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.

JACK EWING, Administrative Code Editor Telephone: 515.281.6048 Email: Jack.Ewing@legis.iowa.gov
Publications Editing Office (Administrative Code) Telephone: 515.281.3355 Email: AdminCode@legis.iowa.gov

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).

Schedule for Rulemaking
2024

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	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '24	Jan. 24 '24	Feb. 13 '24	Feb. 28 '24	Mar. 1 '24	Mar. 20 '24	April 24 '24	Jul. 22 '24
Jan. 19	Feb. 7	Feb. 27	Mar. 13	Mar. 15	April 3	May 8	Aug. 5
Feb. 2	Feb. 21	Mar. 12	Mar. 27	Mar. 29	April 17	May 22	Aug. 19
Feb. 16	Mar. 6	Mar. 26	April 10	April 12	May 1	June 5	Sep. 2
Mar. 1	Mar. 20	April 9	April 24	April 26	May 15	June 19	Sep. 16
Mar. 15	April 3	April 23	May 8	**May 8**	May 29	Jul. 3	Sep. 30
Mar. 29	April 17	May 7	May 22	May 24	June 12	Jul. 17	Oct. 14
April 12	May 1	May 21	June 5	June 7	June 26	Jul. 31	Oct. 28
April 26	May 15	June 4	June 19	**June 19**	Jul. 10	Aug. 14	Nov. 11
May 8	May 29	June 18	Jul. 3	Jul. 5	Jul. 24	Aug. 28	Nov. 25
May 24	June 12	Jul. 2	Jul. 17	Jul. 19	Aug. 7	Sep. 11	Dec. 9
June 7	June 26	Jul. 16	Jul. 31	Aug. 2	Aug. 21	Sep. 25	Dec. 23
June 19	Jul. 10	Jul. 30	Aug. 14	**Aug. 14**	Sep. 4	Oct. 9	Jan. 6 '25
Jul. 5	Jul. 24	Aug. 13	Aug. 28	Aug. 30	Sep. 18	Oct. 23	Jan. 20 '25
Jul. 19	Aug. 7	Aug. 27	Sep. 11	Sep. 13	Oct. 2	Nov. 6	Feb. 3 '25
Aug. 2	Aug. 21	Sep. 10	Sep. 25	Sep. 27	Oct. 16	Nov. 20	Feb. 17 '25
Aug. 14	Sep. 4	Sep. 24	Oct. 9	Oct. 11	Oct. 30	Dec. 4	Mar. 3 '25
Aug. 30	Sep. 18	Oct. 8	Oct. 23	**Oct. 23**	Nov. 13	Dec. 18	Mar. 17 '25
Sep. 13	Oct. 2	Oct. 22	Nov. 6	**Nov. 6**	Nov. 27	Jan. 1 '25	Mar. 31 '25
Sep. 27	Oct. 16	Nov. 5	Nov. 20	**Nov. 20**	Dec. 11	Jan. 15 '25	April 14 '25
Oct. 11	Oct. 30	Nov. 19	Dec. 4	**Dec. 4**	Dec. 25	Jan. 29 '25	April 28 '25
Oct. 23	Nov. 13	Dec. 3	Dec. 18	**Dec. 18**	Jan. 8 '25	Feb. 12 '25	May 12 '25
Nov. 6	Nov. 27	Dec. 17	Jan. 1 '25	**Jan. 2 '25**	Jan. 22 '25	Feb. 26 '25	May 26 '25
Nov. 20	Dec. 11	Dec. 31	Jan. 15 '25	Jan. 17 '25	Feb. 5 '25	Mar. 12 '25	June 9 '25
Dec. 4	Dec. 25	Jan. 14 '25	Jan. 29 '25	Jan. 31 '25	Feb. 19 '25	Mar. 26 '25	June 23 '25
Dec. 18	Jan. 8 '25	Jan. 28 '25	Feb. 12 '25	Feb. 14 '25	Mar. 5 '25	April 9 '25	Jul. 7 '25
Dec. 20 '23	Jan. 10	Jan. 30	Feb. 14	Feb. 16	Mar. 6	April 10	Jul. 8

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
7	**Friday, September 13, 2024**	**October 2, 2024**
8	**Friday, September 27, 2024**	**October 16, 2024**
9	**Friday, October 11, 2024**	**October 30, 2024**

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 Monday 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 working days in advance of the deadline.

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Monday, September 9, 2024, at 11 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

NOTE: See also Agenda published in the August 21, 2024, Iowa Administrative Bulletin.

HUMAN SERVICES DEPARTMENT[441]

Collection of delinquent debts; collection of debt, rescind ch 10; adopt ch 11 Filed **ARC 8205C** 9/4/24

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Administration, ch 1 Filed **ARC 8207C** 9/4/24
Customer and administrative services division, rescind ch 2 Filed **ARC 8206C** 9/4/24
New Iowan centers, rescind ch 14 Filed **ARC 8208C** 9/4/24

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Mike Klimesh
Chair
Senate District 32

Senator Nate Boulton
Senate District 20

Senator Mike Bousselot
Senate District 21

Senator Chris Cournoyer
Senate District 35

Senator Cindy Winckler
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Representative Mike Sexton
House District 7

Representative David Young
House District 28

Jack Ewing
Administrative Code Editor
Capitol
Des Moines, Iowa 50319
Telephone: 515.281.6048
Fax: 515.281.8451
Email: jack.ewing@legis.iowa.gov

Steve Blankenship
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone: 515.281.5211

COLLEGE STUDENT AID COMMISSION[283]

Rural Iowa primary care loan repayment program, ch 24; rural veterinarian loan repayment program, ch 27; mental health professional loan repayment program, ch 31 IAB 8/21/24 **Regulatory Analyses**	ICN Room Grimes State Office Building Des Moines, Iowa	September 10, 2024 11 to 11:30 a.m.

EDUCATIONAL EXAMINERS BOARD[282]

Organization and operation, ch 1; procedures and petitions for rulemaking, ch 2; declaratory orders, ch 3; agency procedure for rule making, rescind ch 4; public records and fair information practices, ch 5; waivers from rules, ch 6; proof of legal presence, ch 7; debts to government—noncompliance, ch 8; background checks and issuance, adopt ch 9; child support noncompliance, ch 10; complaints, investigations, contested case hearings, ch 11; fees, ch 12; teacher licenses and endorsements, ch 13; special education endorsements, ch 14; special education support personnel authorizations, rescind ch 15; statements of professional recognition (SPR), ch 16; administrator licenses, ch 18; evaluator licenses, ch 19; renewing and extending licenses, ch 20; conditional endorsements, ch 21; limited authorizations, ch 22; behind-the-wheel driving instructor authorization, ch 23; paraeducator certificates, ch 24; code of professional conduct and ethics, ch 25; code of rights and responsibilities, ch 26; issuance of professional service licenses, ch 27 IAB 8/21/24 **Regulatory Analyses**	Board Room, Suite A 701 East Court Avenue Des Moines, Iowa	September 11, 2024 9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

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; clean water state revolving fund; criteria for ranking projects for the clean water state revolving fund (CWSRF); CWSRF; and nonpoint source pollution control set aside programs, adopt ch 90; rescind chs 91, 92, 93 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Private water well construction permits; nonpublic water wells—permits and construction, rescind ch 38; adopt ch 49; requirements for properly plugging abandoned wells, ch 39; 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; drinking water state revolving fund, ch 44; scope of title, definitions, wastewater construction permits, and operation permits; wastewater construction and operation permits; and pesticide application to water Iowa, adopt ch 60; rescind chs 64, 66; private sewage disposal systems, ch 69; operator certification: public water supply systems and wastewater treatment systems, ch 81; well contractor certification, ch 82; laboratory certification, ch 83 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 10 to 11 a.m.
Scope of title—definitions—forms—rules of practice, ch 70; floodplain or floodway development—when approval is required; management of flood plain areas; federal water resource projects, adopt ch 71; rescind chs 75, 76; criteria for approval, ch 72; approval, construction, use, maintenance, removal, inspections, and safety of dams, ch 73 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 1 p.m.
Water use, withdrawals, and diversions; water permit or registration—when required; and criteria and conditions for authorizing withdrawal, diversion, and storage of water, 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 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 1 to 2 p.m.

IOWA FINANCE AUTHORITY[265]

Rescission of chapters, rescind chs 2, 4, 30, 32, 37, 38 IAB 9/4/24 **Regulatory Analysis**	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review/	September 24, 2024 9 to 9:15 a.m.
State housing trust fund, ch 19 IAB 9/4/24 **Regulatory Analysis**	Suite 200 1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowafinance.com/red-tape-review/	September 24, 2024 9:30 to 9:45 a.m.

LABOR SERVICES DIVISION[875]

Consultative services, ch 8; OSHA discrimination against employees, ch 9; general industry safety and health rules, ch 10; construction safety and health rules, ch 26; occupational safety and health standards for agriculture, ch 28 IAB 8/21/24 **Reges**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	September 10, 2024 8:30 to 9 a.m.
Rules of practice for OSHA variances, ch 5; sanitation and shelter rules for railroad employees, ch 29 IAB 8/21/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	September 10, 2024 9 to 9:20 a.m.
Child labor, ch 32 IAB 9/4/24 **Regulatory Analysis**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	September 24, 2024 8:30 to 9 a.m.
Wage civil penalties, ch 34; wage claims, ch 35; wage discrimination, ch 36 IAB 9/4/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	September 24, 2024 9 to 9:30 a.m.
Minimum wage scope and coverage, ch 215; records to be kept by employers, ch 216; wages, ch 217; domestic service, ch 219; employees of state and local governments, ch 220 IAB 9/4/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	September 24, 2024 9:30 to 10 a.m.

LABOR SERVICES DIVISION[875](cont'd)

Community right to know hazardous chemicals, ch 130; public safety/ emergency response right to know, ch 140; employer requirements for non-English speaking employees, ch 160; employees employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesperson, rescind ch 218 IAB 9/4/24 **Regulatory Analyses**	Woods Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	September 25, 2024 9 to 9:30 a.m.
Elevator safety board administrative and regulatory authority, ch 65; waivers from administrative rules by the elevator safety board, ch 66; contested cases before the elevator safety board, ch 69; administration of the conveyance safety program, ch 71; conveyances installed on or after January 1, 1975, ch 72; conveyances installed prior to January 1, 1975, ch 73 IAB 9/4/24 **Regulatory Analyses**	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa	October 1, 2024 9 to 9:30 a.m.

NATURAL RESOURCE COMMISSION[571]

Green valley lake special water activity; boating safety equipment; boat registration and numbering; boating passenger capacity; boating speed and distance zoning; boating navigation aids; boating accident reports; motorboat noise; boat motors, rescind chs 36, 38, 39, 40, 41, 42, 43, 45; adopt ch 37; special events and fireworks displays, ch 44; inspection of permanently moored vessels, ch 48; operation of motor vehicles in meandered streams, navigable streams and trout streams, ch 49; nonpermanent structures, ch 55 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 24, 2024 9 a.m.
All-terrain vehicles, off-road motorcycles, and off-road utility vehicles, ch 46; wild turkey hunting, adopt ch 98; rescind ch 99 IAB 9/4/24 **Regulatory Analyses**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 12 to 1 p.m.
Restrictions on removal of plant life, ch 54 IAB 9/4/24 **Regulatory Analysis**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 1 p.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Game management areas, ch 51; wildlife refuges, ch 52; shooting sports program grants, ch 56; migratory game bird hunting, adopt ch 91; rescind chs 92, 97, 102; small game hunting, adopt ch 96; rescind chs 100, 107; 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 IAB 9/4/24 **Regulatory Analyses**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 1 to 2 p.m.
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; development and management of recreation trails on state forests, parks, preserves and recreation areas, ch 67 IAB 9/4/24 **Regulatory Analyses**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 25, 2024 12 noon to 1 p.m.
Timber buyers, ch 72; forest and fruit-tree reservations, ch 73; forest land enhancement program (FLEP), ch 74 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting (via Google Meets or Zoom) A meeting registration link will be provided prior to the hearing	September 25, 2024 1 p.m.

NATURAL RESOURCES DEPARTMENT[561]

Special nonresident deer and turkey licenses, ch 12 IAB 9/4/24 **Regulatory Analysis**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 24, 2024 12 to 1 p.m.
Description of organization, submission of information and complaints, procedure for rulemaking, petitions for rule making, declaratory orders, rescind chs 1, 3 to 6; public records and fair information practices, ch 2; contested cases, ch 7; waivers from rules, ch 10; Iowa nature store, ch 11; concessions, ch 14; revocation, suspension, and nonrenewal of license for failure to pay state liabilities, ch 15 IAB 9/4/24 **Regulatory Analyses**	Virtual Meeting A meeting registration link will be provided prior to the hearing	September 24, 2024 1 p.m.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

Oil, gas, and metallic minerals, ch 17 IAB 9/4/24 **Regulatory Analyses**	Backbone Conference Room 6200 Park Avenue, Suite 200 Via video/conference call: meet.google.com/xaw-nknt-rss Or 219.370.6900 PIN: 493 836 892#	September 24, 2024 1 p.m.
Contracts for services and public improvements, ch 8 IAB 9/4/24 **Regulatory Analysis**	Virtual Meeting A meeting registration link will be provided prior to the hearing	September 24, 2024 2 p.m.
State lands volunteer program, ch 13 IAB 9/4/24 **Regulatory Analysis**	Yellow River Conference Room 6200 Park Avenue, Suite 200 Des Moines, Iowa Via video/conference call	September 25, 2024 12 noon to 1 p.m.
State park and recreation area fees, ch 16 IAB 9/4/24 **Regulatory Analysis**	6200 Park Avenue, Suite 200 Des Moines, Iowa	September 25, 2024 12 noon to 1 p.m.
Groundwater hazard documentation, ch 9 IAB 9/4/24 **Regulatory Analysis**	Virtual Meeting A meeting registration link will be provided prior to the hearing	September 25, 2024 1 p.m.

PHARMACY BOARD[657]

Agency realignment, rescind chs 1 to 8, 10 to 23, 25 to 37, 39 to 43, 100 IAB 8/21/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa and via Zoom	September 16, 2024 3:30 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS), ch 11 IAB 8/7/24 **ARC 8191C**	Microsoft Teams Meeting ID: 220 612 072 487 Passcode: vTNDrz	September 5, 2024 2 to 2:30 p.m.

REVENUE DEPARTMENT[701]

Determination of aggregate actual values, 102.12 IAB 9/4/24 **Regulatory Analysis**	Via video/conference call	September 24, 2024 2 to 3 p.m.

STATE PUBLIC DEFENDER[493]

Claims for other professional services, 13.2 IAB 9/4/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	September 25, 2024 1:30 p.m.
Claims for attorney fees in 600A terminations, ch 14 IAB 9/4/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	September 25, 2024 3 p.m.

STATE PUBLIC DEFENDER[493](cont'd)

Travel time, 12.5 IAB 9/4/24 **Regulatory Analysis**	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa	September 25, 2024 3:30 p.m.

TRANSPORTATION DEPARTMENT[761]

County and city bridge construction funds, ch 160 IAB 8/21/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 234 269 155	September 12, 2024 11 to 11:30 a.m.
Authorized emergency vehicle certificate of designation, ch 451 IAB 8/21/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 634 063 190	September 12, 2024 1 to 1:30 p.m.
Personalized and special registration plates, ch 401 IAB 8/21/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 653 544 678	September 12, 2024 2 to 2:30 p.m.
Financial responsibility, ch 640 IAB 8/21/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 654 270 556	September 13, 2024 1 to 1:30 p.m.
Financial liability coverage cards, ch 641 IAB 8/21/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 827 214 891	September 13, 2024 2 to 2:30 p.m.
Aeronautics administration; airport improvement program; air service development program; commercial service vertical infrastructure program; general aviation vertical infrastructure program, adopt ch 700; rescind chs 710, 715, 716, 717 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 442 802 945	September 24, 2024 9 to 9:30 a.m.
Iowa airport registration, ch 720 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 577 170 7	September 24, 2024 10 to 10:30 a.m.
Aircraft registration, ch 750 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 449 766 788	September 24, 2024 11 to 11:30 a.m.
Farm-to-market review board, ch 101 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 255 936 075	September 26, 2024 9 to 9:30 a.m.
Motor vehicles operated by an automated driving system, ch 380 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 398 016 157	September 27, 2024 10:30 to 11 a.m.

TRANSPORTATION DEPARTMENT[761](cont'd)

Salvage and other title designations, ch 405 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 256 985 764	September 27, 2024 2 to 2:30 p.m.
Persons with disabilities parking permits, ch 411 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 665 260 986	September 30, 2024 9 to 9:30 a.m.
Abandoned vehicles, ch 480 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 292 792 560	September 30, 2024 10 to 10:30 a.m.
Project cost reporting requirements for cities and counties, ch 178 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 669 636 465	September 30, 2024 1 to 1:30 p.m.
Motorized bicycle rider education, ch 636 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID:	September 30, 2024 1 to 1:30 p.m.
RISE program, ch 163 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 385 044 72	October 2, 2024 11 to 11:30 a.m.
Recreational trails program, ch 165 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 460 336 395	October 2, 2024 1 to 1:30 p.m.

UTILITIES COMMISSION[199]

Location and construction of electric power generating facilities, ch 24 IAB 8/7/24 **Regulatory Analysis**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	September 5, 2024 9 to 11 a.m.
Iowa electrical safety code, ch 25 IAB 8/21/24 **ARC 8200C**	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	October 1, 2024 2 to 4 p.m. October 15, 2024 9 to 11 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Request for waiver of administrative rule, ch 41 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 294 646 210 897 Passcode: UBmwFZ Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 451 996 139#	September 24, 2024 8:30 to 9 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

Public records and fair information practices, ch 42 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 226 075 875 966 Passcode: HP7XHC Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 367 660 289#	September 24, 2024 9 to 9:30 a.m.
Petitions for rulemaking, ch 43 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 278 082 236 697 Passcode: gvqDfq Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 449 351 964#	September 24, 2024 9:30 to 10 a.m.
Declaratory orders, ch 44 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 289 208 802 199 Passcode: G9k8zc Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 525 008 60#	September 24, 2024 10 a.m.
Contested case proceedings, ch 26 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 262 021 762 472 Passcode: ZF4Pn4 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 772 679 764#	September 26, 2024 10:30 a.m.
Employer records and reports, ch 11 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 262 021 762 472 Passcode: ZF4Pn4 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 772 679 764#	September 24, 2024 11 to 11:30 a.m.
Forms and informational matters, ch 12 IAB 9/4/24 **Regulatory Analysis**	Microsoft Teams Meeting ID: 286 694 738 87 Passcode: DN6QGY Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 632 284 65#	September 24, 2024 11:30 a.m. to 12 noon

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.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
  Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[141]
CIVIL RIGHTS COMMISSION[161]
INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]
  Alcoholic Beverages Division[185]
  Banking Division[187]
  Credit Union Division[189]
  Insurance Division[191]
  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]
UTILITIES COMMISSION[199]
CORRECTIONS DEPARTMENT[201]
  Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
  Historical Division[223]
ECONOMIC DEVELOPMENT AUTHORITY[261]
  City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
  Educational Examiners Board[282]
  College Student Aid Commission[283]
  Higher Education Loan Authority[284]
  Libraries and Information Services Division[286]
  Public Broadcasting Division[288]
  School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
  Employment Appeal Board[486]
  Child Advocacy Board[489]
  Racing and Gaming Commission[491]
  State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

IOWA PUBLIC INFORMATION BOARD[497]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
  Appeal Board, State[543]
  City Finance Committee[545]
  County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
  Environmental Protection Commission[567]
  Natural Resource Commission[571]
  Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
  Professional Licensure Division[645]
  Dental Board[650]
  Medicine Board[653]
  Nursing Board[655]
  Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
  Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
  Labor Services Division[875]
  Workers' Compensation Division[876]
  Workforce Development Board and Workforce Development Center Administration Division[877]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapters 38 and 49 "Private Water Well Construction Permits; Nonpublic Water Wells—Permits and Construction"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3) and 455B.173(9)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.172, 455B.187, 455B.190, and 455B.190A; Executive Order 10

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Erik Day
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: erik.day@dnr.iowa.gov

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 Chapters 38 and 49 were reviewed consistent with Executive Order 10. 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Individuals, businesses, or industries constructing a private well; certified well contractors who construct private wells; and counties in Iowa implementing the rule through delegated private well construction permitting authority will bear the costs.

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

Current and future private well owners; well contractors; citizens of Iowa; individuals, business and industry, and public bodies that use Iowa's groundwater resources; and counties in Iowa with delegated private well construction permitting authority 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:

Quantitative costs incurred as a result of this rulemaking are neutralized since this rule was previously in effect. Costs associated with this rulemaking are limited to the costs incurred by private property owners, businesses, or industries that wish to construct a private well. The private well construction permit fee is set at $125 for each private well permit application in this rule, and may be a different amount as set by a county if the authority for construction permitting is delegated to a county. Additional costs include those incurred to meet minimum private well construction standards.

- Qualitative description of impact:

This proposed rulemaking ensures the continued protection of groundwater resources in the state of Iowa, ensuring their availability for use now and into the future by the public, business, and industry alike. Costs to obtain construction permits and construct private wells are limited and provide flexibility to the regulated public. The standards for construction and construction permit application requirements are clear.

3. Costs to the State:

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

Agency costs are limited to agency staff time to process private well construction permit applications; time to provide technical assistance in the submission of private well construction permit applications; time to train county staff and well contractors to interpret, enforce, and follow the private well permitting and construction rules; and time to oversee the delegated permitting program for private well permitting by counties.

- Anticipated effect on state revenues:

A neutral impact on state revenues is anticipated since this rule was previously in effect.

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

Repromulgation of Chapter 49 is necessary to implement Iowa Code sections 455B.173 and 455B.187. Failure to repromulgate Chapter 49 would result in no schedule or process for construction permitting for private wells or standards of construction of private wells in Iowa. Without a schedule or process to issue construction permits for private wells in Iowa and without standards for construction of private wells in Iowa, the groundwater resources of the state are unprotected and at risk of contamination. This proposed rulemaking ensures the continued protection of groundwater resources in the state of Iowa, ensuring their use now and into the future.

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 to achieve 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:

No alternative methods were considered.

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

Alternative methods were not considered as significant changes are not within the scope and intent of Executive Order 10.

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?

This rulemaking will not have a substantial impact on small business. This rulemaking includes flexibilities in private well construction methods and materials and provides for a delegated private well construction permitting authority to be granted to counties.

Text of Proposed Rulemaking

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, 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 (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, division 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 10 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 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 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 10 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	

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]
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 and 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.*

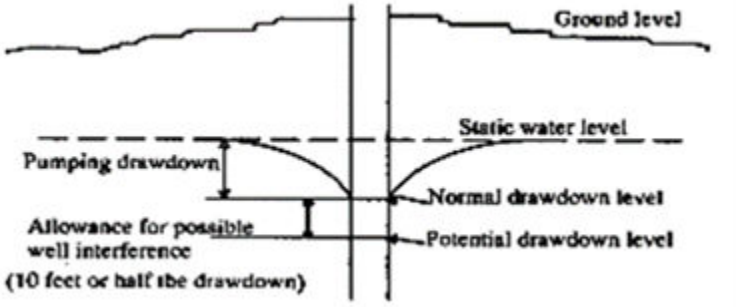
a. The upper terminal casing of all wells shall extend at least 12 inches above established grade or pump house floor, or the 100-year flood level, whichever is higher. A well cap or sanitary seal shall be installed immediately following well completion. A well cap shall be used on an exposed well; a 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.

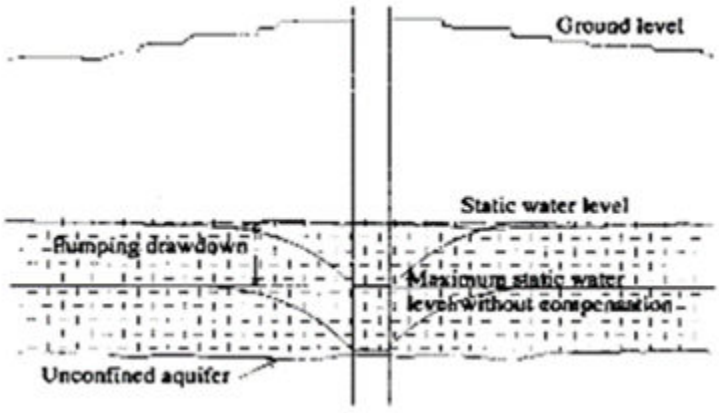
49.9(3) *Criteria for well interference protection.* 567—Chapter 54 provides an administrative process for owners of nonregulated wells to receive compensation for well interference caused by permitted uses. To be eligible for compensation due to well interference, nonregulated wells shall be constructed 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.

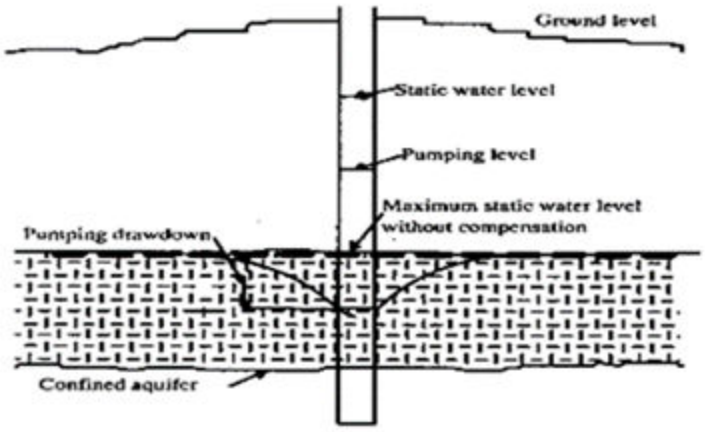
(1) A well shall be drilled deep enough to allow for pump setting at least 10 feet or half the normal pumping drawdown, whichever is greater, below the initial recommended setting depth.



(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 paragraph 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 aerial, engineering document, or map shall be submitted, with the well record form, that indicates the location and GPS

coordinates of each vertical borehole and includes a map of the location of all horizontal piping from the borehole into the building and vault.

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 39
"Requirements for Properly Plugging Abandoned Wells"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.190

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.171 and 455B.19; see also Executive Order 10

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Erik Day
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: Erik.Day@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of wells that are abandoned will bear the costs.

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

Citizens of Iowa, individuals, business and industry, and public bodies that use Iowa's groundwater resources 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:

Quantitative costs incurred as a result of this rulemaking are neutralized since this rule has previously been in effect. Costs associated with this rulemaking are limited to the costs incurred by well owners to plug their abandoned wells.

- Qualitative description of impact:

This proposed rulemaking ensures the continued protection of groundwater resources in the state of Iowa, ensuring their availability for use now and into the future by the public, business, and industry alike. Costs to properly plug abandoned wells are limited to the time and expense to plug an abandoned well by the owner of the well.

3. Costs to the State:

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

Agency costs are limited to agency staff time to process submitted well plugging forms; time to provide technical assistance in the completion of well plugging forms; time to train county staff and well contractors to interpret, enforce, and follow the well plugging rules; and time to solicit well plugging forms for wells known to be abandoned.

- Anticipated effect on state revenues:

A neutral impact of state revenues is anticipated since this rule was previously in effect.

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

Repromulgation of Chapter 39 is necessary to implement Iowa Code section 455B.190. Failure to repromulgate Chapter 39 would result in no schedule or process for properly plugging abandoned wells in Iowa. Without a schedule or process to properly plug abandoned wells in Iowa, the groundwater resources of the state are unprotected and at risk of contamination. This proposed rulemaking ensures the continued protection of groundwater resources in the state of Iowa, ensuring their use now and into the future.

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 to achieve 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:

No alternative methods were considered.

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

Alternative methods were not considered since significant changes are not within the scope and intent of Executive Order 10.

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?

This rulemaking will not have a substantial impact on small businesses. This rulemaking includes flexibilities in who conducts the abandoned well plugging and has waiver provisions.

Text of Proposed Rulemaking

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 4 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 10 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 10 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 10 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 10 feet of each subsequent aquifer and extend at least 10 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.171 and 455B.190.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapters 40 and 42 "Scope of Division, Definitions, Forms, Public Notice and Education, Consumer Confidence Reports, Reporting, and Record Maintenance"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.173(3), and 455B.173(5)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.171 through 455B.188, Iowa Code sections 455B.190 through 455B.192, and the federal Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.)

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom Contact Carmily Stone at carmily.stone@dnr.iowa.gov for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Carmily Stone
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: carmily.stone@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Public water supply systems, water use permit holders, private well owners, well contractors, water supply system operators, and consulting engineering firms will bear the costs.

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

Citizens of Iowa, public water supply systems, water use permit holders, private well owners, well contractors, water supply system operators, and consulting engineering firms 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:

There are no direct costs associated with the requirements in Chapter 40.

Costs associated with Chapter 40 are limited to certain application procedures and recordkeeping costs associated with the public water supply program, the drinking water laboratory certification program, the Drinking Water State Revolving Fund loan program, and the water supply construction permitting program. Fees associated with these programs are covered in the program-specific chapters.

Additionally, public water supply systems will incur costs to conduct required public notice and education, to produce and publish consumer confidence reports annually, and to meet monitoring and reporting requirements as set forth in Chapter 40. These costs vary from public water supply system to public water supply system.

- Qualitative description of impact:

The new Chapter 40 is expected to have a neutral impact since the State has implemented water supply programs for several decades and the SDWA has been implemented in Iowa for nearly 50 years.

Through implementation of Chapter 40, public health is protected through enforcement of the SDWA that is managed by a public water system supervision program, the administration of public and private water supply infrastructure permitting programs and the establishment of construction standards, the administration of a water use and allocation program and of laboratory and operator certification programs, and the implementation of a Drinking Water State Revolving Fund loan program.

The State of Iowa's primacy to enforce the SDWA allows for the Department, rather than the Environmental Protection Agency (EPA), to be the primary agency to implement public water system requirements in Iowa and to provide appropriate, locally tailored assistance and outreach to the regulated entities. Stakeholders prefer to work with the Department rather than EPA to meet SDWA requirements.

In 2023, 99.5 percent of the population in Iowa served by public water supply systems (3.05 million out of 3.07 million) regularly received water meeting all health-based drinking water standards in the SDWA.

3. Costs to the State:

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

Costs to the agency to implement Chapter 40 include staff time and salaries to administer 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. Additional costs include necessary information technology costs, such as development and maintenance of applications and programs used to administer the rules.

It should be noted that with primacy for enforcing the SDWA in Iowa and administration of a Drinking Water State Revolving Fund program, the Department secures certain federal grants that offset costs associated with administration of the associated programs that administer the rules. Some program costs are offset by fees collected per other chapters.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected because these rules were previously in effect. Costs to the agency are necessary for administration of the water supply programs and are largely offset by federal grant funding and fees collected pursuant to other rules as authorized by the Iowa Code.

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

Costs to the regulated public are limited to those required to comply with federal and state law and are reasonable and fair. Costs to the agency are necessary for administration of the programs discussed and are largely offset by federal grant funding.

Public health is protected through the enforcement of the SDWA that is managed by a public water system supervision program, the administration of public and private water supply infrastructure permitting programs and the establishment of construction standards, the administration of a water use and allocation program and of laboratory and operator certification programs, and the implementation of a Drinking Water State Revolving Fund loan program.

In the absence of a State of Iowa public water system supervision program and primacy to enforce the SDWA in Iowa, EPA would administer the SDWA in the state. Local knowledge and assistance would not be available because the EPA regional office is located in Kansas.

Stakeholders prefer to have the Department implement the SDWA in Iowa rather than the EPA because the Department has the history, relationships, knowledge, and track record of successful implementation of the SDWA in Iowa. Iowa's compliance with SDWA standards demonstrates this; in 2023, 99.5 percent of the population in Iowa (3.05 million out of 3.07 million) was served by public water supply systems and regularly received water meeting all health-based drinking water standards in the SDWA.

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

There are no less costly or intrusive methods to accomplish this purpose. The regulations included in these rules implement state and federal laws.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

A public water system supervision program, public and private water system construction permitting and standards, water use and allocation program, operator certification program, and Drinking Water State Revolving Fund loan program are provided for in the Iowa Code and administered in part through proposed Chapter 40. A public water system supervision program and associated programs and requirements are necessary for Iowa to retain primacy for enforcing the SDWA in Iowa.

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?

This rulemaking will not have a substantial impact on small business since these rules have been in place for a substantial period of time.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 40 and adopt the following **new** chapter in lieu thereof:

DRINKING WATER

DIVISION B

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 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.

"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).

"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. The specific standards, editions, or volumes are set forth in specific rules of this division.

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
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	www.standardmethods.org

Abbreviated Name	Association/Society Name	Standards/Publications Website
	Water Works Association (AWWA), and Water Environment Federation (WEF)	
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
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
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

Abbreviation	Meaning
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
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. NCWS (TNC or NTNC) 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 CWS. 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 the 40 CFR Part 141, it must include the results of monitoring in compliance with 40 CFR §141.142 and 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)*"a"*(1) through 40.7(7)*"a"*(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 70.7(9)*"f"*(1) through 70.7(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 70.7(9)*"g"*(1) and 70.7(9)*"g"*(2) in its CCR as appropriate, filling in the blanks accordingly and including the appropriate text in 70.7(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 70.8(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. 2. Location, date, and result of each sample taken during the last quarter. 3. Arithmetic average of all samples taken in the last quarter. 4. Annual arithmetic average of the quarterly arithmetic averages for the last four quarters.* 5. Whether the MCL was exceeded. 6. Under Stage 2, any OELs that were exceeded during the quarter, including the

If you are a system monitoring for ...	You must report the following ...
	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. 2. Location, date, and result of each sample taken during the last monitoring period. 3. Arithmetic average of all samples taken over the last year.* 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. 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. 2. Location, date, and result of each sample taken during the last quarter. 3. For each month in the reporting period, arithmetic average of all samples taken in each three sample sets taken in the month. 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. 2. Location, date, and result of each sample taken during the last quarter. 3. Arithmetic average of the monthly arithmetic averages of all samples taken in the last year. 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. 2. Monthly arithmetic average of all samples taken in each month for the last 12 months. 3. Arithmetic average of all monthly averages for the last 12 months.

If you are a system monitoring for ...	You must report the following ...
	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. 2. Whether the MRDL was exceeded. 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. 2. Location, date, and result of each paired sample and associated alkalinity taken during the last quarter. 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. 4. Calculations for determining compliance with TOC percent removal requirements in 567—subparagraph 43.6(3)*"c"*(1). 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. 2. Number of paired samples taken during the last quarter. 3. Location, date, and result of each paired sample and associated alkalinity taken during the last quarter. 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." 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."

If you are a ...	You must report the following ...
	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." 7. RAA for both TTHM and HAA5 for systems meeting the criterion in 567—paragraph 43.6(3)*"a"*(2)"3" or "4." 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." 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: 1. Number of source water TOC samples taken each month during the last quarter. 2. Date and result of each sample taken during the last quarter. 3. Quarterly average of monthly samples taken during the last quarter or the quarterly sample result. 4. RAA of quarterly averages from the past four quarters. 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 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 CaCO3	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 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 CaCO3	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 CaCO3	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: raw and CFE:	At least every 15 minutes 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 (CO2), 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.

	Pumpage or Flow:	**All**
Parameter	**Sample Site**	**Frequency**
Copper residual	finished:	1/week
	injection stream:	1/week

ITEM 2. Rescind and reserve **567—Chapter 42**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 41 "Water Supplies"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.171 through 455B.188 and 455B.190 through 455B.192

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.171 through 455B.188, Iowa Code sections 455B.190 through 455B.192, and the federal Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.)

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Carmily Stone
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: carmily.stone@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Public water supply systems in Iowa and water supply system operators in Iowa will bear the costs.

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

Citizens of Iowa, public water supply systems in Iowa and water supply system operators in Iowa 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:

There are not direct costs associated with the requirements in Chapter 41.

Costs associated with Chapter 41 are primarily incurred by public water supply systems that are regulated under the SDWA and vary from public water supply system to public water supply system. These costs are primarily costs to conduct monitoring and testing of the contaminants regulated by the SDWA and to report those results to the Department. Additionally, if a public water supply system is out of compliance with contaminant levels, they may incur costs to return to compliance.

- Qualitative description of impact:

Through implementation of Chapter 41, public health is protected by enforcing the SDWA through the public water system supervision program and its implementation of federal regulations on drinking water contaminants and the federal groundwater rule. The SDWA and Chapter 41 require public water supplies to monitor and report to the Department on various regulated contaminants. The Department reviews reported data and follows procedures to bring public water supply systems back into compliance, whether through operational changes, requiring additional water treatment, or other available mechanisms.

3. Costs to the State:

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

Costs to the agency to implement Chapter 41 include staff time and salaries to administer the public water supply program (including SDWA implementation). Staff time is necessary to review and enforce the SDWA requirements covered in Chapter 41. Additional costs include necessary information technology costs, such as development and maintenance of applications and programs used to administer the rules.

It should be noted that with primacy for enforcing the SDWA in Iowa and the administration of a Drinking Water State Revolving Fund program, the Department secures certain federal grants that offset some costs associated with administration of the associated programs that administer the rules. Some program costs are offset by fees collected per other chapters.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected since these rules were previously in effect. Costs to the agency are necessary for administration of the water supply programs and are largely offset by federal grant funding and fees collected pursuant to other rules as authorized by the Iowa Code.

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

Costs to the regulated public are limited to those required to comply with federal and state law and are reasonable and fair. Costs to the agency are necessary for administration of the SDWA requirements and are largely offset by federal grant funding.

Public health is protected by enforcing the SDWA through the public water system supervision program and its implementation of federal regulations for drinking water contaminants and the federal groundwater rule. The SDWA and Chapter 41 require public water supplies to monitor and report to the Department on various regulated contaminants. The Department reviews reported data and follows procedures to bring public water supply systems back into compliance, whether through operational changes, requiring additional water treatment, or other available mechanisms.

In the absence of a State of Iowa public water system supervision program and primacy to enforce the SDWA in Iowa, the Environmental Protection Agency (EPA) would administer the SDWA. Local knowledge and assistance would not be available because EPA's regional office is located in Kansas.

The Department has the history, relationships, knowledge, and track record of successful implementation of the SDWA in Iowa. Iowa's compliance with SDWA standards demonstrates this; in 2023, 99.5 percent of the population in Iowa (3.05 million out of 3.07 million) served by public water

supply systems regularly received water meeting all health-based drinking water standards in the SDWA.

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

There are no less costly or intrusive methods to accomplish the benefit. The regulations included in these rules implement state and federal laws.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

A public water system supervision program that includes enforcement of the SDWA is provided for in Iowa Code chapter 455B. A public water system supervision program and associated programs and requirements are necessary for Iowa to retain primacy for enforcing the SDWA.

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?

This rulemaking will not have a substantial impact on small businesses, as the current rules have been in place for a substantial period of time.

Text of Proposed Rulemaking

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] 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] 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] 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]	
	Chromocult[2, 4]	
Enzyme Substrate	Colilert	SM 9223 B (20th, 21st and 22nd ed.)[2, 5] SM Online 9223 B-97, B-04[2, 5]
	Colilert-18	SM 9223 B (21st and 22nd ed.)[2, 5] SM Online 9223 B-04[2, 5]

Methodology Category	Method Name[1]	Method Citation[1]
	Colisure	SM 9223 B (20th, 21st and 22nd ed.)[2, 5, 6] 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] 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] SM Online 9223 B-97, B-04[2, 5, 6]
	Colilert-18	SM 9223 B (21st and 22nd ed.)[2, 5] SM Online 9223 B-04[2, 5]
	Colisure	SM 9223 B (20th, 21st and 22nd ed.)[2, 5, 6] 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
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-NO3-F[18, 27, 33]	4500-NO3-F-00		0.05
	Ion selective electrode			4500-NO3-D[18, 27, 33]	4500-NO3-D-00	601[7]	1
	Manual cadmium reduction		D3867-90B	4500-NO3-E[18, 27, 33]	4500-NO3-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

Contaminant	Preservative[1]	Container[2]	Time[3]
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
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	
	Capillary ion electrophoresis					D6508, Rev. 2[14]
Conductivity	Conductance		D1125-95A (reapproved 1999), 14A	2510 B[11, 15, 18]	2510 B-97	
	Atomic absorption; furnace technique		D1688-95C, 02C, 07C, 12C	3113 B[4, 15, 18]	3113 B-99, 04, 10	

Contaminant	Methodology[9]	Reference (Method Number)				
		EPA	ASTM[3]	SM	SM Online[16]	USGS[5] or Other
Copper[6]	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]
Silica	Colorimetric, molybdate blue					I-1700-85
	Automated-segmented flow					I-2700-85
	Colorimetric		D859-95, 00, 05, 10			
	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-97	

Contaminant	Methodology[9]	Reference (Method Number)				
		EPA	ASTM[3]	SM	SM Online[16]	USGS[5] or Other
				4500-SiO_2 E[12, 15, 18]		
	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
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

Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology[1]	Detection Limit (mg/L)
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
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

Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology[1]	Detection Limit (mg/L)
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 Size (number of people served)	Date system must comply with MCL at each sampling location*
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 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

Type of System (source water type and population served)	Minimum Monitoring Frequency	Sample Location in the Distribution System
		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,	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.

