)** The weekly benefit amount is pursuant to the same terms and conditions as regular unemployment benefits and the benefits are for a maximum of 26 times the weekly benefit amount of the claim that resulted in eligibility. Contributory and reimbursable employers will be relieved of charges for training extension benefits.

**24.32(3)** Enrollment must be full-time, as defined by the training institution, and courses must be designed to prepare the individual for a high-demand or high-technology occupation. The department will make available on its website and at workforce centers a list of high-demand, high-technology, and declining occupations.

*a.* High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one that requires a high degree of training in the sciences, engineering, or other advanced learning area and that has work opportunities available in the labor market area or the state of Iowa.

*b.* A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

*c.* A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

*d.* A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

*e.* A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

**24.32(4)** The application for training benefits must be received within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program for training extension benefit eligibility to continue.

**24.32(5)** Training benefits will cease to be available if the training is completed, the individual quits the training course, the individual exhausts the training extension maximum benefit amount, or the individual fails to make satisfactory progress. Benefits will cease no later than the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the benefits have been exhausted in order to maintain eligibility for training extension benefits.

This rule is intended to implement Iowa Code section 96.3(5).

**871—24.33** Reserved.

**871—24.34(96) Trade Act of 1974.** Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618) are determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, Chapter 29, Parts 70 and 91. The Trade Act of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

This rule is intended to implement 19 U.S.C. Sections 2101 through 2497b as amended November 1, 2024.

**871—24.35(96) Extended benefits.**

**24.35(1)** *Purpose.* Extended benefits are defined by Iowa Code section 96.1A(20).

**24.35(2)** *Determination of when extended benefits are paid.*

*a. When paid.* The state "on" indicator, as defined by Iowa Code section 96.1A(29), determines when extended benefits are paid in this state.

*b. When not paid.* The state "off" indicator, as defined by Iowa Code section 96.1A(28), determines when extended benefits are not paid in this state.

*c. Period of payment.* The extended benefit period is defined in Iowa Code section 96.1A(19).

*d. Rate of insured unemployment.* See Iowa Code section 96.1A(31).

**24.35(3)** *Notice of the beginning and ending of an extended benefit period.*

*a. Notice to individuals.* The department will notify individuals of:

(1) The beginning of an extended benefit period. The notice of potential entitlement to extended benefits is sent to each individual who has exhausted all rights to regular benefits either prior to the beginning of, or during, the extended benefit period and who has a benefit year that will not end prior to the beginning of the extended benefit.

(2) The ending of an extended benefit period. The notice of termination of entitlement to extended benefits is sent to each individual who is currently filing a claim for extended benefits.

*b.* Reserved.

**24.35(4)** *Amount and duration of extended benefits.*

*a. Eligibility period.* The eligibility period is defined in Iowa Code section 96.29(6).

*b. Applicable benefit year.* The applicable benefit year includes the period of one year from the date that an individual files a valid claim for benefits and any weeks following this one-year period in which the individual's eligibility period for extended benefits has not expired and the individual is not able to establish a second benefit year for regular benefits.

**24.35(5)** *Eligibility requirements for extended benefits.* The individual is required to actively seek, apply for or accept suitable work as per the current extended benefits proclamation.

This rule is intended to implement Iowa Code section 96.29.

**871—24.36(96) Disaster benefits.** Unemployment benefits payable under the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Title 20, Chapter V, Parts 625 and 650.

This rule is intended to implement Iowa Code section 96.7(2).

**871—24.37(96) UCFE claims.** Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees are determined in accordance with the applicable state law and rules as well as the rules of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 609, 615, 616, and 650. These benefits are payable under the Federal Employees Compensation Account, 5 U.S.C. 8509, and are based on wages earned by civilians in covered federal employment.

This rule is intended to implement 20 CFR Sections 10.0 through 25.203 as amended November 1, 2024.

**871—24.38(96) UCX claims.**

**24.38(1)** Unemployment benefits for ex-military personnel, in addition to being determined in accordance with applicable Iowa law and rules, will be determined in substantial compliance with the rules and guidelines of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 614 and 650.

**24.38(2)** These benefits are payable under the Ex-Service Member's Unemployment Compensation Act of 1958, 5 U.S.C. 8521-8525.

This rule is intended to implement 10 U.S.C. Sections 1141 through 1155 as amended November 1, 2024.

**871—24.39(96) Temporary extended unemployment compensation.**

**24.39(1)** Overpayments will be offset up to and including 100 percent of the federal extended unemployment compensation benefit payment.