If you are a ...	And you have monitored at least one year and you have ...	You may reduce monitoring to this level
before any treatment, of ≤4.0 mg/L.		
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		

Contaminant and Methodology	EPA Method[1]	SM[2]	ASTM Method[3]
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		
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-ClO2 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

Schedule	System Population	Date by Which System Must Begin Stage 2 Compliance Monitoring
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
	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]

Fecal Indicator[1]	Methodology	Method Citation
	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	D 3649-91, 98a, 06			

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
						7500-I C, 7500-I C-00 7500-I D, 7500-I D-00				
	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		
Gamma emitters	Gamma ray spectrometry	901.1 902.0 901.0			p. 92	7120 7500-Cs B, 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 (H2SO4) 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 43
"Water Supplies—Design and Operation"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.173(3), and 455B.173(5) through 455B.173(10)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.171 through 455B.188, Iowa Code sections 455B.190 through 455B.192, and the federal Safe Drinking Water Act (SDWA) as amended (42 U.S.C. §300f et seq.)

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Carmily Stone
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: carmily.stone@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Public water supply systems and water supply construction contractors and developers will bear the costs.

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

Citizens of Iowa, public water supply systems, drinking water-related businesses, and supply construction contractors and developers 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:

Public water supply systems and third-party construction permit applicants such as developers are impacted by fees established in Chapter 43.

An annual operations permit fee as authorized by Iowa Code section 455B.183A is set at the greater of $25 or $0.14 multiplied by the total population served by the public water supply system. These fees are incurred only by active public water supply systems and are incurred on an annual basis. This fee is limited to $25 for noncommunity, transient public water supply systems.

Construction permit fees are incurred by those applying for a water supply construction permit (public water supply system owners and third-party developers or water supply contractors). Construction permit application fees are based on the type of system being constructed, installed, or modified as authorized by Iowa Code section 455B.183A. Generally, fees range from $100 to $5,000 for water main projects and from $100 to $16,000 for non-water-main-related construction projects. Minimum fees for time extensions or change orders are $50. The total amount of construction permit fees for a public water supply system owner during any calendar year cannot exceed $5,000 for water mains and $16,000 for non-water-main-related construction projects.

In 2023, 99.5 percent of the population in Iowa (3.05 million out of 3.07 million) served by public water supply systems regularly received water meeting all health-based drinking water standards in the SDWA. Approximately 1,800 water supply systems are active and have water supply operations permits issued by the Department, which assists in compliance with the SDWA. The water supply construction permitting program issues approximately 1,000 construction permits and approvals per year, which support water systems maintaining compliance and promote residential, business, and industrial development in the state.

- Qualitative description of impact:

Public health is protected through the enforcement of the SDWA through the public water system supervision program and its implementation of federal regulations regarding minimum water treatment requirements. A water supply operations permitting program is implemented, which supports public water system compliance with the SDWA and state rules. Department staff conducts regular sanitary survey inspections for active water supply systems. Water supply construction standards are maintained by the Department and are enforced through a water supply construction permitting program.

3. Costs to the State:

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

Costs to the agency to implement Chapter 43 include staff time and salaries to administer the public water supply program (including SDWA implementation), to administer a water supply operations permitting program, to conduct sanitary surveys, to maintain and develop construction standards, and to administer a construction permitting program for water supply infrastructure. Additional costs include necessary information technology costs, such as development and maintenance of applications and programs used to administer the rules.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected because these rules were previously in effect. Costs to the agency are necessary for administration of the water supply programs and are largely offset by federal grant funding and fees collected as authorized by Iowa Code section 455B.183A.

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

Costs to the regulated public are limited to those required to comply with federal and state law and are reasonable and fair. Costs to the agency are necessary for the administration of the SDWA requirements and Iowa Code requirements for a water supply operations permitting program, a construction permitting program, and maintenance of water supply system construction standards. Costs are offset by fees collected as authorized by Iowa Code section 455B.183A and by federal grant funding.

Public health is protected by enforcement of the SDWA through the public water system supervision program and its implementation of federal regulations regarding minimum water treatment requirements. A water supply operations permitting program is implemented, which supports public water system compliance with the SDWA and state rules. Approximately 1,800 water supply systems are active and have water supply operations permits issued by the Department. Water supply construction standards are maintained by the Department and are enforced through a water supply construction permitting program. The water supply construction permitting program issues approximately 1,000 construction permits and approvals per year, which support water systems maintaining compliance and promote residential, business, and industrial development in the state.

In the absence of a State of Iowa public water system supervision program and primacy to enforce the SDWA, the Environmental Protection Agency (EPA) would administer the SDWA in the state. Local knowledge and assistance would not be available because EPA's regional office is located in Kansas.

The Department has the history, relationships, knowledge, and track record of successful implementation of the SDWA. Iowa's compliance with SDWA standards shows this; in 2023, 99.5 percent of the population in Iowa (3.05 million out of 3.07 million) served by public water supply systems regularly received water meeting all health-based drinking water standards in the SDWA.

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

There are no less costly or intrusive methods to accomplish the benefit. The regulations included in these rules implement state and federal laws.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

There are no less restrictive alternatives to accomplish the benefit. A public water system supervision program that includes enforcement of the SDWA is provided for in Iowa Code chapter 455B. Chapter 43 implements provisions of the SDWA. A public water system supervision program and associated programs and requirements are necessary for Iowa to retain primacy for enforcing the SDWA in Iowa. Chapter 43 also implements programs established in the Iowa Code, including a water supply operation permitting program, a water supply construction permitting program, and establishment of water supply construction standards.

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?

This rulemaking will not have a substantial impact on small businesses because the current rules have been in place for a substantial period of time.

Text of Proposed Rulemaking

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 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

Other Categories	Rate
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;
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
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

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]	
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]			
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 (as noted in footnote 6). 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).

(3) If the source is a shallow well, a well source evaluation shall be conducted in accordance with 43.5(1)*"f"*(2).

(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 (CTcalculated/CTrequired) 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 n 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-ClO2 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) CWS and NTNC systems. 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 CWS and NTNC. 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. CWS and NTNC SW or IGW systems serving fewer than 10,000 persons must comply with this rule.

2. GW CWS and NTNC. CWSs and NTNCs using only GW not under the direct influence of SW must comply with this rule.

3. TNC 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
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	
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-ClO2 E. Only the 19th and 20th editions may be used for the chlorine dioxide Method 4500-ClO2 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	

Analyte	Methodology	EPA	SM	ASTM	Other
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		
	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 UV254 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 $_{CaCO3}$, 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 Alkalinity, mg/L as $CaCO_3$		
Source water TOC, mg/L	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 as 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 WQP 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 to 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 CT99.9 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 CT99.9 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 (CTcalc/CT99.9) before or at the first customer during peak hourly flow; or
- Determine successive CTcalc/CT99.9 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 (CTcalc/CT99.9) for each sequence and then adding the (CTcalc/CT99.9) values together to determine Σ(CTcalc/CT99.9).

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 CTcalc/CT99.9 value of each segment and Σ(CTcalc/CT99.9) 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 CT99.9 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/CT99.9) 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/CT99.9) for each sequence and then adding the (CT calc/CT99.9) values together to determine (ΣCT calc/CT99.9).

2. If the system uses only one point of disinfectant application, it must determine:

- One inactivation ratio (CT calc/CT99.9) before or at the first customer during peak hourly flow, or
- Successive (CT calc/CT99.9) 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/CT99.9) for each sequence and then adding the (CT calc/CT99.9) values together to determine (ΣCT calc/CT99.9).

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], Colilert[3, 5] 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 CT99.9 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 (CTcalc/CT99.9) 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 (CTcalc/CT99.9) 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 (CTcalc/CT99.9) 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		

Toolbox Option	Specific Criteria Rule	*Cryptosporidium* treatment credit with design and implementation criteria
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: LOG10(monthly mean of daily influent turbidity) – LOG10(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 - 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: - Continuous basin operation; - Treatment of 100 percent of the flow; - Continuous coagulant addition; and - 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: - Chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration; and - 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: - Unconsolidated, predominantly sandy aquifer; and - 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 result and	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
	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: - IFE turbidity levels less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter; and - 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: - Process meets the definition of bag or cartridge filtration, and - 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: - Removal efficiency established through challenge testing meets criteria; and - Integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline	No later than applicable date
	Monthly report summarizing: - All DITs above the control limit, and	Within 10 days following the month monitoring was

Toolbox Option	Systems must submit this information	Submit information in accordance with the applicable treatment compliance dates in subrule 43.11(7), as noted
	- If applicable, any turbidity or alternative department-approved indirect integrity monitoring results triggering DITs and corrective action that was taken	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
	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

43.11(15) *Recordkeeping requirements.*

a. Source water monitoring. Systems must keep results from the initial round of source water monitoring under 43.11(3)*"a"* and the second round of source water monitoring under 43.11(3)*"b"* until three years after bin classification under 43.11(5) for the particular round of monitoring.

b. Systems meeting 5.5-log Cryptosporidium treatment. Systems must keep, for three years, records of any notification to the department that they will meet the 5.5-log Cryptosporidium treatment requirements and avoid source water monitoring.

c. Microbial toolbox treatment monitoring. Systems must keep the results of treatment monitoring associated with microbial toolbox options under 43.11(8) through 43.11(13) for three years.

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 (CT99.9) for 99.9 Percent Inactivation of *Giardia lamblia* Cysts

These tables provide the CT99.9 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 CT99.9 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										
	15	16	17	18	19	20	21	22	23	24	25
2	2.0	1.8	1.6	1.4	1.2	1.0	1.0	1.0	1.0	1.0	1.0
3	3.0	2.8	2.6	2.4	2.2	2.0	1.8	1.6	1.4	1.2	1.0
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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 44
"Drinking Water State Revolving Fund"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3) and 455B.299

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.291 through 455B.299; see also Safe Drinking Water Act as amended (42 U.S.C. §300f *et seq.*)

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tara Naber
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: SRF-pc@dnr.iowa.gov

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 Safe Drinking Water Act (SDWA). Iowa has implemented a DWSRF program since 1998. This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Public water supply systems, should they choose to pursue a DWSRF loan, will bear the costs.

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

Citizens of Iowa and public water supply systems 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:

Since the implementation of this rule in 1998, low-interest rate loans totaling over $1.2 billion have been executed to fund planning, design, and construction of public drinking water infrastructure in Iowa. The retention of these rules allows for this funding program to remain available to benefit the citizens of Iowa.

The implementation of these rules also allows the state to fund technical assistance to small public water supply systems, Iowa's Public Water Supply Supervision (PWSS) program management and staffing, public water supply capacity development work, and source water protection program and staffing.

- Qualitative description of impact:

Public drinking water systems are able to obtain loans at below-market interest rates to make necessary improvements and repairs to drinking water infrastructure. There are costs associated with taking out a loan through the DWSRF program and with complying with DWSRF requirements. Many Iowans, businesses, and industries purchase water from public water supply systems, and it is in their interest for the public water supply systems to secure the most advantageous funding source for projects.

3. Costs to the State:

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

Agency costs are limited to agency (Department of Natural Resources and Iowa Finance Authority) staff time required to apply for funding from EPA annually, to manage that funding, and to implement and administer a DWSRF program. These costs are offset and covered by federal grant administrative funds and program-generated income.

- Anticipated effect on state revenues:

A neutral impact on state revenues is anticipated since these rules were previously in effect for over 25 years.

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

The costs of the proposed Chapter 44 are significantly less than inaction (not repromulgating). Without these rules, the state would not have a DWSRF program, and a valuable funding program would no longer be available to public water systems to benefit their customers. In the absence of a state DWSRF program, there would be no DWSRF funding administered within the state of Iowa. Public water supply systems would be left without this opportunity for below-market rate funding, and necessary infrastructure replacements and upgrades would become more expensive. If public water supply systems must pay more for necessary improvements, those additional costs are very likely to be passed to their customers, which include residents, businesses, and industries of Iowa.

There are significant economic benefits of the proposed rulemaking. Historically, these rules have precipitated $1.2 billion in loans to public water supply systems, and the continued availability and administration of this program is necessary for public water systems to continue making necessary repairs and improvements to their systems to support the population and businesses of Iowa.

Costs to agencies to administer this rulemaking are offset and covered by federal grant administrative funds and program-generated income.

The benefits of the proposed rulemaking far outweigh the costs. The economic benefits of administering a DWSRF program are substantial, providing long-term benefits to citizens of Iowa and to the State.

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

There are no less costly or intrusive methods to accomplish the benefit. The requirements for this program are limited to the federal requirements.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The DWSRF program has minimum federal requirements in the SDWA and a state DWSRF program is authorized in Iowa Code sections 455B.291 through 455B.299. As written, the proposed rulemaking will allow for efficient administration of the program.

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?

This rulemaking will not have a substantial impact on small business.

Text of Proposed Rulemaking

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 to administer the drinking water state revolving fund (DWSRF) in order to assist in the construction of drinking water treatment facilities is provided by Iowa Code sections 455B.291 through 455B.299.

567—44.2(455B) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate, and control pollution. As a part of that General Responsibility, 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). A project must comply with this chapter to be eligible for a DWSRF loan. This chapter provides the background, the general rules of practice for the department's administration of the program, including the criteria for loan eligibility, and the general project and program administration rules.

567—44.3(455B) Purpose.

The DWSRF provides financial assistance to eligible public water systems for the design and construction of facilities to ensure public health and the provision of safe and adequate drinking water.

The DWSRF reserves a certain percentage of money each year from capitalization grants: for administrative purposes (up to 4 percent), to assist with the administration of the public water supply supervision program (up to 10 percent), to provide technical assistance to smaller drinking water systems (up to 2 percent) and to fund local assistance and other authorized activities (up to 15 percent). The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

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 available funds. All potentially funded

projects or activities must be approved by the department. 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.

567—44.4(455B) Definitions. Definitions provided in 567—Chapter 40 apply to this chapter.

567—44.5(455B) Set-asides. The Safe Drinking Water Act (SDWA) authorizes set-aside funds to enable states to implement specific requirements of the SDWA. The amount and use of set-aside money is set each year in the IUP pursuant to rule 567—44.8(455B) and may be adjusted from year to year based on available funds and priorities as outlined in the IUP. As prescribed in the SDWA, set-asides will include but are not limited to:

44.5(1) *Administration expense set-aside.* These set-aside funds are to be used to administer the DWSRF. Up to 4 percent of the funds allotted through federal capitalization grants may be used for the reasonable costs of administering the programs and providing technical assistance. These costs may include such activities as issuing debt; DWSRF program start-up costs; audit costs; financial, management and legal consulting fees; development of IUP and priority ranking system; development of affordability criteria; and cost of support services provided by other state agencies. If the entire 4 percent is not obligated for administrative costs in one year, the excess balance may be reserved and used for administrative costs in later years.

44.5(2) *Small system technical assistance set-aside.* These set-aside funds will be used to provide technical assistance to public water supplies serving 10,000 people or fewer. Up to 2 percent of funds allotted through federal capitalization grants may be used for this purpose. These funds may be used to support a technical assistance team or to contract with outside organizations to provide technical assistance. Applications for third-party technical assistance proposals must be submitted and will be accepted and evaluated pursuant to subrules 44.7(2) through 44.7(7) prior to publication of the IUP in a given year. If the entire 2 percent is not obligated for these activities in one year, the excess balance may be reserved and used for the same activities in later years.

44.5(3) *Local assistance and other state programs set-aside.* Funds from this set-aside may be used for other categories of activities to assist development or implementation of local drinking water protection initiatives or both. Up to 15 percent of the capitalization grant amount may be used for the following activities, with the stipulation that not more than 10 percent of the capitalization grant amount may be used for any one activity:

a. Assistance, in the form of a loan, to a public water system to acquire land or a conservation easement for source water protection purposes;

b. Assistance, in the form of a loan, to a community water system to implement voluntary, incentive-based source water quality protection measures;

c. Establishment and implementation of wellhead protection programs; and

d. Provision of funding to a public water system to implement technical or financial assistance under the capacity development strategy.

Source water (quality partnership) petition programs (made by individual or consortiums of public water systems) established under Section 1454 of the SDWA amendments of 1996 (P.L. 104-182, August 6, 1996) will be eligible for money under this set-aside. Applications for third-party source water petition proposals must be submitted and will be accepted and evaluated pursuant to subrules 44.7(2) through 44.7(7) prior to publication of the IUP in a given year. These funds may not be reserved for future use.

44.5(4) *State program management set-aside.* Funds from this set-aside may be reserved for public water supply supervision (PWSS) programs, including the following uses:

a. Administration of the state PWSS program;

b. Administration or provision of technical assistance through source water protection programs, which include the Class V portion of the Underground Injection Control Program;

c. Development and implementation of a capacity development strategy; and

d. Development and implementation of an operator certification program.

This set-aside allows a maximum of 10 percent of the total available federal capitalization grant in a particular year and requires a one-to-one match. If the entire 10 percent is not obligated for these activities in one year, the excess balance may be reserved and used for the same activities in later years.

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 Safe Drinking Water Act amendments of 1996 (P.L. 104-182, August 6, 1996).

a. Community drinking water systems.

b. Nonprofit nontransient noncommunity drinking water systems.

c. Cities and counties that are PWS or can become viable new PWS as a result of this project.

d. Any other governmental subdivision of the state responsible for a public water supply.

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 of 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 U.S. Environmental Protection Agency's Drinking Water State Revolving Fund regulations (40 CFR Part 35, Subpart L) or program guidance, or by the department.

44.6(3) *Certified operator requirement.* A system without a certified operator shall not receive loan assistance. The system must submit to the department the name, certification number and certification expiration date of the operator certified, pursuant to 567—Chapter 81, to be directly responsible (in direct responsible charge) for the operation of the facility before receiving a loan.

567—44.7(455B) Project point ranking system (project priority list).

44.7(1) *Project priority list.* The director shall develop and maintain a project priority list of public water systems that have a need for 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. The project priority list may include projects that are not ready to proceed (e.g., the list may include projects that by their nature are planned and implemented for a longer term than one year or projects that are unable to be implemented within one calendar year). Projects may be construed as not ready to proceed due to emergencies experienced by the applicant (or the state), or due to construction or other scheduling constraints. Projects will continue to be eligible for loan funding when funded for the first year of a multiyear project effort.

44.7(2) *Application.* Applications for placement on the project priority list shall be accepted by the department on a continuous basis.

44.7(3) *Amendment of project priority list.* The department may amend the project priority list to add eligible projects or remove projects. List adjustment can be done to ensure that the department

uses at least 15 percent of each capitalization grant and required state match to provide loan assistance to systems serving fewer than 10,000 persons (allowable under Section 1452(a)(2) of SDWA), to the extent that there are a sufficient number of eligible projects to fund.

44.7(4) *Preliminary engineering study requirements.* To be eligible for placement on the project priority list for a construction loan, the water system must have a preliminary engineering study of potential system needs (e.g., a "planning" study) approved by the department, and must submit to the director a written application for placement on the list. The application must include:

a. A description of the type of project for which financial assistance is being requested;

b. The amount of financial assistance being requested; and

c. A proposed project construction schedule.

Application shall be made on the form from the DWSRF application package provided by the department; the applicant may include additional information in the application. Forms may be obtained from the Environmental Services Division, Iowa Department of Natural Resources, Water Supply Engineering Section, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309, or at www.iowasrf.com.

44.7(5) *Construction project 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 drinking water system and compliance with state and federal criteria;

b. An estimate of the population and the number of households to be served;

c. A completed Self-Assessment Manual for Iowa Water System Viability;

d. A description of the basis for project design;

e. A map showing the geographical area that the project is expected to serve; and

f. A cost estimate for the selected project.

44.7(6) *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 department's scoring system, delineated in subrule 44.7(7). 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 (if the system is determined by U.S. EPA regulations or guidance to be eligible for DWSRF funding), 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 community public water supply systems and for nontransient noncommunity systems, 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 also be included in the department's intended use plan (IUP), pursuant to rule 567—44.8(455B). 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.

44.7(7) *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
Human Health Risk-related Criteria (maximum of 60 points)	
1. Correction of acute MCL or Tier I treatment technique violation as defined in 567—paragraph 42.1(2)*"a"* (fecal coliform, nitrate, nitrite, chlorine dioxide, turbidity, CT corrective measures, and Giardia)	60
2. Correction of nonacute MCL violation (IOCs excluding acute contaminants, radionuclides, SOCs, VOCs)	50
3. Correction of an expected MCL or treatment technique violation (acute or nonacute)	45
4. Correction of Tier II treatment technique 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 UST site, from CERCLA site, from 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
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 (made 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 (system 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.	35
2. Water systems over capacity expansion. Points are allowable only when 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	20
4. Treatment plant improvements, excluding operation and maintenance costs	15
5. Provision of emergency power/emergency pumping capacity including purchase of diesel generators or installation of automatic switching systems	15
6. Security improvements (fencing, lighting, video surveillance, locks, access control)	10
Affordability Criteria (maximum of 10 points)	
1. System serves low-income population (Community Development Block Grant (CDBG) Iowa Department of Economic Development (IDED) Low-Moderate Income Criteria (LMI))	10
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
IDNR Adjustment Factor for Population	
1. (Project Serves) Population less than 10,000	10
TOTAL MAXIMUM POINTS	135

567—44.8(455B) Intended use plan.

44.8(1) *Development.* The director shall prepare an intended use plan (IUP) at least annually and on a quarterly basis as needed. The IUP will be submitted to a public hearing and approved by the commission and U.S. EPA.

44.8(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—44.7(455B)) which includes all projects that are eligible for DWSRF loans and any proposed activities eligible for assistance under set-aside authority of the SDWA. The list will include the name of the eligible recipient, applicable PWS permit

number, the projected amount of loan assistance, and a schedule of estimated disbursement of funds. The department will consider the following in developing the list of eligible recipients for the intended use plan:

(1) Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds; and

(2) Whether the project addresses the need upon which the system's priority is based.

b. Discussion of the long-term and the short-term goals of the DWSRF.

c. Information on the types of activities to be supported by the DWSRF, including requests for planning and design loans.

d. The method by which the IUP may be amended.

e. Assurances on how the state intends to meet environmental review requirements of the SDWA.

567—44.9(455B) Department initial approval of projects.

44.9(1) *Project initiation conference.* The department may require the applicant or the applicant's representative to meet at a location designated by the department.

44.9(2) *Required project information.*

An applicant seeking financial assistance from the DWSRF for a construction project must provide the following information to the director for review and approval:

a. Plans and specifications must be signed by a professional engineer holding current license to practice in Iowa.

b. Plans and specifications must be consistent with the project identified in the application submitted pursuant to subrule 44.7(5).

c. The planned project must be described in full, and the construction requirements necessary to complete the project as proposed must be detailed.

d. The project submittal shall include the latest engineering cost estimate for the project.

e. The plans and specifications shall comply with all applicable state statutes, rules, and design standards.

f. 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.

g. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial, and financial capability to complete the project.

44.9(3) *Department review.* An applicant seeking financial assistance from the DWSRF for any project appearing on the project priority list must submit information as required under subrule 44.7(5) on forms provided by and acceptable to the department. Departmental review requirements shall consist of the following:

a. Upon review and approval of construction projects submitted as required under subrule 44.7(5), and the plans and specifications as required under subrule 44.9(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 from the department an amended approval. The director shall review the request and proposed project alteration (change order) and, upon a determination that the project meets the applicable requirements of the SDWA, federal regulations, the August 7, 2000, Drinking Water State Revolving Funds: 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—44.10(455B) General administrative requirements.

44.10(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 which is integral to a project needed to meet or maintain public health protection and which 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 those costs identified in this chapter, unallowable costs include the following:

a. Costs of service lines, except lead-containing service lines and connectors which are exterior to a home.

b. Costs of in-house plumbing.

c. Administrative costs of the loan recipient.

d. Vehicles and tools.

44.10(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.

44.10(3) *Cross-cutters.* Other federal and state statutes and programs, including federal "cross-cutters," will be applicable to DWSRF projects.

44.10(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—44.11 Reserved.

567—44.12(455B) Construction phase and postconstruction phase requirements.

44.12(1) *Estimated project completion date.* The loan recipient must notify the director of the estimated project completion date. 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. Three months after initiation of operation of the project, the loan recipient must certify to the director that the project is operating as planned and designed. This certification must be made on a form provided by and 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 pertaining to drinking water supply systems constitutes grounds for the withholding of loan disbursements. The loan recipient is then responsible for ensuring that the identified problem either in the plans and specifications or in the other relevant portion of the project 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 rule 567—44.7(455B), 567—44.8(455B), or 567—44.13(455B) may request a formal review of the action. The person or entity must submit to the director a request for review in writing within 45 days of the date of notification of the final decision made by the department or department staff. A decision by the director in a formal review case may be further appealed to the commission.

These rules are intended to implement Iowa Code sections 455B.291 through 455B.299.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapters 50 through 52 "Water Use, Withdrawals, and Diversions; Water Permit or Registration—When Required; and Criteria and Conditions for Authorizing Withdrawal, Diversion, and Storage of Water"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.105(11), 455B.263(8) and 455B.265(4)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A.3, 455B.105, 455B.171, 455B.190, 455B.264, 455B.268, and 455B.278, and chapter 460.

Public Hearing

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

September 24, 2024 1 to 2 p.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Chad Fields
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: Chad.Fields@dnr.iowa.gov

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 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Water use permit holders (the entities or persons diverting, withdrawing, or using over 25,000 gallons of water per day any single day of the year) will bear the costs.

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

Water use permit holders, public water supplies, private well owners, irrigators, golf courses, citizens, businesses and industries of Iowa 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:

State law (Iowa Code sections 455B.265 and 455B.265A) authorizes the collection of fees as specified in Chapter 50. Application fees range from $0 to $700, depending on the application type. Annual permit fees only apply to active water use permit holders, and the fee is calculated based on the costs to administer the water use program for the previous calendar years and on the anticipated expenses for succeeding years. The fee undergoes public comment and approval through the Environmental Protection Commission. The annual permit fee amount is reviewed each year and either increased or decreased as necessary. From 2020 through 2024, the water use annual permit fees ranged as low as $95 per year and as high as $115 per year, averaging $103 per year per water use permit holder. There is a $100 late fee assessed for annual permit fees not paid by the annual deadline.

- Qualitative description of impact:

The new Chapter 50 is expected to have a neutral impact since the state has implemented a water use and allocation program since the 1950s. The water use and allocation program will ensure ground and surface waters of the state are put to beneficial use, prevent waste or unreasonable use, prevent unreasonable methods of use, and conserve and protect water resources in the interest of the citizens of Iowa. This is accomplished through water use permitting and registration, annual water use reporting requirements, enforcement of protected stream levels, and implementation of conservation requirements when necessary.

3. Costs to the State:

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

Agency costs are limited to staff time required to implement the water use and allocation programs. The costs incurred are offset by the general funds and by fees collected through the water use and allocation programs.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected since this rule was previously in effect. The fees collected through these rules are used for the administration of the water use and allocation programs.

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

Costs of the proposed rulemaking are not new costs and are limited to costs necessary to administer a water use and allocation program. Fees are evaluated on an annual basis and are adjusted to fit the costs to administer the water use and allocation program accordingly.

Benefits of proposed new Chapter 50 include benefits associated with continuing to administer water use and allocation programs in the state. These benefits include that the ground and surface water resources of the state are put to beneficial use to the fullest extent possible, that there is adequate supply of water for existing water users, that the waste or unreasonable use, or unreasonable methods of use of water are prevented, and that the conservation and protection of water resources are required with the view to their reasonable and beneficial use in the interest of the people. These programs allow for the public to have access to the quantity and quality of ground and surface water sources to live, work, and play and allows businesses and industries in the state to operate and provide long-term benefits to the public, including jobs, services, and products.

Failure to repromulgate Chapter 50 would result in the loss of long-standing programs that provide an immense benefit to the people. Without these rules implementing Iowa laws related to water use in the state, there would be no way for the state to understand how, when, where, and in what quantities surface and ground water resources are being used. The Department’s ability to implement priority

uses as determined in the Iowa Code, effectively respond during low stream levels, and react effectively to drought conditions would be hindered.

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

There are no less costly or intrusive methods to accomplish the benefit. The regulations included in these rules implement state law.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

As proposed, the new Chapter 50 implements water use and allocation programs in the state for a reasonable and minimal cost to the people. These programs are established in the Iowa Code and are administered and implemented through these proposed rules. The proposed Chapter 50 includes efficiencies in the rule language since it will include content previously in Chapters 51 and 52. Chapters 51 and 52 will not be repromulgated after rescission.

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?

This rulemaking will not have a substantial impact on small business since the current rules have been in place for a substantial period of time.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 50 and adopt the following **new** chapter in lieu thereof:

WITHDRAWAL, DIVERSION AND STORAGE
OF WATER: WATER RIGHTS ALLOCATION

DIVISION C

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 or soybeans.

"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
(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 soil conservation plan prepared with the assistance of the NRCS for the land where crop irrigation is proposed, if the land includes either of the following:

a. Soils more erodible than Capability Subclass IIe as defined by the NRCS; or

b. Slopes greater than 6 percent, where a modern NRCS Soil Survey is not available.

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"* to *"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"* to *"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

River or Stream	Gage Location	USGS Gage Number	Protected Low Flow (CFS)
Skunk River	Augusta	5474000	287
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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 53 "Protected Water Sources"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.262, 455B.264 through 455B.274 and 455B.278

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.262, 455B.264 through 455B.274 and 455B.278

Public Hearing

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

September 24, 2024 1 to 2 p.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Chad Fields
6200 Park Ave, Suite 200
Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Water use permit applicants and nonregulated well drillers in the protected sources will bear the costs.

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

Water use permit applicants and permit holders, public water supplies, citizens of Iowa, and businesses and industries in Iowa 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:

Costs to the public to comply with these rules are limited. Any costs related to these rules would be indirect, such as costs for a potential water use permit holder or well driller needing to seek out a different water source if they initially intended to withdraw water from a designated protected source area and it is determined that no additional withdrawals can be authorized at that time due to water quantity or water contamination.

- Qualitative description of impact:

Chapter 53 provides transparency and clarity to the regulated public regarding protected surface and groundwater sources within the state. These rules provide a significant benefit to the public since they provide a mechanism to ensure long-term availability of the quantity or quality of the protected surface and groundwater sources. Long-term availability of quantity and quality of surface and groundwater sources allows for the public, along with business and industry, in Iowa to benefit from the use of Iowa's water resources.

3. Costs to the State:

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

Costs incurred by the Department include the staff time and necessary tools required to implement this chapter. It is noted that staff that implement these rules have other assigned duties.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected since these rules were previously in effect. Funding of the programs implemented in Chapter 53 are drawn from fees collected by the Department as authorized in Iowa Code sections 455B.265 and 455B.265A.

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

Costs of the proposed rulemaking are not new costs and are limited to costs necessary to implement the rules regarding protected source water and groundwater sources in Iowa. The costs to implement Chapter 53 are covered by fees collected by the Department as authorized in Iowa Code sections 455B.265 and 455B.265A.

Benefits of proposed new Chapter 53 include transparency and clarity to the regulated public regarding protected surface and groundwater sources within the state. These rules benefit the public since the rules provide a mechanism to ensure long-term availability of the quantity or quality of the protected surface and groundwater sources. Long-term availability of quantity and quality of surface and groundwater sources allows for the public, along with business and industry, in Iowa to benefit from the use of Iowa's water resources.

Failure to repromulgate Chapter 53 would greatly reduce the Department's ability to protect and conserve Iowa's water resources for beneficial use now and in the future.

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

There are no less costly or intrusive methods to accomplish the benefit. The regulations included in these rules implement state law.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Chapter 53 is limited and is specific to designation of protected surface and groundwater sources in the state of Iowa and the information necessary for water use withdrawal applications related to the designated sources.

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?

This rulemaking will not have a substantial impact on small business since these rules have previously been in place for a substantial period of time.

Text of Proposed Rulemaking

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.

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.

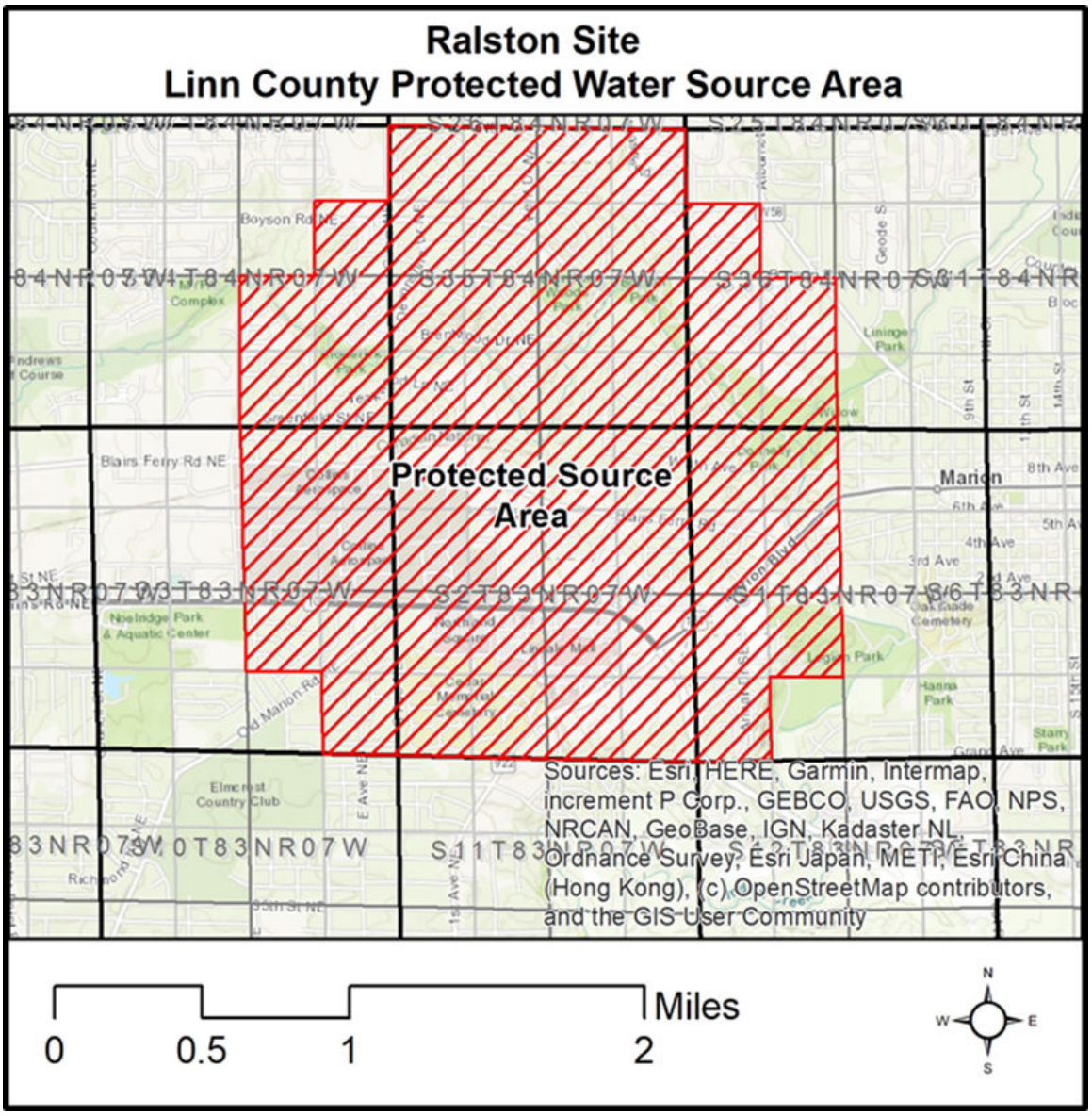
c. Groundwater withdrawal. Groundwater withdrawal from within the protected water source area may also be restricted or denied from what would otherwise be nonregulated wells, if necessary to preserve public health and welfare or to minimize the movement of groundwater contaminants from the Ralston Site. 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.

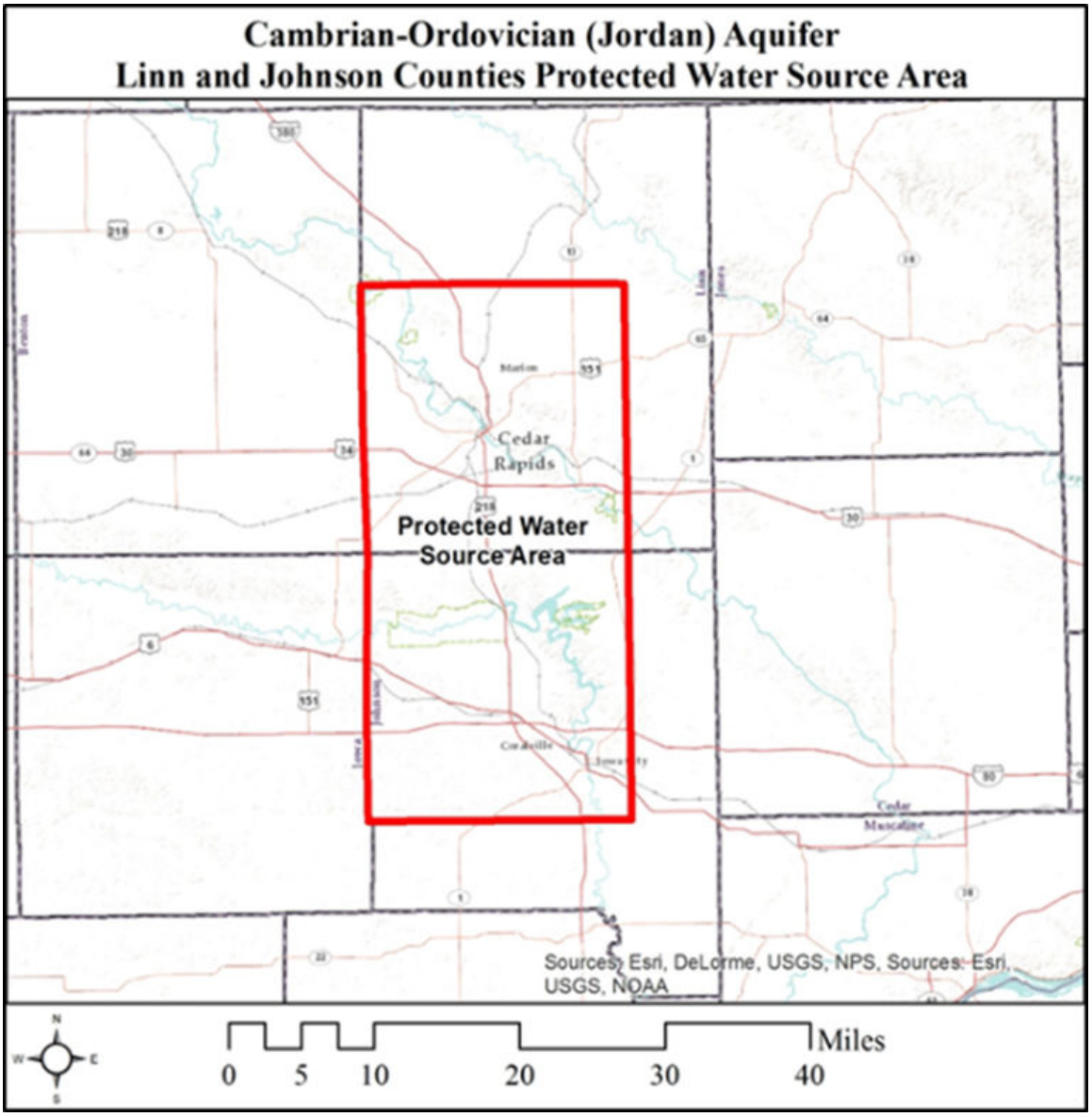
Johnson County

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.

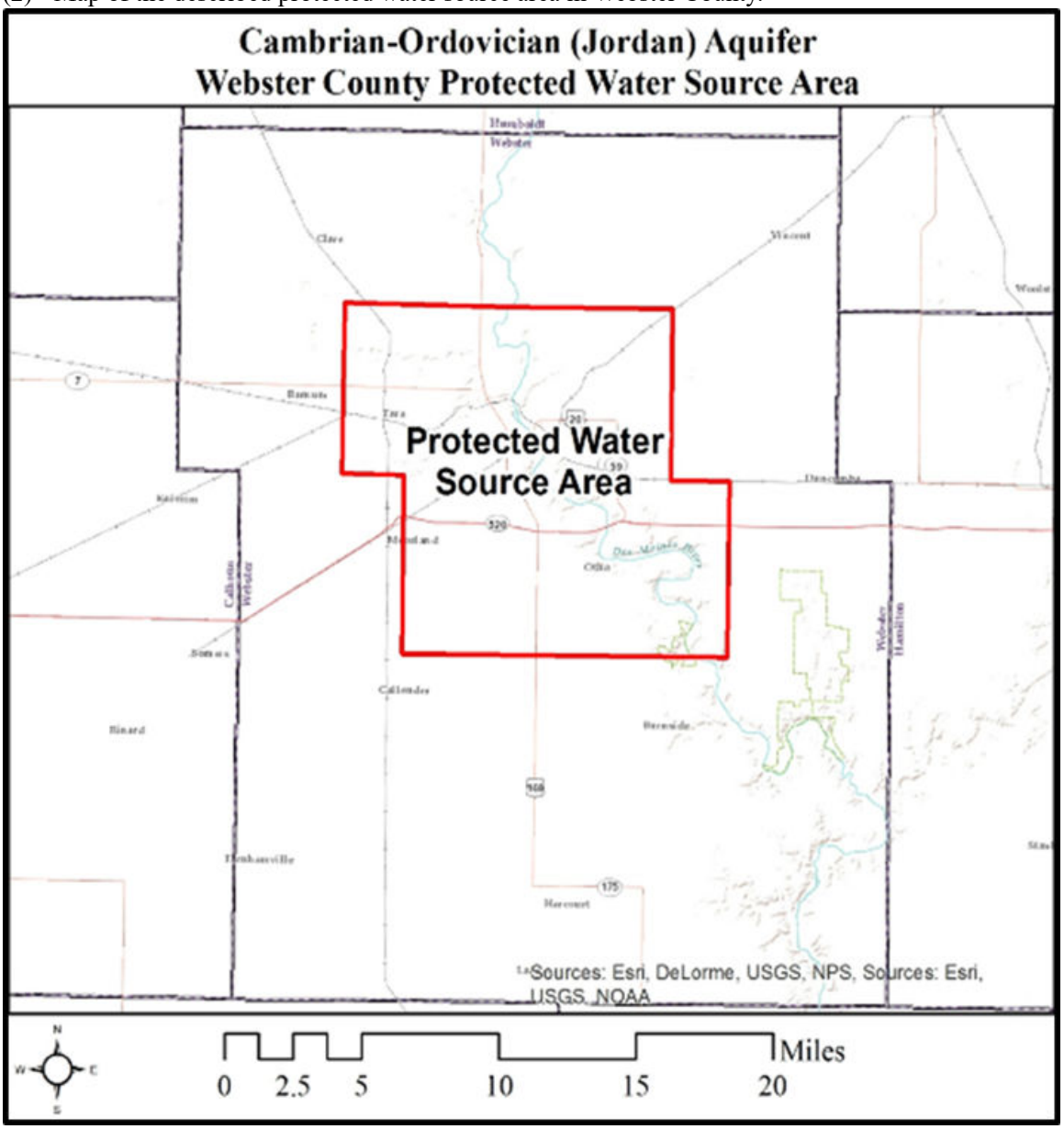
c. Groundwater withdrawal. Groundwater withdrawal from within the protected water source area may also be restricted or denied from water supply wells constructed in the Cambrian-Ordovician (Jordan) aquifer, public or private, and the construction of all new water supply wells in this aquifer shall be 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.