**24.39(2)** Waiver of overpayments.

*a.* Individuals who have received amounts of extended unemployment compensation to which they were not entitled are required to repay the amounts of such extended unemployment compensation except that the state repayment may be waived if the department determines that:

(1) The payment of such extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

*b.* In determining whether fault exists, the following factors are considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and that was erroneous or inaccurate or otherwise wrong.

*c.* In determining whether equity and good conscience exist, the following factors are considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

**871—24.40(96) School definitions.**

**24.40(1)** Educational institution is defined in Iowa Code section 96.1A(12).

**24.40(2)** Educational service is defined in Iowa Code section 96.4(5)*"d."*

**24.40(3)** Employment definitions.

*a.* Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution that consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services that consist of directing or supervising the instructional activities of others; or services that consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) Research: Services performed for an educational institution that consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor that is varied in character and requiring the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

(3) Principal administrative: Services performed for an educational institution that consist of managing the educational institution or one of its major divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations that have major impact on the overall operations and functions of the educational institutions or one of its major divisions or departments. Work and activities are performed under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operations of the educational institution or one of its major divisions or departments. The duties performed by the individual rather than the title held should determine whether the prohibition applies.

*b.* Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

**24.40(4)** Institution of higher education is defined in Iowa Code section 96.1A(25).

**24.40(5)** Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

**24.40(6)** School duration period.

*a.* "Academic year" is defined as that period of time that school personnel are obligated by contract to render services to the educational institution during the school year.

*b.* "Term" is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester. If the educational institution operates on a quarterly basis, then term means the same as a quarter period. If the educational institution operates on a trimester basis, then term means the same as a trimester period or any other division in a school year during which instruction is regularly given to students.

*c.* Twelve-month employment. School employees who perform services for educational institutions 12 months of a calendar year or years.

**24.40(7)** The term "established and customary" vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term.

**24.40(8)** Between terms or academic years denial means any week of unemployment that begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will

perform services in any such capacity for any educational institution for both such terms or academic years.

This rule is intended to implement Iowa Code sections 96.1A(12), 96.1A(25), and 96.4(5).

**871—24.41(96) Determining eligibility of school claims after employer protest.**

**24.41(1)** Claim filed. When a claim has been filed by an employee of an educational institution, the department sends a Notice of Claim to the educational institution. To protest the claim, the educational institution returns the notice to the department, including a statement as to whether or not the individual who filed a claim had been given reasonable assurance for the ensuing academic year or term. The statement should include the date and method of such notification. A copy of the notification may be attached to the Notice of Claim.

**24.41(2)** If the statement from the school indicates that there is no reasonable assurance of the employee returning to work for the ensuing academic year or term, the claim will be allowed, subject to meeting all other eligibility requirements. However, if an educational institution submits a statement or the claimant furnishes information concerning a reasonable assurance of school employment, the employee is subject to a denial of benefits. If the fact-finding results in a disqualification, the effective starting date of the disqualification is determined as follows:

*a.* No earlier than the effective starting date of the claim. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue is adjudicated as a voluntary quit.

*b.* The Sunday of the week in which the job was offered under any of the following conditions:

(1) The employer protest was made within ten-day protest period.

(2) The department was notified within ten days of the date of the offer.

(3) The claimant was in a reporting status on a claim for unemployment insurance at the time the offer was made and the claimant failed to notify the department of the offer.

*c.* The Sunday of the week in which the claimant or employer notified this department of the offer unless the offer was prior to the week that the department was notified of the offer and the claimant was in reporting status on a claim for unemployment insurance at that time. In this situation, the effective starting date of disqualification will be the Sunday of the week in which the job offer was made.

*d.* The Sunday of the week in which the employer notified the department of the offer to the claimant. A refusal to accept the offer of employment is adjudicated as a voluntary quit section.

**24.41(3)** Professional employee. Unemployment insurance payments that are based on school employment shall not be paid to a professional employee for any week of unemployment that begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or terms. However, unemployment insurance payments may be made that are based on non-school-related wage credits pursuant to subrule 24.41(6).

**24.41(4)** Nonprofessional employee.

*a.* Unemployment insurance payments that are based on school employment may not be paid to a nonprofessional employee for any week of unemployment that begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.41(6).