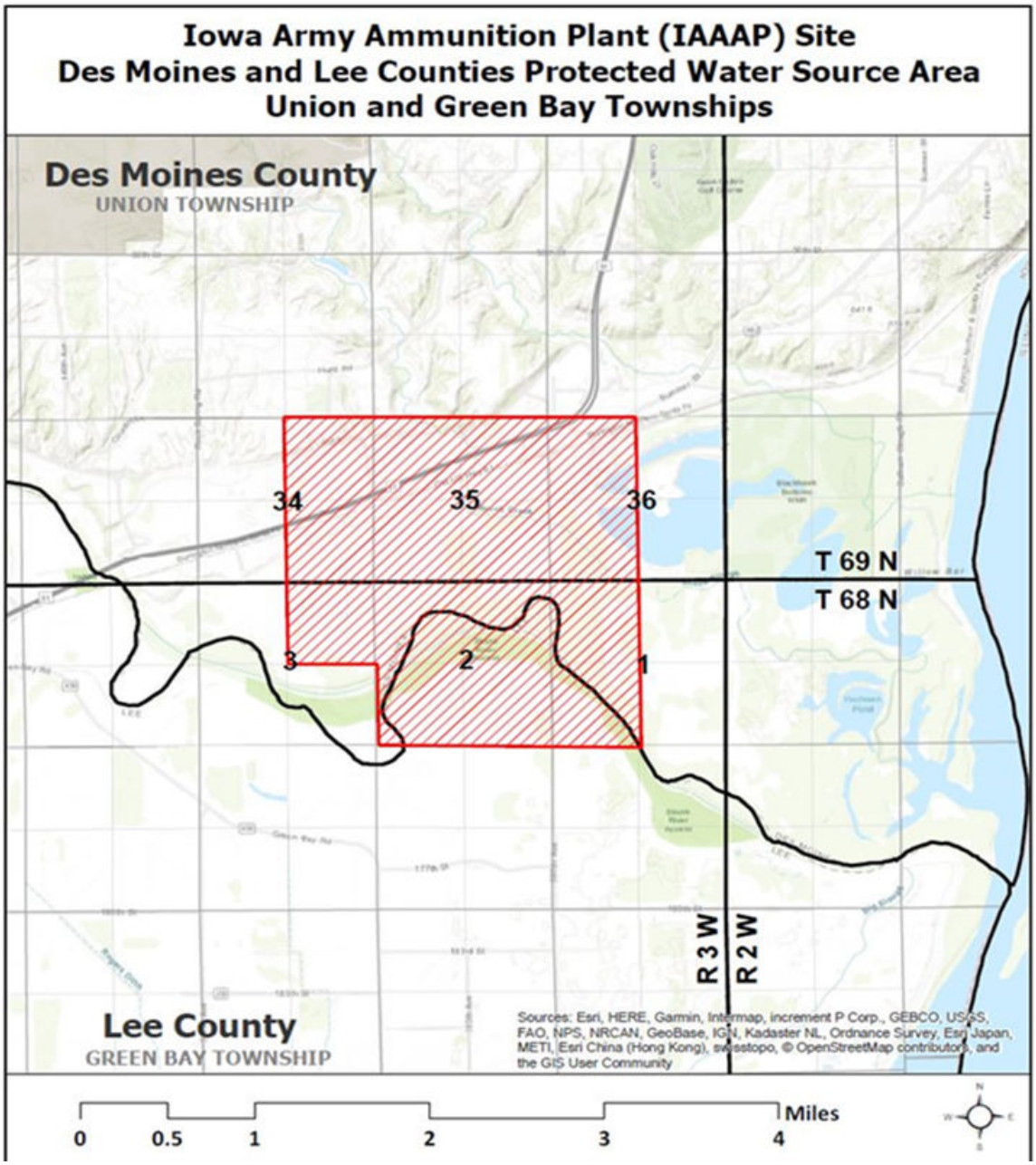
(1) The following described area within Des Moines County and Lee County is defined as a protected water source.

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 54
"Water Use Permit Restrictions or Compensation by Permitted Users
to Nonregulated Users Due to Well Interference"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.262(3), 455B.263(8), 455B.281(1) and 455B.281(2)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.171 and 455B.281

Public Hearing

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

September 24, 2024 1 to 2 p.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Chad Fields
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

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 non-regulated 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 non-regulated well such that it does not, or will not, provide a sufficient water supply. This framework is limited to conflicts in which the non-regulated 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 non-regulated water user within the state. This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Water use permit holders and non-regulated well owners involved in a well interference conflict, now or in the future are affected.

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

Water use permit holders and non-regulated well owners involved in a well interference conflict, citizens of Iowa, public water supplies, and businesses and industries in Iowa are affected.

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 to the public to comply with this chapter are limited. Any costs related to complying with Chapter 54 for non-regulated water users would include any costs incurred to pursue a well interference complaint, of which eligible costs may be reimbursed or managed with a settlement. Any costs related to complying with Chapter 54 for water use permit holders would include settlement or other costs associated with resolving the well interference complaint, which may include water usage or water pumping restrictions.

- Qualitative description of impact:

Chapter 54 provides a transparent and clear procedure for the resolution of certain water well interference conflicts. This benefits water users in the state and the public by providing a process that either compensates or re-establishes water availability for water well owners. These rules also allow for wells to remain in use with certain restrictions, which allows for continued and future use of Iowa's groundwater resources by both parties.

3. Costs to the State:

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

Costs incurred by the Department of Natural Resources include the staff time and necessary tools required to implement this chapter. It is noted that staff that implement this chapter have other assigned duties.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected, as this chapter was previously in effect. Funding of the program implemented in Chapter 54 is drawn from fees collected by the Department as authorized in Iowa Code sections 455B.265 and 455B.265A.

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

Costs of the proposed rulemaking are not new costs and are limited to costs necessary to implement a process for resolution of certain water well interference complaints in Iowa. The costs to implement Chapter 54 are covered by fees collected by the Department as authorized in Iowa Code sections 455B.265 and 455B.265A.

Benefits of proposed new Chapter 54 include a process providing for compensation for well interference, which benefits non-regulated water users, such as private well owners, and allows for their continued use of Iowa's water resources now and into the future. This process also benefits regulated water use permit holders by providing a framework to resolve any such conflicts with options that allow for their use of Iowa's groundwater resources. The costs to Department to implement this chapter are justified as these rules provide a process for resolving well interference conflicts in a consistent manner, and managing such conflicts protects the availability of Iowa's groundwater sources now and in the future.

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

There are no less costly or less intrusive methods to accomplish the benefit. The regulations included in these rules implement state law.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

As proposed, the new Chapter 54 narrowly and concisely provides a process for well interference compensation. There are no less restrictive alternatives to accomplish this benefit because this chapter is necessary to implement Iowa Code sections 455B.171 and 455B.281.

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?

This rulemaking will not have a substantial impact on small businesses.

Text of Proposed Rulemaking

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 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 55 "Aquifer Storage and Recovery"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.263(8) and 455B.265(4)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.261, 455B.265 and 455B.269

Public Hearing

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

September 24, 2024 1 to 2 p.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Chad Fields
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Permit applicants or permit holders of aquifer storage and recovery permits will bear the costs.

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

Permit applicants or permit holders of aquifer storage and recovery permits, water use permit holders, citizens, businesses and industries of Iowa 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:

Costs to the regulated public are limited. The fee established in 567—Chapter 50 for an ASR permit application is $700. Costs to comply with the chapter include costs to complete an application, produce an engineering report, conduct regular reporting and keep records associated with an ASR well.

- Qualitative description of impact:

As a result of proposed Chapter 55, an aquifer storage and recovery permitting program promotes the beneficial use of ground water resources; ensures that waters of the state are put to beneficial use, waste or unreasonable use is limited, and unreasonable methods of use are prevented; and conserves and protects water resources in the interest of the citizens of Iowa. This is accomplished through aquifer storage and recovery permitting, reporting requirements associated with aquifer storage and recovery wells, and the implementation of permit conditions as necessary.

3. Costs to the State:

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

Agency costs are limited to staff time required to implement the aquifer storage and recovery permitting program. The costs incurred are offset by the general funds and by fees collected through the water use and allocation programs.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected, as this chapter was previously in effect. The fees collected through these rules are used for the administration of the water use and allocation programs.

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

Costs of the proposed rulemaking are not new costs and are limited to costs necessary to administer an aquifer storage and recovery permitting program. Application fees are unchanged, and reflect staff time and resources necessary for staff to review and process such applications.

Benefits of proposed Chapter 55 include the establishment of a permitting program for aquifer storage and recovery wells that is actively in use, and the provision of a clear application process and procedures for the Department to review and process such permit applications. Additionally, Chapter 55 allows for the beneficial use of water resources through the establishment of a permitting program for aquifer storage and recovery wells. This chapter protects public health and safety through criteria established for aquifer storage and recovery wells. These rules establish that existing nearby water users shall not be restricted as a result of an aquifer storage and recovery well's construction and operation.

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

There are no less costly or less intrusive methods to accomplish the benefit. The regulations included in these rules implement state law.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

As proposed, the new Chapter 55 is specific and limited to application requirements and Department procedures for aquifer storage and recovery well permits. Such a permitting program is authorized in Iowa Code section 455B.265. The proposed Chapter 55 introduces efficiencies in the rule language.

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?

This rulemaking will not have a substantial impact on small businesses, as the current rules have been in place for a substantial period of time.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapters 60, 64, and 66 "Scope of Title, Definitions, Wastewater Construction Permits, and Operation Permits; Wastewater Construction and Operation Permits; and Pesticide Application to Water Iowa"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3) and 455B.173(3)

State or federal law(s) implemented by the rulemaking: Clean Water Act §402(b), 40 CFR §123.25, and Iowa Code sections 455B.171, 455B.172, 455B.173, 455B.174, 455B.175, 455B.177, 455B.183, 455B.184, 455B.185, 455B.186, 455B.196, 455B.197, 455B.198 and 455B.199B

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: npdes.mail@dnr.iowa.gov

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 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, General Permits 1-9 (various issuance dates, available at: www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-General-Permits) and the Iowa Antidegradation Implementation Procedure (dated August 12, 2016), 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/NPDES-General-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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated wastewater disposal systems will bear the costs.

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

Citizens of Iowa 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:

Quantitative costs cannot be determined. However, the activities required of the regulated entities that result in various costs are described below.

- Qualitative description of impact:

Facilities covered by NPDES or state operating permits may require treatment to meet pollutant limits. Facilities that need treatment must demonstrate through the wastewater construction permitting process that their proposed treatment will comply with the applicable pollutant limits. This is done through the installation of wastewater treatment technologies that vary by facility process and the quantity and type of pollutants present. Facilities also incur costs related to the operation of treatment plants, the monitoring and reporting of pollutants, and recordkeeping. The costs of complying with NPDES or state operating permits vary by the type of facility process, pollutant capacity of the receiving stream, and the quantity and type of pollutants discharged. The Department's wastewater construction permit application fee and the operation permit fees are listed in Iowa Code section 455B.197. Facilities' incurred costs to prepare and submit the required applications vary greatly depending on the types and amounts of waste discharged, number of point sources, and other factors.

3. Costs to the State:

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

Department staff review permit applications and write the permits. Department staff also ensure that permit requirements are being met by conducting facility inspections, reviewing reports, and providing outreach and assistance to ensure compliance with the permits. The Department also reports information for requirements included in permits to the public and state and federal partners.

- Anticipated effect on state revenues:

The proposed chapter will have a neutral impact on state revenues because the rules related to monitoring and reporting are already being implemented in existing Chapters 60 and 64.

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

Demonstrating through the construction permitting process that treatment will meet NPDES or operation permit limits ensures that the health and welfare of the public and protection of aquatic life is being maintained. Without the construction permit requirements, facilities could install treatment

incapable of meeting pollutant limits, which could adversely impact the water quality of Iowa. Issuing and renewing NPDES and operation permits, conducting inspections, reviewing sampling data, and providing outreach and assistance also ensures that the health and welfare of the public and protection of aquatic life is maintained.

In the absence of a state permitting program, EPA would administer a permitting program consisting of NPDES permitting, water quality standards development, inspections and enforcement. No NPDES general permits would be immediately available. Iowa's rules include NPDES general permits, developed with stakeholders, that implement a streamlined, less-costly application and authorization process to thousands of Iowans. Local knowledge and assistance would not be available. Nationwide standards, some of which would be unaffordable to communities and businesses, would be adopted. There would be no disadvantaged community program, which provides communities additional time to comply with more stringent standards. For these reasons, stakeholders prefer to have the Department, rather than the EPA, administer the NPDES program that is specific to Iowa's needs. Additionally, Iowa's state operation permit rules include nine permit exemptions, developed with stakeholder assistance and approval.

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

There are no less costly or intrusive methods to accomplish the benefit. These limits and discharge restrictions are provisions required by the Clean Water Act (CWA).

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Iowa must have the NPDES provisions contained in the proposed Chapter 60 to maintain delegated CWA authority. Stakeholders generally prefer a local approach to CWA permitting, standards development, inspections and enforcement. The Iowa Code requires construction permits and state operating permits. The Iowa Administrative Code must have implementing law to support these required programs.

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?

Chapter 64 (proposed Chapter 60) contains operation permit exemptions for certain disposal systems, and small businesses benefit from these exemptions. Small businesses also benefit from the streamlined permitting of NPDES general permits. These permits are already completed and cover everyone in Iowa discharging specific types of wastewater. General permits provide quick permit coverage and eliminate many of the application and public notice steps.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 60 and adopt the following **new** chapter in lieu thereof:

WASTEWATER TREATMENT AND DISPOSAL

TITLE IV

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 to 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 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 Clean Water Act (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
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

Abbreviation	**Meaning**
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
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
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

Abbreviation	Meaning
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*, 2024, 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 75: Standard sanitary sewer	400	200	200	500	200
Public water supply well - shallow[7]	200	400	25: Water main 75: Standard sanitary sewer	1000	400	200	500	400
Below-ground level finished water storage facility	50		25: Water main 75: Standard sanitary sewer	50	50	50	50	
New or existing private well - deep or shallow	50	100	10	400[8,9]	200	500		
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 of intent 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 August 12, 2016, 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) 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 to 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) to 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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 62
"Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3) and 455B.173(3)

State or federal law(s) implemented by the rulemaking: Clean Water Act Section 402, 40 CFR §123.25, and Iowa Code section 455B.174

Public Hearing

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

September 24, 2024 10 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Courtney Cswercko
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: npdes.mail@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated wastewater disposal systems will bear the costs.

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

Citizens of Iowa 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:

Quantitative costs cannot be determined. However, the activities required of regulated entities that result in various costs are described below.

- Qualitative description of impact:

Compliance with NPDES limits may require the installation of wastewater treatment. Treatment technologies vary by facility process and the quantity and type of pollutants present. Facilities also incur costs related to the ongoing operation and maintenance of treatment plants and chemical usage. The costs of complying with NPDES limits vary by the type of facility process, the pollutant capacity of the receiving waterbody, and the quantity and type of pollutants discharged.

3. Costs to the State:

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

Department staff calculate NPDES permit limits for each regulated pollutant. Department staff also review monitoring data to locate limit violations and work with facilities to ensure compliance with limits.

- Anticipated effect on state revenues:

The proposed chapter will have a neutral impact on state revenues because the rules related to monitoring and reporting are already being implemented in existing Chapter 62.

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

Limits in NPDES permits help protect Iowa's waters for its citizens and for aquatic life by setting pollutant targets at levels that ensure public health and ecosystems are maintained. Compliance with permit limits drives the proper treatment of wastewater, which ensures that Iowans can safely fish and recreate, while communities can use surface waters for drinking.

Absent the pollutant limits and wastewater discharge restrictions in Chapter 62, Iowa would not have all of the required provisions needed to maintain delegated NPDES permitting authority from EPA. The delegation of the NPDES program allows the Department, rather than EPA, to be the primary agency to implement wastewater pollutant requirements in Iowa and to provide outreach and compliance assistance to affected facilities. Stakeholders typically prefer for the Department, rather than EPA, to be the primary implementation agency in Iowa.

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

There are no less costly or intrusive methods to accomplish the benefit. These limits and discharge restrictions are provisions required by the Clean Water Act.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Iowa must have these limits and discharge restriction provisions to maintain delegated Clean Water Act authority. Stakeholders generally prefer a local approach to Clean Water Act permitting, standards development, inspections and enforcement.

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?

Small businesses are often covered by general permits, which typically rely on visual monitoring and sometimes pollutant thresholds, rather than quantitative limits, for coverage. This practice provides cost savings for monitoring and reporting and provides permit requirements that are easier to follow.

Text of Proposed Rulemaking

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 $_5$, 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 $_5$ 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 $_5$, 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, division III, part 1.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 63 "Monitoring, Analytical and Reporting Requirements"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.174

State or federal law(s) implemented by the rulemaking: Clean Water Act Section 402, 40 CFR §123.25, and Iowa Code section 455B.174

Public Hearing

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

September 24, 2024 10 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Courtney Cswercko
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: npdes.mail@dnr.iowa.gov

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 in compliance with every permit limit. Monitoring also helps the 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-reference document, the Supporting Document for Permit Monitoring Frequency Determination, March 2022 (www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting/NPDES-Rules), is unchanged.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated wastewater disposal systems will bear the costs.

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

Citizens of Iowa 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:

Quantitative costs cannot be determined. However, the activities required of regulated entities that result in various costs are described below.

- Qualitative description of impact:

Facilities covered by NPDES permits and some operating permits are required to sample their wastewater for pollutants using certified labs and report the results. There are laboratory costs and costs associated with staff time to take samples and report the results electronically to the Department. Facility monitoring costs vary by the type of facility process, pollutant capacity of the receiving stream, the compliance history, the size of the treatment plant, and the quantity and type of pollutants discharged.

3. Costs to the State:

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

Department staff determine, in each permit, which pollutants must be monitored and at what frequency. Department staff are also responsible for managing the monitoring data reported to the Department each month. Managing data includes electronically transmitting data daily to the EPA, running violation reports for enforcement needs, and consolidating data for public records requests. The Department also reviews sampling methods and monitoring results with permittees during inspections.

- Anticipated effect on state revenues:

The proposed chapter will have a neutral impact on state revenues because the rules related to monitoring and reporting are already being implemented in existing Chapter 63.

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

Monitoring, using defined analytical methods, and reporting ensures that the Department is aware of permit violations and when treatment plants are approaching capacity. This allows the Department to work with facilities to resolve compliance issues and to provide guidance to those that are approaching capacity. Reporting of sample results also ensures that the public is able to view pollutant information, if requested.

Absent the pollutant monitoring and reporting requirements in Chapter 63, Iowa would not have all of the required provisions needed to maintain delegated NPDES permitting authority from the EPA. The delegation of the NPDES program allows the Department, rather than the EPA, to be the primary agency to implement wastewater pollutant requirements in Iowa and to provide outreach and compliance assistance to affected facilities. Stakeholders typically prefer for the Department, rather than EPA, to be the primary implementation agency in Iowa.

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

There are no less costly or intrusive methods to accomplish the benefit. These monitoring, analytical and reporting requirements are required by the Clean Water Act.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Iowa must have these monitoring, analytical and reporting provisions to maintain delegated Clean Water Act authority. Stakeholders generally prefer a local approach to Clean Water Act permitting, standards development, inspections and enforcement.

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?

Small businesses are often covered by general permits which typically rely on visual monitoring, rather than laboratory analysis, to assess wastewater discharges. Visual monitoring is less expensive and provides businesses with an immediate wastewater assessment, so they can react quickly, if necessary.

Text of Proposed Rulemaking

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 procedures, application for alternative test procedures, and method modifications.*

a. The following is adopted by reference and is applicable to all such citations in this chapter: 40 CFR Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants), as amended through July 19, 2021.

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. 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 P.E.[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] 2024.

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 P.E.[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 two calendar days 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 x Sample two x Sample three x Sample four x Sample five…Sample N)^(1/N), which is the Nth 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 67
"Standards for the Land Application of Sewage Sludge"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), and 455B.173(3)

State or federal law(s) implemented by the rulemaking: 40 CFR 503, 40 CFR 127, and Iowa Code sections 455B.173 and 455B.304 and chapters 174 and 183

Public Hearing

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

September 24, 2024 10 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: npdes.mail@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Citizens of Iowa will bear the costs.

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

Citizens of Iowa 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:

The proposed changes streamline the rule language but do not alter any existing land application requirements or criteria. No economic or other quantitative impact is anticipated.

- Qualitative description of impact:

The proposed changes allow for the continued administration of sewage sludge land application by the Department, which facilitates beneficial reuse of sewage sludge while protecting the environment and public health.

3. Costs to the State:

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

Existing costs to the State include program administration, including providing technical assistance to sludge generators and applicators, review of sludge generator long-term management plans, coordination with the U.S. Environmental Protection Agency (EPA) regarding the submission of required records for major treatment facilities and compliance inspections and/or enforcement. The Department maintains one full-time equivalent (FTE) position for a Senior Engineer who acts as the State Biosolids Coordinator in addition to other duties. The proposed changes are not anticipated to have any effect on existing costs to the State.

- Anticipated effect on state revenues:

No effect on state revenues is anticipated.

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

The costs and benefits of the proposed chapter are anticipated to be the same as the costs and benefits of the existing chapter.

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

None. Chapter 67 ensures compliance with the minimum federal requirements for land application of sludge contained in 40 CFR Part 503 while allowing state administration of the program. Stakeholders typically prefer that the Department, rather than EPA, be the primary implementation agency in Iowa. State rules for land application of sewage sludge are required under the Iowa Code.

6. Alternative methods considered by the agency:

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

None.

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

Chapter 67 was revised in 2022 to clarify and refine definitions and land application requirements for consistency with 40 CFR Part 503 and modify reporting rules to comply with federal electronic reporting requirements in 40 CFR Part 127.

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?

Chapter 67 mirrors the federal requirements for land application of sewage sludge. Significant changes to establish less stringent requirements or exempt a specific category of sewage sludge generator or applicator would be inconsistent with federal regulations. This rulemaking does not apply to small businesses and applies only to major publicly owned treatment works.

Text of Proposed Rulemaking

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, as amended through July 1, 2024, 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 high polychlorinated biphenyl (PCB) concentration, 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 to 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," and 567—103.6(455B), 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 approved at 40 CFR Part 136, as amended through August 28, 2017.

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 68
"Commercial Septic Tank Cleaners"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3) and 455B.173(3)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.172 and 455B.172A

Public Hearing

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

September 24, 2024 10 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Courtney Cswercko
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: npdes.mail@dnr.iowa.gov

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.

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of private sewage disposal systems and businesses that clean private sewage disposal systems will bear the costs.

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

Citizens of Iowa 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:

Quantitative costs require large amounts of data to verify, and estimates based upon available data would be poor, at best. However, the activities required of the regulated entities that result in various costs are described in the answer below.

- Qualitative description of impact:

Owners of private sewage disposal systems and on-farm food processors may be required to pay fees to have their systems pumped and the waste properly disposed of. The rules allow for homeowners to remove their own septage for land application, and on-farm food processors may also land apply their own wastes.

3. Costs to the State:

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

Department staff provide program overview and support to local boards of health and manage the licensing of commercial septic tank cleaners.

- Anticipated effect on state revenues:

The proposed chapter will have no impact on state revenues because the rules are already being implemented in existing Chapter 68.

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

Proper licensing of commercial septic tank cleaners ensures the health and welfare of the public and protection of surface and groundwater resources. The rules that allow on-farm food processors to land apply wastes without a permit provide 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.

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

There are no less costly or intrusive methods to accomplish the benefit.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Not applicable.

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?

On-farm food processors benefit from being able to land apply waste from their businesses themselves.

Text of Proposed Rulemaking

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) *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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 69 "Private Sewage Disposal Systems"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3) and 455B.173(3)

State or federal law(s) implemented by the rulemaking: Clean Water Act Section 402, 40 CFR §123.25, and Iowa Code section 455B.174

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of private sewage disposal systems will bear the costs.

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

Citizens of Iowa 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:

Quantitative costs require large amounts of data to verify, and estimates based upon available data would be poor, at best. However, the activities required of the regulated entities that result in various costs are described below.

- Qualitative description of impact:

Property owners may be required to pay fees by the local county board of health to obtain permits for installing or repairing private sewage disposal systems. These fees cover the administrative costs of processing permits and ensuring compliance with regulations. Property owners are also required to have a Time of Transfer inspection completed prior to transferring a property. Inspectors charge a fee for this service.

3. Costs to the State:

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

Department staff provide program overview and support to local boards of health and manage the training for and the licensing of Time of Transfer inspectors.

- Anticipated effect on state revenues:

The proposed chapter will have no fiscal impact on state revenues because the rules are already being implemented in existing Chapter 69.

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

Proper permitting of private sewage disposal systems ensures the health and welfare of the public and protection of surface and groundwater resources, as well as maximizing the longevity of the systems. Individual properties typically have small areas to install a treatment system, so maximizing the longevity of these systems ensures a long system lifetime and reduces cost to the property owner.

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

There are no less costly or intrusive methods to accomplish the benefit.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

Not applicable.

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 updated chapter allows for easier implementation of new technologies for treating onsite wastewater.

Text of Proposed Rulemaking

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 PSDS. 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 PSDS 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 ≤ 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 - Granular, Blocky, or Prismatic			Platy	
			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 (ISSF).* 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 System (PTS).* 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, division 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

Source of use for sewage unit	Units	Gallons per day per unit
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
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

Source of use for sewage unit	Units	Gallons per day per unit
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		
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
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		

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 70
"Scope of Title—Definitions—Forms—Rules of Practice"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.263(8) and 455B.276(1)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 455B, division III, part 4, and sections 455B.105(11), 459.102, 459.301 and 481A.15.

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jon Garton via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Jon Garton prior to the hearing to facilitate an orderly hearing.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jon Garton, Supervisor
Floodplain and Dam Safety Section
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private landowners, businesses and government agencies are all impacted by floodplain regulation.

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

Private landowners and businesses benefit from construction regulation by a reduction in potential flood-related damages. Surrounding landowners benefit from the reduction in potential increases in flood depths that would be caused by unregulated fill in the floodplain. The general public benefits from the reduction in public damages related to emergency response and recovery.

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 vary depending on the projects.

- Qualitative description of impact:

Applicants are required to reduce impacts to others from reduction in conveyance along rivers and streams due to obstruction and are required to flood protect proposed construction in the floodplain.

3. Costs to the State:

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

Staff time is dedicated to the review of proposed construction and the determination of potential flood depths at locations requested by applicants.

- Anticipated effect on state revenues:

No anticipated effect on state revenue is expected.

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

Floodplain regulation is required by the Iowa Code and seeks to reduce the damages both to individuals and the public due to flood-related risk.

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

Floodplain regulation is required by the Iowa Code.

6. Alternative methods considered by the agency:

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

Floodplain regulation is required by the Iowa Code. The agency seeks to streamline the application and review process to ease the process.

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

Not applicable.

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?

This rulemaking is composed in a way that tries to ease requirements for not only small businesses, but also individual landowners that need to apply and receive permits. Often, permitting requires engineering design that frequently utilizes small, local engineering firms around the state.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 70 and adopt the following **new** chapter in lieu thereof:

FLOODPLAIN DEVELOPMENT

TITLE V

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.

"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 water discharged 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.

"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 by a flood with a 1 percent annual chance of recurrence 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, which, if inundated by flooding, would result in high public damages as determined by the department or which contain high-value equipment or contents that are not easily removed; or

3. Public buildings or building complexes, which, if inundated by flooding, would result in high public damages as determined by the department.

"Hydraulic shadow" means the areas immediately upstream and downstream of an existing building or other obstruction. It can typically be determined by drawing lines at a 1:1 ratio upstream and downstream of the obstruction.

"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, which 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," et cetera, means a flood having a 0.2, 1, 2, 4, 7, 10, et cetera, percent chance of being equaled or exceeded in any one year as determined by the department.

"Regulated floodplain" means the land adjacent to a stream that has been or may be inundated by a flood with a 0.2 percent annual chance of recurrence.

"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 which 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 in Federal Emergency Management Agency (FEMA)-designated floodways.* Proposed development in floodways designated on FEMA's effective flood insurance rate maps should be submitted for review by the department. These submissions should include:

a. A description of the work involved, the need to place the proposed development in the floodway, and an explanation of how the proposed work will not obstruct flow or result in any changes to the mapped floodway, or

b. Where flow may be obstructed by the project, detailed plans and hydraulic modeling are required for projects that include any obstruction to flow unless the project lies in a hydraulic shadow of an existing obstruction. The following information should be provided for review:

(1) Detailed engineering construction plans showing all fill and proposed development.

(2) A hydraulic model following the process for "no-rise" certification as outlined in 44 CFR Part 65.

In cases where the applicant cannot prevent a rise in the base flood elevation or is changing the boundaries of the floodway due to grading, a conditional letter of map revision (CLOMR) should be submitted to the department, local community, and FEMA for review and approval.

70.3(2) *Development needing approval.* Any development in a floodway or floodplain that exceeds the thresholds in 567—Chapter 71 requires approval.

70.3(3) *Permit application submittal requirements.* Applications should be submitted on 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 should include a project description and detailed drawings of the proposed development. Certified engineering plans, specifications, and hydrologic and hydraulic analysis are 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(4) *Application fee.* No fee is charged at this time.

70.3(5) *Modification of application or plans.* Applicants and prospective applicants are encouraged to communicate with the department's staff before submitting plans to identify the data required for review of a project and to discuss project modifications reasonably required to make the project conform to applicable criteria. When staff review of submitted plans discloses need for plan modification to conform to one or more criteria, the applicant is encouraged to submit revised plans.

567—70.4(455B) Establishment of a floodway. Review and approval of floodplain projects will often depend on the location of the project relative to the floodway. When available, floodways calculated and published by FEMA on community-adopted flood insurance rate maps may be used by the department. Delineation of the encroachment limits defining the outer limits of the floodway must conform 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 shall 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 are 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 development which 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 which 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 which are not approvable, and those projects which 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 which the agency staff determines may be adversely affected 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) *Initial decision by the department.* The initial decision by the department on an application for a floodplain development permit shall be either approval or disapproval. The initial 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 initial decision. Copies of the initial decision shall be mailed or emailed 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. An initial 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 initial decision.

70.6(1) Any person aggrieved by an initial 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, division III, part 4, and sections 455B.105(11), 459.102, 459.301 and 481A.15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapters 71, 75, and 76 "Floodplain or Floodway Development—When Approval is Required; Management of Flood Plain Areas; Federal Water Resource Projects"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.263(8) and 455B.276(1)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 455B, division III, part 4, and Iowa Code sections 459.102, 459.301 and 481A.15

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jon Garton via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Jon Garton prior to the hearing to facilitate an orderly hearing.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jon Garton, Supervisor
Floodplain and Dam Safety Section
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private landowners, businesses and government agencies are all impacted by floodplain regulation.

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

Private landowners and businesses benefit from construction regulation by a reduction in potential flood-related damages. Surrounding landowners benefit from the reduction in potential increases in flood depths that would be caused by unregulated fill in the floodplain. The general public benefits from the reduction in public damages related to emergency response and recovery.

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 vary depending on the projects.

- Qualitative description of impact:

Applicants are required to reduce impacts to others from a reduction in conveyance along rivers and streams due to obstruction and are required to flood-protect proposed construction in the floodplain.

3. Costs to the State:

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

Staff time is dedicated to the review of proposed construction and the determination of potential flood depths at locations requested by applicants.

- Anticipated effect on state revenues:

No anticipated effect on state revenue is expected.

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

Floodplain regulation is required by the Iowa Code and seeks to reduce the damages to both individuals and the public due to flood-related risk.

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

Floodplain regulation is required by the Iowa Code.

6. Alternative methods considered by the agency:

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

Floodplain regulation is required by the Iowa Code. The agency seeks to streamline the application and review process to ease the process.

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

Not applicable.

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?

This rulemaking is composed in a way that tries to ease requirements for not only small businesses, but also individual landowners that need to apply and receive permits. Often, permitting requires engineering design that frequently utilizes small, local engineering firms around the state.

Text of Proposed Rulemaking

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) Delegated state floodplain permitting by local communities. A floodplain permit issued by a local government may fulfill the state floodplain permitting requirements of the department when all of the following apply:

71.1(1) *Delegated authority.* The community has an ordinance containing floodplain regulations approved by the department. The department will review the community's floodplain permitting procedures to determine whether they are consistent with the requirements for communities to participate in the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) and are compatible with these rules.

71.1(2) *Project types.* The project is located in the community's adopted floodway fringe zoning and consists of buildings, fill placement, minor grading activities, trails or another development that does not require an engineering evaluation such as is required for bridges, culverts and levees. Where it is unclear whether the project is adequately covered by the local regulations, the department shall make the determination.

71.1(3) *Eligibility.* Communities shall demonstrate capacity to properly review applications and issue floodplain permits. Communities shall provide evidence of this capacity at least every five years.

71.1(4) *Waivers.* If a waiver is requested for the project, the review and permitting should be handled by the department pursuant to 561—Chapter 10. Waivers for local community floodplain permits under the NFIP should be reviewed by the NFIP state coordinator.

567—71.2(455B) State floodplain permits. Approval 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 shall be required in the following instances if a project is not approved by a delegated community's local floodplain permit under 567—71.1(455B) in any of the following instances:

71.2(1) *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.

71.2(2) *Urban areas.* Projects in or on the flood plain of any river or stream draining two or more square miles at the downstream end of the project site.

71.2(3) *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.

71.2(4) *Buildings and other structures adjacent to or downstream from impoundments.* Approval is required for new construction, additions, lowering, or reconstruction of buildings and other structures such as water and waste water treatment, sanitary landfills, and animal feeding operations, and associated fill without regard to the drainage area if the proximity of the building to a dam regulated by the department is as follows:

a. Adjacent to impoundment. Approval is required for a building or other structure and associated fill adjacent to an impoundment if the lowest floor level, including any basement, is lower than the top of the dam.

b. Downstream from dam. Approval is required for a building or other structure and associated fill downstream from a dam at any location where flooding can be reasonably anticipated from

principal or emergency spillway discharges. If the dam does not substantially comply with high-hazard criteria in these rules, approval is required for a building and associated fill at any location where flooding can be reasonably anticipated from overtopping and failure of the dam.

71.2(5) *Dams.* Approval by the department for construction, repair, or modification of any dam shall be required when the dam exceeds the thresholds under 567—73.3(455B).

567—71.3(455B) Exempted activities. The following activities will not require approval by the department:

71.3(1) *Bridges, culverts, road embankments and associated work.* Approval is not required for any crossing in a rural area floodplain with a drainage area less than 100 square miles Approval is not required for channel changes associated with road projects whereby (1) less than a 500-foot length of the existing channel is being altered and (2) the length of existing channel being altered is not reduced by more than 25 percent. Approval is not required for federally regulated railroad crossings having a drainage area of any size due to federal regulatory preemption.

71.3(2) *Buildings.* Approval is not required under the following conditions:

a. Building additions that increase the original floor area of a building by less than 25 percent. All additions constructed after July 4, 1965, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

b. Reconstruction of any portion of a building if the cost of reconstruction (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. Equivalent professional labor and material costs must be included for any proposed or actual volunteer labor and donated materials

71.3(3) *Pipeline and underground linear utility crossings.* Approval by the department for the construction, operation and maintenance of buried pipeline, conduit and linear utility crossings is not required if the natural contours of the channel and floodplain are maintained and no bank stabilization is included.

71.3(4) *Excavations.* Approval by the department shall not be required if one of the following applies:

a. The channel cross section is increased by 10 percent or less. The cross-sectional area of the channel shall be determined based on current survey, or original engineering plans, if being performed by a drainage district. If an original plan is not available, the current channel surveyed area will be used to determine the original cross-sectional area of the channel.

b. The excavation is for the repair and maintenance of a drainage district ditch with less than 100 square mile drainage area as defined in 567—70.2(455B).

c. The excavation is outside the channel on any floodplain of any river or stream draining more than 10 square miles where spoil is removed from the floodplain and surface waters are not diverted into a sinkhole or quarry excavated in carbonate rock.

71.3(5) *Boat docks.* All floating boat docks on lakes, and those recreational nonfloating-type 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 shall not require department approval, other than a permit obtained from the parks, recreation and preserves division of the department.

71.3(6) *Small projects.* Approval by the department shall not be required 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. This includes signs, navigational markers, and utility poles including H-frame structures. 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, division 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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 72 "Criteria for Approval"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.263(8) and 455B.276(1)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 455B, division III, part 4, and Iowa Code sections 459.102 and 459.301

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jon Garton via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Jon Garton prior to the hearing to facilitate an orderly hearing.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jon Garton, Supervisor
Floodplain and Dam Safety Section
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private landowners, businesses and government agencies are all impacted by floodplain regulation.

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

Private landowners and businesses benefit from construction regulation by a reduction in potential flood-related damages. Surrounding landowners benefit from the reduction in potential increases in flood depths that would be caused by unregulated fill in the floodplain. The general public benefits from the reduction in public damages related to emergency response and recovery.

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 vary depending on the projects.

- Qualitative description of impact:

Applicants are required to reduce impacts to others from a reduction in conveyance along rivers and streams due to obstruction and are required to flood-protect proposed construction in the floodplain.

3. Costs to the State:

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

Staff time is dedicated to the review of proposed construction and the determination of potential flood depths at locations requested by applicants.

- Anticipated effect on state revenues:

No anticipated effect on state revenue is expected.

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

Floodplain regulation is required by the Iowa Code and seeks to reduce the damages to both individuals and the public due to flood-related risk.

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

Floodplain regulation is required by the Iowa Code.

6. Alternative methods considered by the agency:

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

Floodplain regulation is required by the Iowa Code. The agency seeks to streamline the application and review process to ease the process.

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

Not applicable.

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?

This rulemaking is composed in a way that tries to ease requirements for not only small businesses, but also individual landowners that need to apply and receive permits. Often, permitting requires engineering design that frequently utilizes small, local engineering firms around the state.

Text of Proposed Rulemaking

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. The need for such access shall be determined on the basis of the criteria for evaluating flood warning and response time in 567—subrule 75.2(3).

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 wastewater treatment facilities:

72.6(1) *Location.* 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 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 1 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 73 "Approval, Construction, Use, Maintenance, Removal, Inspections, and Safety of Dams"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.263(8) and 455B.276(1)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 455B, subchapter III, part 4

Public Hearing

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

September 24, 2024 1 p.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jon Garton, Supervisor—Floodplain and Dam Safety Section
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private landowners, businesses and government agencies are all impacted by floodplain and dam safety regulation.

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

Private landowners and businesses benefit from construction regulation by reducing potential flood-related damages. Surrounding landowners benefit by the reduction in potential risk of flooding from dam failures. The general public benefits from the reduction in public damages related to emergency response and recovery.

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 vary depending on the projects.

- Qualitative description of impact:

Applicants are required to construct dams and perform maintenance to reduce the risk of dam failure.

3. Costs to the State:

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

Staff time is dedicated to the review of proposed construction and to perform dam inspections.

- Anticipated effect on state revenues:

No anticipated effect on state revenue is expected.

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

Floodplain regulation is required by the Iowa Code and seeks to reduce the damages both to individuals and the public due to flood-related risk.

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

Floodplain regulation and dam safety is required by the Iowa Code.

6. Alternative methods considered by the agency:

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

Floodplain regulation is required by the Iowa Code. The Department seeks to streamline the application and review process to ease the process.

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

Floodplain and dam safety is required by the Iowa Code and the dam safety rules are consistent with national standards and those of surrounding states.

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?

Rulemaking is composed in a way that tries to ease requirements for not only small businesses, but individual landowners that need to apply and receive permits. Often times permitting requires engineering design that frequently utilizes small local engineering firms around the state.

Text of Proposed Rulemaking

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.

"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.

"Confinement feeding operation" means the same as defined in 567—65.1(459,459B).

"Dam" means a barrier that impounds or stores water.

"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.

"Public damages" means as defined in 567—70.2(455B,481A).

"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.

"Q500," "Q100," "Q50," "Q25," "Q15," "Q10," et cetera, means the same as defined in rule 567—70.2(455B,481A).

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, 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. 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 these rules 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 which 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 which 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 which 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 which 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 which 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 which 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 which 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 which 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 which 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 81
"Operator Certification: Public Water Supply Systems and Wastewater Treatment Systems"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3) and 455B.222

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.211 through 455B.224, 42 U.S.C. Section 300g-8, and 40 CFR section 141.130(c)

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

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

Laurie Sharp
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.664.8553
Email: laurie.sharp@dnr.iowa.gov

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 (SDWA) that states must adopt to implement a program that meets the U.S. Environmental Protection Agency's (EPA) 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Certified individuals or municipalities and their customers, depending on who pays the certification fees, will bear the costs of the proposed rulemaking.

Various businesses that are considered public water supplies will also bear the costs.

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

With respect to public water supplies, public wastewater systems, and distribution systems, the citizens of Iowa and industry will benefit.

Having properly trained certified operators to manage Iowa's wastewater and drinking water facilities protects interests such as tourism and the preservation of the state's lakes, rivers and streams.

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:

State law, as authorized by Iowa Code section 455B.211, not only directs the Department to collect fees by rule, but state law also calls for the Department's designation to directly implement and administer those rules. The fees proposed are the same as the fees previously assessed, so the quantitative impact is expected to be neutral. Examination fees are $30. Certification fees are prorated in six-month increments over a two-year period for initial certification, up to an $80 maximum. Renewal fees are $60 every two years. Operators incur costs in examination preparation and obtaining continuing education. These costs are often paid by the municipality or business that retains the certified operator.

- Qualitative description of impact:

Proposed Chapter 81 is expected to have a neutral impact as the Department has implemented this program for over 20 years. Chapter 81 will maintain a Drinking Water, Distribution System, and Wastewater System Operator Certification Program in the state. It will continue to be a valuable catalyst for the viability and sustainability of Iowa's drinking water and wastewater infrastructure through the assurance of competent operation, management and maintenance.

3. Costs to the State:

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

Agency costs are limited to staff time required to implement the Drinking Water, Distribution System, and Wastewater System Operator Certification Program. These costs are covered by Drinking Water Program Administration Funds (federal funding) and through certification and renewal fees.

- Anticipated effect on state revenues:

A neutral impact on state revenue is expected since these rules were previously in effect for over 20 years, it uses no General Fund moneys, and Iowa Code section 455B.211 calls for any fees collected by the program to be used for the implementation of the program.

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

The SDWA requires states to adopt and implement a program that meets EPA's guidelines for the certifying and recertifying of public water supply and distribution system operators. Failure to have these rules in place, per the SDWA, results in the loss of primacy for Iowa's Drinking Water Program and in EPA withholding 20 percent of Iowa's Drinking Water State Revolving Funds (DWSRF). This would translate to a loss of millions of dollars yearly for Iowa's wastewater and drinking water infrastructure projects, technical assistance to small systems, Iowa's Public Water Supply Supervision (PWSS) program management and staffing, public water supply viability and sustainability work, and the Source Water Protection Program and its staff.

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

There are no less costly or intrusive methods to accomplish this benefit. The regulations included in these rules implement the requirements of both state and federal law.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

The SDWA, as amended (42 U.S.C. 300f et seq.), requires states to adopt and implement a program that meets EPA's guidelines for both the classification of water supply systems and certifying and recertifying operators of public water systems. The current Chapter 81 has met these guidelines for over 20 years and is integrated within the Department's Drinking Water Program. The EPA requires stakeholder input on program processes every five to seven years.

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?

This rulemaking will not have a substantial impact on small business.

Text of Proposed Rulemaking

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): "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 rules 567—81.3(455B) to 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
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 rule 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 rule 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 rules 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 82
"Well Contractor Certification"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.187(1), 190A.2, 190A.4 through 190A.6, 455B.173(9), 455B.103(2) and 455B.105(3)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.187 and 455B.190A

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

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).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Well contractors will bear the costs.

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

Well contractors, citizens and businesses of Iowa 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:

State law directs the Department to collect the fees specified in Chapter 82 as authorized by Iowa Code section 455B.190A. The fees proposed are the same as the fees previously assessed, so the

quantitative impact is expected to be neutral. Examination fees are $50. Well drillers and pump installers require two examinations and well pluggers require one examination. Oral examination fees are $100. Certification fees for well drilling contractors are prorated in six-month periods for the initial certification up to $300 total until June 30 of the next even-numbered year, then a $300 certification renewal fee every two years. Pump installation contractors and well plugging contractor initial certification fees are prorated in six-month periods for the initial certification period up to $250 total until June 30 of the next even-numbered year, then a $200 certification renewal fee assessed every two years. The provisionally certified well contractor fee is $150. The late certification penalty is $100, and the duplicate certificate fee is $20. Recertification within two years of expiration of certification is $1,000.

Well contractors' incurred costs to prepare for the examination, obtain adequate experience, and obtain required continuing education units varies.

- Qualitative description of impact:

The new Chapter 82 is expected to have a neutral impact, as the Department has implemented a well contractor certification program for over 30 years. Chapter 82 will maintain a well contractor certification program in the state. A well contractor certification program serves to set minimum standards for those conducting well construction work in the state, including continuing education requirements and minimum experience levels in order to obtain and retain certification status. Water wells constructed and/or repaired by certified well contractors protects the future quality and use of groundwater in Iowa.

3. Costs to the State:

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

Agency costs are limited to staff time required to implement the well contractor certification program. The costs incurred are partially offset by the fees collected through the well contractor certification program.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected as this chapter was previously in effect for over 30 years. The fees collected through these rules are used for the administration of the well contractor certification program.

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

The benefits realized by the regulated public and the Department through the implementation of state law outweigh the associated costs of inaction. Repromulgating the new proposed Chapter 82 will provide well contractors with continuity and regulatory certainty by allowing uninterrupted implementation of state law as it relates to the well contractor certification program. A well contractor certification program is necessary as well contractors must be certified to perform well services according to state law (more information can be found in Iowa Code section 455B.187). The costs incurred by the regulated public are limited and are used for the administration of the well contractor certification program. A significant benefit of the proposed rulemaking is the improved protection of Iowa's groundwater sources compared to if wells were constructed by well contractors that did not meet minimum work experience and did not maintain continuing education in their field of work.

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

There are no less costly or intrusive methods to accomplish the benefit. The regulations included in these rules implement state law.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The well contractor certification rules implement Iowa Code sections 455B.187 and 455B.190A in a straightforward manner. A well contractor certification program is required, and the program was initially and has been developed in consultation with the regulated parties.

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?

This rulemaking will not have a substantial impact on small business because the rules have previously been in place for over 30 years.

Text of Proposed Rulemaking

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

CLASSIFICATION	EXPERIENCE
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.dnr.iowa.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 rule 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.dnr.iowa.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.dnr.iowa.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 rule 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 rule 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 rule 567—82.5(455B) apply.

These rules are intended to implement Iowa Code sections 455B.187 and 455B.190A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 83 "Laboratory Certification"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.113(1) through (4); 455B.114(1) and (2), and 455B.115

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.113 through 455B.115; federal Drinking Water Primacy requirements in 40 CFR Section 141.10(b)(3)(i)

Public Hearing

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

September 24, 2024 10 to 11 a.m.	Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kathy Lee
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: kathy.lee@dnr.iowa.gov

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 Section 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).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated laboratories will bear the costs.

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

Regulated laboratories, environmental facilities, and the citizens of Iowa 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:

Iowa Code section 455B.113 gives the Department the authority to collect fees for the Laboratory Certification Program. Fees range from $400 to $14,350 depending on the size, number of analyses performed, and sophistication of the laboratory. Laboratories must maintain and calibrate equipment, follow standard operating procedures, perform quality control checks, and train analysts in proper

laboratory practices. These costs are variable and are dependent on the size, number of analyses performed, and sophistication of the laboratory.

- Qualitative description of impact:

The purpose of a certification program is to ensure that environmental analytical compliance data generated for the Department are scientifically valid and defensible, and are of known and acceptable precision and accuracy. The rules ensure that laboratories are producing data that is consistent between analysts in each laboratory and between laboratories. The compliance data produced is used to determine if drinking water is safe; facilities are complying with wastewater permits; leachate is migrating from landfills; underground storage tank releases are being cleaned up; contaminated sites are being assessed correctly; and if Iowa's rivers, lakes, and wetlands are meeting water quality standards under the Clean Water Act.

3. Costs to the State:

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

The Department administers, has oversight, and issues certifications to laboratories. The Department contracts with the State Hygienic Laboratory (SHL) at the University of Iowa to conduct on-site audits and provide technical assistance to laboratories. The Department has a tracking system for laboratories that ensures the laboratories apply on time for certification renewals, pay the appropriate fee, and have submitted the appropriate corrective actions to stay in compliance with method requirements, equipment calibration and maintenance, quality control checks, and training of analysts. On-site assessments of laboratories may range from two to eight hours. Additional time is required to prepare the assessment report and issue the certification. Administrative consent orders are prepared if it is necessary to suspend or revoke the certification of a laboratory, but this rarely occurs.

- Anticipated effect on state revenues:

Neutral. These actions are already being implemented.

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

The program ensures that all laboratories reporting compliance data to the Department are meeting the same requirements, which gives facilities, the public, and the Department confidence that the results are legally defensible. If there was not a Laboratory Certification Program, the public and regulated facilities would not have a benchmark (certification) to determine whether a laboratory is producing reliable data that are scientifically valid and defensible, and are of known and acceptable precision and accuracy.

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

There are no less costly or intrusive methods to accomplish the benefit. A laboratory certification program for drinking water is required by 40 CFR Section 141.10(b)(3)(i) for the state to receive primacy for federal drinking water regulations. Iowa Code sections 455B.113 through 455B.115 establish requirements for the Laboratory Certification Program that requires analytical laboratories that submit compliance data pursuant to Department rules, permits or orders to be certified.

6. Alternative methods considered by the agency:

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

No alternatives were considered.

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

There are no alternatives since a certification program is required for primacy of the drinking water program, and pursuant to Iowa Code sections 455B.113 through 455B.115.

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 does not have provisions for small businesses because any compliance data produced by a laboratory must be legally defensible.

Text of Proposed Rulemaking

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 (June 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	$1,600

ANALYTICAL GROUP	REGULATORY PROGRAM & PARAMETERS[1]	FEE
	organic carbon & other inorganic chemicals)	
	SW/CS	$1,600
	CWA & SDWA combined	$2,400
	CWA & 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
	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 Part 141.74 (Filtration and Disinfection) as amended February 13, 2013; 40 CFR Part 141.89 (Control of Lead and Copper) as amended January 15, 2021; 40 CFR Part 141.131 (Disinfection By-Products) as amended February 13, 2013; 40 CFR Part 141.402 (Groundwater Rule) as amended February 13, 2013; 40 CFR Part 141.704 (Enhanced Treatment for Cryptosporidium) as amended June 29, 2009; 40 CFR Part 141.852 (Revised TCR) as amended February 26, 2014; 40 CFR Part 901 (PFAS) as amended through June 25, 2024; 40 CFR Part 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 July 19, 2021, 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 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 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapters 90, 91, 92, and 93
"Scope of Title — Definitions — Forms; Clean Water State Revolving Fund; Criteria for Ranking Projects for the Clean Water State Revolving Fund (CWSRF); and Nonpoint Source Pollution Control Set Aside Programs"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.299

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.191 through 455B.299 and the Clean Water Act

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Theresa Enright via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Theresa Enright prior to the hearing to facilitate an orderly hearing.

September 24, 2024 10 a.m.	Via video/conference call

Public Comment

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

Theresa Enright
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50312
Phone: 515.214.3937
Email: srf-pc@dnr.iowa.gov

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 section.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Communities who may borrow from the CWSRF loan program will be impacted by the rulemaking, and there are little to no costs associated with these proposed changes.

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

Citizens of Iowa 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:

Quantitative costs cannot be determined.

- Qualitative description of impact:

The rulemaking allows for the continued administration of the CWSRF program in the state, which allows for communities to construct wastewater infrastructure and nonpoint source pollution control projects at a low cost to ratepayers.

3. Costs to the State:

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

Agency costs are limited to Department and Iowa Finance Authority staff time required to apply for funding annually from the U.S. Environmental Protection Agency (EPA) as well as manage and implement a CWSRF program. These costs are offset by federal grant administrative funds and revenue generated by the program.

- Anticipated effect on state revenues:

This chapter will have a neutral impact on state revenues since there are no changes to how the Clean Water State Revolving Fund program will be administered.

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

Maintaining clear and transparent rules regarding the administration of the CWSRF program benefits Iowa citizens by providing below-market interest rate loans. Funds are used for construction and upgrades to wastewater treatment facilities and associated infrastructure. This program provides an opportunity for communities to meet compliance goals as well as advance water quality goals for their community. In addition, the CWSRF nonpoint program provides low-interest loans to private and public entities to construct nonpoint source pollution control projects.

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

This rulemaking implements an optional, low-interest loan program and therefore does not result in any restrictions on the borrower or the general public.

6. Alternative methods considered by the agency:

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

The Department considered keeping Chapters 90, 91, 92, and 93 separate.

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

It was determined that combining the chapters would provide efficiency and clarity to program participants.

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 proposed rulemaking will not impact small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 90 and adopt the following **new** chapter in lieu thereof:

WATER POLLUTION CONTROL STATE REVOLVING FUND

TITLE VII

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. Grey 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.

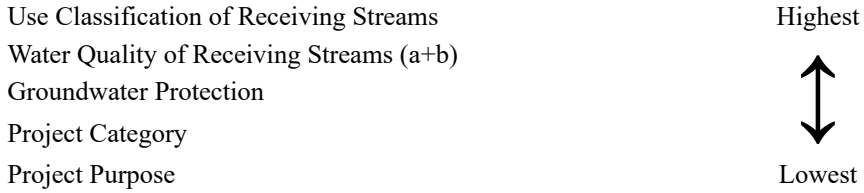
Centralized Wastewater Treatment Project Category	Points
Category I. Secondary treatment	40
Category II. Advanced treatment	50
Category III–A. Infiltration/inflow correction	30
Category III–B. Sewer replacement/rehabilitation	30
Category IV–A. New collector sewers and appurtenances	10
Category IV–B. New interceptor sewers and appurtenances	20
Category V. CSO correction	40
Stormwater Project Category	
Category VI–A. Grey 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:



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) *NPS project ranking.* Once 90 percent of NPS program funds have been allocated, projects and activities under NPS project categories VI B-CD, VII A-K, and XII will all receive a total score of five when placed on the PPL. Then, additional NPS project scoring criteria published in the IUP will be used to rank NPS projects for funding priority for the remaining 10 percent of the NPS funds. 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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapters 2, 4, 30, 32, 37, and 38
"Rescission of Chapters"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5, 16.5C, 16.38, and 16.39

State or federal law(s) implemented by the rulemaking: Iowa Code sections 16.4, 16.5, 16.5C, 16.38, 16.39; 2009 Iowa Acts Senate File 376; 2010 Iowa Acts, House File 2487; 2010 Iowa Acts, Senate File 2389; Executive Order 9 (November 7, 2008); and the federal Heartland Disaster Tax Relief Act of 2008.

Public Hearing

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

September 24, 2024	1963 Bell Avenue
9 to 9:15 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Finance Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, IA 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to permanently rescind the following obsolete and unnecessary chapters:

- Chapter 2, which describes the policies and procedures applicable to provide origination and servicing of mortgage and temporary loans from the Authority. The chapter does not apply to any current loan programs administered by the Authority.
- Chapter 4, which describes the policies and procedures applicable to issue revenue bonds for any of the purposes for which financing is authorized under Iowa Code chapter 16. The chapter does not apply to current bond issues by the Authority.
- Chapter 30, which describes the policies and procedures that allocate authority to issue up to a specified amount of qualified midwestern disaster area bonds. The chapter is no longer applicable. The subject bonds ceased to be available in 2012.
- Chapter 32, which describes the policies and procedures applicable to the Authority's responsibilities as to the Iowa Jobs Program. The program has been discontinued.
- Chapter 37, which describes the policies and procedures of the recovery zone bond allocation and compliance. The chapter is no longer applicable. Iowa Code section 16.171, which authorized the rules, was repealed in 2014.
- Chapter 38, which describes the policies and procedures applicable to the Authority's responsibilities as to the Iowa Jobs II Program. The program has been discontinued.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The rescission of Chapters 2, 4, 30, 37, and 38 does not impose any costs.

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

Rescinding chapters for programs and activities that have been discontinued will provide clarity about the responsibilities of the Authority. Rescinding chapters where there is no statutory requirement for the Authority to promulgate rules will reduce unnecessary rules and streamline the Authority's ongoing rule review.

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:

The rescission of Chapters 2, 4, 30, 32, 37, and 38 does not impose any costs.

- Qualitative description of impact:

Rescinding chapters for programs and activities that have been discontinued will provide clarity about the responsibilities of the Authority. Rescinding chapters where there is no statutory requirement for the Authority to promulgate rules will reduce unnecessary rules and streamline the Authority's ongoing rule review.

3. Costs to the State:

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

Authority staff time is utilized to administer current loan programs and issue bonds according to the Authority's current authority.

- Anticipated effect on state revenues:

The rescission of chapters has no fiscal impact.

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

The rescission of Chapters 2, 4, 30, 32, 37, and 38 does not impose any costs. Rescinding chapters for programs and activities that have been discontinued will provide clarity about the responsibilities of the Authority. Rescinding chapters where there is no statutory requirement for the Authority to promulgate rules will reduce unnecessary rules and streamline the Authority's ongoing rule review.

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

The Authority has not identified less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

The Authority did not consider any alternative methods.

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

The Authority did not consider any alternative methods.

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 rescission of chapters does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **265—Chapter 2**.

ITEM 2. Rescind and reserve **265—Chapter 4**.

ITEM 3. Rescind and reserve **265—Chapter 30**.

ITEM 4. Rescind and reserve **265—Chapter 32**.

ITEM 5. Rescind and reserve **265—Chapter 37**.

ITEM 6. Rescind and reserve **265—Chapter 38**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 9
"Title Guaranty Division"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5 and 16.91

State or federal law(s) implemented by the rulemaking: Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 through 16.93, 17A.10 and 535.8

Public Hearing

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

September 24, 2024	1963 Bell Avenue
9:15 to 9:30 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Finance Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind 265—Chapter 9 and adopt a new chapter in lieu thereof. The chapter describes the structure, policies, and procedures of the Iowa title guaranty division (division) of the Authority.

The new chapter eliminates language that is duplicative of statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language. Additionally, the following changes from the existing chapter are proposed:

- The definition of "commitment" in rule 265—9.1(16) will be clarified.
- Rule 265—9.4(16) will be updated to provide correct contact information for the division.
- The process to obtain a title plant waiver, currently addressed in rule 265—9.7(16), will be streamlined by removing the requirement that the division board approve such waivers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Participants in the program pay an annual renewal fee pursuant to Iowa Code section 16.91(4). The division collects a fee to provide a mortgage release certificate. The division charges premiums for the certificates and endorsements it issues.

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

Users of the division's services may benefit from the improved clarity of the chapter. Applicants and participants may also benefit from improved clarity and streamlining of the process to obtain a title plant waiver.

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:

Participants in the title guaranty program pay an annual renewal fee pursuant to Iowa Code section 16.91(4). The division collects a fee to provide a mortgage release certificate. The division charges premiums for the certificates and endorsements it issues.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the division's structure, policies, and procedures.

3. Costs to the State:

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

Division staff time is required to evaluate and approve applications from participants and to administer the program. Such costs are covered by fees and premiums collected by the division.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

The proposed rulemaking does not impose any additional costs compared to the existing Chapter 9.

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

The Authority has not identified any less costly methods or less intrusive methods for administering the title guaranty program.

6. Alternative methods considered by the agency:

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

The Authority did not consider any alternative methods.

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

The Authority did not consider any alternative methods because the Authority did not identify a less costly or less intrusive method.

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 proposed rules do not have a substantial impact on small business. The application and monitoring requirements related to the program are no more than necessary to administer the statutory requirements and purposes of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
TITLE GUARANTY DIVISION

265—9.1(16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

"Abstract" means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by the division, provided however, that for nonpurchase transactions, "abstract" may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by the division.

"Abstractor" means a person who is engaged in the practice of searching public records for the purpose of creating abstracts.

"Authority" means the Iowa finance authority established by Iowa Code chapter 16.

"Certificate" means the form used to guarantee title, including any part or schedule thereof and any endorsements thereto.

"Claim" means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.

"Claim loss" means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys' fees, and all other expenses and costs related to or arising from the claim.

"Closing protection letter" means the division's written agreement to indemnify a lender or borrower or both for loss caused by a participating closer's theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the participating closer.

"Commitment" means the division's written offer to issue a certificate and any endorsements thereto.

"Division" means Iowa title guaranty, a division of the authority.

"Division board" means the board of the division created pursuant to Iowa Code section 16.2A(1).

"Field issuer" means a participant authorized by the division to issue commitments and certificates.

"Mortgage release certificate" means a certificate of release or a certificate of partial release issued by the division, pursuant to Iowa Code section 16.92.

"Participant" means a participating attorney, a participating abstractor, or a participating closer.

"Participating abstractor" means an abstractor who is authorized by the division to prepare abstracts for division purposes.

"Participating attorney" means an attorney licensed to practice law in the state of Iowa who is authorized by the division to prepare title opinions for division purposes.

"Participating closer" means any of the following authorized by the division to issue a closing protection letter: an Iowa licensed attorney disbursing funds through an interest on lawyer trust account, a closing agent licensed by the Iowa division of banking, or a real estate broker licensed by the Iowa real estate commission disbursing funds through a real estate trust account.

"Party" means a participant, or any other person, that has a contractual relationship with the division to provide services for which a claim may be brought against the division.

"Person" means an individual or legal entity, including corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

265—9.2(16) Mission. The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state of Iowa and to perform other duties as assigned by Iowa law.

265—9.3(16) Organization.

9.3(1) *Location.* The office of the division is located at the address set forth in rule 265—1.3(16). Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's website address is www.iowatitleguaranty.com, and the division's telephone number is 515.452.0484. The division's email address is titleguaranty@iowafinance.com. Inquiries, submissions, applications and other requests for information may be directed to the division by the methods set forth herein.

9.3(2) *Meetings.* Meetings of the division board will generally be held quarterly on the date and time determined by the division board, or in accordance with Iowa Code section 16.2A(6). The division will give advance public notice of each division board meeting pursuant to Iowa Code chapter 21. Division board meetings may be conducted by conference call. Any person may attend and observe division board meetings except for any portion of a division board meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available at the office of the division and on the division's website. A board member who has a conflict of interest may not vote on substantive actions of the division board.

265—9.4(16) Operation. The division offers guaranties of real property titles in the state through the issuance of commitments and certificates.

9.4(1) *Commitments, certificates, forms and manuals.* The terms, conditions, and form of commitments and certificates shall be approved by the division board. The division may adopt and use manuals and other forms as the division deems necessary for implementation and administration of the title guaranty program.

a. The division will provide forms to a participant for use in issuing commitments and certificates on behalf of the division. A participant may not alter any form supplied by the division or use a form supplied by another person to bind the division. In addition, the participant shall not transfer or attempt to transfer unissued commitments or certificates to another participant or other person unless authorized in writing by the division.

b. In addition to the division's other rights and remedies, the division may refuse to allow the participant access to any forms until the participant complies with the requirements of this chapter to the satisfaction of the division.

c. A participant shall be liable to the division for loss or damage sustained by the division by reason of the failure of the participant to comply with the requirements of this rule.

9.4(2) *Application for commitments and certificates.* The division will make an application for commitments and certificates available on the division's website.

9.4(3) *Rates.* Rates for commitments, certificates and closing protection letters shall be set pursuant to Iowa Code section 16.91(1). In transactions involving extraordinary risk or unusual or unique endorsements, the division may assess additional charges.

265—9.5(16) Participants.

9.5(1) *General provisions.* An applicant shall submit a participant application and the first year's annual fee and shall sign a participation agreement in order to be authorized to provide one or more services on behalf of the division.

9.5(2) *Participant application.* Applications for participation and renewal are available on the division's website. An applicant shall submit an application to provide one or more services on behalf of the division. If the applicant is approved as a participant, the participant is required to submit a renewal application annually.

9.5(3) *Eligibility considerations.* To determine whether to approve or deny a participant application, factors the division may consider include but are not limited to the following:

a. The needs of the public and the needs of existing or potential customers of the applicant.

b. A history of the operation and management of the applicant's business.

c. The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.

d. A credit report or criminal background check of the applicant or the applicant's employees.

e. A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.

f. A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.

g. Compliance with the title and settlement best practices adopted by the division.

h. Other factors as determined by the division.

9.5(4) *Participation agreement.* The participation agreement sets forth the contractual relationship between the participant and the division. A new participation agreement is executed annually and when otherwise required by the division.

9.5(5) *Annual fee.* A participant may be required to pay an annual fee of $75, set pursuant to Iowa Code section 16.91(4).

9.5(6) *Agent relationship.* A participant is only authorized to act as an agent of the division for the purposes and in the manner set forth in the participant's participation agreement, Iowa Code, these rules, manuals and any other written instructions given by the division. The authority of a participant to act as an agent of the division is not exclusive and is subject to the rights of the authority, the division, and other participants, agents, or representatives of the division.

9.5(7) *Conflict of interest.* A participant shall not, without prior authorization of the division, prepare an abstract or issue a title opinion, commitment, certificate, or closing protection letter for a transaction in which the participant has a personal or financial interest in the real estate that is the subject of that transaction.

9.5(8) *Clearance of title objections.* All title objections must be cleared in accordance with applicable division manuals and any other written instructions given by the division prior to the issuance of a certificate. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by division manuals or instructions, shall be approved by the division in writing.

9.5(9) *Commitment and certificate coverage limitations.* A field issuer shall obtain written authorization from the division prior to issuing a commitment or certificate that exceeds the allowable maximum amount of coverage, as determined by the division. If authorization under this subrule is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment, closing protection letter, or certificate.

9.5(10) *Document retention.* A participant shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to the division while protecting confidential client information. A participant shall retain files for a period of ten years after the issued date of the certificate or the issued date of the commitment if a certificate is not issued.

9.5(11) *Training.* The division may require a participant and the participant's staff to participate in training sessions or continuing education seminars as deemed necessary by the division to ensure compliance with division requirements and procedures.

9.5(12) *Compliance.* Participants shall comply with Iowa Code, these rules, the participation agreement, manuals, and any other written instructions given by the division. The division may audit

the participant, with or without notice, for verification of compliance. An audit may include but not be limited to a review of the participant's abstracts, title opinions, commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details.

9.5(13) *Revocation.* The division may revoke a participant's authorization to provide services on behalf of the division for reasons, including but not limited to the following:

a. Failure to comply with the terms and conditions of the participation agreement.

b. Failure to submit an annual renewal application.

c. Knowingly withholding or misrepresenting material facts relied upon by the division.

d. Fraud, theft, dishonesty, or misappropriation of funds or documents.

e. Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of the division.

f. A finding by the division director of material noncompliance with Iowa Code, these rules, manuals, and any other written instructions given by the division.

g. Other factors as determined by the division.

265—9.6(16) Services offered.

9.6(1) *Abstracting.* Abstracts utilized for division purposes must be prepared by a participating abstractor.

a. Title plant. A participating abstractor shall own and maintain, or lease and use, a title plant, including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under Iowa Code section 16.91(5)*"a"*(2) and paragraph 9.6(1)*"c"* or authorized under Iowa Code section 16.91(5)*"b"* and paragraph 9.6(1)*"d."* Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program. A government-maintained and -controlled database is not considered a title plant for division purposes.

b. Intent to build title plant. The division may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for division purposes, upon review of the following:

(1) The abstractor's business plan;

(2) Evidence that a title plant will be built for a specific county or counties within three years of authorization;

(3) A time line for completion of the title plant; and

(4) A description of the applicant's abstracting experience.

c. Exemption. The exemption available pursuant to Iowa Code section 16.91(5)*"a"*(2) is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.

d. Title plant waivers. The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders a high quality of certificates throughout the state, rapid service, and a competitive price.

(1) General provisions. The division shall consider an application for a title plant waiver upon submission by an attorney or an abstractor.

(2) Submission of application. The division shall accept applications in the same manner as provided in subrule 9.5(2).

(3) Content of application. The applicant must provide, at a minimum, the following information:

1. The name, business address, email address, and telephone number of the applicant;

2. The applicant's business plan;

3. The county or counties in which the applicant intends to abstract;
4. A description of the applicant's abstracting experience;
5. Samples of abstracts prepared by the applicant;
6. A history of any professional disciplinary action against the applicant;
7. Professional references in support of the applicant;
8. The relevant facts that the applicant believes would justify a waiver under Iowa Code section 16.91(5)*"b"*; and
9. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

(4) Notification and response.

1. The division shall notify the applicant upon receipt of a complete application.
2. The Iowa State Bar Association and Iowa Land Title Association shall be provided notice of an application. Provision of the notice to the identified associations is not a requirement for the division to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the division.

(5) Conditions. A waiver is unique to the recipient and is nontransferable. The division may limit a waiver as to county, transaction type, duration, or any other limitation. The division may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver annually and may require a renewal, modification or addition to any required assurances. An applicant may only retain a waiver if the applicant continues to meet the requirements for a participant in rule 265—9.5(16). If the waiver recipient fails to meet the terms of the recipient's participation agreement, the waiver may be withdrawn by the division.

(6) Withdrawal of a waiver. A waiver issued by the division may be withdrawn or modified if, after public notice and division board meeting, the division board issues a written ruling finding any of the following:

1. That the waiver recipient knowingly withheld or misrepresented material facts relied upon by the division in granting the waiver; or
2. That the waiver recipient failed to comply with all conditions contained in the written ruling; or
3. That the abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by the division; or
4. That the division has revoked the waiver recipient's authorization to provide services on behalf of the division pursuant to subrule 9.5(13).

The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

9.6(2) *Issuing title opinions.*

a. All title opinions shall be prepared by participating attorneys and issued in compliance with division procedures as specified in manuals and any other written instructions given by the division.

b. A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion.

c. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

9.6(3) *Issuing commitments and certificates.* Pursuant to a participation agreement with the division, a participant may be authorized to issue a commitment or certificate on behalf of the division. A participant's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to terms of the participation agreement.

9.6(4) *Issuing closing protection letters.*

a. Pursuant to a participation agreement with the division, a participant may be authorized to issue a closing protection letter on behalf of the division.

b. The division may require the participating closer to provide an irrevocable letter of direction to the institution at which each escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary.

265—9.7(16) Claims.

9.7(1) *Claim procedures.* In the event of a claim, the rights of the division and a party are as follows:

a. Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division's address as set forth in rule 265—1.3(16) or provide notification by email.

b. When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, title opinions, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.

c. A party shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the party's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.

9.7(2) *Claim loss recovery.*

a. Any claim losses paid are recoverable from a party by the division.

b. In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party when a claim loss arises from one or more of the following:

(1) Hidden defects, including but not limited to forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records, including but not limited to errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, manuals, and any other written instructions given by the division that the party relies upon in issuing an abstract, title opinion, commitment, closing protection letter or certificate;

(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in issuing a certificate that provides survey coverage; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract, title opinion, commitment, closing protection letter, or certificate.

c. The party shall reimburse the division for a claim loss when the division determines, in accordance with paragraph 9.7(2)*"d,"* that the party is liable and when the claim loss arises from one or more of the following:

(1) Errors by the party in the preparation of an abstract or any other report of information in the public record;

(2) Reliance by the party upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the party in examining the title information provided in an abstract, survey, affidavit, or other source of title information;

(4) Errors made by the party in the preparation or review of an abstract, title opinion, commitment, closing protection letter, or certificate;

(5) Issuance of an abstract, title opinion, commitment, closing protection letter or certificate by the party with knowledge that title is defective; or

(6) Failure of the party to follow Iowa Code, these rules, manuals, or any other written instructions given by the division.

d. Unless another rule, Iowa Code, manuals, or any other written instruction given by the division provides for a different standard of liability or other rule for determining whether the party shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.7(2)*"c"*(1), the division may demand reimbursement from the party if the party was grossly negligent in preparing the abstract. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the party upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the party.

(2) In the event that a claim loss occurs for which the division may seek recovery from a party under subparagraph 9.7(2)*"c"*(2), the division may demand reimbursement from that party if the party relied upon sources of abstracts or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.7(2)*"c"*(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a commitment or certificate.

1. The division may make full review of local county abstracting standards and title standards as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed Iowa Code, these rules, manuals, or any other written instructions given by the division in examining the title.

3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract or of an attorney who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.7(2)*"c"*(4), the division may demand reimbursement from the party if the party negligently prepared or reviewed an abstract, title opinion, commitment, closing protection letter, or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.7(2)*"c"*(5), the division may demand reimbursement from the party if the issuance of the abstract, title opinion, commitment, closing protection letter, or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract, title opinion, commitment, closing protection letter or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.7(2)*"c"*(6), the division may demand reimbursement from the party if the party failed to follow Iowa Code, these rules, manuals, or any other written instructions given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.

265—9.8(16) Mortgage release certificate. Pursuant to Iowa Code section 16.92, the division is charged with the administration of a program to release, after proper notification, paid-off mortgages from real estate titles in Iowa by executing and filing with the county recorder a mortgage release certificate.

9.8(1) *Application.* The division will provide a mortgage release application on the division's website.

9.8(2) *Application fee.* An applicant may be required to pay a fee of $200 to apply for a mortgage release certificate. The fee shall be set by the division.

9.8(3) *Maximum principal amount of mortgage.* The division board may set a maximum principal amount for mortgages that may be released by a mortgage release certificate.

9.8(4) *Authority to sign certificate.* A mortgage release certificate shall be executed by the division director or designee of the division director.

265—9.9(16) Rules of construction. In this chapter, the following rules of construction shall be observed:

1. The word "shall" means mandatory and not permissive and the word "may" means permissive and not mandatory.
2. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.
3. Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other remedies or sanctions under this chapter, or otherwise against a participant or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.
4. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

These rules are intended to implement Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 to 16.93, 17A.10 and 535.8.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 19
"State Housing Trust Fund"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5(1)"r" and 16.181
State or federal law(s) implemented by the rulemaking: Iowa Code sections 16.5(1)"r" and 16.181

Public Hearing

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

September 24, 2024	1963 Bell Avenue
9:30 to 9:45 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Finance Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind 265—Chapter 19 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the housing trust fund (Fund) established pursuant to Iowa Code section 16.181.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Entities that apply for and are approved for grants from the Fund will bear the costs of the rulemaking.

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

Entities that apply for and are approved for grants from the Fund will benefit from clarity and streamlining of the rules.

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:

Entities interested in applying for grants from the Fund may require staff time to complete an application. Recipients may similarly incur costs to comply with reporting and monitoring requirements. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary, depending on the compensation of staff or service providers involved.

- Qualitative description of impact:

Entities that apply for and are approved for grants will benefit from clarity and streamlining of the rules.

3. Costs to the State:

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

Authority staff time is required to review and approve applications, administer grants, and communicate with program applicants and recipients.

- Anticipated effect on state revenues:

The rulemaking has no fiscal impact. The Authority is directed to administer the Fund by Iowa Code section 16.181.

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

Only the entities that will potentially benefit from financial assistance bear the costs of the rulemaking. The costs to the state to administer the program are proportional to the activities supported by financial assistance.

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

The Authority has not identified less costly methods or less intrusive methods of administering the Fund.

6. Alternative methods considered by the agency:

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

The Authority did not consider any alternative methods.

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

The Authority did not consider any alternative methods.

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 proposed rules do not have a substantial impact on small business. The application, contracting, and monitoring requirements related to the program are no more than necessary to administer the statutory requirements of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19
STATE HOUSING TRUST FUND

265—19.1(16) Trust fund allocation plans. The state housing trust fund is established pursuant to Iowa Code section 16.181.

19.1(1) The authority shall allocate funds in the state housing trust fund according to Iowa Code section 16.181 and the following allocation plans:

a. The Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated September 8, 2021; and

b. Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Project-Based Housing Program dated August 5, 2009.

19.1(2) The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6.

265—19.2(16) Location of copies of the plans. The trust fund allocation plans for the local housing trust fund program and the project-based housing program will be posted on the authority's website at www.iowafinance.com. The plans incorporate by reference Iowa Code section 16.181.

These rules are intended to implement Iowa Code sections 16.5(1)*"r"* and 16.181.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 32
"Child Labor"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 92.21
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This rulemaking proposes promulgation of a new 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 proposed 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers of minor employees will bear the costs.

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

Employers and employees benefit from a safer workplace. Employers benefit from certain lower penalties.

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:

The quantitative impact is not substantially changed.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Department of Inspections, Appeals, and Licensing will continue to enforce this chapter at the same cost.

- Anticipated effect on state revenues:

There are no increased costs to the State.

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

The benefit is safety for employed minors.

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

No less costly method is known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Small businesses have an increased deduction for child labor penalties.

Text of Proposed Rulemaking

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 for 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.

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.

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 (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, 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, etc.):

(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"* of this subrule, 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
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.

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 34
"Wage Civil Penalties"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91A.9
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking in accordance with Executive Order 10 proposes a new Chapter 34 that provides procedures for assessing penalties for violations of Iowa wage law in Iowa Code chapter 91A.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The rulemaking does not impose any meaningful additional costs. Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by being able to assert wage rights without retaliation and with a remedy if there is retaliation.

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:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit is a remedy for when employers violate wage law. The costs would only be for violating employers.

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

The Department has not identified less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Alternative methods were rejected because this is a rarely used chapter that imposes no significant burden.

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 rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
WAGE CIVIL PENALTIES

875—34.1(91A) Civil penalties for Iowa Code chapter 91A violations. The director may, upon report of an affected employee or based on other credible information, seek to recover civil money penalties for violation(s) of Iowa Code chapter 91A.

875—34.2(91A) Investigation.

34.2(1) Prior to initiating a contested case proceeding, the director will, in writing, request written information from the complaining employee(s). This request for written information may be

omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(2) Prior to initiating a contested case proceeding, the director will, in writing, inform the employer of the nature of the alleged violation(s) and request the employer to provide, within 14 days, a response with relevant information, including information necessary for the to assess penalties. This request for written information may be omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(3) The director may secure evidence or witnesses by administrative subpoena.

34.2(4) The director may, in response to a written complaint, request a warrant to enter a place of employment to inspect records, ask questions, and investigate in relation to possible violations of Iowa Code chapter 91A.

875—34.3(91A) Calculation of penalty.

34.3(1) The director will assess the penalty with due consideration for the size of the employer's business, the gravity of the violation(s), the good faith of the employer, and the history of previous violations by granting appropriate penalty reductions.

34.3(2) The gross penalty for each distinguishable violation will be $500. The following are examples of distinguishable violations:

a. If the act or omission occurs during five consecutive pay periods affecting a single employee, there are five distinguishable violations.

b. If the act or omission occurs during a single pay period affecting 50 employees, there are 50 distinguishable violations.

34.3(3) The size of the business will be considered as follows:

Number of Employees	Penalty Reduction
1-25	25%
26-100	15%
101-250	5%
251+	0%

34.3(4) Gravity will be considered by giving a 20 percent penalty reduction for a low-gravity violation or a 10 percent reduction for a medium-gravity violation. High-gravity violations will receive no gravity reduction. The gravity of a violation will be based primarily on its actual or potential harm to employees. Following are examples of gravity determinations:

a. A low-gravity violation includes any merely technical violation of Iowa Code chapter 91A that does not substantially prejudice any employee.

b. A high-gravity violation includes any violation causing financial injury to an employee.

34.3(5) Good faith will be considered by giving a 15 percent penalty reduction when there is sufficient evidence that the employer made earnest attempts to be well-informed about and in compliance with Iowa Code chapter 91A. A good-faith reduction will not be given if the employer committed a violation(s) after having received a complaint(s) or warning(s) about a practice clearly in violation of Iowa Code chapter 91A.

34.3(6) History will be considered by giving a 10 percent penalty reduction if the violation(s) was isolated. Consideration will be given to prior civil penalty complaints and may include prior wage claims. A history reduction will not be given if the violation(s) for which the penalty is being calculated occurred over an extended period of time.

34.3(7) If the employer does not, upon request of the director, provide information relevant to the penalty assessment, the director may deny any penalty reduction for which the employer does not provide responsive information.

875—34.4(91A) Settlement opportunity. Prior to initiating a contested case proceeding, the director will normally request, in writing, that the employer enter into settlement negotiations. This request may be omitted for good cause, including urgent circumstances or reasonable belief that the employer will not comply with the relevant section(s) of Iowa Code chapter 91A as part of a settlement. The director may, in consideration of the overall nature of the violations, the promptness of the employer's remedial action, and administrative efficiency, accept less than the full penalty from the employer at any time as a settlement.

875—34.5(91A) Notice of penalty assessment; contested case proceedings.

34.5(1) To initiate an Iowa Code chapter 17A contested case proceeding, the director will serve a notice of penalty assessment in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. Such notice will include the following:

a. A statement that the notice concerns a civil penalty assessment for violation of wage laws.

b. A statement that, if a hearing is requested by the employer, the director will determine, after the hearing is held pursuant to Iowa Code sections 91A.12(2) and 91A.12(3), whether the penalty assessment will be upheld.

c. References to this chapter, Iowa Code section 91A.12, and any sections of Iowa Code chapter 91A that are alleged to have been violated.

d. The type of violation(s).

e. The number of violations.

f. The amount of the penalty.

g. A demand that the employer comply with the notice and recordkeeping requirements of Iowa Code section 91A.6(1).

h. A statement that the employer has the right to request a hearing within 30 days.

34.5(2) Employer nonresponse. If the employer does not respond to the notice of penalty assessment within 30 days of being served, the director will assess the full proposed penalty, and such assessment will be final.