*b.* The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to paragraph 24.2(1)*"e."*

**24.41(5)** An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and may not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term will be adjudicated under Iowa Code section 96.5(3) regarding offers of suitable

work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

**24.41(6)** Benefits based on services performed in an educational institution for periods between academic years or terms that are denied to an individual will result in the denial of the use of such wage credits. However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

**24.41(7)** Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes, then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

*a.* A nonprofit organization that has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs that have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

*b.* A head start program that is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

**24.41(8)** Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a "when earned" basis rather than on a "when paid" basis. Deferred wages currently paid that are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9)*"b"* and paragraph 24.13(2)*"o."*

**24.41(9)** Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments may not be paid to any individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. The provision of subrule 24.52(6) could also apply in this situation.

**24.41(10)** Substitute teachers.

*a.* Substitute teachers are professional employees and subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

*b.* Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subparagraph 24.15(2)*"i"*(1).

*c.* Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not deemed unemployed persons pursuant to subparagraph 24.15(2)*"i"*(3).

*d.* Substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subparagraph 24.15(2)*"i"*(3) if they are:

(1) Able and available for work,

(2) Making an earnest and active search for work each week,

(3) Placing no restrictions on their employability, and

(4) Have wages other than on-call wages with an educational institution in the base period.

*e.* A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.19(19).

**24.41(11)** Declination of new contract or reasonable assurance.

*a.* The school employee who is not employed on a 12-month, year-round basis and who fails or refuses to accept a contract or reasonable assurance of employment in the succeeding academic term or year will have the separation adjudicated as a voluntary quit.

*b.* This subrule also applies to substitute teachers who fail or refuse to accept a contract or reasonable assurance of employment in the succeeding academic term or year pursuant to subrules 24.19(19) and 24.19(22).

**24.41(12)** School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all other eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year will be disqualified under the "between terms denial" provision.

**24.41(13)** Continuing supplemental (part-time) school employment after loss of non-school employment. All employers, including employers of part-time workers, are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account pursuant to Iowa Code section 96.7(3)*"a"*(2).

This rule is intended to implement Iowa Code section 96.4.

**871—24.42(96) Noncovered school-related employment.**

**24.42(1)** See rule 871—23.20(96). However, wages earned by an individual who is a full-time employee for a school whose academic pursuit is incidental to the full-time employment may be used for claim and benefit purposes.

**24.42(2)** See rule 871—23.21(96).

This rule is intended to implement Iowa Code section 96.1A(16)*"g."*

**871—24.43(96) Church school coverage.** Schools affiliated with a church, as per 871—subrule 16.27(7), are exempt from coverage but may volunteer coverage by request to the department. Schools not affiliated with a church are covered employers with insured work.

This rule is intended to implement Iowa Code section 96.1A(16)*"g"*(6).

**871—24.44(96) Athletes—disqualifications.** "Athletes," as used in Iowa Code section 96.5(9), applies to professional athletes. A professional athlete is an individual whose occupation is participating in athletic or sporting events for wages. A semiprofessional athlete is within the scope of Iowa Code section 96.5(9), if such sports services are performed for compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes.

**24.44(1)** As used in Iowa Code section 96.5(9), "services performed by an individual, substantially all of which consist of participating in sports or athletic events" means all services performed by an individual in any subject employment during the individual's base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

**24.44(2)** As used in Iowa Code section 96.5(9), "participating in sports or athletic events" means any services performed in an athletic activity by an individual as:

*a.* A regular player or team member.

*b.* An alternate player or team member.

*c.* An individual in training to become a regular player or team member.

*d.* An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

**24.44(3)** The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons are determined by the department after considering custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

**24.44(4)** For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

*a.* The individual has an express or implied multiyear contract that extends into the subsequent sport season, or

*b.* The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and

*c.* There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and

*d.* The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

**24.44(5)** Benefits that will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are payable on the basis of any athletic or nonathletic wages if substantially all (see subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

**24.44(6)** When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

**24.44(7)** Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

**24.44(8)** Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

**871—24.45(96) Voluntary shared work.** The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of all employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the workforce. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and claim for benefits and return it to the employer, who will submit it to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

**24.45(1)** The duration of a shared work plan is between 4 and 52 weeks. Any requests for subsequent plans will be reviewed by the department.

**24.45(2)** Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

**24.45(3)** A plan that has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

**24.45(4)** The department retains discretion to approve, deny, or revoke an approved plan.

**24.45(5)** Employer requirements.

*a.* For each week that a voluntary shared work employer has an active plan, the employer will submit a certification of hours worked by each employee covered under the plan in the form or manner

directed by the department. This includes a part-time employee provided that the employee meets all other requirements.