34.5(3) Employer request for hearing. The employer may request a hearing within 30 days of being served by mailing such request to the director. Such request will include the address to which notice of hearing should be mailed. Upon such request, notice of the time and place of hearing will be mailed to the employer and a hearing pursuant to Iowa Code chapter 17A will be conducted before an administrative law judge.

34.5(4) Failure to request judicial review. If, after hearing, the employer does not request judicial review of an adverse decision within 30 days, the ruling is final.

875—34.6(91A) Judicial review.

34.6(1) *Employer petition for Iowa Code chapter 17A judicial review.* The employer may request judicial review of an adverse ruling within 30 days. Such petition for review shall name the agency as respondent and shall contain a concise statement of the following:

a. The nature of the agency action for which review is requested.

b. The action for which review is requested.

c. The facts on which venue is based.

d. The grounds for the relief sought.

e. The relief sought.

34.6(2) *Jurisdiction.* Judicial review will be in the district court of a county in which at least one violation occurred.

34.6(3) *Transmittal of record.* Within 30 days of the petition for judicial review, or longer as allowed by the court, the director shall transmit the record of the case to the reviewing court.

34.6(4) *District court remedies.* The district court may require the employer to deposit the amount of the assessed penalty with the clerk of court pending the outcome of the judicial review, may

uphold the penalty, and may order that the employer comply with the notice and recordkeeping requirements of Iowa Code section 91A.6(1).

These rules are intended to implement Iowa Code chapters 91A and 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 35
"Wage Claims"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91A.9
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking in accordance with Executive Order 10 proposes a new Chapter 35 that provides procedures for investigating wage claims filed under Iowa Code chapter 91A.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by having recourse for unlawful nonpayment of wages.

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:

This governs claims of no more than $6,500, and only against employers who are alleged to have underpaid employees.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

None.

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

The benefit of underpaid employees having a remedy outweighs the cost of employers responding to wage claims.

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

These procedures are not labor- or time-intensive for employers.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

This implements a legislative policy that wage earners should have a remedy for underpayment.

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?

Small businesses that properly pay employees will likely be unaffected by this chapter.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 36
"Wage Discrimination"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91A.9
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking in accordance with Executive Order 10 proposes a new Chapter 36 that provides procedures for investigating wage discrimination when an employer has unlawfully sanctioned an employee for cooperating with Iowa Code chapter 91A complaints.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by having recourse for retaliatory sanctions.

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:

There will be little impact because there is not a large number of claims under this chapter.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

None.

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

The benefit of a remedy for retaliatory employer actions overrides any costs of employer compliance.

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

None exist.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Alternative methods were rejected because this is a rarely used chapter that imposes no significant burden.

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 shorter and more understandable.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 36 and adopt the following **new** chapter in lieu thereof:

CHAPTER 36
WAGE DISCRIMINATION

875—36.1(91A) Definitions.

"Director" means the director of the department of inspections, appeals, and licensing or the director's designee.

"The Act" means Iowa Code chapter 91A.

875—36.2(91A) General requirements. An employer shall not discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Assigned a wage claim to the director;
3. Instituted or caused to be instituted any proceeding under or related to the Act;

4. Cooperated in bringing any action against an employer under or related to the Act;
5. Exercised on the employee's behalf or on behalf of others any right afforded by the Act.

875—36.3(91A) Unprotected activities distinguished.

36.3(1) Wage discrimination occurs when an employer engages in adverse action because the employee engaged in a protected activity. An employee's engagement in activities protected by the Act does not automatically render the employee immune from adverse action dictated by nonprohibited considerations.

36.3(2) A violation exists if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in the protected activity.

875—36.4(91A) Complaint under or related to the Act. Discharge or discriminatory actions to an employee because the employee has filed a wage claim or asserted in good faith rights covered by the Act are prohibited.

875—36.5(91A) Proceedings related to the Act. Discharge of or discrimination against any employee because the employee has cooperated in bringing any action against an employer related to the Act is prohibited. Protection under the Act would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, or adjudicative functions.

875—36.6(91A) Filing of complaint for discrimination or discharge.

36.6(1) Any employee who believes that discrimination in violation of Iowa Code section 91A.10(5) has occurred, may, within 30 days after the violation occurs, lodge a complaint with the director alleging the violation. No particular form is required. If, as a result of the investigation, the director determines that Iowa Code section 91A.10(5) has been violated, civil action may be instituted in any appropriate district court to restrain the violations and to obtain other appropriate relief.

36.6(2) Complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely. However, there may be circumstances that would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances.

875—36.7(91A) Decision of the director.

36.7(1) Upon receipt of all requested information, the director may determine the employee's complaint alleging discharge or discrimination is enforceable and notify the employee of that determination.

36.7(2) Upon a determination that the employee's complaint alleging discharge or discrimination is enforceable, the director will notify the employer of that determination in writing and afford the employer an opportunity to tender settlement within 14 days of the writing prior to initiating judicial proceedings.

36.7(3) Upon a determination that the employee's complaint alleging discharge or discrimination is unenforceable, the director shall notify the employee of that decision in writing. The employee shall have 14 days from the date of the written notification to appeal the decision to the director. If the appeal is not made in writing within the 14-day period, then the employee loses the right to appeal the unenforceable decision.

These rules are intended to implement Iowa Code section 91A.10(5).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 65
"Elevator Safety Board Administrative and Regulatory Authority"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 1, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 65 describes the authority and conduct of the Elevator Safety Board.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Board runs with minimal cost to anyone.

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

The public benefits from having safe elevators and conveyances and from being able to request waivers and other relief from the Board.

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:

The Board frequently hears waiver requests.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Board consititutes a small cost for the agency.

- Anticipated effect on state revenues:

The 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:

Inaction would result in less expertise and longer waits for necessary rule changes and waivers.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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 Board has no negative impact on small business.

Text of Proposed Rulemaking

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 commissioner 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 commissioner nor the commissioner'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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 66
"Waivers from Administrative Rules by the Elevator Safety Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 1, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 66 sets forth procedures for the Elevator Safety Board to grant waivers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Board runs with minimal cost to anyone.

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

The public benefits from safe elevators, and elevator owners benefit from being able to obtain waivers when warranted.

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:

The Board frequently hears waiver requests.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Board constitutes a small cost for the agency.

- 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:

Inaction would result in less expertise and longer waits for hearing waivers.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Waivers have no negative impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 69
"Contested Cases Before the Elevator Safety Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 1, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 69 sets forth procedures for the Elevator Safety Board to conduct contested cases.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Board runs with minimal cost to anyone.

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

Elevator and conveyances owners benefit from clarity on how to bring contested cases to the Board.

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:

Contested cases before the Board are rare.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Board constitutes a small cost for the agency.

- Anticipated effect on state revenues:

The 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:

Inaction would result in uncertainty and confusion about how to assert rights in a contested case.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Contested case procedures have no negative impact on small business.

Text of Proposed Rulemaking

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 Doctorate 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 71
"Administration of the Conveyance Safety Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 1, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 71 sets forth the authority of the Elevator, Boiler and Amusements Bureau to inspect, grant permits, enforce safety requirements, and assess fees for covered conveyances.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The conveyance program maintains personnel to inspect elevators and enforce safety.

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

The public and elevator owners benefit from operating safe conveyances.

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:

There are fees that are comparable to fees of other nearby jurisdictions.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The agency hires personnel to inspect.

- Anticipated effect on state revenues:

The level of fees in this new chapter will not change the impact on state revenues.

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

Inaction would result in unsafe elevators and conveyances.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Small businesses can seek a waiver from burdensome requirements.

Text of Proposed Rulemaking

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 2 feet below the lower landing and ending 10 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 pursuant to 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 10 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 – 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 875—Chapter 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.

These rules are intended to implement Iowa Code chapters 89A, 252J, and 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 72
"Conveyances Installed on or After January 1, 1975"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 1, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 72 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The conveyance program maintains personnel to inspect conveyances and enforce safety.

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

The public and elevator owners benefit from operating safe conveyances.

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:

There are fees that are comparable to fees of other nearby jurisdictions.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The agency hires personnel to inspect.

- Anticipated effect on state revenues:

None.

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

Inaction would result in unsafe elevators and conveyances.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Small businesses can seek a waiver from burdensome requirements.

Text of Proposed Rulemaking

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, 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, which 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, which 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 (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 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) Wind tower lifts comply with 29 CFR 1910.

72.11(8) 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(9) 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(10) 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—71(89A) 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 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 American National Standards Institute (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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 73
"Conveyances Installed Prior to January 1, 1975"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89A.3
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 1, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 73 adopts standards for certain conveyances installed prior to January 1, 1975, provides criteria for their installation and inspection, and requires child entrapment safeguards.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The conveyance program maintains personnel to inspect conveyances and enforce safety.

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

The public and elevator owners benefit from operating safe conveyances.

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:

There are fees that are comparable to fees of other nearby jurisdictions.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The agency hires personnel to inspect.

- Anticipated effect on state revenues:

None.

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

Inaction would result in unsafe elevators and conveyances.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Small businesses can seek a waiver from burdensome requirements.

Text of Proposed Rulemaking

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 875—72.1 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 130
"Community Right to Know Hazardous Chemicals"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89B.12
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 25, 2024 9 to 9:30 a.m.	Woods Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 130 requires employers that store hazardous chemicals to provide information about those chemicals to certain interested persons in the community.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Businesses storing hazardous chemicals will bear the costs.

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

Members of the community who could undergo exposure to the hazardous chemicals 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:

The cost of compliance is not high.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

Costs are low to the Division of Labor Services. There are not many inquiries about this chapter.

- 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:

Inaction would result in potential hazards to members of the community.

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

No less costly methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Given the nature of the hazards and protected interest, there is no small business exception.

Text of Proposed Rulemaking

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 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 140
"Public Safety/Emergency Response Right to Know"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89B.17
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 25, 2024 9 to 9:30 a.m.	Woods Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 140 enhances the safety of fire departments by requiring certain employers to communicate information on their hazardous chemicals.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers that are required to communicate information about their stored hazardous chemicals and fire departments who receive that communication will bear the costs.

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

Fire departments benefit by knowing of hazardous chemicals prior to engaging in an emergency response.

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:

The costs are small.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

This is enforced by Iowa Occupational Safety and Health, which receives few inquiries under this chapter.

- 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:

Inaction would result in increased hazards to fire departments when making emergency responses to employers that store hazardous chemicals.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Given the nature of the hazard, there is no exception for small business.

Text of Proposed Rulemaking

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. An employer may, in writing, apply to the commissioner for a waiver for less stringent sign posting requirements.

140.1(1) 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.

140.1(2) Reserved.

875—140.2(89B) Agreement between an employer and fire department. In instances where the posting of a sign for each hazardous chemical would be ambiguous, 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.

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 3 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 160
"Employer Requirements for Non-English Speaking Employees"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91E.5
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 25, 2024 9 to 9:30 a.m.	Woods Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 160 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers with 100 or more employees will bear the costs.

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

Employees who have language impediments that prevent them from understanding terms of employment, safety issues, and health issues 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:

Covered employers may have an employee use some of their time to comply with the chapter.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

This chapter is enforced by the Wage and Child Labor Unit of the Department of Inspections, Appeals, and Licensing. Enforcement costs are low as there are few inquiries under this chapter.

- 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:

Inaction would result in employees being vulnerable to financial exploitation and safety and health hazards.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Employers with fewer than 100 employees are exempt from the requirements.

Text of Proposed Rulemaking

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) 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—160.2(91E) Knowledge of English. An employee who can understand the following in English is not covered by these rules:

160.2(1) The hours of work.

160.2(2) The hourly wage.

160.2(3) All mandatory and elective benefits.

160.2(4) The job duties.

160.2(5) The safety and health risks of the job and appropriate methods of protection.

160.2(6) Information and training on hazardous chemicals in the employee's work area.

160.2(7) Safety signs and symbols that warn of potential dangers and hazards at the work site.

160.2(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.

160.2(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.

160.2(10) An ability to effectively communicate with a nurse or other medical personnel at the work site.

875—160.3(91E) Community services referral agent requirements.

160.3(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.

160.3(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—160.4(91E) Exemptions.

160.4(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.

160.4(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.

160.4(3) If the applicant is an employer, any affected employee or 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 of the notice.

875—160.5(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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 215
"Minimum Wage Scope and Coverage"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 215 primarily provides definitions and exceptions that apply to subsequent wage chapters.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The proposed rulemaking does not impose any meaningful costs. Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by knowing what wages are due.

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:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The rules provide clarity for proper payment of wages.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of clarity in minimum wage payments overrides any costs of employer compliance.

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

The Department has not identified less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Alternative methods were rejected because this chapter imposes no significant burden.

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 shorter and more understandable. The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

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 to 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, 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 and 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.

SOURCE: 29 U.S.C. 213.

875—215.4(91D) Interpretative guidelines. The rules contained in 875—Chapters 216 to 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 216
"Records to be Kept by Employers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 216 details records that must be maintained by employers to prove compliance with wage law, doing so with 8 rules rather than 33.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The rulemaking does not impose any meaningful costs. Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by being paid properly. Employers will know minimum wage coverage and be able to establish compliance.

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:

The rulemaking does not impose any meaningful additional costs. It requires less than the prior chapter.

- Qualitative description of impact:

The rules provide clarity for minimum wage compliance.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated impact on state revenues.

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

The benefit of minimum wage compliance overrides any costs of employer compliance.

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

The Department has not identified less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Alternative methods were rejected because this is a significant reduction in the chapter.

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 shorter and more understandable. The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

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 homeworker" or *"homeworker,"* as used in this rule, means any employee employed or suffered or permitted to perform industrial homework for an employer.

"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.

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.

These rules are intended to implement Iowa Code chapter 91D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 217
"Wages"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 217 details tip income, kickbacks, and reasonable cost for purposes of minimum wage determination. This rulemaking removes 22 rules from the prior chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The rulemaking does not impose any meaningful costs. Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by knowing what wages they are due.

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:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The rules provide clarity for proper payment of wages.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of a remedy for retaliatory employer actions overrides any costs of employer compliance.

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

The Department has not identified any less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Alternative methods were rejected because this is a rarely used chapter that imposes no significant burden.

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 shorter and more understandable. The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

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.

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—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 Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 25, 2024 9 to 9:30 a.m.	Woods Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Chapter 218 is 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Not applicable.

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

Not applicable.

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:

This rulemaking imposes no costs.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

There is no fiscal impact.

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

This rulemaking has the benefit of reducing unnecessary rules.

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:

No alternative methods were seriously considered.

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

Not applicable.

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. Rescind and reserve **875—Chapter 218**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 219
"Domestic Service"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 219 details wage obligations owed to domestic service employees in a way that is more than 500 words shorter than the original Chapter 219.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The rulemaking does not impose any meaningful additional costs. Employers subject to Iowa wage law will bear the costs.

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

Employees and employers will benefit by having clarity on how wages are properly paid to domestic service workers.

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:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of knowing appropriate wages in this unique context outweighs the cost of compliance.

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

The Department has not identified any less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

It would not be beneficial to disrupt established expectations for paying domestic service workers.

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 rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

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) Nothing herein prevents employers from crediting themselves with the actual cost or fair value of furnishing meals.

219.6(3) Nothing herein prevents employers from crediting themselves with the actual cost or fair value of furnishing lodging.

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 220
"Employees of State and Local Governments"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

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

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 220 requires certain wage practices for government employees and describes exemptions, including volunteers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The rulemaking does not impose any meaningful additional costs. Employers subject to Iowa wage law will bear the costs.

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

Employees and employers will benefit by having clarity on how wages are properly paid.

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:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

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

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

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

The benefit of knowing appropriate wages in this unique context outweighs the cost of compliance.

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

The Department has not identified any less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

It would not be beneficial to disrupt established expectations for paying employees of state and local governments.

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 rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

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 policy-making 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 policy-making 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. 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 553.102.

875—220.13(91D) Same type of services defined. The duties and other factors contained in the definitions of the three-digit categories of occupations in the Dictionary of Occupational Titles will be followed in determining whether the volunteer activities constitute the same type of services as the employment activities. Equally important in the determination will be the consideration of all the facts and circumstances in a particular case.

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) 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(2) 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(3) 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; however, 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapters 36 to 43 and 45 "Green Valley Lake Special Water Activity Rules; Boating Safety Equipment; Boat Registration and Numbering; Boating Passenger Capacity; Boating Speed and Distance Zoning; Boating Navigation Aids; Boating Accident Reports; Motorboat Noise; Boat Motor Regulations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 462A.3, 462A.5, 462A.7, 462A.9, 462A.11, 462A.17, 462A.26 and 462A.32

State or federal law(s) implemented by the rulemaking: 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

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Susan Stocker via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Susan Stocker prior to the hearing to facilitate an orderly hearing.

September 24, 2024 9 a.m.	Via video/conference call

Public Comment

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

Susan Stocker
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.313.6439
Email: susan.stocker@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 37 contains Iowa's water navigational rules, which 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 Executive Order 10 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 proposed 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.

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 public using public waters for recreation will bear the costs.

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

Members of the public using public waters for recreation 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:

The cost for members of the public to comply with the rules includes having to purchase additional equipment, modifying a vessel to add compliant equipment or remove noncompliant equipment, and purchasing registration.

- Qualitative description of impact:

Members of the public may be limited from accessing certain water bodies if their preferred vessel, equipment, or operation does not comply with the rules.

3. Costs to the State:

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

Department costs are for staff involved in enforcing the rules and administrative costs related to vessel registrations and accident reports.

- Anticipated effect on state revenues:

The water navigation rules are necessary to protect private and public property and the health, safety, and welfare of the public. Further, the rules must consider the necessity for uniformity relating to use, operation, and equipment of vessels. Transparency and a safe boating environment encourage increased tourism on public waters, which will have a positive impact on state revenues. Further, compliance with U.S. Coast Guard regulations and guidelines makes Iowa eligible for certain federal funding.

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

Inaction, meaning the absence of these rules, reduces transparency to the public of expectations in public water recreation and has a negative impact on the health, safety, and welfare of the public. Inaction also threatens federal funding. In contrast, the benefit of the proposed rulemaking is ensuring uniformity for the public and promoting health and safety on public waters. Further, the rules align with U.S. Coast Guard regulations and guidelines, which makes Iowa eligible for certain federal funding.

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

Less costly or less intrusive methods to the public would include not having certain regulations on how the public can engage in water recreation. However, these methods do not achieve the purpose of a safe and healthy recreation environment on Iowa's public waters.

6. Alternative methods considered by the agency:

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

With the risk to federal funding, no serious alternative methods were seriously considered. Moreover, these rules are required by state law.

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

Not applicable. These rules are required by state law.

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?

This rulemaking does not impact small businesses.

Text of Proposed Rulemaking

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 polyvinylchloride 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 polyvinylchloride 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 which 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 which impairs the operating efficiency, any PFD on which the U.S. Coast Guard approval tag is no longer easily legible, or any inflatable device which 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	Private Individual
IA-1555-XX	IA-1555-X
IA-1555-EX	IA-1555-E

Transferred to	
Private	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 which 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 which 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, which 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 which will provide maximum legibility, and of a size which 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 which 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 which 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 which 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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 44
"Special Events and Fireworks Displays"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321G.16, 321I.17, 461A.42, 462A.16, and 481A.38

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321G.16, 321I.17, 461A.3, 461A.4, 461A.42, 462A.16, 481A.22, and 481A.38

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Susan Stocker via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Susan Stocker prior to the hearing to facilitate an orderly hearing.

September 24, 2024 9 a.m.	Via video/conference call

Public Comment

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

Susan Stocker
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.313.6439
Email: susan.stocker@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 44 provides rules on the issuance of permits for special events and fireworks displays held on public land, 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 land and are potentially fire and public safety hazards. This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

User groups who wish to schedule events and fireworks held on public land, waters, and ice of the state will bear the costs.

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

User groups who want to schedule events and user groups who wish to attend the events held on public land, waters, and ice of the state 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:

Each special event and/or fireworks display is required to pay a $25 administrative fee and ensure there is liability insurance for the specific event.

- Qualitative description of impact:

There are no additional costs from this rulemaking.

3. Costs to the State:

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

There are no implementation or enforcement costs outside of routine Department Conservation Officer patrol or administrative staff time.

- 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:

The costs of inaction are high. Special events and fireworks not managed will allow for overuse of resources and depleted fisheries. Excessive events on the water will create a safety hazard and harm to the public with increased boating accidents. Unmanaged fireworks displays will create excess debris in the water and on public land.

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

None were identified.

6. Alternative methods considered by the agency:

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

No practical alternatives were found. The regulated activities could be allowed without the requirements in these rules; however, this would not accomplish the purposes of the rules or the Iowa Code provisions that they implement.

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

The alternative method of not proposing this rulemaking would cause hardship to the user groups applying for the special events and fireworks displays. Prior to the electronic system and application process provided for by the proposed rules, a paper application was used, which burdened the public with additional processing time. The types of events being regulated by these rules are often large and potentially have great impact on public land and waters and other users of these resources. It is impractical to not provide some form of permitting and related requirements.

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?

This proposed rulemaking does not have any anticipated impact on small business.

Text of Proposed Rulemaking

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 *"OHV"* 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-highway 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 OHV 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 46
"All-Terrain Vehicles, Off-Road Motorcycles, and Off-Road Utility Vehicles"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321I.2

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321I.2 through 321I.36

Public Hearing

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

September 25, 2024	6200 Park Avenue, Second Floor
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

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

Jessica Flatt
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone Number: 515.975.8569
Email: jessica.flatt@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Off-highway vehicle owners and off-highway vehicle dealers will bear minimal costs that are outweighed by the benefits of the rules.

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

Citizens of Iowa, off-highway vehicle owners, off-highway vehicle dealers, and program partners and sponsors 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:

Regulated vehicle owners that choose to register will incur costs.

- Qualitative description of impact:

The funds associated with the fees are utilized to develop and maintain designated riding areas and off-highway vehicle programs of the state.

3. Costs to the State:

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

Costs to the agency are minimal and limited to staff time. The Department administers the program and provides law enforcement at designated riding areas.

- Anticipated effect on state revenues:

The proposed rules do not have any effect on state revenue.

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

The costs of the program are minimal to the State, and the benefits to regulated vehicle owners and citizens of Iowa are significant. The fees collected are used to develop and maintain designated riding areas and off-highway vehicle programs in the state.

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

No less costly methods exist for achieving the purpose of the proposed rulemaking. The rulemaking is streamlined to implement the program consistent with the Iowa Code.

6. Alternative methods considered by the agency:

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

The Department considered the use of a program guideline document in lieu of rules.

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

Oversight and processes in rule better protect the user-generated funding source and ensure that Iowa Code requirements are met.

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?

This proposed rulemaking does not have any impact on small business.

Text of Proposed Rulemaking

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 which 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 which 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 which 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 47
"Snowmobiles"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321G.2 and 321G.21

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 321G and 2024 Iowa Acts, Senate File 2423

Public Hearing

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

September 25, 2024	6200 Park Avenue, 2nd Floor
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

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

Jessica Flatt
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.975.8569
Email: jessica.flatt@dnr.iowa.gov

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. In addition, this rulemaking 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, snow, or designated trails in this state.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Snowmobile owners and snowmobile dealers will bear minimal costs that are outweighed by the benefits of the rules.

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

Citizens of Iowa, snowmobile owners, snowmobile dealers, and program partners 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:

Snowmobile owners and dealers that choose to register will incur costs.

- Qualitative description of impact:

The funds associated with the fees are utilized to develop and maintain snowmobile trails and programs in the state.

3. Costs to the State:

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

Costs to the agency are minimal and limited to staff time.

- Anticipated effect on state revenues:

The proposed rules do not have any effect on state revenues.

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

The costs of the program are minimal, and the benefit to snowmobile owners and the citizens of Iowa is significant. The fees collected develop and maintain designated snowmobile trails and programs of the state.

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

No less costly methods exist for achieving the purpose of the proposed rulemaking. The rulemaking is streamlined to implement the program consistent with the Iowa Code.

6. Alternative methods considered by the agency:

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

The agency briefly considered adopting a program guideline document in lieu of rule promulgation.

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

Having oversight and processes in rule better protects the user-generated funding source and ensures that Iowa Code requirements are met.

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?

This proposed rulemaking does not have any impact on small business.

Text of Proposed Rulemaking

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 which 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 48
"Inspection of Permanently Moored Vessels"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99F.7 and 462A.20
State or federal law(s) implemented by the rulemaking: Iowa Code sections 99F.7 and 462A.20

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Craig Cutts via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Craig Cutts prior to the hearing to facilitate an orderly hearing.

September 24, 2024 9 a.m.	Via video/conference call

Public Comment

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

Craig Cutts
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.971.8136
Email: craig.cutts@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of regulated excursion boats used for gambling will bear the costs.

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

Members of the public who utilize excursion boats for gambling 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:

Owners of regulated excursion boats used for gambling incur a cost for the third-party contractor for inspection. However, this cost is significantly less than previous costs of inspection and certification.

- Qualitative description of impact:

In the 19 years of this program, these excursion boats have never had a significant casualty involving personal injury or damage related to any system or procedure regulated by these rules.

3. Costs to the State:

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

There is no cost to the State for this program.

- Anticipated effect on state revenues:

There is no expected impact from repromulgating these rules.

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

The benefits to the safety of the public outweigh the costs to the regulated industry, particularly when the previous costs of inspection and certification were higher than the current costs.

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 to implement these rules. These rules are tailored to the statutory authority.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

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?

There is no impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 49
"Operation of Motor Vehicles in Meandered Streams, Navigable Streams and Trout Streams"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 462A.34A
State or federal law(s) implemented by the rulemaking: Iowa Code section 462A.34A

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Craig Cutts via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Craig Cutts prior to the hearing to facilitate an orderly hearing.

September 24, 2024 9 a.m.	Via video/conference call

Public Comment

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

Craig Cutts
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.971.8136
Email: craig.cutts@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 49 creates a process to identify meandered streams, navigable streams, and trout streams and lists the streams in which operation of motor vehicles is prohibited. This chapter is required by statute. The benefit of the chapter is protecting 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).

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 this rulemaking.

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

All Iowans will benefit from protecting water quality and natural resources associated with the covered streams and rivers. Paddlers and anglers are more directly benefited by undisturbed rivers and streams.

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:

There is no negative economic impact of this rulemaking. The prohibitions included in this rulemaking are mandated by the Iowa Code.

- Qualitative description of impact:

There is no negative economic impact of this rulemaking. The prohibitions included in this rulemaking are mandated by the Iowa Code.

3. Costs to the State:

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

The Department's Law Enforcement Bureau enforces these rules and will have costs in the form of staff time.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenue.

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

Protecting streams and rivers is highly beneficial to water quality and recreational use. The costs of staff time are relatively low since enforcing these particular rules is part of the larger day-to-day law enforcement activities of the Department's conservation officers.

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

These rules contain a simple prohibition on an activity that can be harmful to natural resources. There is no less costly or intrusive method of obtaining these benefits.

6. Alternative methods considered by the agency:

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

None. The prohibitions in this chapter are mandated by the Iowa Code.

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

The methods employed in this rulemaking are mandated by the Iowa Code.

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?

This rulemaking has no known impact on small business.

Text of Proposed Rulemaking

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
	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
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
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
	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
	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
	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
	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
	Floyd River	All
	West Fork,	All

	Little Sioux River	
Pocahontas	Lizard Creek	West Line of S2,T90N,R31W to East County Line
	North Branch, 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, Des Moines River
	West Fork, 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 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 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 Wapsipinicon River
	Mississippi River	All
	Mud Creek	County Road Bridge in S11,T79N,R1E to Mouth at the 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
	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
	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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 50
"Regulated Vehicle, Snowmobile and Vessel Bonding"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321I.31(9), 321G.29(9) and 462A.5A

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321I.31, 321G.29 and 462A.5A

Public Hearing

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

September 25, 2024	6200 Park Avenue, Suite 200
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

Purpose and Summary

Proposed Chapter 50 contains rules related to 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. 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 chapter, the 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons who purchase boats, snowmobiles, and regulated vehicles and do not receive the proper paperwork to transfer ownership will bear the costs.

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

Persons who purchase boats, snowmobiles, and regulated vehicles and do not receive the proper paperwork to transfer ownership and the owners of units that have a retail value of $1,000 or less and are older than 15 years old 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:

Customers with lower-value and older vehicles will no longer have the financial burden to obtain a bond. The Department estimates that more than 220 cases out of the 530 cases last year would benefit from this proposed chapter.

- Qualitative description of impact:

Customers will see a more efficient process.

3. Costs to the State:

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

Department staff will continue to administer this program, but the Department foresees fewer customers needing to obtain a bond and require support through the administrative process.

- Anticipated effect on state revenues:

The Department anticipates an increase in state revenue as a result of allowing units to register when, in the past, customers may have been dissuaded by the bond process and failed to register the units.

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

The benefits to customers and increase in efficiency outweigh a minimal cost.

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

No less costly or less intrusive methods are possible.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

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?

This rulemaking has no impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 51
"Game Management Areas"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.6 and 456A.24(2)"a"

State or federal law(s) implemented by the rulemaking: Iowa Code sections 481A.6 and 456A.24(2)"a"

Public Hearing

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

September 24, 2024	6200 Park Avenue, 2nd Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

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

Monica Thelen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.868.2209
Email: monica.thelen@dnr.iowa.gov

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 new version updates and clarifies the process for power-driven mobility devices for persons with physical disabilities and removes a reference to a target shooting range at Bays Branch. This target shooting range is now closed.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Not applicable. No class of persons will bear the costs of the rulemaking besides the Department itself.

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

Citizens of Iowa, including persons with physical disabilities seeking recreational opportunities in Game Management Areas, 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:

This rulemaking is not associated with an economic impact or cost.

- Qualitative description of impact:

This rulemaking does not impose burdens on the public. The rules clarify the process for persons with physical disabilities using power-driven mobility devices to access Game Management Areas, which creates transparency to allow these users access to Iowa's recreational opportunities.

3. Costs to the State:

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

The Department currently provides management and oversight of Game Management Areas and enforcement of these rules and provides assistance to users in understanding and complying with the rules, and those services will not change due to the proposed rulemaking.

- Anticipated effect on state revenues:

The proposed rulemaking does not have any effect on state revenue.

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

The general public does not have any costs to comply with the process and requirements set forth in these rules. The rules on power-driven mobility devices are beneficial since the rules increase transparency to persons with physical disabilities on how to apply for access to these areas.

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

There are no costs associated with this proposed rulemaking.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

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?

This proposed rulemaking does not have any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 51 and adopt the following **new** chapter in lieu thereof:

MANAGEMENT AREAS AND PRACTICES

TITLE V

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

County	Wildlife Area
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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 52
"Wildlife Refuges"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.5, 481A.6, 481A.9 and 481A.39

State or federal law(s) implemented by the rulemaking: Iowa Code sections 481A.5, 481A.6, 481A.9 and 481A.39

Public Hearing

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

September 24, 2024	6200 Park Avenue, 2nd Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

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

Monica Thelen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.868.2209
Email: monica.thelen@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 52 establishes wildlife refuges on state-owned lands and water under the jurisdiction of the Department. Wildlife refuges are sanctuaries for wildlife and help preserve a species' biological balance pursuant to the provisions of Iowa Code sections 481A.35, 481A.6, 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Not applicable. No class of persons will bear the costs of the proposed rulemaking besides the Department itself.

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

Citizens of Iowa 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:

This rulemaking is not associated with an economic impact or cost.

- Qualitative description of impact:

This rulemaking does not impose burdens on the public.

3. Costs to the State:

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

The agency's primary cost is for staff involved in ensuring refuges and restricted areas are posted, and law enforcement officers' enforcement of the rules.

- Anticipated effect on state revenues:

The proposed rulemaking does not have any effect on state revenues.

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

The public does not have any costs to comply with the process and requirements set forth in these rules.

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

There are no costs associated with this proposed rulemaking.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

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?

This proposed rulemaking does not have any impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 54
"Restrictions on Removal of Plant Life"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6), 456A.24(11), 461A.35 and 461A.41

State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.24(11), 461A.35 and 461A.4

Public Hearing

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

September 24, 2024 1 to 2 p.m.	6200 Park Avenue, Second Floor Des Moines, Iowa

Public Comment

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

Randall Schultz
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 391.217.9317
Email: randy.schultz@dnr.iowa.gov

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, asparagus, fruit, American ginseng, and trees on public lands and aquatic plants under the jurisdiction of the Natural Resource Commission (Commission). This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Department may issue permits for the introduction and removal of aquatic plants in public waters; cities and counties would incur the costs of staff time. Herbicide purchase for removal of aquatic plants is required for successful problematic aquatic vegetation control.

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

This chapter benefits recreational water body use by controlling the spread of nuisance aquatic vegetation.

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:

Nuisance aquatic plant control benefits Iowans' water use by preventing the obstruction of water intake structures and promoting water recreation, access, and angling. Fishing contributes to the economy through angler purchases and travel.

- Qualitative description of impact:

Nuisance aquatic plant control provides outdoor recreation opportunities such as angling and nonconsumptive use, improving the general quality of life for Iowans.

3. Costs to the State:

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

The Department, cities, and counties incur costs for staff time. Herbicides are purchased to control aquatic vegetation and must be applied by a certified aquatic pesticide applicator.

- Anticipated effect on state revenues:

None.

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

This chapter implements restrictions on the introduction and removal of plants on public lands and waters that are explicitly mandated by the Iowa Code.

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

None. Herbicides and costs to become a certified aquatic pesticide applicator are fixed costs.

6. Alternative methods considered by the agency:

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

None. This is a nonregulatory chapter covering restrictions for plant introductions on public lands and waters.

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

Not applicable.

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?

This chapter does not affect small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 55
"Nonpermanent Structures"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 461A.4
State or federal law(s) implemented by the rulemaking: Iowa Code section 461A.4

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Matt Bruner via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Matt Bruner prior to the hearing to facilitate an orderly hearing.

September 24, 2024 9 a.m.	Via video/conference call

Public Comment

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

Matt Bruner, Captain, Law Enforcement Bureau
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.336.5456
Email: matt.bruner@dnr.iowa.gov

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licensed ice anglers who intend to leave ice-fishing shelters unattended on public ice during the ice fishing season will bear the costs.

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

Ice anglers utilizing ice-fishing shelters and winter-time recreationalists utilizing public ice (i.e., snowmobilers, all-terrain vehicle riders) 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:

Each ice-fishing shelter left unattended would be required to be marked with the owner's identification information (Department number or name and address).

- Qualitative description of impact:

The required markings may be simple stick-on decals that are easily acquired at local stores or painted with the owner's information in 3-inch-high block letters. The proposed rule allows just a Department number to be displayed, compared to the existing rule's requirement of full owner name and street address.

3. Costs to the State:

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

There are no implementation or enforcement costs outside of routine Department Conservation Officer patrol.

- Anticipated effect on state revenues:

This chapter is not anticipated to affect state revenues.

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

The costs of inaction incurred by the Department are high. Unidentified and unmarked ice fishing shelters left on the ice after March 1 or ice-out are a hazard to remove. The debris left by unremoved shelters requires specialized equipment and additional dedicated time to remove so as not to be a hazard to other recreationalists using the public waterbodies. Without the requirement for reflectors on all sides of shelters left out after sunset, the safety of ice anglers and other recreationalists using the ice would be in jeopardy.

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

After a thorough investigation into other less costly and less intrusive methods for achieving the purpose of the proposed chapter, none were identified. This chapter previously required an ice shelter owner's name and home address be displayed on the ice shelter. That provision has been changed to allow for display of the owner's Department number instead, due to angler concerns regarding privacy and personal safety.

6. Alternative methods considered by the agency:

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

The proposed chapter creates a general permit covering all ice shelter owners who comply with the provisions of the chapter. The alternative to this chapter would be requiring owners of ice shelters to file an application for a written permit under Iowa Code section 461A.4.

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

This alternative was rejected in favor of the proposed chapter because the proposed chapter decreases the cost to the public and eliminates the need for Department staff to process written applications.

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 proposed chapter does not have any anticipated impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 56
"Shooting Sports Program Grants"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 456A.30 and 481A.17
State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.30 and 481A.17

Public Hearing

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

September 24, 2024	6200 Park Avenue, Second Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

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

Megan Wisecup
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.238.4968
Email: megan.wisecup@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 56 establishes a target shooting sports 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 and the five-year review of rules in 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 the same process applies to both programs, with the few differences between the programs identified as appropriate.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Grant applicants will bear the costs.

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

Iowans being introduced to shooting sports programs, existing shooting sports program participants, and recreational shooters 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:

Costs include administrative time and effort for application, tracking, and reporting requirements.

- Qualitative description of impact:

Impacts include availability of quality shooting sports facilities and equipment and increasing public awareness and opportunity for participation in shooting sports programs.

3. Costs to the State:

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

Costs include administrative costs to the Department to administer the program. The funding required for the program is not a cost that results from rulemaking.

- Anticipated effect on state revenues:

The program may increase state revenues through increased participation in shooting sports programs; however, this chapter does not directly impact state revenues.

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

The cost of inaction, meaning the absence of this chapter, would lead to confusion and challenges for applicants navigating the application process and expectations for continued compliance with the grant. The benefits of transparency and a fair and equitable process for administering funds to grant applications outweigh the cost of inaction.

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 to administer this program. The program is statutorily required and has minimal administrative costs.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered because of the minimal administrative costs and the statutory requirement to have this process.

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

Not applicable.

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?

There is no substantial impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapters 61 and 63
"State Parks, Recreation Areas, and State Forest Camping; Keg Beer Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 461A.3 and 461A.35
State or federal law(s) implemented by the rulemaking: Iowa Code sections 461A.3 and 461A.35

Public Hearing

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

September 25, 2024	6200 Park Avenue, Second Floor
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

Purpose and Summary

Chapter 63 provides guidance on consumption of beer dispensed from a keg in state parks, recreation areas, and designated state forest campgrounds. In compliance with Executive Order 10, 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 the phrase "Boy Scouts of America" was no longer accurate, and that has been modified to read "Scouts of America."

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No costs are expected from the proposed rulemaking.

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

The proposed rulemaking maintains the status quo on where keg beer gatherings are restricted. No additional benefits are expected.

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 costs are expected from this proposed rulemaking.

- Qualitative description of impact:

No costs are expected from this proposed rulemaking.

3. Costs to the State:

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

The proposed rulemaking does not impose costs on the agency or any other agency.

- Anticipated effect on state revenues:

The proposed rulemaking does not have an effect on state revenue.

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

The public does not have any costs to comply with the process and requirements set forth in these rules that differ from costs under the existing law.

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

There are no costs associated with this proposed rulemaking.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

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?

This proposed rulemaking does not have any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend rule **571—61.1(461A)**, definition of "Chaperoned, organized youth group," as follows:

"Chaperoned, organized youth group" means a group of persons 17 years of age and under~~, which~~ 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.

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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 64
"Metal Detector Use in State Areas"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 461A.35
State or federal law(s) implemented by the rulemaking: Iowa Code section 461A.35

Public Hearing

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

September 25, 2024	6200 Park Avenue, Second Floor
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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.

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 public who choose to use metal detectors on state land will bear the costs.

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

Members of the public who choose to use metal detectors on state land and citizens of Iowa 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:

This rulemaking does not have an economic impact or cost.

- Qualitative description of impact:

This rulemaking does not impose burdens to the public other than restricting where people who wish to use metal detectors on state lands may use these devices. The restrictions on metal detector use protect the natural environment, which allows members of the public to appreciate state areas.

3. Costs to the State:

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

The proposed rulemaking does not have costs to the agency or any other agency.

- Anticipated effect on state revenues:

The proposed rulemaking does not have any effect on state revenues.

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

The restrictions on where certain members of the public can use metal detectors are outweighed by the benefit to the public to enjoy Iowa's natural areas without excessive digging.

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 associated with this proposed rulemaking that can achieve the purpose of protecting state areas.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

There is no impact on small business.

Text of Proposed Rulemaking

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 which 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 66
"Saylorville Multiuse Trail"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 461A.35, 481A.5 and 481A.6

State or federal law(s) implemented by the rulemaking: Iowa Code sections 461A.35, 481A.5 and 481A.6

Public Hearing

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

September 25, 2024	6200 Park Avenue, Second Floor
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

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

Kim Bohlen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.360.3682
Email: kim.bohlen@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 66 establishes 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Not applicable. No class of persons will bear the costs of the rulemaking besides the Department itself.

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

Recreational trail users and citizens of Iowa 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:

There is no cost to the public to comply with this rulemaking.

- Qualitative description of impact:

This rulemaking does not impose burdens on the public.

3. Costs to the State:

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

Department costs are for staff involved in the management and enforcement of these areas.

- Anticipated effect on state revenues:

The proposed rulemaking does not affect state revenue.

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

The public does not bear any costs due to the proposed rulemaking. The agency's expenses related to the management and enforcement are outweighed by the benefits received by trail users and citizens of Iowa.

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

The rulemaking is very low-cost and unobtrusive and yields significant benefits to trail users and citizens of Iowa.

6. Alternative methods considered by the agency:

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

None. There are no less restrictive alternatives to achieve the same benefit because the provisions of Chapter 66 are necessary for ensuring the trail and surrounding areas are used in an authorized manner.

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

Not applicable.

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 proposed rulemaking does not have any impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 67
"Development and Management of Recreation Trails on
State Forests, Parks, Preserves and Recreation Areas"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5, 456A.24 and 461A.35

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455A.5, 456A.24 and 461A.35

Public Hearing

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

September 25, 2024	6200 Park Avenue, Second Floor
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

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

Kim Bohlen
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.360.3682
Email: kim.bohlen@dnr.iowa.gov

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, 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 in the proposed chapter.

In addition, the process to request an equestrian hunting permit has been removed in the proposed chapter. 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Not applicable. No class of persons will bear the costs of the rulemaking besides the Department itself.