*b.* The first employer weekly certification is due no later than the Monday following the effective date of the employer's approved work share plan. All subsequent weekly employer certifications are due no later than Monday (close of business) immediately following the benefit week. If the employer fails to submit the weekly certification by Monday immediately following the benefit week, the department will have good cause to terminate the employer's work share plan.

This rule is intended to implement Iowa Code section 96.40.

**871—24.46(96) Child support intercept.** The term "benefits" for child support intercept purposes means any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

**24.46(1)** *Information furnished to child support recovery unit.* The department will furnish information to the child support recovery unit concerning all new claims filed that are monetarily eligible for benefits under any state or federal program administered by the department.

**24.46(2)** *Action taken by child support recovery unit.* The child support recovery unit will contact the claimant to afford claimant opportunity to enter into an agreement regarding amounts to be deducted and withheld.

**24.46(3)** *Processing of payments.* The child support recovery unit will furnish to the department the name and address of the designated public official to whom the amount deducted will be remitted. After the deduction, the remaining balance is credited to the claimant.

**24.46(4)** *Notice to claimant.* The department will send a notice to the claimant explaining the beginning date and the amount of the weekly benefit deduction that satisfies the individual's child support obligation to the child support recovery unit. This notice, which explains the authority for the deduction and the claimant's right of appeal, will be issued when the first deduction is made from the benefit payment.

**24.46(5)** *Appeal rights on the child support deduction.*

*a.* Any appeal on a child support deduction is limited to either the validity of the development's authority to make the deduction or the accuracy of the amount deducted.

*b.* The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

*c.* The department does not have the authority to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code sections 96.3 and 96.20.

**871—24.47(96) Alien.** An alien is defined as a person who is not a citizen or a national of the United States. An alien is a person owing allegiance to another country or government. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States.

**24.47(1)** To identify illegal nonresident aliens, each claimant, at the establishment of a benefit year will be asked whether or not the individual is a citizen.

*a.* If the response is "yes," no further proof is necessary, and the claimant's records are marked accordingly.

*b.* If the answer is "no," the claimant will be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is provided to the department. The principal documents showing legal entry for permanent residency are the Form I-94, Arrival and Departure Record, and the Forms I-151 and I-551, Alien Registration Receipt Card. These forms are issued by the U.S. Citizenship and Immigration Services and should be accepted

unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

*c.* Any or all documents presented to the department by an alien shall be subject to verification with the U.S. Citizenship and Immigration Services. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871—18.10(96), prosecution on overpayments.

**24.47(2)** Disqualification of aliens. Color of law permanent residence is defined as:

*a.* An alien admitted as a refugee under Section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157, in effect after March 31, 1980;

*b.* An alien granted asylum by the attorney general of the United States under Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158;

*c.* An alien granted a parole into the United States for an indefinite period under Section 212(d)(5)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(B);

*d.* An alien who entered the United States prior to June 30, 1948, and who is eligible for lawful permanent residence pursuant to Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259; or

*e.* An alien who has been formally granted deferred action or nonpriority status by the U.S. Citizenship and Immigration Services.

**24.47(3)** Certain nonimmigrants may perform service in this country. All nonimmigrant aliens 18 years and older are required by law to carry alien registration card Form I-94. The immigration and naturalization service places a symbol on the Form I-94 that indicates eligibility to perform service in this country.

*a.* Nonimmigrant aliens who are allowed to perform certain types of service are:

| Class of worker | | Symbol on I-94 | Employment Permitted |
|---|---|---|---|
| (1) | Ambassador, Consular officers and their immediate families | A-1 | May accept employment with permission from the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized." |
| (2) | Other foreign government officials and their immediate families. | A-2 | Same as for A-1. |
| (3) | Treaty trader, spouse and children<br>Treaty investor, spouse and children | E-1<br>E-2 | Admitted to work for a specific employer or as a sole proprietorship or partnership. |
| (4) | Student | F-1<br>M-1 | May accept employment of up to 20 hours per week with permission from the Immigration Service. I-94 will be stamped: "Employment Authorized." Employment should not displace a USC or permanent resident alien. |
| (5) | Representatives of foreign governments to international organization such as the U.N. | G-1<br>G-2<br>G-3<br>G-4<br>G-5 | May accept employment if approved by the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized." |
| (6) | Temporary worker of distinguished merit and ability | H-1 | Admitted to work on a petition of an employer. Can only work for that employer unless permission is granted by the Immigration Service to change employers. |

| Class of worker | | Symbol on I-94 | Employment Permitted |
|---|---|---|---|
| (7) | Temporary workers performing services unavailable in the U.S. | H-2 | Same as for H-1. |
| (8) | Trainee | H-3 | Same as for H-1. |
| (9) | Exchange visitor<br>Spouse and children | J-1<br>J-2 | May be admitted to work in a specific program or may be granted permission to work after entry. I-94 will be stamped: "Employment Authorized." |
| (10) | Fiancé or fiancée of USC entering solely to conclude valid marriage<br>Child of a K-1 | K-1<br>K-2 | May accept employment upon approval of the Immigration Service. I-94 will be stamped: "Employment Authorized." |
| (11) | Intra company transferee entering to continue employment with same employer.<br>Dependents. | L-1<br>L-2 | Admitted upon petition by an employer. May only work for that employer.<br>May accept employment if approved by the Immigration Service. I-94 will be stamped: "Employment Authorized." |
| (12) | NATO representatives | NATO-1<br>NATO-2<br>NATO-3<br>NATO-4<br>NATO-5<br>NATO-6<br>NATO-7 | Dependents may accept employment with approval of the Immigration Service. I-94 will be stamped: "Employment Authorized." |

*b.* Immigrant aliens who are not allowed to perform services are:

| Class of worker | | Symbol on I-94 | Employment Status |
|---|---|---|---|
| (1) | Attendant, servant or personal employee of an A-1 or A-2 | A-3 | May not accept employment. |
| (2) | Temporary visitor for business | B-1 | May not accept employment. |
| (3) | Temporary visitor for pleasure | B-2 | May not accept employment. |
| (4) | Alien in transit | C-1<br>C-2<br>C-3 | May not accept employment. |
| (5) | Transit without a visa | TRWOV | May not accept employment. |
| (6) | Seaman | D-1<br>D-2 | May not accept employment. |
| (7) | Dependent of student | F-2<br>M-2 | May not accept employment. |
| (8) | Spouse or child of an H-1, H-2 or H-3 | H-4 | May not accept employment. |
| (9) | Representative of foreign information media including spouse and children | I | May not accept employment. |

This rule is intended to implement Iowa Code section 96.5(10).

**871—24.48(96) References.**

**24.48(1)** All references to the Code of Federal Regulations (CFR) and United States Code (U.S.C.) in this chapter are to the laws as amended as of November 1, 2024.

**24.48(2)** All references to the Social Security Act refer to 42 U.S.C. Sections 301-1397mm, as amended as of November 1, 2024.

**24.48(3)** All references to the Federal Unemployment Tax Act refer to 23 U.S.C. Sections 3301-3311, as amended as of November 1, 2024.

**24.48(4)** All references to the Workforce Innovation and Opportunity Act refer to 29 U.S.C. Sections 3101-3361, as amended as of November 1, 2024.

**24.48(5)** All references to the Americans with Disabilities Act of 1990 refer to 42 U.S.C. Sections 12101-12213, as amended as of November 1, 2024.

**24.48(6)** All references to Public Law 96-499 refer to the Foreign Investment in Real Property Act of 1980, as amended as of November 1, 2024.

**24.48(7)** All references to the Trade Act of 1974 refer to 19 U.S.C. Sections 2101-2497b, as amended as of November 1, 2024.

**24.48(8)** All references to the Federal Employer's Compensation Act refer to 20 CFR Sections 10.0-25.203, as amended as of November 1, 2024.

**24.48(9)** All references to the Ex-Service Member's Unemployment Compensation Act of 1958 refer to 10 U.S.C. Sections 1141-1155, as amended as of November 1, 2024.

**24.48(10)** All references to the Immigration and Nationality Act refer to 8 U.S.C. Sections 1101-1537, as amended as of November 1, 2024.

**24.48(11)** All references to the Railroad Unemployment Insurance Act refer to 45 U.S.C. Sections 351-369, as amended as of November 1, 2024.

**24.48(12)** All references to the Interstate Handbook for Interstate Claims-Taking refer to ET Handbook No. 392, published by the United States Department of Labor Employment and Training Administration, as amended and in effect as of November 1, 2024.

This rule is intended to implement Iowa Code chapter 96.

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