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

Recreational trail users and citizens of Iowa 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:

There is no cost to the public to comply with this rulemaking.

- Qualitative description of impact:

This rulemaking does not impose burdens on the public.

3. Costs to the State:

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

Department costs are for staff involved in the management and enforcement of these areas.

- Anticipated effect on state revenues:

The proposed rulemaking does not affect state revenue.

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

The public does not bear any costs due to the proposed rulemaking. The agency's expenses related to management, development and enforcement are outweighed by the benefits received by the trail users and citizens of Iowa.

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

The rulemaking is very low-cost and unobtrusive and yields significant benefits to trail users and citizens of Iowa.

6. Alternative methods considered by the agency:

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

The less restrictive option would be to not have a chapter that outlines trail development, requirements, and management practices. However, this chapter is necessary because the provisions in this chapter allow the Department to preserve the ability to close trails due to safety concerns. Staff reached out to Missouri, Nebraska, and South Dakota staff to see if they had any comparable chapters, and staff from those states stated they did not but wished they did.

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

Not applicable.

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 proposed rulemaking does not have any impact on small business.

Text of Proposed Rulemaking

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 horserider 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 which 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 72
"Timber Buyers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 456A.36(6)
State or federal law(s) implemented by the rulemaking: Iowa Code section 456A.36

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jeff Goerndt via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Jeff Goerndt prior to the hearing to facilitate an orderly hearing.

September 25, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Timber buyers will bear the costs.

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

Timber owners will benefit by having the protection of timber buyers being bonded under the 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:

Timber buyers will be required to purchase a bond in the amount of $25,000 to $50,000.

- Qualitative description of impact:

The increase in the bond amount ensures adequate protection for the landowner selling the timber.

3. Costs to the State:

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

There are no costs beyond staff time. The staff who process paperwork and annually develop a list of bonded timber buyers have other assigned duties as well.

- Anticipated effect on state revenues:

None.

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

There is no cost to the Department other than staff time. The benefits include providing an accurate list of timber buyers to forest landowners who want to sell timber as part of their management of the forest resource. The bond is required by the Iowa Code, so any costs borne by timber buyers in obtaining the bond are attributable to the Iowa Code provision and would exist regardless of this chapter.

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

None were identified.

6. Alternative methods considered by the agency:

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

None. The Department's role in the program is mandated by the Iowa Code.

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

Not applicable.

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?

This rulemaking is for compliance with the Iowa Code and does not have a substantial impact on small business. Any impact on small business is attributable to Iowa Code provisions and not this chapter.

Text of Proposed Rulemaking

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 which 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 THE PURCHASE OF TIMBER FROM TIMBER GROWERS BY TIMBER BUYER OR BUYER'S AGENT (Revised 3/21)
NRC72-3	TIMBER BUYER SURETY BOND (USING A CERTIFICATE OF DEPOSIT) GOVERNING THE PURCHASE OF TIMBER FROM TIMBER GROWERS BY BUYER OR BUYER'S AGENT (Revised 8/17)
NRC72-4	COLLATERAL ASSIGNMENT OF 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 73
"Forest and Fruit-Tree Reservations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 427C.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 427C

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jeff Goerndt via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Jeff Goerndt prior to the hearing to facilitate an orderly hearing.

September 25, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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. Forest and fruit-tree reservations are exempt from taxation under the Iowa Code. This chapter will ensure consistent application of the tax exemptions afforded to 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 so 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).

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 this proposed rulemaking.

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

County assessors, forest landowners, and the Department will benefit from having the forest reserve county-level data in a format that is more efficient and sortable.

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:

This rulemaking does not change the amount of data collected by the counties, only the format in which it must be reported.

- Qualitative description of impact:

Reporting the data in a sortable Microsoft Excel file is more efficient for the county offices and also is more efficient for staff analyzing the data and reporting data to the Department, legislators, and the public.

3. Costs to the State:

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

There are no costs associated with this rulemaking.

- Anticipated effect on state revenues:

None.

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

There are no costs associated with the rulemaking, and the benefit is that the Department will receive data from each county in a consistent format.

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

None.

6. Alternative methods considered by the agency:

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

None. The Department's role in this program is limited and mandated by the Iowa Code.

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

Not applicable.

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?

This rulemaking does not have a substantial impact on small business.

Text of Proposed Rulemaking

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 which 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 74
"Forest Land Enhancement Program (FLEP)"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 456A.24
State or federal law(s) implemented by the rulemaking: Iowa Code section 456A.24(13)

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jeff Goerndt via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Jeff Goerndt prior to the hearing to facilitate an orderly hearing.

September 25, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No costs are associated with this rulemaking.

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

Not applicable.

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:

This chapter is being rescinded and will not be replaced.

- Qualitative description of impact:

Rescinding this chapter will remove unnecessary regulations.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

None.

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

There is no cost related to the proposed rulemaking, and any benefits of the rescinded chapter are maintained through other existing laws.

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

Rescinding this chapter is the least costly and intrusive option.

6. Alternative methods considered by the agency:

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

The Department considered repromulgating the existing chapter.

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

The benefits of this chapter are already accomplished under Iowa Code provisions, and therefore, this chapter was determined to be unnecessary.

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?

This rulemaking has no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **571—Chapter 74**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapters 91, 92, 97, and 102
"Migratory Game Bird Hunting"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.38, 481A.39, and 481A.48(2)

State or federal law(s) implemented by the rulemaking: 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)

Public Hearing

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

September 24, 2024	6200 Park Avenue, Second Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Orrin Jones
Iowa Department of Natural Resources
1203 North Shore Drive
Clear Lake, Iowa 50428
Email: orrin.jones@dnr.iowa.gov

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.

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Iowa waterfowl hunters will bear the costs.

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

Iowa waterfowl hunters 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:

Approximately 30,000 individuals hold licenses to participate in migratory bird hunting in Iowa.

- Qualitative description of impact:

These rules ensure that the season dates are within the framework established by the USFWS and compatible with current populations and habitat conditions.

3. Costs to the State:

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

The agency's primary cost is for staff time to implement and enforce the rules. This includes Wildlife Bureau staff to administer, coordinate, and monitor the hunting seasons and also effort from conservation officers to ensure that safe and compliant hunting takes place. However, no staff work exclusively on waterfowl and coot hunting-related matters.

- Anticipated effect on state revenues:

A detailed 2022 survey of nearly 1,100 Iowans conducted by Responsive Management Inc. estimated that 433,000 people participate in hunting activities in Iowa annually. As mentioned previously, at least 30,000 of them choose migratory birds as one of the species they pursue. According to the U.S. Bureau of Economic Analysis with the U.S. Department of Commerce, hunting is linked to nearly 7,000 jobs in Iowa and generated $47.8 million in taxes based on $227 million in salaries and wages.

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

The loss of migratory bird hunting in Iowa would eliminate the revenues described previously.

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

The Department could not identify less costly or less intrusive methods for achieving the purpose of this chapter. Other states have similar regulations, and the USFWS provides the framework for all.

6. Alternative methods considered by the agency:

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

No alternative methods were identified to effectively manage Iowa's migratory bird population.

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

Not applicable.

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 following types of jobs are positively impacted by migratory hunting in Iowa generally and should see no noticeable change due to this rulemaking: hunting equipment retailers (firearms, ammunition, clothing, chairs, stands, binoculars, and other supporting equipment); field guides and outfitters; taxidermists; and restaurants, hotels, and gas stations for hunters traveling around the state.

Text of Proposed Rulemaking

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: September 1 through September 16. 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 13 and continue for 53 consecutive days.

91.1(3) *Season dates - central zone.* Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 6 and run for seven days. The second segment of the season will open on the Saturday nearest October 20 and continue for 53 consecutive days.

91.1(4) *Season dates - south zone.* Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 13 and run for seven days. The second segment of the season will open on the Saturday nearest October 27 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 13 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 20 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 6 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 27 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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapters 96, 100 and 107 "Small Game Hunting"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.38, 481A.39 and 481A.48

State or federal law(s) implemented by the rulemaking: Iowa Code sections 481A.38, 481A.39, and 481A.48

Public Hearing

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

September 24, 2024	6200 Park Avenue, 2nd Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Iowa small game hunters will bear the costs.

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

Iowa small game hunters 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:

There is no economic impact or cost associated with this rulemaking.

- Qualitative description of impact:

This rulemaking does not impose burdens on the public. In fact, this chapter authorizes small game hunting by setting forth the specific regulations on certain small game species, which provides recreational opportunities to hunters and associated economic benefits to this state.

3. Costs to the State:

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

The Department's primary cost is from staff time to implement and enforce the rules. This includes Wildlife Bureau staff to administer, coordinate, and monitor the hunting seasons and also effort from conservation officers to ensure safe and compliant hunting takes place. However, no staff work exclusively on small game hunting-related matters.

- Anticipated effect on state revenues:

A detailed 2022 survey of nearly 1,100 Iowans conducted by Responsive Management Inc. estimated that 433,000 people participate in hunting activities in Iowa annually. As mentioned previously, at least 70,000 of them pursue small game. According to the U.S. Bureau of Economic Analysis with the U.S. Department of Commerce, hunting is linked to nearly 7,000 jobs in Iowa and generated $47.8 million in taxes based on $227 million in salaries and wages.

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

The loss of small game hunting in Iowa would eliminate the economic benefits (jobs, wages, and taxes) described previously. Additionally, unregulated small game populations could cause an increasing amount of damage to Iowa landowners.

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

The Department could not identify less costly or less intrusive methods for achieving the purpose of this rulemaking. Other states have similar regulations and strive to manage their small game populations at a balance between recreational opportunities and negative interactions.

6. Alternative methods considered by the agency:

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

No alternative methods were identified to effectively manage Iowa's small game populations.

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

Not applicable.

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 following types of jobs are positively impacted by small game hunting in Iowa generally and should see no noticeable change due to this rulemaking: hunting equipment retailers (firearms, ammunition, clothing, chairs, stands, binoculars, and other supporting equipment); field guides and outfitters; taxidermists; and restaurants, hotels, and gas stations for hunters traveling around the state.

Text of Proposed Rulemaking

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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapters 98 and 99
"Wild Turkey Hunting"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.38, 481A.39, 481A.48, 483A.1, 483A.7 and 483A.24

State or federal law(s) implemented by the rulemaking: Iowa Code sections 481A.38 and 481A.48

Public Hearing

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

September 24, 2024	6200 Park Avenue, Second Floor
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Iowa turkey hunters will bear the costs.

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

Iowa turkey hunters 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:

This chapter regulates the harvest of over 12,000 wild turkeys by over 30,000 hunters annually across the state.

- Qualitative description of impact:

The impacts of this chapter are far-reaching, from recreational impacts for hunters to economic impacts for Iowa's small businesses and landowners.

3. Costs to the State:

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

The agency's primary cost is for staff time to implement and enforce the rules. This includes Wildlife Bureau staff to administer, coordinate, and monitor the hunting seasons and also effort from conservation officers to ensure safe and compliant hunting takes place. However, no staff work exclusively on turkey hunting-related matters.

- Anticipated effect on state revenues:

A detailed 2022 survey of nearly 1,100 Iowans conducted by Responsive Management Inc. estimated that 433,000 people participate in hunting activities in Iowa annually. As mentioned previously, at least 30,000 of them choose turkeys as one of the species they pursue. According to the U.S. Bureau of Economic Analysis with the U.S. Department of Commerce, hunting is linked to nearly 7,000 jobs in Iowa and generated $47.8 million in taxes based on $227 million in salaries and wages.

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

The loss of turkey hunting in Iowa would eliminate the revenues described previously.

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

The Department could not identify less costly or less intrusive methods for achieving the purpose of this chapter. Other states have similar regulations and strive to manage their turkey flock at a balance between recreational opportunities and negative interactions.

6. Alternative methods considered by the agency:

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

No alternative methods were identified to effectively manage Iowa's wild turkey population.

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

Not applicable.

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 following types of jobs are positively impacted by turkey hunting in Iowa generally and should see no noticeable change due to this rulemaking: hunting equipment retailers (firearms, ammunition, clothing, chairs, stands, binoculars, and other supporting equipment); field guides and outfitters; taxidermists; and restaurants, hotels, and gas stations for hunters traveling around the state.

Text of Proposed Rulemaking

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 DNR 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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 101
"Falconry Regulations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.38, 481A.39 and 481A.48
State or federal law(s) implemented by the rulemaking: Iowa Code sections 481A.38 and 481A.48

Public Hearing

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

September 24, 2024	6200 Park Avenue, Second Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Anna Buckardt
Iowa Department of Natural Resources
1436 255th Street
Boone, Iowa 50036
Email: anna.buckardt@dnr.iowa.gov

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).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Iowa and nonresident falconers will bear the costs.

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

Iowa and nonresident falconers 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:

This chapter regulates the take and possession of raptors for falconry by over 60 Iowa falconers.

- Qualitative description of impact:

Raptors are protected by state and federal law, and this chapter allows the sustainable take of this group of birds for the purpose of the sport of falconry.

3. Costs to the State:

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

The agency's primary cost is for staff time to implement and enforce the rules. This includes Wildlife Bureau and licensing staff to administer, coordinate, and monitor falconry take and also effort from conservation officers to ensure safe and compliant holding facilitates for raptors. However, no staff work exclusively on falconry-related matters.

- Anticipated effect on state revenues:

The Department does not anticipate a significant impact to state revenue given the small size of the falconry community. Falconry permits and fees do result in small financial gains of roughly $4,500 each year. Falconers must also purchase appropriate hunting licenses in order to hunt with falcons, resulting in additional revenue.

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

The loss of falconry in Iowa would eliminate the revenues described previously. Additionally, falconers were instrumental in the recovery of Peregrine falcon populations in Iowa.

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

The Department could not identify less costly or less intrusive methods for achieving the purpose of this chapter. Other states have similar regulations and strive to manage falconry at a balance between recreational opportunities and negative interactions.

6. Alternative methods considered by the agency:

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

No alternative methods were identified to effectively manage Iowa's raptor take.

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

Not applicable.

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 following types of jobs are positively impacted by falconry in Iowa generally and should see no noticeable change due to this rulemaking: outdoor equipment retailers (clothing, animal carriers, binoculars, and other supporting equipment) and restaurants, hotels, and gas stations for falconers traveling around the state.

Text of Proposed Rulemaking

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, Eurasian 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) 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.

101.2(3) 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.

101.2(4) 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, Eurasian 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 105
"Deer Population Management Zones"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.38, 481A.39, 481A.48, and 483A.8

State or federal law(s) implemented by the rulemaking: Iowa Code sections 481A.38, 481A.39, 481A.48, and 483A.8

Public Hearing

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

September 24, 2024 1 to 2 p.m.	6200 Park Avenue, Second Floor Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Andy Kellner
Iowa Department of Natural Resources
55 East Jefferson Street
Winterset, Iowa 50273
Email: andrew.kellner@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 105 establishes deer management zone hunts 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Hunters will bear the majority of the cost of this rulemaking in the form of license and tag fees. Other entities that are managing the wildlife in areas under their jurisdiction will have some staff time involved for administrative and operational work related to carrying out a hunt.

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

Hunters gain additional hunting opportunities through this rulemaking, both in high-population centers and in more rural areas of the state. This rulemaking also benefits anyone managing property and resources in areas that would not otherwise see hunting in the form of a deer population management tool. Property damage, agricultural loss, and ecological disruption from overabundant deer populations can be mitigated through 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:

Nearly 120 different deer management zones have been established through use of this chapter since the early to mid-1990s. Tens of thousands of deer have been harvested through this program in that time period. Over 6,000 deer have been harvested in the Des Moines metropolitan area through this program. The potential for an increase in deer population that has not occurred due to the implementation of this chapter is difficult to quantify but has significantly impacted cities and parks across the state.

- Qualitative description of impact:

Overabundance of deer in situations where hunting is not occurring can lead to property damage, agricultural damage, and increased rates of deer-vehicle collisions. This chapter offers a tool that cities, parks, refuges, and other entities can use to manage deer populations through special hunting opportunities alleviating conflict scenarios.

3. Costs to the State:

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

The Department's Law Enforcement Bureau, Wildlife Bureau, and Customer and Employee Services Bureau staff time is the only cost to the agency. The Department spends time assisting requesting entities through the process and offering guidance on ways to utilize the program safely, ethically, and effectively.

- Anticipated effect on state revenues:

Revenue from the sales of deer management zone tags, which cost $28.50 for the first tag and $15 for each additional tag a hunter purchases, is incorporated with revenue from other deer licenses.

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

The loss of these hunting opportunities would detrimentally impact many areas around the state that would not otherwise have an avenue for utilizing hunting as a management tool. Other deer population control methods are extremely controversial, potentially less effective, and much more expensive.

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

The Department could not identify less costly or less intrusive methods for achieving the purpose of this chapter.

6. Alternative methods considered by the agency:

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

No alternative methods were identified to effectively manage these situations.

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

Not applicable.

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 updates made in the proposed chapter will be neutral toward small businesses. Small businesses benefit from an increased customer base when acting as a license vendor for a deer management zone under this chapter.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapters 108, 109, and 110
"Wild Furbearer Trapping And Hunting"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.6, 481A.38, 481A.39, 481A.87, 481A.90, and 481A.92

State or federal law(s) implemented by the rulemaking: Iowa Code sections 481A.6, 481A.38, and 481A.92

Public Hearing

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

September 24, 2024	6200 Park Avenue, 2nd Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. 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

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Iowa fur harvesters will bear the costs.

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

Iowa fur harvesters 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:

This rulemaking is not associated with an economic impact or cost.

- Qualitative description of impact:

This rulemaking does not impose burdens on the public.

3. Costs to the State:

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

The agency's primary cost is for staff time to implement and enforce the rules. This includes Wildlife Bureau staff to administer, coordinate, and monitor the hunting and trapping seasons and also effort from conservation officers to ensure that safe and compliant hunting takes place.

- Anticipated effect on state revenues:

A detailed 2022 survey of nearly 1,100 Iowans conducted by Responsive Management Inc. estimated that 433,000 people participate in hunting activities in Iowa annually. As mentioned previously, at least 15,000 of them pursue furbearers. According to the U.S. Bureau of Economic Analysis with the U.S. Department of Commerce, hunting is linked to nearly 7,000 jobs in Iowa and generated $47.8 million in taxes based on $227 million in salaries and wages.

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

The loss of furbearer hunting and trapping in Iowa would eliminate the revenues described previously. Additionally, unregulated furbearer populations could cause an increasing amount of damage to Iowa landowners.

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

The Department could not identify less costly or less intrusive methods for achieving the purpose of this chapter. Other states have similar regulations and strive to manage their furbearer populations at a balance between recreational opportunities and negative interactions.

6. Alternative methods considered by the agency:

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

No alternative methods were identified to effectively manage Iowa's furbearer populations.

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

Not applicable.

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 following types of jobs are positively impacted by furbearer hunting and trapping in Iowa generally and should see no noticeable change due to this rulemaking: hunting equipment retailers (firearms, ammunition, clothing, chairs, stands, binoculars, and other supporting equipment); field guides and outfitters; taxidermists; and restaurants, hotels, and gas stations for hunters and trappers traveling around the state.

Text of Proposed Rulemaking

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**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 114
"Nuisance Wildlife Control"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 481A.38, 481A.39, 481A.48 and 456A.24

State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.24 and 481A.48

Public Hearing

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

September 24, 2024	6200 Park Avenue, Second Floor
1 to 2 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Andy Kellner
Iowa Department of Natural Resources
55 East Jefferson Street
Winterset, Iowa 50273
Email: andrew.kellner@dnr.iowa.gov

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 and NWCOs have resulted in a positive customer service response to the public.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private businesses operating as an NWCO and the general public will bear the costs.

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

Private businesses and the general public 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:

This chapter regulates over 140 NWCOs in rural and urban areas of the state. Each NWCO offers service to a significant number of Iowans.

- Qualitative description of impact:

This chapter offers business opportunities for trappers who would like to expand their experience with removing wildlife as a service to others. It ensures that the process is handled effectively and ethically while also assisting Iowans with wildlife conflict. The chapter also offers a framework so that the State of Iowa can monitor what species and how many wildlife are involved to better respond and implement management at the statewide level.

3. Costs to the State:

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

The Department's only costs are for staff time. The Department must spend time with new applicants to proctor the applicants' initial test and interview the candidates. Department staff also spend time coaching NWCOs through certain difficult situations, such as endangered species issues. The Department also completes annual renewals and houses records from NWCOs. Ultimately, the NWCO program actually decreases the amount of staff time the Department spends on wildlife conflict scenarios. Importantly, all involved staff have other assigned duties.

- Anticipated effect on state revenues:

Any direct revenue to the State from the associated fees of the NWCO application process (fur harvester license ($26), habitat fee ($15), initial testing fee ($25), and annual permitting fee ($20)) are offset by Department staff time involved with application and records. However, the economic benefit that almost 150 small business are generating with their services is significant.

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

The loss of this business opportunity for Iowans would leave some Iowans without an income source. Additionally, the workload to compensate for the unanswered wildlife conflict situations would require at least 150 additional employees.

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

The Department could not identify less costly or less intrusive methods for achieving the purpose of this chapter. Other states have similar NWCO programs that operate in similar ways.

6. Alternative methods considered by the agency:

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

No alternative methods were identified to effectively manage these situations.

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

Not applicable.

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 proposed updates to the chapter will help consolidate and simplify reporting requirements for small businesses. Importantly, this chapter allows many NWCO small businesses to exist and flourish. Furthermore, changes proposed will increase performance standards by clarifying and streamlining the guidebook adopted by reference in this rulemaking.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapters 1, 3 to 6 "Description of Organization; Submission of Information and Complaints—Investigations; Agency Procedure for Rulemaking; Petitions for Rule Making; Declaratory Orders"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3(1)"a" through "c" (repealed in 2024 Iowa Acts, Senate File 2370), 17A.7(1), 17A.9(2), and 455A.

State or federal law(s) implemented by the rulemaking: 2024 Iowa Acts, Senate File 2370, and Executive Order 10 (2023).

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

Purpose and Summary

The Iowa Administrative Procedure Act has long required agencies to adopt rules describing its internal organization and mission, how to submit information and complaints, its rulemaking process (to include receiving and evaluating rulemaking petitions), and how it will receive and process declaratory orders. To satisfy these obligations, the Department promulgated Chapters 1 and 3 and also adopted by reference, with appropriate edits, the applicable chapters contained in the Uniform Rules on Agency Procedure (Chapters 4, 5, and 6).

However, 2024 Iowa Acts, Senate File 2370, rescinds some applicable law (section 4) and creates a new related statute (section 12). The new statute states that the administrative rules coordinator, in partnership with the Iowa Attorney General's Office, may adopt a new set of uniform model rules that will automatically apply to agencies in the absence of self-promulgated rules (more information can be found in Iowa Code section 17A.24 as enacted by 2024 Iowa Acts, Senate File 2370).

Accordingly, the Department is proposing to rescind these chapters consistent with the principles of Executive Order 10 as being either unauthorized or unnecessary. It will instead operate under the new model rules and other applicable laws. On that point, 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

None. There are no costs associated with this proposed rulemaking. The agency will still operate consistent with Iowa Code chapter 17A and other applicable law. Additionally, all contact information that was previously provided in Chapters 1 and 3 is available on the Department's website and other Department publications. 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.

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

There will be no groups impacted by the rescission of these chapters.

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:

None. The agency will still operate consistent with Iowa Code chapter 17A and other applicable law. Additionally, all contact information that was previously provided in Chapters 1 and 3 is available on the Department's website and other Department publications. 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.

- Qualitative description of impact:

None.

3. Costs to the State:

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

None. The agency will still operate consistent with Iowa Code chapter 17A and other applicable law. Additionally, all contact information that was previously provided in Chapters 1 and 3 is available on the Department's website and other Department publications. 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.

- Anticipated effect on state revenues:

None.

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

Not applicable. The agency will still operate consistent with Iowa Code chapter 17A and other applicable law. Additionally, all contact information that was previously provided in Chapters 1 and 3 is available on the Department's website and other Department publications. 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.

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

Not applicable. Underlying statutory authority for these rules was either rescinded or changed. Moreover, the agency will still operate consistent with Iowa Code chapter 17A and other applicable law, and all contact information that was previously provided in Chapters 1 and 3 is available on the Department's website and other Department publications. 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.

6. Alternative methods considered by the agency:

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

None. See section 5.

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

See section 5.

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. Rescind and reserve **561—Chapter 1**.

ITEM 2. Rescind and reserve **561—Chapter 3**.

ITEM 3. Rescind and reserve **561—Chapter 4**.

ITEM 4. Rescind and reserve **561—Chapter 5**.

ITEM 5. Rescind and reserve **561—Chapter 6**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 2
"Public Records and Fair Information Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 22.11 and 17A.4

State or federal law(s) implemented by the rulemaking: 2024 Iowa Acts, Senate File 2370, and Executive Order 10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kelli Book
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: kelli.book@dnr.iowa.gov

Purpose and Summary

Chapter 2 establishes the Department's policies and procedures for the maintenance of records. This chapter facilitates public access to open records and provides the procedures for identifying and protecting confidential records. This chapter implements provisions of the Fair Information Practices Act. Chapter 2 had previously been promulgated to include language contained in the Uniform Rules relating to fair information practices. However, 2024 Iowa Acts, Senate File 2370, created a new statute that states the administrative rules coordinator, in partnership with the Iowa Attorney General's Office, may adopt a new set of uniform model rules that will automatically apply to agencies in the absence of self-promulgated ones. Accordingly, the Department is proposing to rescind the language provided in the Uniform Rules relating to fair information practices consistent with the principles of Executive Order 10 as being either unauthorized or unnecessary. The Department will operate under its remaining fair information practice rules and future Uniform Rules and other applicable laws.

Additionally, consistent with Executive Order 10, this chapter was edited for length and clarity. Specifically, the proposed new chapter reduces and consolidates the rules. This is accomplished by removing outdated provisions and by removing those redundant to statute.

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 this proposed rulemaking to the general public and regulated entities. The Department will continue to operate consistent with Iowa Code chapter 22 and other applicable law. Those requesting a public record may incur a cost associated with fees prescribed by law and rule.

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

This rulemaking provides the procedural structure of public and confidential records for the general public and regulated entities. Those parties will benefit from clear and concise rules as to how records will be maintained by the Department.

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:

None. The Department will continue to operate consistent with Iowa Code chapter 22 and other applicable law.

- Qualitative description of impact:

This rulemaking provides the procedural structure of public and confidential records for the general public and regulated entities. Those parties will benefit from clear and concise rules as to how records will be maintained by the Department.

3. Costs to the State:

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

There are no costs associated with this rulemaking.

- Anticipated effect on state revenues:

There is no anticipated impact on state revenues.

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

There are no costs associated with this rulemaking. The Department will continue to operate consistent with Iowa Code chapter 22 and other applicable law.

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

Not applicable. The Department will continue to operate consistent with Iowa Code chapter 22 and other applicable law.

6. Alternative methods considered by the agency:

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

None. The Department will continue to operate consistent with Iowa Code chapter 22 and other applicable law.

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

The rulemaking is consistent with the provisions of Iowa Code chapter 22.

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?

This rulemaking has no impact on small business. The rulemaking will benefit small businesses by providing clear and concise rules as to how records will be maintained by the Department.

Text of Proposed Rulemaking

ITEM 1. Rescind 561—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

561—2.1(17A,22) Purpose and scope.

2.1(1) In addition to the Uniform Rules relating to fair information practices, which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf, this chapter implements Iowa Code section 22.11 by establishing additional department of natural resources (department) procedures for the maintenance of records.

2.1(2) This chapter does not:

a. Require the department to index or retrieve records that contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the department that are governed by the regulations of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings are to be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations.

561—2.2(17A,22) Confidential records. Unless deemed as a confidential record or considered as a confidential record by Iowa Code section 22.7, all records are considered public and routinely disclosed without the consent of the subject.

2.2(1) *Processing of business confidentiality claims.* In order to request a record to be held confidential with the department, the party will comply with the following provisions.

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

b. Confidentiality request process. A business that submits information to the department may assert a business confidentiality claim in accordance with the following process:

At the time the information is submitted, attach a cover sheet indicating the business is seeking the information to be held confidential. When only a portion of the information is claimed to be confidential, only that portion shall be deleted, with appropriate reference to a separate claim for business confidentiality, which separate claim shall be submitted as specified above. If a request not to disclose information is filed with the department, the party shall file together with the document a second copy of the document from which has been deleted the information for which such party

wishes to claim confidential treatment. The business shall conspicuously indicate on the face of the original document that it is confidential information and shall file a claim for confidential status in accordance with the provisions of this subrule.

c. Contents of claim. All claims for confidentiality must be substantiated with the following information in a letter attached to the proposed confidential document:

(1) A statement of all measures the business has taken to protect the confidentiality of the information, and a statement of intent to continue to take such measures;

(2) Practices and policies of other businesses, if known, regarding confidentiality of similar information;

(3) A statement that the information is not, and has not been, reasonably attainable without the consent of the business by other persons other than government bodies by use of legitimate means;

(4) A statement demonstrating that disclosure of the information is likely to cause substantial harm to the business's competitive position;

(5) A reference to any other determinations of confidential status of the information or similar information.

d. Initial action by department. All claims will be reviewed within ten days of receipt for completeness and applicability of 2.2(3). If the claim does not include the substantiation required by 2.2(1)*"c,"* or if the claim relates to information within 2.2(3), the business making the claim will be so notified by certified mail. If the substantiation or comment regarding the inapplicability of 2.2(3) is not received by the department within ten days of the date on the return receipt, the department will place the information in the public file. Otherwise, all information claimed to be confidential will be treated as such by the department until further notice. A timely response from the notice under this paragraph will be ruled on by the department within ten days based on the applicability of 2.2(3) or in compliance with 2.2(1)*"c"* as appropriate.

e. Initiation of official determination. All claims not rejected under 2.2(1)*"d"* will receive an official determination when a request for disclosure covering such information is received by the department or when the department deems it advisable to make a determination because a request for disclosure is likely to be received or because of administrative burdens in maintaining the information confidential. The procedures and criteria below shall be followed.

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

(1) The business has taken and intends to continue to take reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The claim is not unreasonable in view of the nature of the information, the interests, and normal practices of the business, and the practices of other businesses;

(4) No statute or rule specifically requires disclosure of the information; and

(5) There is a substantial likelihood that disclosure of the information would cause substantial harm to the competitive position of the business.

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

g. Determination. The department will transmit its determination regarding a claim for business confidentiality to the claimant by certified mail, notifying the claimant of the opportunity to provide comments within ten days subject to reasonable extension upon written request, and that failure to comment will be construed to indicate agreement with the preliminary determination. If the determination is in response to a request for disclosure, the person requesting the disclosure shall be sent a similar notice in the same manner within ten days of the request. If any substantial comments are received, the final decision shall be made by the director or designee. If no substantial comments are received, the preliminary determination becomes the final decision.

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

2.2(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

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

b. Tax records made available to the department;

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

d. Minutes of closed meetings of a government body;

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets;

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

(1) Enable law violators to avoid detection;

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

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

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

h. Any other records made confidential by law.

2.2(3) *Not confidential.* Notwithstanding any other provision, the following information will not be considered confidential by the department:

a. Emission data. For purposes of this subrule, "emission data" means the following, with reference to any source of emission of any substance into the air:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission that has been emitted by the source (or of any pollutant resulting from any emission by the source) or any combination of the foregoing;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions that, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(3) A general description of the location and nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

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

c. Name and address of any permit applicant; and

d. NPDES permits, applications (including any information required by NPDES application forms) and effluent data. For purposes of this subrule, "effluent data" means the following, with reference to any source of discharge of any pollutant:

(1) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant that has been emitted by the source (or of any pollutant resulting from any discharge from the source) or any combination of the foregoing;

(2) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants that, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(3) A general description of the location and nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

2.2(4) *Authority to release confidential records.* The department may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure. If the department initially determines that it will release such records, the department may, where appropriate, notify interested parties and withhold the records from inspection.

561—2.3(17A,22) Disclosures without the consent of the subject. To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. The following are instances where disclosure, if lawful, will generally occur without notice to the subject:

2.3(1) For a routine use as defined in rule 561—2.4(17A,22) or in any notice for a particular record system.

2.3(2) To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

2.3(3) To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

2.3(4) To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

2.3(5) To the legislative services agency under Iowa Code section 2A.3.

2.3(6) Disclosures in the course of employee disciplinary proceedings.

2.3(7) In response to a court order or subpoena.

561—2.4(17A,22) Routine use.

2.4(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose that is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.4(2) To the extent allowed by law, the following uses are considered routine uses of all department records:

a. Disclosure to those officers, employees and agents of the department who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action or regulatory order.

c. Disclosure to the department or officer that this office is advising or representing in the matter in question or to the department of inspections, appeals, and licensing for matters in which it is performing services or functions on behalf of the agency.

d. Transfer of information within the department, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the department is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

561—2.5(17A,22) Consensual disclosure of confidential records.

2.5(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to the department disclosure of confidential records as provided in rule 561—2.7(17A,22).

2.5(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the department may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

561—2.6(17A,22) Release to subject.

2.6(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the department need not release the following records to the subject:

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

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

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

d. As otherwise authorized by law.

2.6(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject.

561—2.7(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the department by personal identifier in record systems as defined by the Uniform Rules. For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Records maintained by the department of natural resources, the environmental protection commission and the natural resource commission are in accordance with guidelines as set forth by the state records commission's file system. An updated index is maintained by the department and is available for public inspection. Records are collected pursuant to authorities contained in Iowa Code chapters 106, 107, 109, 109B, 110, 110A, 110B, 111, 111A, 111B, 112, 321G, 458A, 460A and Iowa Code Title XI, subtitles 1, 2, 3, 4 and 6. Records are stored on paper, microfilm, microfiche, and, in some cases, automated data processing systems, such as electronic management systems and department web application. Department records may include but are not limited to the following:

2.7(1) *Department of natural resources.*

a. Administration, organization, and management.

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

b. Budgets, accounting and financial analysis.
(1) Budget information.
(2) Accounting.
(3) Cost accounting.
c. Office services and facilities management.
(1) Communications.
(2) Printing and reproduction.
(3) Records management.
(4) Motor pool operations.
(5) Facilities management.
(6) Engineering and construction.
d. Equipment, supplies, and services.
(1) Procurement.
(2) Property accountability.
e. Legislative and legal.
(1) Department legislative liaison.
(2) Bills, joint resolutions, amendments, messages and reports.
(3) Federal government.
(4) Administrative procedures.
(5) Attorney general opinions and research materials.
(6) Claims against the state.
(7) Lawsuits filed by the state.
(8) 28E agreements.
f. Personnel and payroll.
(1) Employee personnel/payroll files.
(2) Merit rules.
(3) Payroll administration.
(4) Position classification.
(5) Preemployment.
(6) Certification and selection.
(7) Scheduling, assignments, working hours.
(8) Grievances.
(9) Training and education.
(10) Employee benefits and welfare.
(11) Employment relations.
(12) Equal employment opportunity.
(13) Management improvement programs.
(14) Delegation of authority and signature authorization.
g. Conservation and environment.
(1) Water conservation.
(2) Land conservation.
(3) Soil conservation.
(4) Forestry management.
(5) Fish and game conservation.
(6) Recreation.
(7) Environmental technology.
(8) Air quality monitoring.
(9) Water quality monitoring.
(10) Land quality monitoring.
(11) Hazardous material planning.
(12) Hazardous waste management.

(13) Underground storage tanks.
(14) Leaking underground storage tanks.
(15) Radioactive materials.
(16) Environmental—interdisciplinary.

2.7(2) *Natural resource commission.*

a. Tort claims investigations.
b. Numerous licensing files.
c. Lifetime licenses.
d. Boat registrations.
e. Docks, mooring, buoys or raft registrations.
f. Snowmobile registrations.
g. Miscellaneous mailing list (magazine, etc.).
h. Payroll and personnel information system.
i. Fur buyer reports.
j. Fish and game violations.
k. Safety certified students (hunter safety, snowmobile safety, boating safety).
l. Special events applications and permits.
m. Snowmobile accident reports.
n. Boating accident reports.
o. Drowning reports.
p. Timber buyer reports and bonds.
q. Work programs with ISU.
r. Timber management and forestry.
s. State park ranger violation reports.
t. Incident reports.
u. Donations.
v. Real estate acquisition.
w. Encroachments.
x. Campground host program.
y. Law enforcement intelligence network (LEIN) and turn in poachers (TIP).
z. Park leases and concessions.

561—2.8(17A,22) Other groups of records. This rule describes groups of records maintained by the department other than record systems as defined in the Uniform Rules. These records are routinely available to the public. However, the department's files of these records may contain confidential information. In addition, some records may contain information about individuals. Records are stored on paper, microfilm, microfiche, and, in some cases, automated data processing systems, such as electronic management systems and department web application.

2.8(1) Rulemaking. Rulemaking records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

2.8(2) Commission records. Agendas, minutes and materials presented to the environmental protection commission and the natural resource commission are available from the office of the director, except these records concerning closed sessions, which are confidential under Iowa Code section 21.5(4). Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3.

2.8(3) Publications. News releases, annual reports, Iowa Conservationist, Iowa Outdoors, project reports, agency newsletters, etc., are available from the department offices for public information. Brochures describing various department programs are available at local offices of the department. The publications may contain information about individuals, including department staff or members of the commission or committees.

2.8(4) Statistical reports. Periodic reports for various department programs are available from the department offices for public information.

2.8(5) Grants or loans. Records on persons and institutions receiving grants or loans are available through the institutions, also for public information. The records may contain information about employees of a grantee.

2.8(6) Published materials. The department uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

2.8(7) Policy manuals. The department employees' manual, containing the policies and procedures for programs administered by the department, is available upon request. Policy manuals do not contain information about individuals.

2.8(8) All other records that are not exempted from disclosure by law. The department maintains a variety of records that do not generally contain information pertaining to named individuals.

2.8(9) All other records that are not exempted from disclosure by law.

These rules are intended to implement Iowa Code section 22.11.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 7
"Rules of Practice in Contested Cases"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.22
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.12

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process.

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

Parties involved in a contested case proceeding 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:

This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process.

- Qualitative description of impact:

This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process.

3. Costs to the State:

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

Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability, and guarantee due process.

- Anticipated effect on state revenues:

None. Litigation inherently has costs and these rules do not directly impose any specific expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability and guarantee due process. The Department does not pay more to participate in a contested case; those costs are absorbed into the program's operational budget.

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

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

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

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

6. Alternative methods considered by the agency:

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

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

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

Not applicable. This chapter is procedural in nature and required by law. It sets forth rules of practice for contested cases.

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. This rule is procedural in nature and required by law. It sets forth rules of practice for contested cases. Litigation inherently has costs and these rules do not directly impose any specific

expenses, such as a filing fee. Rather, the rules of practice ensure consistency and predictability, and guarantee due process.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 8
"Contracts for Services and Public Improvements"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3, 455A, 456A and 573

State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.3 and chapters 455A, 456A and 573

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 2 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

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 long-standing rules consistent with Executive Order 10 (January 10, 2023). 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.

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 to the public associated with the proposed rule. To the extent there are compliance costs, these would be borne by the agency via staff time.

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

The contracts set out how the Department will interact with the other party or parties to enter into contracts and to accomplish the tasks set out in the contracts. The contracts allow for clarity of expectations on both sides. The contracts facilitate the Department's ability to conduct its work. The contracts also create a public record of the Department's agreements for work to be performed by contractors.

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:

The proposed rulemaking does not have an economic impact or cost associated with it.

- Qualitative description of impact:

The proposed chapter was made easier to read and understand by removing unnecessary provisions and by updating to current law and policy regarding contracting with the Department. Additionally, provisions were deleted that were duplicative of statute. The proposed chapter has been streamlined as much as possible to provide a statement of the conduct and business operations of the Department contracting process more succinctly and clearly.

3. Costs to the State:

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

The proposed chapter does not have any direct costs to the Department or any other agency.

- Anticipated effect on state revenues:

The proposed chapter does not have any effect on state revenue.

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

There are no costs associated with the proposed chapter. However, the benefit of the proposed chapter is to provide a succinct overview of the Department's contracting processes.

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

There are no costs associated with this proposed chapter, except costs to the Department in personnel time. However, the changes in the proposed chapter that make the process more succinct will require less personnel time than previously spent on the contracting process.

6. Alternative methods considered by the agency:

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

None.

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

Not applicable.

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 proposed rule supports the Department's use of Iowa statutes and rules regarding Department contracting with small businesses.

Text of Proposed Rulemaking

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).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 9
"Groundwater Hazard Documentation"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 558.69(5) and 558.69(6)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 558.69(5) and 558.69(6)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Contact Bradley Adams at bradley.adams@dnr.iowa.gov for meeting information.

September 25, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Bradley Adams
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: bradley.adams@dnr.iowa.gov

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.

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 this rule.

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

County recorders, real estate professionals and members of the public who buy and sell real estate 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:

Chapter 9 requires those who need to file a groundwater hazard statement to use the groundwater hazard statement form provided by the Department, or something substantially similar in form. This rule does not increase costs to any entity since the submission of a groundwater hazard statement is required by the Iowa Code.

- Qualitative description of impact:

Chapter 9 provides a standard form statewide for the groundwater hazard statement, which allows county recorders and real estate professionals to provide a consistent approach when fulfilling their duties and functions. Additionally, the chapter allows (but does not require) county recorders to submit a copy of a recorded groundwater hazard statement to the Department, as required by the Iowa Code, via an online interface.

3. Costs to the State:

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

The only ongoing costs to the agency are those associated with answering questions related to the chapter or the form.

- Anticipated effect on state revenues:

The anticipated effect on state revenues is neutral since this chapter has already been implemented.

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

This chapter provides a consistent form for real estate professionals to engage with, and for county recorders to use in the performance of their duties. Prescribing this form ensures all statutory requirements in Iowa Code section 558.69 concerning contamination at a property are met for every real estate transaction in the state.

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

There are no less costly or intrusive methods to accomplish the benefit.

6. Alternative methods considered by the agency:

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

No alternatives were considered.

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

Not applicable.

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 rule does not have an impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 10
"Waivers From Administrative Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.9A
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

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 duplicity with statute and made edits consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

All persons seeking a waiver from a requirement of administrative rules will bear the costs. However, this chapter is procedural in nature and is easily met without significant costs. Persons or entities who want a waiver from a requirement of administrative rule must articulate how they satisfy the legal test contained in the Iowa Administrative Procedure Act.

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

All persons seeking a waiver from a requirement of administrative rules will benefit. The Department cannot grant rule waivers without promulgating rules stating how it will do so.

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:

This chapter is procedural in nature and is easily met without significant costs. Persons or entities who want a waiver from a requirement of administrative rule must articulate how they satisfy the legal test contained in the Iowa Administrative Procedure Act.

- Qualitative description of impact:

This chapter is procedural in nature and is easily met without significant costs. Persons or entities who want a waiver from a requirement of administrative rule must articulate how they satisfy the legal test contained in the Iowa Administrative Procedure Act.

3. Costs to the State:

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

Nominal. Existing staff who perform other duties also process administrative rule waivers.

- Anticipated effect on state revenues:

None.

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

The Department cannot issue waivers in the absence of a rule setting forth the procedures around such a process. It is to everyone's benefit that the Department has Chapter 10.

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

No. This chapter is required by state law before the Department can process rule waivers.

6. Alternative methods considered by the agency:

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

None. This chapter is required by state law before the Department can process rule waivers.

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

See 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?

There are no direct costs to small businesses from this chapter. In fact, this chapter is likely to their benefit. The Department cannot process rule waivers without first promulgating a chapter describing how it will do so.

Text of Proposed Rulemaking

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 to 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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 11
"Iowa Nature Store"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 456A.24(5)

State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.7(2) 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. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

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 10 to 15 years. Accordingly, this chapter can be rescinded.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

None. The Iowa Nature Store has been closed for 10 to 15 years.

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

Not applicable. The Iowa Nature Store has been closed for 10 to 15 years.

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:

None.

- Qualitative description of impact:

None.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

None.

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

None.

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

None.

6. Alternative methods considered by the agency:

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

None.

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

None.

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.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **561—Chapter 11**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 12
"Special Nonresident Deer and Turkey Licenses"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 483A.24
State or federal law(s) implemented by the rulemaking: Iowa Code section 483A.24

Public Hearing

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

September 24, 2024	6200 Park Avenue, Suite 200
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Denise Roberg
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: denise.roberg@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 12 implements Iowa Code section 483A.24, which requires the director 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 (January 10, 2023). Changes from the prior version of the chapter include removing inconsistency on due dates for applications by allowing the coordinator to set dates, removing language about services provided by recipients of special promotional licenses, and removing a reference to an electronic lottery system since it is outdated.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Individuals who receive the special license will bear the costs.

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

Individuals who receive the special license, nonprofit organizations and their local communities 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:

The general public does not have a cost. Individuals who receive the special license pay the hunt and habitat fee and cost of the license; however, those costs are imposed by statute.

- Qualitative description of impact:

Nonprofit organizations and local communities benefit from providing these hunting opportunities to nonresidents. Individuals who receive these special licenses benefit from hunting they otherwise may not qualify to engage in as a nonresident. These activities promote the state and Iowa's natural resources.

3. Costs to the State:

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

Department staff administers the program, including reviewing applications and answering questions from organizations and applicants.

- Anticipated effect on state revenues:

While the program itself increases tourism and is anticipated to have a positive impact on state revenues, the process in the rules does not have a direct impact on state revenues.

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

The costs are minimal compared to the benefits to the state of Iowa.

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

There are no less costly or less intrusive methods. This program is required by statute.

6. Alternative methods considered by the agency:

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

Not applicable. These rules are required by statute and are narrowly tailored to adhere to state law.

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

Not applicable. These rules are required by statute and are narrowly tailored to adhere to state law.

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?

There is no substantial impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 13
"State Lands Volunteer Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 461A.81
State or federal law(s) implemented by the rulemaking: Iowa Code section 461A.81

Public Hearing

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

September 25, 2024 12 noon to 1 p.m.	Yellow River Conference Room 6200 Park Avenue, Suite 200 Des Moines, Iowa Via video/conference call

Public Comment

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

Kim Bohlen
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.360.3682
Email: kim.bohlen@dnr.iowa.gov

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).

The Department has reviewed and edited this chapter consistent with Executive Order 10 (January 10, 2023). Duplicative provisions and redundant statutory language have been removed.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Nonprofit organizations and individuals will bear the costs.

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

Nonprofit organizations and individuals registered under the program, park visitors, and citizens of Iowa 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:

There is no financial cost to the public to comply with this rulemaking. There is no financial cost to nonprofit organizations and individuals to register under this program.

- Qualitative description of impact:

This chapter does not impose burdens on the public. This chapter imposes a minimal administrative burden on nonprofit organizations and individuals registering under the program by requiring specific steps to follow to register. This chapter benefits the public, including park visitors and citizens of Iowa because it encourages nonprofit organizations and individuals to participate in this program by creating a straightforward registration and approval process.

3. Costs to the State:

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

The Department administers the program, which includes coordinating the registration and approval process and confirmation of eligibility.

- Anticipated effect on state revenues:

The proposed rules do not affect state revenue.

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

The public does not bear any costs due to the proposed rulemaking. The minimal administrative burden on the nonprofit organizations and individuals registering under the program and the agency's expenses related to the administration of the program are outweighed by the benefits received by Department staff, park visitors, and citizens of Iowa. Some administrative expenses are necessary for the agency to confirm that liability protection and volunteer activities are only approved for nonprofit organizations or individuals that meet the definition of volunteer and are providing appropriate services.

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

The chapter is very low-cost and unobtrusive and yields significant benefits to the Department staff, park visitors, and citizens of Iowa.

6. Alternative methods considered by the agency:

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

None. There are no less restrictive alternatives to achieve the same benefit. Iowa Code section 461A.81 requires the Department to adopt rules to govern the administration of the program to include eligibility requirements and provisions to govern approved volunteer duties and services. Chapter 13's provisions are necessary for reviewing and verifying whether the registrant meets the definition of a volunteer under this program to meet this statutory requirement.

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

Not applicable.

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 proposed chapter does not have any impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 14 "Concessions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.7 and Executive Order 10 (January 10, 2023)

State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.7 and Executive Order 10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

Purpose and Summary

Chapter 14 creates a framework for the Department to competitively hire a business to operate on public lands or waters under its jurisdiction. However, all concession operations are in state parks, which have their own rules in agency [571] of the Iowa Administrative Code. 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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

None. No private concession opportunities are being eliminated, nor are future opportunities being prevented by this rulemaking.

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

Not applicable. No private concession opportunities are being eliminated, nor are future opportunities being prevented by this rulemaking.

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:

None. No private concession opportunities are being eliminated, nor are future opportunities being prevented by this rulemaking.

- Qualitative description of impact:

None. No private concession opportunities are being eliminated, nor are future opportunities being prevented by this rulemaking.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

Not applicable.

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

Not applicable. This chapter has not been utilized in decades. No private concession opportunities are being eliminated, nor are future opportunities being prevented by this rulemaking.

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

None. No private concession opportunities are being eliminated, nor are future opportunities being prevented by this rulemaking.

6. Alternative methods considered by the agency:

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

Not applicable. The Department will utilize its other concession rules in agency [571] to competitively bid for private concessionaires.

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

Not applicable. See 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?

Not applicable.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **561—Chapter 14**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 15
"Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272D.8
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272D

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

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.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Licensees with an outstanding state debt will bear the costs.

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

Taxpayers, who will benefit from the state collecting all owed revenues.

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:

Impacted persons will bear the costs of engaging with the Department of Revenue, and possibly challenging the action in court; however, these costs are the consequence of underlying state law, not the rulemaking.

- Qualitative description of impact:

Impacted persons will bear the costs of engaging with the Department of Revenue, and possibly challenging the action in court; however, these costs are the consequence of underlying state law, not the rulemaking.

3. Costs to the State:

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

Nominal. Existing staff prepare letters to licensees after receiving a notice from the Department of Revenue; staff do this work along with other assigned duties. The Department is otherwise not involved in this process.

- Anticipated effect on state revenues:

Licensees who receive these notices tend to pay back the debt, which is beneficial to the state. However, those dollars do not come to the Department.

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

Not applicable. These rules are required by state law.

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

Not applicable. These rules are required by state law.

6. Alternative methods considered by the agency:

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

Not applicable. These rules are required by state law.

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

Not applicable. These rules are required by state law.

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. These rules are procedural in nature and required by state law and, furthermore, only apply to license holders who owe a debt to the state.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 16
"State Park and Recreation Area Fees"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.14
State or federal law(s) implemented by the rulemaking: Iowa Code section 455A.14

Public Hearing

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

September 25, 2024	6200 Park Avenue, Suite 200
12 noon to 1 p.m.	Des Moines, Iowa

Public Comment

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

Jessica Manken
6200 Park Avenue, Suite 200
Des Moines, Iowa 50312
Phone: 515.571.4010
Email: jessica.manken@dnr.iowa.gov

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 the chapter 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 to expect alternative fees when political subdivisions are managing the state-owned areas.

This chapter has been reviewed and edited consistent with 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:

Members of the public using facilities in state park and recreation areas, including for camping, rental facilities, vessel storage, and other special privileges, will bear the costs.

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

Members of the public using facilities in state parks and recreation areas, including for camping, rental facilities, vessel storage, and other special privileges, 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:

The indirect cost to the public under Chapter 16 is the specific fees for camping, the use of rental facilities, vessel storage, and other special privileges at state parks and recreation areas. The authority to set fees at a reasonably competitive basis is in statute, but the actual amount of each fee is subject to the methodology in Chapter 16. Members of the public may see fee increases at parks and recreation areas under this methodology.

- Qualitative description of impact:

The rules provide an objective methodology to maximize occupancy and usage of Iowa state parks and recreation areas.

3. Costs to the State:

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

Department costs include staff involvement in determining and justifying the fees, and updating the website with any fee adjustments.

- Anticipated effect on state revenues:

These rules increase funding to the state conservation fund by allowing flexibility to increase occupancy and usage of park and recreation area facilities.

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

The benefits of increasing occupancy and usage of state park and recreation facilities outweigh the cost to the public.

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

There are no less costly or less intrusive methods associated with this proposed chapter. Under Iowa Code section 455A.14, the Department must adopt a methodology to set fees to be reasonably competitive.

6. Alternative methods considered by the agency:

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

None. These rules are required by statute.

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

Not applicable. These rules are required by statute.

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?

This proposed rulemaking does not have an impact on small business.

Text of Proposed Rulemaking

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 17
"Oil, Gas, and Metallic Minerals"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 458A.4(5) and 458A.4(6)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 458A

Public Hearing

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

September 24, 2024 1 p.m.	Backbone Conference Room 6200 Park Avenue, Suite 200 Via video/conference call: meet.google.com/xaw-nknt-rss Or 219.370.6900 PIN: 493 836 892#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. 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

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. In more detail, 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. It also seeks to protect the groundwater and surface water from pollution.

Proposed Chapter 17 has been reviewed consistent with Executive Order 10, and has also been updated to reflect 2024 Iowa Acts, Senate File 2421. This legislation expands the scope of the Act to include all naturally occurring gasses.

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 in the proposed rules that are not in Iowa Code chapter 458A.

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

Well drillers will benefit from the changes made to modernize and clarify the administrative rules as well as the ability to drill for hydrogen or other naturally occurring gasses. Land owners will benefit from the protection of correlative rights.

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:

It is believed that costs for applicants wishing to produce oil, gas, or metallic minerals within the purview of Chapter 17 will either remain unchanged or decrease after proposed modifications related to EO10 are enacted.

- Qualitative description of impact:

It is anticipated that suggested alterations to Chapter 17 related to EO10 will reduce red tape and remove unnecessary or nonvaluable elements of the chapter, improving the qualitative aspects of the chapter for the regulated community.

3. Costs to the State:

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

The costs to the state are solely staff time. All involved staff have other assigned duties.

- Anticipated effect on state revenues:

No effect on state revenues is expected.

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

This chapter is required by law. Iowa Code sections 458A.4(5) and 458A.4(6) direct the Department to promulgate rules to implement Iowa Code chapter 458A. So long as that statute is in place, these rules must exist.

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

No less costly methods were identified. The rules closely align with the statutory directives.

6. Alternative methods considered by the agency:

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

No alternatives were identified. The rules closely align with the statutory directives.

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

No alternative methods were identified.

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?

Updating this chapter to reflect modern methods of well drilling will benefit well drilling businesses. Additionally, incorporating changes made to Iowa Code chapter 458A during the 2024 Legislative Session will allow for production of all naturally occurring gasses, including hydrogen.

Text of Proposed Rulemaking

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 include 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. The definitions set out in Iowa Code chapter 458A shall be considered to be incorporated verbatim in these rules.

"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.

"Correlative rights" means each owner of a common reservoir is entitled to a fair share of the oil or gas beneath a property but is limited by an obligation to do so without affecting another property owner's right to do the same.

"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 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. A permit to drill, deepen or plug a well shall be obtained from the department prior to commencement of operations to drill, deepen or plug any well for oil, or gas or metallic mineral production, exploratory wells for geological information relating to oil, gas, or metallic mineral production, or the underground storage of natural gas.

17.3(1) *Application to deepen or plug a well.* An application on a form prescribed by the department shall be filed with 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 mathematical modeling of the area of influence of each well. The department shall use this information to establish spacing that meets the requirements of Iowa Code section 458A.7.

f. Copies of each lease pertinent to the well location, as well as a map showing the boundaries of each lease. Legal description of lease boundaries is not sufficient.

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) *Denial of permit.*

a. The department shall not issue a permit to drill for the following reasons:

(1) The application is not properly completed, and

(2) The proposed well would cause or tend to cause waste or violate correlative rights.

b. The applicant may appeal the decision of the department to the environmental protection commission in accordance with 567—Chapter 7.

c. Unless extended in writing by the department, the permit shall expire six months from the date of issue if the work for which the permit was issued is not being actively pursued.

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 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 acting as a principal or agent for another or independently engaged in the production, storage, transportation (except railroad), refining, reclaiming, treating, marketing, or processing of oil or gas, or engaged in 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 in which engaged;

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 report shall show 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 shut off and excluded from the various oil- and gas-bearing strata that are penetrated. Water shutoffs shall be made 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 stand cemented under pressure for at least 12 hours before drilling plug or initiating tests. 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. The signs shall be displayed for each drilling well when so required by the department.

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.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code rule 701—102.12(441) "Determination of Aggregate Actual Values"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 441.21(1)"e"
State or federal law(s) implemented by the rulemaking: Iowa Code section 441.21(1)"e"

Public Hearing

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

September 24, 2024 2 to 3 p.m.	Via virtual/video conference

Public Comment

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

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

Iowa Code section 441.21(1)"e" dictates that the valuation of agricultural property for property tax purposes shall be determined on the basis of productivity and net earning capacity of the property. That statute also requires the Department to set forth any formula or method employed to determine productivity and net earning capacity of property by rule. The Department utilizes hay data provided by the United States Department of Agriculture National Agricultural Statistics Services (USDA NASS) to assist with the accurate valuation of agricultural property. Recent changes to hay data reported by USDA NASS will result in inaccurate valuations for the agricultural property classification if the Department does not identify and utilize additional data sources. The Department has found an alternative source of data in the U.S. Census of Agriculture and is proposing to incorporate this data source in this rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No classes of persons have been identified to bear the costs of the proposed rules.

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

The Department will benefit from the proposed rulemaking because it will have updated data sources to accurately assess agricultural property valuations for assessment year 2025. Taxpayers and local governments will benefit from the proposed rulemaking. The ability to utilize more accurate data sources will result in more accurate assessments. More accurate assessments will result in more equitable property tax administration.

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:

Recent changes to hay data reported by USDA NASS will result in inaccurate valuations for the agricultural property classification if the Department does not identify additional data sources and amend its administrative rules. The Department has found an alternative source of data in the U.S. Census of Agriculture and is proposing to amend its rules to contemplate this data source.

- Qualitative description of impact:

Failing to amend these rules would lead to confusion, inaccurate agricultural valuations, and additional questions to the Department and local governments.

3. Costs to the State:

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

There are no costs to the agency of implementing the rules beyond those that would otherwise be required to administer the statutes. The Department must have processes in place to accurately calculate agricultural valuation assessments.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues; however, the proposed rulemaking provides an updated method for how to source accurate valuation of agricultural property, making it more likely that the correct amount of tax will be assessed and collected by local governments.

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

There are no costs associated with the proposed rulemaking. The benefit of the rulemaking is updating the use of an updated data source to accurately assess agricultural property valuations for assessment year 2025. The cost of inaction is confusion for local governments when assessing agricultural property, potentially resulting in inaccurate assessments or inequitable assessments across assessing jurisdictions across the state.

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

The proposed rulemaking is not costly or intrusive.

6. Alternative methods considered by the agency:

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

The Department considered the possibility of not providing these rules, but determined that these rules provide useful guidance on how to accurately calculate agricultural valuation assessments.

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

The Department determined that proceeding without these rules would lead to confusion and create additional questions to the Department.

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 does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Amend subparagraph **102.12(1)"a"(1)** as follows:

(1) Computation of county acres. This information shall be obtained from the USDA National Agricultural Statistics Service. If this information is not available from the USDA National Agricultural Statistics Service, this information shall be obtained from the U.S. Census of Agriculture.

1. to 6. No change.

1.	From the most recent U.S. Census of Agriculture obtain the following:		
	Cropland used only for pasture and grazing	_____	acres
	Woodland pasture	_____	acres
	Pasture land and rangeland (other than cropland and woodland pasture)	_____	acres
	TOTAL PASTURE LAND (total of above):	_____	acres
2.	Determine what percentage of the total pasture land is cropland used only for pasture:	_____	%
3.	Apply the percentage in "2" above to the 5-year average total acres of pasture as determined above to determine the pasture acres to be classified as tillable pasture. The remainder of the 5-year average shall be classified as nontillable pasture land.	_____	acres

7. Government programs: Determine the 5-year average acres participating in applicable government programs. Obtain data from the USDA Farm Service Agency, including but not limited to acreage devoted to the Payment-In-Kind (PIK), diverted and deficiency programs.

8. Other acres: The difference between the total acreage for land uses listed above and the total of all land in farms. Add the total of the corn, oats, soybeans, hay, tillable and nontillable pasture and diverted acres. Subtract this total from total acres in farms. The residual is classified as other acres.

ITEM 2. Amend subparagraph **102.12(1)"a"(2)** as follows:

(2) Computation of county yields. This information shall be obtained for each county from the USDA National Agricultural Statistics Service. If this information is not available from the USDA National Agricultural Statistics Service, this information shall be obtained from the U.S. Census of Agriculture.

1. to 4. No change.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code subrule 12.5(4)
"Travel Time"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 13B and 815

Public Hearing

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

September 25, 2024 3:30 p.m.	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Office of the State Public Defender no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kurt Swaim, First Assistant State Public Defender
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.218.2445
Email: kswaim@spd.state.ia.us

Purpose and Summary

The purpose of this proposed rulemaking is to amend former administrative rules that became inconsistent and incompatible with the new statutory enactments in the 2024 Legislative Session of the 90th General Assembly. Specifically, this rulemaking amends the subrule related to travel time to clarify that out-of-county travel pursuant to Iowa Code section 815.7A does not count toward the attorneys' maximum daily hours.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Payment for the increased number of daily hours allowed will be paid initially from the indigent defense fund. The indigent defense fund is funded primarily by a state appropriation, but indigent clients who are appointed an attorney by the court may be ordered to reimburse the state for all or a portion of the fees to the extent the indigent person has the reasonable ability to pay.

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

Private attorneys and guardian ad litems who are appointed by the court to represent indigent persons will benefit directly from the potential increase in maximum daily hours allowed when traveling outside their county of domicile. This change benefits attorneys doing indigent defense work by removing additional burdens and extending the number of hours they can be paid to do indigent defense work. This theoretically in turn benefits indigent defendants and juveniles and the criminal and juvenile justice system as a whole, which benefits the general public.

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:

It is impossible to know how many attorneys will take advantage of this amendment and impossible to know how many additional hours those attorneys will undertake each day due to this amendment.

- Qualitative description of impact:

The principal economic impact of the amended subrule will likely be in rural areas. Attorneys doing indigent defense work will likely be more willing to travel farther and more frequently with the increased allowable maximum hours. The increased allowable daily hours should make it more economically feasible for attorneys to practice in rural areas of Iowa, which will benefit these communities by generally increasing the availability of legal services in those parts of the state.

3. Costs to the State:

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

No additional enforcement costs are anticipated. The amount for the increased travel time allowed is expected to be paid initially from the indigent defense fund, with reimbursement from the judicial branch to the extent that requests for remote hearings to uncontested proceedings are denied. The amount of the reimbursement is unknown because it is unknown how many attorneys will make use of the additional allowable hours, and the exact number of additional hours is impossible to know.

- Anticipated effect on state revenues:

No effect on state revenues is expected.

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

There are no added costs for inaction because the additional cost of the newly enacted statutes result from the statutory enactments that supersede the Office's administrative rules. The benefits derive from the avoidance of confusion resulting from the inconsistency of our rules with the new statutory enactments.

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

The Office has not considered less costly alternatives because there are none that will give full effect to the statutory intent of the new legislative enactment.

6. Alternative methods considered by the agency:

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

None.

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

This Office could find no alternative that would give effect to the language in the new statute.

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?

This rulemaking will not have a substantial impact on small business. This rulemaking does not amend any deadlines, reporting requirements, or standards.

Text of Proposed Rulemaking

ITEM 1. Amend subrule 12.5(4) as follows:

12.5(4) *Travel time.* Time spent by an attorney or guardian ad litem traveling is only payable at the full hourly rate provided in subrule 12.4(1) when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

a. to *i.* No change.

j. To other locations for which travel authorization is obtained from the state public defender.

Otherwise, travel time for an attorney or guardian ad litem is only payable at the rate and in the manner provided in Iowa Code section 815.7A ~~as enacted by 2023 Iowa Acts, Senate File 562~~. For all uncontested hearings, the attorney or guardian ad litem must file an application for a remote hearing to be entitled to travel time. If the court denies the application, the attorney or guardian ad litem must submit a copy of the application and the denial order with the claim for payment of travel time. If the client wishes to have an uncontested hearing in person, and the attorney or guardian ad litem has no other reason to request an in-person hearing other than to be paid for travel time to attend the hearing in person in view of the client's request, the request for hearing shall be sent to the state public defender at claims@spd.state.ia.us. No application is required to be filed for contested hearings, but the travel time must be clearly identified as being for a contested hearing in the description of the travel on the claim. Travel time ~~payable at any hourly rate counts~~ claimed pursuant to Iowa Code section 815.7A does not count toward the maximum daily hours allowed pursuant to subrule 12.5(1). No amount is payable for travel time at any hourly rate if the time is otherwise being paid at the full hourly rate provided in subrule 12.4(1).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 493—13.2(815)
"Claims for Other Professional Services"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 13B and 815

Public Hearing

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

September 25, 2024 1:30 p.m.	Ledges Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Office of the State Public Defender no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kurt Swaim, First Assistant State Public Defender
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.218.2445
Email: kswaim@spd.state.ia.us

Purpose and Summary

The primary purpose of the proposed rulemaking is to increase pay rates for court reporters and add language allowing court reporters to be paid for realtime reporting and technical transcriptions. The secondary purpose of this proposed rulemaking is to amend or rescind specific language and descriptions in order to conform to practice and decrease confusion regarding application of these rules. Additionally, this proposed rulemaking removes provisions that are inconsistent with prior statutory enactments.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Payment for the increased rates will be paid initially from the indigent defense fund. The indigent defense fund is funded primarily by a state appropriation, but indigent clients who are appointed an attorney by the court may be ordered to reimburse the state for all or a portion of the fees to the extent the indigent person has the reasonable ability to pay.

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

Certified court reporters who are retained to perform services for indigent persons will benefit directly from the increased rates in this rule. All Iowans generally benefit from the Office's criminal and juvenile justice systems working efficiently. The increasingly low number of court reporters has been an issue for the judicial system as a whole in recent years; however, the amount of court reporting necessary has not decreased significantly, if at all. Court reporters play a crucial role in maintaining a working criminal justice system. The increase in court reporter rates seeks to encourage

current court reporters to continue their indigent defense services and to encourage additional court reporters to accept requests for indigent defense services.

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:

The estimated annual cost of the increase in the rates for court reporters will be approximately $415,000.

- Qualitative description of impact:

The economic impact of this rulemaking will result in a positive impact on the quality of life and wellbeing of court reporters who primarily provide indigent defense services. It will also likely have a positive impact on the ability of attorneys doing indigent defense work to provide necessary services to their clients in rural areas since the increased rate in travel time will increase the pool of court reporters willing to travel to provide services to indigent clients. Another impact of the proposed rulemaking is the improvement to our administrative rules generally by updating them to avoid inconsistencies with statutory provisions and added simplicity by the elimination of portions that are now obsolete and extraneous. Providers of professional services and the general public will benefit from the simplification and streamlining of these administrative rules.

3. Costs to the State:

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

No additional enforcement costs are anticipated. The implementation costs are expected to be the amounts set forth in section 2 above.

- Anticipated effect on state revenues:

No effect on state revenues is anticipated.

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

Costs of inaction include the cost to the judicial system and general public if the current decline in number of court reporters continues. While it may be impossible to quantify, court reporters are necessary to the indigent defense system to work properly and efficiently.

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

This Office has considered less costly alternatives, which would include fewer increases for certified court reporting, or no change in current court reporting rates.

6. Alternative methods considered by the agency:

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

This agency increased court reporter rates by roughly 30 percent. This agency considered increasing court reporter rates by a lower percentage.

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

Court reporters providing indigent defense services have not had an increase in their rates for over ten years. This is thought to have, to some extent, had an effect on the declining number of court reporters available to perform the necessary services. The increased rates for court reporters is meant to reflect a necessary increase given inflation and cost of living, and is intended to enlarge the pool of court reporters who will provide indigent defense services.

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?

No impact is anticipated.

Text of Proposed Rulemaking

ITEM 1. Amend rule 493—13.2(815), introductory paragraph, as follows:

493—13.2(815) Claims for other professional services. The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, ~~foreign language interpreters,~~ expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

ITEM 2. Amend paragraph **13.2(3)"d"** as follows:

d. Rates for other transcripts. Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment or the certified shorthand reporter submits a claim for a lesser amount, claims for certified shorthand reporter services for a non-judicial branch employee will be paid only at the rates set forth in this paragraph:

(1) Hourly rate when no transcript ordered. Fees for attending depositions when no transcript is ordered will be paid at the rate of ~~$45~~ $60 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. If multiple witnesses are deposed in a deposition session on a single day, this hourly rate shall only apply if no transcript is ordered for any of the witnesses. If the transcript is ordered for some of the witnesses, the hourly rate when a transcript is ordered shall apply for the entire deposition session.

(2) Hourly rate when transcript ordered. Fees for attending depositions when a transcript is ordered will be paid at the rate of ~~$35~~ $50 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. Fees for performing a transcription of an audio or video recording will be paid at the rate of ~~$35~~ $50 per hour for the actual time required to complete the transcription but not more than two times the length of the recording transcribed.

(3) Travel time. Fees for travel time will be paid at the rate of ~~$15~~ $25 per hour for travel outside of the county of the certified shorthand reporter's office location. Travel time within the county of the certified shorthand reporter's office location will not be paid. No travel time is payable for the delivery of a transcript or related to the transcription of an audio or video recording.

(4) Transcripts. Unless expedited delivery is requested, fees will be paid at the rate of ~~$3.50~~ $4.55 per page for an original, one copy, and an electronic version of the transcript. Copies of a transcript for which an original has already been ordered by any party will be paid at the rate of $1 per page.

(5) Exhibits. A rate of $0.10 per page for black and white and $0.30 per page for color copies will be paid.

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. Weekends

and state holidays shall not be included when calculating the 24-hour prior notice of cancellation contained in this subparagraph. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(3)*"d"*(1). If a full day of depositions was scheduled, a minimum fee for four hours is payable at the rate set forth in subparagraph 13.2(3)*"d"*(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the email address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message. No cancellation fee will be paid related to the transcription of an audio or video recording.

(7) to (9) No change.

(10) Expedited transcripts. Expedited transcripts are those that are required to be delivered within five business days of the date requested. Fees of ~~$6~~ $8 per page for an original, one copy, and an electronic version of the transcript will be paid for expedited transcripts. Copies of an expedited transcript for which an original has already been ordered by any party will be paid at the rate of $1 per page.

(11) No change.

(12) Realtime reporting. Realtime reporting is any reporting provided by a certified realtime reporter (CRR), either in person or remotely, that produces an immediate transcript of proceedings by using a steno machine connected to a computer that instantly translates spoken word to text. Realtime reporting shall be paid at the hourly rate provided for in subparagraph 13.2(3)*"d"*(1).

(13) Technical transcriptions. Technical transcriptions include transcriptions for testimony provided by an "expert witness" as defined in 493—7.1(13B,815). This includes but is not limited to state medical examiners, doctors, nurses, forensic interviewers, accident investigators, lab technicians, and engineers. A witness who happens to fall into one of the preceding categories but who is providing lay testimony does not qualify as an expert witness for purposes of this subparagraph. Technical transcriptions shall be paid at the hourly rate otherwise applicable for such reporting plus an additional $2 per page. If a witness does not qualify as an expert witness for any reason and is not otherwise included in the foregoing list, but a certified shorthand reporter believes a witness still qualifies under this subparagraph, the certified shorthand reporter may provide additional information with their claim to support their request for the technical transcription rate.

ITEM 3. Amend subrule 13.2(6) as follows:

13.2(6) *Submission of claims.*

a. ~~With the exception of judicial branch certified shorthand reporters,~~ All claims ~~submitted on or after March 1, 2020,~~ for professional services shall be submitted electronically via the online claims website: spdclaims.iowa.gov. ~~Effective March 1, 2020, with the exception of judicial branch certified shorthand reporter claims, any~~ Any reference in these rules to forms or to claims submissions shall refer to the respective claims submission page for miscellaneous claims on the online claims website. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website. ~~Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.~~

b. ~~Claims for the payment of services to public defenders provided either by judicial branch certified shorthand reporters or by claimants~~ Claimants granted an exception to online claim submission, must be submitted to the local public defender office for which the services were provided~~. Other judicial branch certified shorthand reporter claims, claimants granted an exception to online claim submission, or claims submitted prior to March 1, 2020, must be submitted~~ or on a form, promulgated by the state public defender, to the state public defender at the following address: State

Public Defender, Claims, ~~Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319~~ 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321, as appropriate.

ITEM 4. Rescind subrule **13.2(7)**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 493—Chapter 14
"Claims for Attorney Fees in 600A Terminations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 13B.4(8)
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 13B, 815, and 600A

Public Hearing

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

September 25, 2024 3 p.m.	Ledges Conference Room 6200 Park Avenue Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Office of the State Public Defender no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kurt Swaim, First Assistant State Public Defender
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.218.2445
Email: kswaim@spd.state.ia.us

Purpose and Summary

The General Assembly changed the definition of "indigency" in Iowa Code chapter 600A to conform to the definition of indigency for purposes of appointment of counsel in all other cases, per Iowa Code section 815.9. The proposed rulemaking also clarifies the rate at which court-appointed counsel is to be paid, in line with current practices, and simplifies the language related thereto.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Payment for any increase in costs will be paid initially from the Indigent Defense Fund. The Indigent Defense Fund is funded primarily by a state appropriation, but indigent clients who are appointed an attorney by the court may be ordered to reimburse the state for all or a portion of the fees to the extent the indigent client has the reasonable ability to pay.

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

Judges who are appointing attorneys and court-appointed attorneys in Iowa Code chapter 600A cases will benefit from the change in definition since it not only simplifies the process, but conforms with all other "indigency" definitions throughout the Iowa Code. All Iowans generally benefit from our juvenile justice system working more effectively.

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:

The number of people allowed court-appointed counsel will increase with this change of definition; however, the exact increase is unknown. Based on the Office's experience in the area, it is assumed the increased number will not exceed 10 percent. The average cost to the Fund over FY 2022 and FY 2023 was $41,822. A 10 percent increase as a result of this legislation would be an increase of $4,182.25, bringing the total future cost to the Fund to $46,005.

- Qualitative description of impact:

The change in definition will allow more Iowans to benefit from court-appointed counsel in Iowa Code chapter 600A cases. This is beneficial not only to the children or respondents receiving the counsel, but also the petitioners requesting termination of parental rights since they otherwise bear the burden of the cost of counsel for the child and respondent. This change will make bringing these cases easier for petitioners who are generally already struggling to raise one or more children on their own. The Office's contract attorneys and the general public will benefit from the simplification and streamlining of these administrative rules.

3. Costs to the State:

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

No additional enforcement costs are anticipated. The implementation costs are expected to be the amounts set forth in section 2 above.

- Anticipated effect on state revenues:

No effect on state revenues is expected.

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

There are no added costs for inaction because the additional cost of the newly enacted statutes results from the statutory enactments that supersede the Office's administrative rules. The benefits derive from the avoidance of confusion resulting from the inconsistency of the Office's rules with the new statutory enactments.

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

The Office has considered less costly alternatives, but has found none that would honor and give full effect to the statutory intent of the new legislative enactments.

6. Alternative methods considered by the agency:

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

This Office found no alternatives that would honor and give full effect to the statutory intent of the new legislative enactments.

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

This Office found no alternatives that would honor and give full effect to the statutory intent of the new legislative enactments.

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?

This rulemaking will not have a substantial impact on small business. The amendments adopt the new statutory provisions, largely by incorporating them by reference. This Office is not capable of exempting anyone from the new statutory requirements, but it tries in all instances to accommodate all parties in meeting the requirements imposed by statute to the maximum extent allowed by law.

Text of Proposed Rulemaking

ITEM 1. Amend rule 493—14.2(13B,600A,815) as follows:

493—14.2(13B,600A,815) ~~Definitions~~ Definition. The following ~~definitions apply~~ definition applies only to this chapter.

"Indigent" ~~means the person has an income level at or below 100 percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services, unless the court determines that the person is able to pay for the cost of an attorney in the pending case. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the nature and complexity of the case~~ means the same as defined in Iowa Code section 600A.2(12).

ITEM 2. Amend rule 493—14.3(13B,600A,815) as follows:

493—14.3(13B,600A,815) Hourly rate and fee limitations. Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment, claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A ~~to which the attorney was appointed after March 11, 2004, and before July 1, 2006,~~ shall be paid ~~at the rate of $50 per hour, with a fee limitation of $500 for the trial court proceedings and $500 for appellate proceedings. Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2006, and before July 1, 2007, shall be paid at the rate of $55 per hour, with a fee limitation of $550 for the trial court proceedings and $550 for appellate proceedings. Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2007, shall be paid at the rate of $60 per hour, with a~~ the hourly rate consistent with Iowa Code section 815.7 for "all other cases." The fee limitation ~~of $600~~ is ten hours for the trial court proceedings and ~~$600~~ ten hours for appellate proceedings.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 101
"Farm-to-Market Review Board"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 306.6A
State or federal law(s) implemented by the rulemaking: Iowa Code sections 306.6 and 306.6A

Public Hearing

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

September 26, 2024 9 to 9:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 255 936 075

Public Comment

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

Garrett Pedersen
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1027
Email: garrett.pedersen@iowadot.us

Purpose and Summary

This proposed chapter formalizes the process by which the Farm-to-Market Review Board (Board), created by Iowa Code section 306.6, will administer its duties, including the designation of parts of the secondary road network as the farm-to-market road system. Iowa Code section 306.6A requires the Board to adopt rules.

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 direct costs of rules to any classes.

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

The traveling public along the secondary road system in Iowa, including people who live and/or work along the roadway, and those who travel the roadway will 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:

The farm-to-market road designation facilitates the distribution of state funding, and this chapter outlines the function of the Board in determining which roads are eligible to gain this designation. The farm-to-market system is not to exceed 35,000 miles, and, as such, the Board reviews each county's share of that total to maximize the effectiveness of the funds being distributed.

- Qualitative description of impact:

The Board membership is appointed by the Iowa County Engineers Association and represents great institutional and professional knowledge that helps to designate a system that is beneficial to the state.

3. Costs to the State:

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

Costs to the state directly associated with the chapter include the staff time associated with the preparation of materials and administration of activities for the board.

- Anticipated effect on state revenues:

The costs to the state are negligible and, when incurred, allow the Board to maximize its time serving as subject matter experts.

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

The cost of inaction would be inefficiencies in how collected state revenues are distributed. Without the Board functions defined in the rules, there would be no mechanism/governing body employed to ensure the maximum effectiveness of the affected state revenues.

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

No alternatives have been identified that are less costly or intrusive.

6. Alternative methods considered by the agency:

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

The rules and duties could be delegated to the Iowa Transportation Commission as defined in Iowa Code chapter 307A.

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

The Transportation Commission is a rotating body of appointed representatives. As such, 1) institutional and professional knowledge is not built up and shared amongst membership; therefore, reducing the ability of the body relative to the Board, and 2) the members of the Board are selected in such a way that Department district representation is maintained by up to two members from each area, and no less than one member, as the Board cycles through new representatives. This allows for a geographically diverse membership.

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?

This chapter does not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 101 and adopt the following **new** chapter in lieu thereof:

CHAPTER 101
FARM-TO-MARKET REVIEW BOARD

761—101.1(306) Scope. This chapter formalizes the process by which the farm-to-market review board will administer its duties. The board reviews criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system in accordance with Iowa Code sections 306.6 and 306.6A.

761—101.2(306) Definitions.

"Area service roads," "local roads," or *"local road system"* means those secondary roads that are not a part of the farm-to-market road system.

"Board" means the farm-to-market review board.

"Executive board" means the Iowa county engineers association executive board.

"Farm-to-market extensions" means extensions of the farm-to-market road system within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of these extensions of the system is to be included in the total mileage of the farm-to-market road system.

"Farm-to-market roads" or *"farm-to-market road system"* means those county jurisdiction intracounty and intercounty roads that serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market and area service roads and includes those secondary roads that are federal aid eligible. The farm-to-market road system is not to exceed 35,000 miles.

"President" means the president of the Iowa county engineers association.

761—101.3(306) Composition and membership of the board.

101.3(1) The board is composed of 12 county engineers selected by the Iowa county engineers association. Two members are selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members serve six-year terms. Rotations should be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members should further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. Board rotation should be as follows and should be extended in future years in the same pattern:

Year	Rotation	
2021	District 1 Representative A	District 4 Representative A
2022	District 2 Representative A	District 5 Representative A
2023	District 3 Representative A	District 6 Representative A
2024	District 1 Representative B	District 4 Representative B
2025	District 2 Representative B	District 5 Representative B
2026	District 3 Representative B	District 6 Representative B

101.3(2) Members are nominated by their districts and approved by the executive board. A county engineer may serve multiple, consecutive terms if so nominated by the county engineer's district. If a county engineer is unable to complete a term for any reason, the president selects another county engineer within the district to serve the balance of the term.

101.3(3) The board selects from its membership a chair and a vice-chair to serve one-year terms. The chair serves at the pleasure of the board and may be elected to multiple terms as deemed appropriate by the board. The vice-chair presides at a meeting in the absence of the chair.

761—101.4(306) Collection of system modification requests and frequency of meetings.

101.4(1) The department of transportation will collect applications for modifications to the farm-to-market road system. The board chair schedules meetings of the board to review accumulated applications for farm-to-market road system modifications. Applications should be filed no less than 21 calendar days prior to each scheduled board meeting.

101.4(2) The board follows the provisions of Iowa Code chapter 21 with regard to open meetings. The chair posts a meeting agenda on the Iowa county engineers association service bureau website and sends copies of the agenda to all counties.

101.4(3) Minutes of each meeting are kept; the chair is responsible for the minutes. Meetings may be recorded to facilitate the preparation of meeting minutes, but any recordings made are not to be retained after the minutes have been completed.

761—101.5(306) Procedure for requesting modifications to the farm-to-market road system. To apply for a modification to the farm-to-market road system, a county files an application through the department of transportation.

101.5(1) The application includes the following:

a. A copy of a resolution of the county board of supervisors requesting the modification to the existing farm-to-market road system. Farm-to-market modifications may include proposed roads, redesignation of area service roads, or transfers of jurisdiction.

b. A report of the county engineer explaining and justifying the addition of new mileage to the farm-to-market road system or the change in the route or farm-to-market classification proposed by the county.

101.5(2) In the case of intercounty routes, joint applications may be filed. Resolutions are necessary of each county.

761—101.6(306) Voting and approval of requested modifications. Each member is a voting member and is eligible to vote at every meeting at which that member is in attendance. Attendance may include members being present at the meeting through a conference telephone call, Iowa communications network connection, or other electronic means deemed appropriate by the chair.

101.6(1) *Determination of a quorum.* A minimum of eight board members is necessary for a quorum. If a quorum is not present at a meeting, the meeting is rescheduled.

101.6(2) *Number of votes needed to approve or deny a modification.* For a requested modification to the farm-to-market road system to be approved, it needs to receive a minimum of seven affirmative votes; in other words, a majority of the entire board. A motion to deny a requested modification needs to only receive six votes for the denial to be approved.

761—101.7(306) Report of board decision to applicant county. Within 30 calendar days after a board meeting, the chair sends a formal response to each county whose request was acted upon by the board at the meeting. The response apprises each applicant of the decision of the board. If the application is denied, the board provides an explanation of the reasons for the denial.

761—101.8(306) Reapplication for modification. A county may reapply for a modification to the farm-to-market road system if its initial request is denied. The county again follows all provisions for requesting a modification and should be prepared to present additional information in support of the requested change. Any requested system modification that receives two denials is not to be resubmitted for consideration for a minimum of three years.

761—101.9(306) Judicial review. Any county that is aggrieved or adversely affected by a decision of the board may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

761—101.10(306) Adoption and modification of rules. The chair directs the board to review these rules annually. Board members may recommend changes to these rules.

761—101.11(306) Severability clause. If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication will not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement Iowa Code sections 306.6 and 306.6A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 163
"RISE Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 315.10
State or federal law(s) implemented by the rulemaking: Iowa Code section 312.2 and chapter 315

Public Hearing

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

October 2, 2024 11 to 11:30 a.m.	Microsoft Teams Link Or call: 515.817.6093 Conference ID: 385 044 72

Public Comment

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

Debra Arp
800 Lincoln Way
Ames, Iowa 50010
Email: Debra.Arp@iowadot.us

Purpose and Summary

The proposed rules implement a grant program utilizing the Revitalize Iowa's Sound Economy (RISE) fund as described in Iowa Code chapter 315. The purpose of the RISE program is to promote economic development in Iowa through the establishment, construction, improvement, and maintenance of roads and streets. The RISE program is targeted toward value-adding activities to provide maximum economic impact to the state. Value-adding activities feed new dollars into the economy. As these dollars are circulated, the state experiences economic growth. Tourism activities that result in the attraction of out-of-state dollars to the state economy may also be targeted by the program. Residential development, local government facilities, local public schools, locally oriented business services and personal services are generally not value-adding activities and will rarely meet the intent of the program.

The RISE program is also administered to encourage economic diversification, new business opportunities, small business development, exporting, import substitution and tourism in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Local public agencies that apply for RISE funds will bear the costs of the proposed rules.

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

Local public agencies that apply for and are approved for RISE funding will benefit from the rules. Businesses that will locate along roadways constructed with RISE funds will also benefit from the rules.

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:

Local public agencies interested in applying for RISE funding will require staff time to complete an application. The cost of this staff time will vary depending on the compensation of such staff.

- Qualitative description of impact:

Beyond the direct benefit of RISE funding to local public agencies toward the completion of roadway improvements, employees of businesses that locate along the improved roadways and local residents who travel along the roadways will also benefit from implementation of these rules.

3. Costs to the State:

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

Department staff maintains the application form and processes for the RISE program and performs project monitoring. Staff also reviews and prepares funding recommendations for Iowa Transportation Commission consideration.

- Anticipated effect on state revenues:

The rules have no anticipated fiscal impacts.

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

The Department will not be able to carry out its administrative duties for the RISE program without prescribing the form and manner of application submittal, review, award, and expected project performance. The only parties that bear the costs of the rules are those that will potentially benefit from the program.

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

None were considered. Iowa Code chapter 315 requires the Department to administer this program.

6. Alternative methods considered by the agency:

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

Topics included in this chapter could be incorporated into a single published guidance document. For example, the Department administers the federal Transportation Alternatives Set-Aside program for similar types of projects. No administrative rules are promulgated for this program, but guidance is published on the program website at www.iowadot.gov/systems_planning/pdf/IIJA-TAP-Guidance.pdf. If this chapter were rescinded, the Department would publish a similar document to the RISE program website.

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

The alternative method was deemed inconsistent with existing statutory rulemaking authority included in Iowa Code chapter 315.

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 proposed chapter does not directly impact small business; therefore, the impact to small businesses is neutral.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 163 and adopt the following **new** chapter in lieu thereof:

CHAPTER 163
RISE PROGRAM

761—163.1(315) General.

163.1(1) *Definitions.*

"Brownfield site" means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination.

"Commission" means the state transportation commission.

"Direct jobs created" refers to jobs new to the state in firms, developments, or sites specifically assisted by a RISE project.

"Direct jobs retained" refers to existing Iowa jobs that would otherwise be lost in firms, developments, or sites specifically assisted by a RISE project.

"Economic development" means private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost. For the purposes of this program, economic development is viewed from a statewide perspective rather than a local or substate, regional perspective and results in a net gain to the state.

"Funding commitment" means commission approval of the use of RISE funds for a project.

"Grant" means funds received for a RISE project with no provision for applicant repayment of principal.

"Immediate opportunity project," one of the two types of RISE projects, is a roadway project that needs a funding commitment within a short time period and meets the threshold criteria in subrule 163.10(6). The project primarily provides improved access to a single economic unit, such as a county, a city, an industrial park, a plant or other business, a development site or a tourist attraction.

"Import substitution" means replacing inputs, products or services from out-of-state firms or locations with Iowa inputs, products or services.

"Jurisdiction" means the state, county, or city having legal authority over a road or street.

"Loan" means funds received for a RISE project with provision for applicant repayment of principal. A loan may involve the payment of interest charges.

"Local development project," one of the two types of RISE projects, is a roadway project which is programmed through a semiannual competitive rating procedure. The project primarily provides improved access to either a single economic unit, such as a county, a city, an industrial park, a plant or other business, a development site or a tourist attraction, or to a portion of a metropolitan area.

"Project" means an eligible activity or cost or set of eligible activities or costs funded with RISE program funds. The two types of projects which may be funded under the RISE program are immediate opportunity projects and local development projects.

"RISE" means revitalize Iowa's sound economy.

"Total capital investment" means the economic value of all permanent purchases, donations, or improvements directly associated with an economic development activity but not funded with RISE moneys, including land; improvements to land; buildings; equipment; furnishings; electric, gas,

telephone, and other utilities; sanitary sewer and storm sewer extensions and hookups; and railroad spurs, access roads, parking lots, and other transportation facilities.

"Traffic impact analysis" means an analysis identifying system and immediate impacts associated with a proposed development to allow an assessment of the existing and future highway system's safety, performance, maintenance, and capacity needs and includes all necessary information as requested by the department.

"Transportation justification" means the reasons given for a project from a transportation planning and engineering standpoint. The justification should address the current condition of existing roadways or bridges, the relationship of the project to connecting roads, anticipated total traffic, anticipated large truck traffic, proposed major design features, roadway function, and the reasons the proposed alternative was selected over other available alternatives.

"Value-adding activities" means activities which, through the employment of knowledge or labor, add value to a product, process or service that results in the creation of new wealth to the state.

163.1(2) *Information and forms.* Information, instructions and application forms may be obtained from the Local Systems Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; by telephone at 515.239.1738; or through the department's website at www.iowadot.gov/systems_planning/Grant-Programs/Revitalize-Iowas-Sound-Economy-RISE-Program.

761—163.2(315) Administration of RISE program.

163.2(1) Purpose. The purpose of the RISE program is to promote economic development in Iowa through the establishment, construction, improvement, and maintenance of roads and streets. The RISE program is targeted toward value-adding activities to provide maximum economic impact to the state. Value-adding activities feed new dollars into the economy. As these dollars are circulated, the state experiences economic growth. Tourism activities that result in the attraction of out-of-state dollars to the state economy may also be targeted by the program. Residential development, local government facilities, local public schools, locally oriented business services and personal services are generally not value-adding activities and will rarely meet the intent of the program.

The RISE program is also administered to encourage economic diversification, new business opportunities, small business development, exporting, import substitution and tourism in Iowa.

163.2(2) The RISE program is administered by the department as a statewide program, with projects evaluated primarily on the basis of economic development criteria rather than solely on the basis of transportation criteria. In carrying out its program responsibilities, the department:

a. Involves local officials in program development and periodic program review and evaluation, including evaluation of the accomplishments and effectiveness of the RISE program. However, all project funding decisions are the responsibility of the commission.

b. Simplifies application processes and administrative procedures to the maximum practicable extent.

c. Designs the RISE program administrative procedures so that they are flexible enough to meet county and city needs.

d. Ensures neutrality and fairness in the treatment of all applications submitted for funding under the RISE program.

e. Promotes intergovernmental cooperation on economic development.

f. Promotes the use of innovative financing mechanisms for RISE projects.

163.2(3) The commission will be responsible for all RISE project funding commitments. All project funding commitments are made subject to the availability of RISE funds.

163.2(4) The department will annually prepare a written report indicating the amount and percentage of funds committed during the previous year on primary roads, secondary roads, city streets, state park roads and county conservation parkways.

761—163.3(312,315) Allocation and use of RISE funds.

163.3(1) *Allocation and use.*

a. Allocation among roadway jurisdictions. The RISE fund is allocated for use on primary, city, and county roads.

b. Funding limited to public roads. The use of RISE funds is limited to construction or improvement of primary roads, secondary roads, city streets, state park roads and county conservation parkways presently open to public use or ones that will be dedicated and open to public use in the future. RISE funds are not to be used for private road projects or for any other private purpose. Project activities eligible for funding under the RISE program are listed in rule 761—163.6(315).

c. Use of county or city RISE funds on primary road projects. Counties or cities may at their option make application to the department to apply RISE funds allocated for use on secondary road or city street projects toward primary road projects. Use of county or city RISE funds on primary road projects is to be approved by the commission.

d. Type of projects. The two types of projects that may be funded under the RISE program are immediate opportunity projects and local development projects as described in the following rules of this chapter:

(1) Immediate opportunity projects: Rule 761—163.8(315).

(2) Local development projects: Rule 761—163.9(315).

e. Relationship of project. The demonstrated relationship of a project to economic development is generally the main criterion employed in determining the priority for funding. The department will assign the lowest priority to a project if it involves a business with wages substantially below other area businesses or with a consistent record of law violations. In terms of project type, immediate opportunity projects are prioritized for all available RISE funds.

f. Use of repaid funds. RISE funds repaid to the department for any reason may be used for other projects or carried over to the next programming cycle. RISE funds repaid are to be credited to the share of the fund from which the project was originally funded.

g. Carryover of funds. The commission need not commit the spending of all RISE funds available during a programming cycle. Uncommitted city funds may be carried over to the next programming cycle or used for immediate opportunity projects. On June 30 of each year, all uncommitted county funds are to be credited to the secondary road fund.

h. Reserve for future needs and contingencies. The commission will monitor RISE fund commitments and expected RISE fund cash flow and take actions necessary to ensure that funds remain available for anticipated present and future immediate opportunity project needs and other contingencies. Such actions may include placing a moratorium on the receipt and award of local development RISE applications, placing a limit on RISE dollars awarded to each project, or taking other actions at the discretion of the commission.

163.3(2) Reserved.

761—163.4(315) Project financing and funding shares.

163.4(1) *Financing.* Applicants may choose to propose grant financing for any RISE project. Applicants are encouraged to propose below-market rate interest loans, no interest loans, or partial principal payback rather than grant financing for RISE projects. The extent to which a project will return moneys to the RISE fund is to be considered in project evaluation processes. Final financial terms for all RISE projects are subject to negotiation between the department and the applicant and approval by the commission.

163.4(2) *Funding shares.* Applicants may propose the proportions and sources of RISE and non-RISE funds to be used for a project. Use of RISE funds are subject to commission approval.

761—163.5(315) Eligibility of applicants and joint applications.

163.5(1) *Applicant eligibility.* All incorporated cities and all counties in the state of Iowa are eligible to apply for and receive funds under the RISE program. The department is also eligible to

initiate projects and receive funds under this program but need not formally apply for funds. Private firms or developers or other agencies are not eligible to apply directly for funds but are encouraged to work with county or city governments in seeking funding for projects. In any case, all projects are to be let by the applicant or through the department's contracts and specifications bureau and in accordance with all applicable laws and rules.

163.5(2) *Joint applications.* Joint applications from two or more counties or cities are encouraged when mutual action supports economic development. Joint applications are to designate a lead county or city to serve as a principal contact point for the department.

761—163.6(315) Project activities eligible and ineligible for RISE funds.

163.6(1) *Eligible activities.* Project activities or costs eligible for RISE funding and that may be counted as part of the non-RISE participation in immediate opportunity and local development roadway projects include only the following:

a. Roadway resurfacing, rehabilitation, modernization, upgrading, reconstruction or initial construction, including grading and drainage, paving, erosion control, pavement overlays, and shoulder widening and stabilization.

b. Bridge and culvert repair, modernization, replacement or initial construction.

c. Roadway intersection and interchange improvements including warranted traffic signalization when it is integral to the improvement.

d. Public transportation system improvements, including but not limited to bus shelters, bus turnouts, and passenger information signage, when they are integral to the roadway improvement.

e. Bicycle and pedestrian infrastructure improvements, including but not limited to sidewalks, at-grade pedestrian crossings, bike lanes, and separated bike lanes, when they are integral to the roadway improvement.

f. Right-of-way acquisition costs, including but not limited to appraisals, negotiation, compensation, and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations.

g. Construction or improvement of motorist rest areas, welcome centers, and information centers.

h. Design engineering costs leading to construction plan development and construction inspection costs associated with RISE-financed projects.

i. County and city bond principal and interest payments associated only with RISE projects. No financing expenses incurred prior to funding commitment are eligible, and no administrative or legal expenses may be reimbursed. The bond term is limited to the expected useful life of the roadway.

j. Storm drainage and storm sewer costs to the extent needed for draining the roadway.

k. Reconstruction or adjustment of utilities, including but not limited to water, sanitary sewer, electric, telephone, and natural gas, when utilities are located on private property and replacement or relocation due to project construction is necessary; or said utilities are located in the public right-of-way and agreements in place allow for compensation to the utility if relocation is necessary.

l. Costs associated with the acquisition of local, state and federal permits are limited to those directly related to the roadway construction.

m. Costs of modifications to railroad facilities are limited to those necessary to construct the RISE roadway, including but not limited to construction, hiring flaggers, and engineering performed by the railroad or the railroad's contractor, that are consistent with an executed agreement between the railroad and the roadway jurisdiction.

163.6(2) *Ineligible activities.* Activities or costs ineligible for RISE funding and that are excluded from the non-RISE participation in immediate opportunity or local development roadway projects include but are not limited to the following:

a. Any and all costs incurred prior to a funding commitment by the commission notwithstanding rule 761—163.7(315).

b. Routine roadway, bridge and culvert maintenance, including but not limited to pothole filling, crack sealing, seal coating, patching, shoulder maintenance, gravel or earth roadway maintenance, and bridge painting.

c. Winter roadway and bridge maintenance, including but not limited to snow plowing, sanding, and salting.

d. Overhead and operating costs associated with eligible project activities, including auditing.

e. Expenses associated with the preparation and submission of applications for RISE funding.

f. Predesign engineering, feasibility or alignment studies, and other planning expenses.

g. Traffic signalization, except as an integral part of a roadway project.

h. Pavement marking and traffic signs, except as an integral part of a roadway project.

i. Utility construction, reconstruction or adjustment except for those activities or costs described in subrule 163.6(1).

j. Safety appurtenances, except as an integral part of a roadway project.

k. Lighting, except as an integral part of a roadway project.

l. Lighting energy and maintenance costs.

m. Sidewalks, bicycle paths, and railroad-highway crossings, except when replacing those facilities in service and affected by the project, or as an integral part of a roadway project.

n. Parking expenditures, including those for structures, lots, meters, paving, and marking whether for on-street or off-street parking.

o. Nonroadway transportation expenditures, including those for railway, aviation, public transportation, and inland waterway facilities and equipment.

p. Purchase of furnishings, construction equipment, and personal property.

q. General government expenses and expenses associated with the provision of any public service which are not eligible for RISE program assistance.

r. Donated right-of-way.

761—163.7(315) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

163.7(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a RISE funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with RISE funding without jeopardizing the project's eligibility for funding approval but does not imply or guarantee that the commission will commit RISE funding to a subsequent application.

163.7(2) *Request, justification and review.* The request is to be received by the department prior to the expenditure and is to include justification regarding the extreme urgency and necessity to incur costs prior to a RISE funding commitment. A request for land acquisition is to also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests are to include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant is to be submitted that includes the scope of services to be rendered. Costs for RISE application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 163.6(2)*"e"* and *"f"* remain ineligible for RISE funding and are not to be included in a request for determination of advance eligibility. The department will review the submittal and provide written confirmation of the determination of advance eligibility following receipt of a request consistent with this rule.

163.7(3) *Eligibility of costs for reimbursement.* Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance

eligibility are to be noted in the subsequent RISE funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with RISE funds if the property acquired or design work completed is not necessary to construct the proposed RISE project included in the subsequent application. Design costs receiving a determination of advance eligibility are not to exceed 10 percent of the total construction costs for the project. An application for funding that includes the expenditure is to be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for RISE funding.

761—163.8(315) Immediate opportunity projects.

163.8(1) *General provisions.* The following provisions are applicable to immediate opportunity projects:

a. Immediate opportunity projects may be located on primary roads, secondary roads, city streets, state park roads or county conservation parkways.

b. There is no limit on the number of applications per county or city that will be considered for RISE funding.

c. Counties and cities may apply for single-year or multiyear funding. Multiyear funding is to be limited to funding commitments from no more than three program years' allocations.

d. Applicants may use staff from other counties or cities, areawide planning organizations, areawide economic development organizations, or other jurisdictions to prepare application materials or administer projects.

e. An adequate transportation justification for the roadway project is to be provided. The proposed improvement need not be designed prior to project application, but the concept is to generally be reasonable from a transportation planning and engineering standpoint and detailed enough to enable project cost estimates to be developed.

163.8(2) *Contents of applications.* Each application for an immediate opportunity project is to contain the following:

a. General information, including the applicant's name, contact person, mailing address, telephone number, local economic development area and history of efforts in the area, and other information of a general nature about the project proposal and the associated economic development activity.

b. Cost information, including the estimated total capital investment involved with the associated economic development activity, the estimated total cost of the roadway project, the amount of RISE funds requested for the roadway project, and the amount of non-RISE funds to be used to match or supplement RISE funding. Itemized breakdowns (showing the item, cost, and funding source) are to be included for the total capital investment, the total roadway project cost, the RISE funds requested, and the non-RISE funds to be used to match or supplement RISE funding.

c. Data showing the impact of the associated economic development activity, including the number of direct jobs created or direct jobs retained. Jobs created as a result of jobs being displaced elsewhere in the state are not to be considered direct jobs created for the purpose of evaluating the application.

(1) To expedite the review, the applicant is to provide the following data for each business included in the project justification: a list of in-state competitors; a list of in-state suppliers; the percentage of out-of-state sales; the effect on import substitution; long-range growth potential; and a list of all current and anticipated employment positions, both full- and part-time, the hourly wage for each, and the turnover rate.

(2) The applicant is to certify that each business will give hiring preference to residents of the state or local area, except for out-of-state employees offered a transfer to Iowa.

d. A preliminary project concept statement for the roadway project, including maps showing site characteristics, such as zoning, platting, subdivision boundaries, and corporate limits; a sketch plan; and a justification for the transportation improvement. In most cases, a sketch plan should include a

simple plan and profile defining the horizontal and vertical geometrics and a typical roadway cross section defining pavement, shoulders, foreslope, and backslope or border treatment. The transportation justification should address topics such as the current condition of existing roadways or bridges, the relationship of the project to connecting roads, and ingress to and egress from the site, as well as the current flow of traffic on the development site, anticipated total traffic and large truck traffic, proposed major design features of the proposed improvement, the intended roadway function, how the proposed improvement is consistent with other local plans, and the reason the proposed alternative was selected over other alternatives. The department may request completion of a traffic impact analysis to supplement the transportation justification before it is reviewed.

e. A time schedule for the total development, including the roadway project and the associated economic development activity.

f. A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The resolution is to state that the project will be adequately maintained and dedicated to public use for a minimum of 20 years after completion of the project and that land provided access by the proposed improvement will be developed according to rule 761—163.2(315). The resolution is to also certify that the project meets the threshold criteria cited in paragraph 163.8(6)*"a"* and that any business assisted by the project that acquires or merges with an Iowa corporation within three years following the RISE application intends to make a good-faith effort to hire the workers of the merged or acquired company.

g. Documentation showing that the threshold criteria of subrule 163.8(6) have been met.

163.8(3) *Submission of applications.* Applications are to be submitted on a form provided by the department and may be submitted at any time. Once an application has been submitted, no further information concerning that application is accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications are to be dated accordingly.

163.8(4) *Incomplete applications.* An applicant is to fully complete the official application form and provide all other information identified in this chapter before the application will be considered by the commission.

163.8(5) *Verification of application materials.* Complete applications are reviewed to verify the figures or statements in the applications. This may include site visits. If inaccuracies, omissions, or errors are found, the commission may rescind the commitment of funds or reevaluate the application based on the correct information. If an applicant loses funding through this process, the commission has complete discretion concerning the disposition of those funds, including awarding them to other applicants or carrying them over to the next programming cycle.

163.8(6) *Threshold criteria.* Funding commitment decisions for immediate opportunity projects are made on an individual basis. There is no competitive ranking of project applications. In order to gain a funding commitment, an application is to meet all of the following threshold criteria:

a. The project is to be related to an immediate, nonspeculative opportunity for permanent job creation or retention. The applicant county or city (or its agent) should be in the process of negotiating a location or retention decision with a developer or firm.

b. The applicant is to demonstrate that an immediate funding commitment is essential to influence the job location or retention decision.

c. The applicant is to demonstrate that necessary arrangements have been made for nonroadway factors (e.g., labor force training, zoning, sewer, water, police and fire protection, financing, and permits) essential for the proposed job creation or job retention activity.

d. The applicant is to commit to providing at least 20 percent non-RISE financial participation in the roadway project, except the commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.

e. There is to be a strong likelihood that the total development, including the roadway project, can be completed in a timely manner. It is up to the applicant to identify a time schedule and maintain it. This time schedule may be adjusted for such reasons, including but not limited to the project

involves unusually complex engineering studies, extensive real estate negotiations, extensive analysis for environmental clearances, or unusually complex planning for associated development. The commission may withdraw funding if time schedules have been misrepresented or have not been maintained.

163.8(7) *Review and funding of applications.*

a. Department staff reviews complete immediate opportunity project applications and may consult with other organizations with economic development responsibilities. As part of the review, the staff evaluates the effect of the proposed project on the state economy using the following factors: consistency with the state economic development plan; diversification of the state economy; the impact on in-state suppliers, competitors, and import substitution; percentage of out-of-state sales; the quality of employment positions; and the record of law violations. This review is to be performed within a reasonable period of time after receipt of the application. Following this review, complete applications meeting the threshold criteria of subrule 163.8(6) are to be forwarded to the commission for action at its next meeting.

b. The commission may fund all or any part of an application and may make a conditional funding commitment. In making its decision, the commission will consider the amount of total capital investment per RISE dollar requested, and the amount of RISE dollars requested per job created or retained.

c. The commission may deny funding for projects that will not result in net job creation or job retention from a statewide point of view, for instance, projects that simply involve the relocation of jobs or other economic activity within Iowa.

d. Immediate opportunity project applications may, at the discretion of the commission, be considered as applications for local development projects and included in the current round of local development project programming, regardless of the deadlines stated in subrule 163.9(3). However, immediate opportunity project applications submitted solely to circumvent the deadlines for local development project applications are not to be considered in this manner.

761—163.9(315) Local development projects.

163.9(1) *General provisions.* The following provisions are applicable to local development projects:

a. Local development projects may be located on primary roads, secondary roads, city streets, state park roads or county conservation parkways.

b. There is no limit on the number of applications per county or city that will be considered for RISE funding.

c. Counties and cities may apply for single-year or multiyear funding. Multiyear funding is to be limited to funding commitments from no more than three program years' allocations.

d. Applicants may use staff from other counties or cities, areawide planning organizations, areawide economic development organizations, or other jurisdictions to prepare application materials or administer projects.

e. An adequate transportation justification for the roadway project is to be provided. The proposed improvement need not be designed prior to project application, but the concept is to generally be reasonable from a transportation planning and engineering standpoint and detailed enough to enable project cost estimates to be developed.

163.9(2) *Contents of applications.* Each application for a local development project is to contain the following:

a. General information, including the applicant's name, contact person, mailing address, telephone number, local economic development program and history of efforts in the area, and other information of a general nature about the project proposal and the associated economic development activity.

b. Cost information, including the estimated total capital investment involved with the associated economic development activity, the estimated total cost of the roadway project, the amount

of RISE funds requested for the roadway project, and the amount of non-RISE funds to be used to match or supplement RISE funding. Itemized breakdowns (showing the item, cost and funding source) are to be included for the total capital investment, the total roadway project cost, the RISE funds requested, and the non-RISE funds to be used to match or supplement RISE funding.

c. Data showing the impact of the associated economic development activity, including the number of direct jobs created or retained. Jobs created as a result of jobs being displaced elsewhere in the state are not to be considered direct jobs created for the purpose of evaluating the application.

(1) To expedite the review, the applicant is to provide the following data for each business included in the project justification: a list of in-state competitors; a list of in-state suppliers; the percentage of out-of-state sales; the effect on import substitution; long-range growth potential; and a list of all current and anticipated employment positions, both full- and part-time, the hourly wage for each, and the turnover rate.

(2) The applicant is to certify that each business will give hiring preference to residents of the state or local area, except for out-of-state employees offered a transfer to Iowa.

d. A preliminary project concept statement for the roadway project, including maps showing site characteristics such as zoning, platting, subdivision boundaries, and corporate limits; a sketch plan; and a justification for the transportation improvement. In most cases, a sketch plan should include a simple plan and profile defining the horizontal and vertical geometrics and a typical roadway cross section defining pavement, shoulders, foreslope, and backslope or border treatment. The transportation justification should address topics such as the current condition of existing roadways or bridges, the relationship of the project to connecting roads, and ingress to and egress from the site, as well as the current flow of traffic on the development site, anticipated total traffic and large truck traffic, proposed major design features of the proposed improvement, the intended roadway function, how the proposed improvement is consistent with other local plans, and the reason the proposed alternative was selected over other alternatives. The department may request completion of a traffic impact analysis to supplement the transportation justification before it is reviewed.

e. A time schedule for the total development, including the roadway project and the associated economic development activity.

f. A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The resolution is to state that the project will be adequately maintained and dedicated to public use for a minimum of 20 years after completion of the project and that land provided access by the proposed improvement will be developed according to rule 761—163.2(315). The resolution is to also certify that any business assisted by the project that acquires or merges with an Iowa corporation within three years following the RISE application intends to make a good-faith effort to hire the workers of the merged or acquired company.

g. A summary showing that necessary arrangements have been made for nonroadway factors (e.g., zoning, sewer, water, police and fire protection, financing, and permits) essential for the proposed economic development activity.

163.9(3) *Submission of applications.* Applications are to be submitted on a form provided by the department.

a. Applications may be submitted at any time. However, in order to be considered in the current round of programming, complete applications are to be received by the department or postmarked no later than February 1 or September 1.

b. Once an application has been submitted, no further information concerning that application is accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications are to be dated accordingly.

163.9(4) *Incomplete applications.* An applicant is to fully complete the official application form and provide all other information identified in this chapter before the application will be considered by the commission. An applicant is to be notified if an application is incomplete.

163.9(5) *Verification of application materials.* Complete applications are reviewed to verify the figures or statements in the applications. This may include site visits. If inaccuracies, omissions, or errors are found, the commission may rescind the commitment of funds or reevaluate the application based on the correct information. If an applicant loses funding through this process, the commission has complete discretion concerning the disposition of those funds, including awarding them to other applicants or carrying them over to the next programming cycle.

163.9(6) *Rating factors.* The following factors and potential rating points are to be used in assessing applications for local development projects. Assessment of these factors is to be the responsibility of the department.

a. Development potential. This factor measures the degree of certainty involved in the economic development activity to be supported by the proposed RISE project and the potential for future job growth. Maximum points: 35.

b. Economic impact. This factor measures the economic impact of the development activity to be supported by the proposed RISE project, including the number of direct jobs assisted, investment leveraging, the percentage of out-of-state sales and in-state suppliers, the impact on competition and diversification, and the quality of job factors. Maximum points: 20.

c. Local commitment and initiative. This factor measures the level of effort being put forth by the applicant to attract economic development and the adequacy of the supporting infrastructure. Maximum points: 35 (includes 5 points for the remediation or redevelopment of a brownfield site).

d. Transportation need. This factor measures the condition and quality of existing road or street service. Maximum points: 4.

e. Area economic need. This factor measures the economic condition of the area. Maximum points: 6.

163.9(7) *Review and funding of applications.*

a. The staff of the department reviews and rates complete local development project applications and may consult with other organizations with economic development responsibilities. As part of the review, the staff evaluates the effect of the proposed project on the state economy using the following factors: consistency with the state economic development plan; diversification of the state economy; the impact on in-state suppliers, competitors, and import substitution; percentage of out-of-state sales; the quality of employment positions; and the record of law violations. Complete applications are to be forwarded to the commission for a funding commitment action within a reasonable period of time after the application deadline. An application considered but not funded in one programming cycle is not to be considered in a subsequent cycle without resubmittal by the applicant.

b. The commission may fund all or any part of an application and may make a funding commitment conditional upon adherence to a specific time schedule, realization of a development prospect, or fulfillment of other agreements.

761—163.10(315) Project administration.

163.10(1) *Agreement.* After a funding commitment has been made for a project, the department enters into a project agreement with the applicant. The agreement is to delineate responsibilities for project planning, design, right-of-way, contracting, construction and materials inspection, and documentation. The agreement is to identify any additional stipulations regarding the project relating to specific jobs to be created or retained and land development contingencies consistent with rule 761—163.2(315). Procedures for documenting compliance with the agreement terms will also be identified in the agreement. By executing the agreement, the applicant agrees to comply with all local, state, and federal laws, and rules and regulations that may apply to the project.

163.10(2) *Project payments.* Payments from the RISE fund to counties or cities are to be made on a cost reimbursement basis, and financial participation is to be limited to the maximum percentage allowed by the funding commitment. The non-RISE financial participation is to include only those items listed as eligible for RISE funding and may be in the form of cash, the value of design

engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions or preliminary design pursuant to rule 761—163.7(315). Grants from other state agencies or programs may also contribute to the non-RISE financial participation if their laws and rules allow. The applicant is to provide documentation to the department supporting the value of any noncash contribution to the project. The department has the sole authority to determine the value of noncash contributions. Contributions made by a third party may be allowed.

163.10(3) *Project expenditures incurred prior to agreement.* Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, are eligible for reimbursement if a project agreement is subsequently executed. Reimbursement is to be paid following execution of the agreement.

163.10(4) *Remedies for noncompliance with project agreement.* The commission may revoke funding commitments, demand repayment of RISE funds loaned or granted or take both actions when the county or city has not fulfilled the terms of the project agreement.

163.10(5) *Cost overruns.* RISE funds committed for projects are for a maximum dollar amount. Cost overruns are the responsibility of the administering jurisdiction.

163.10(6) *Audit.* The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project is to be audited.

These rules are intended to implement Iowa Code section 312.2 and chapter 315.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 165
"Recreational Trails Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 465B.2
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 465B

Public Hearing

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

October 2, 2024 1 to 1:30 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 227 508 568

Public Comment

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

Debra Arp
800 Lincoln Way
Ames, Iowa 50010
Email: Debra.Arp@iowadot.us

Purpose and Summary

These proposed rules implement a statewide trails program as described in Iowa Code chapter 465B. The recreational trails program provides funds to establish recreational trails in Iowa for the use, enjoyment and participation 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:

Local public agencies or nonprofit organizations that apply for State Recreational Trail Program funds will bear the costs of the proposed rules.

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

Local public agencies or nonprofit organizations that apply for and are approved for State Recreational Trail Program funding will benefit from the rules. Bicyclists, pedestrians, and other trail users of trails constructed with program funds will also benefit from the rules.

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:

Local public agencies or nonprofit organizations interested in applying for State Recreational Trail Program funding will require staff time to complete an application. The cost of this staff time will vary depending on the compensation of such staff.

- Qualitative description of impact:

Beyond the direct benefit of State Recreational Trail Program funding to local public agencies or nonprofit organizations toward the completion of trail improvements, trail users will also benefit from implementation of these rules. Local businesses also benefit from tourism dollars generated by nonlocal or out-of-state trail users.

3. Costs to the State:

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

Department staff maintains the application form and processes for the State Recreational Trail Program and performs project monitoring. Staff also reviews and prepares funding recommendations for Iowa Transportation Commission consideration.

- Anticipated effect on state revenues:

The rules have no anticipated fiscal impacts.

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

The Department will not be able to carry out its administrative duties for the State Recreational Trail Program without prescribing the form and manner of application submittal, review, award, and expected project performance. The only parties that bear the costs of the rules are those that will potentially benefit from the program.

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

None were considered. Iowa Code chapter 465B requires the Department to administer this program.

6. Alternative methods considered by the agency:

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

Topics included in this chapter could be incorporated into a single published guidance document. For example, the Department administers the federal Transportation Alternatives Set-Aside program for similar types of projects. No administrative rules are promulgated for this program, but guidance is published on the program website at www.iowadot.gov/systems_planning/pdf/IIJA-TAP-Guidance.pdf. If this chapter were rescinded, the Department would publish a similar document to the State Recreational Trail Program website.

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

The alternative method was deemed inconsistent with existing statutory rulemaking authority included in Iowa Code chapter 465B.

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 proposed chapter does not directly impact small business; therefore, the impact to small business is neutral.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 165 and adopt the following **new** chapter in lieu thereof:

CHAPTER 165
RECREATIONAL TRAILS PROGRAM

761—165.1(465B) General.

165.1(1) *Definitions.*

"Authority" means a state or local government agency, municipal corporation, county or nonprofit organization having authority and responsibility for a trail.

"Commission" means the state transportation commission.

"Recreational trail" means a thoroughfare or track across land or snow, used for recreational purposes, such as pedestrian activities, including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow trail activities, including skiing; bicycling or use of other human-powered vehicles; providing access to aquatic or water activities; and motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

"Recreational trails funds" means funds appropriated for the acquisition, construction, and improvement of recreational trails.

165.1(2) *Information and forms.* Information, instructions and application forms may be obtained from the Local Systems Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1252; or through the department's website at www.iowadot.gov/systems_planning/Grant-Programs/-Federal-and-State-Recreational-Trails.

761—165.2(465B) Program administration.

165.2(1) *Purpose.* The recreational trails program provides funds to establish recreational trails in Iowa for the use, enjoyment and participation of the public. The department administers the recreational trails fund as a statewide program.

165.2(2) *Funding.*

a. The commission is solely responsible for all funding commitments and determines the projects to be funded, subject to the availability of recreational trails funds. The commission may approve, modify, or deny an application. The commission may fund all or part of a project and may make funding conditional upon adherence to a time schedule or to fulfillment of an agreement.

b. The commission need not commit all funds available during a programming cycle. The commission may reserve unexpended or repaid funds for the next programming cycle or for anticipated present and future project needs and other contingencies.

c. Project costs that exceed the commission's funding commitment are not eligible for reimbursement from the recreational trails fund. Reimbursement for project costs is limited to the percentage match approved by the commission and actual eligible project costs incurred.

761—165.3(465B) Applicant eligibility.

165.3(1) A state or local government agency, a municipal corporation, a county or a nonprofit organization is eligible to apply for and receive funds from the recreational trails program.

165.3(2) A private business or developer is not eligible to apply directly for funds from the recreational trails program.

761—165.4(465B) Project eligibility.

165.4(1) *Public use.* The recreational trails program is limited to the acquisition, construction or improvement of recreational trails open for public use or trails that will be dedicated to public use

upon completion. A private trail project or a project for a private purpose is not eligible for funding under this program.

165.4(2) *Criteria.* A proposed recreational trails project is to meet all of the following:

a. The project is to be part of a local, areawide, regional or statewide plan.

b. The trail route is to be designed to allow enjoyment of scenic views or points of historical interest and to maximize safety. The route may use existing roads, streets or parkways, if the normal flow of motor vehicle traffic will not be hindered; abandoned railroad corridors; utility corridors; or new right-of-way as necessary.

c. The project is to include a contribution of at least 25 percent matching funds.

d. Matching funds may include grants from other state agencies or programs if their laws and rules allow and the donation of in-kind labor, materials, equipment, and services from a third party. The department has the sole authority to determine the value of noncash contributions. The value of donated land may be an eligible matching contribution if:

(1) The land is donated after the commission's funding commitment, and

(2) The value is based on a real estate appraisal acceptable to the department. The appraisal is subject to review and approval by the department after a funding commitment has been made.

761—165.5(465B) Eligible project costs.

165.5(1) *Land.* Land acquisition costs, including but not limited to appraisals, negotiation, compensation and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations, are eligible project costs. Land may be acquired by lease, easement or fee simple and as allowed by Iowa Code section 6A.21. The performance of land negotiation and acquisition activities is not the responsibility of the department, although the department may provide advisory services.

165.5(2) *Other eligible costs.* Other project costs that are eligible for funding are limited to the following:

a. Trail surfacing, resurfacing, rehabilitation, modernization, upgrading and reconstruction, including pavement repairs and overlays and shoulder widening and stabilization; or initial trail construction, including grading, drainage, paving and erosion control.

b. Bridge and culvert repair, modernization, replacement or initial construction.

c. Roadway intersection and interchange improvements, including warranted traffic signalization that is an integral part of the project.

d. Construction or improvement of rest areas, information centers, waysides, permanent interpretive displays, lighting and rest rooms, including the costs of utility connections that are an integral part of the project.

e. Design engineering costs leading to construction plan development and construction inspection costs directly associated with the project.

f. Storm drainage and storm sewer costs to the extent needed for draining the trail.

g. Reconstruction or adjustment of utilities, including but not limited to water, sanitary sewer, electric, telephone, and natural gas when utilities are located on private property and replacement or relocation due to project construction is necessary; or said utilities are located in the public right-of-way and agreements in place allow for compensation to the utility if relocation is necessary.

h. Trail signs, fencing, landscaping, parking areas, and walkways.

761—165.6(465B) Ineligible project costs.

165.6(1) *Before commission approval.* Any and all costs incurred prior to a funding commitment by the commission are ineligible for funding notwithstanding rule 761—165.7(465B).

165.6(2) *Other ineligible costs.* Other project costs that are ineligible for funding include but are not limited to the following:

a. Routine maintenance of a trail, bridge, culvert, fence or sign; winter maintenance of a trail or bridge, including but not limited to snow plowing, sanding, and salting.

b. Overhead and operating costs associated with a project, such as auditing, legal and administrative costs.

c. Expenses associated with the preparation and submission of a project application.

d. Predesign engineering, feasibility, or alignment studies and other planning expenses.

e. Utility construction, reconstruction or adjustment except for those activities or costs described in subrule 165.5(2).

f. Pavement markings, traffic signs, safety appurtenances or lighting except as an integral part of a trail project.

g. Purchases of office furnishings or equipment, construction or maintenance equipment, or personal property.

h. General government expenses and expenses associated with the provision of any public service that are not otherwise eligible for project funding.

761—165.7(465B) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

165.7(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a recreational trails program funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with recreational trails program funding without jeopardizing the project's eligibility for funding approval but does not imply or guarantee that the commission will commit recreational trails program funding to a subsequent application.

165.7(2) *Request, justification and review.* The request is to be received by the department prior to the expenditure and is to include justification regarding the extreme urgency and necessity to incur costs prior to a recreational trails program funding commitment. A request for land acquisition is to also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests are to include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant is to be submitted that includes the scope of services to be rendered. Costs for recreational trails program application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 165.6(2)*"c"* and *"d"* remain ineligible for recreational trails program funding and are not to be included in a request for determination of advance eligibility. The department will review the submittal. The department will provide written confirmation of the determination of advance eligibility following receipt of a request consistent with this rule.

165.7(3) *Eligibility of costs for reimbursement.* Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility are to be noted in the subsequent recreational trails program funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with recreational trails program funds if the property acquired or design work completed is not necessary to construct the proposed recreational trails program project included in the subsequent application. Design costs receiving a determination of advance eligibility are not to exceed 10 percent of the total construction costs for the project. An application for funding that includes the expenditure is to be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for recreational trails program funding.

761—165.8(465B) Application.

165.8(1) *Submission.* An eligible applicant is to complete and submit an application on a form and in the quantity prescribed by the department.

a. An eligible applicant may submit more than one application in a funding cycle.

b. Two or more eligible applicants may submit a joint application and are encouraged to do so when mutual action supports the development of the project. A joint application is to designate a lead applicant to serve as the principal contact with the department.

c. The application deadline is to be on the first day of the fiscal year for which funding has been provided to the program and any additional stated deadline as deemed necessary by the department to fully award program funding.

d. Applications are to be received by the department by the stated application deadline.

e. All applications for funding are to be complete. The department reserves the right to return an incomplete application to the applicant without further consideration for funding. An applicant may then submit a completed application for the next available funding cycle.

f. An application that is considered but not funded in one funding cycle may be resubmitted by the applicant for consideration in the next cycle.

165.8(2) *Contents of application.* Each application is to contain the following:

a. The applicant's name, mailing address, email address, and telephone number, and the contact person who will serve as liaison with the department.

b. A project concept statement, including a location map, a cross section and a sketch of the project intended to be constructed with program funds. The proposed project need not be designed before applying, but the concept is to be reasonable from a transportation engineering standpoint and detailed enough to generate project cost estimates.

c. An itemized cost estimate for the total project to be constructed, showing for each item the cost and funding source. When a project is part of a larger multiphase project, the application is to differentiate the costs and scope of the proposed construction project from the costs and scope of the overall multiphase project.

d. A time schedule for project completion. A time schedule adjustment may be approved by the department if the project involves unusually complex studies, extensive real estate negotiations, extensive analyses for environmental clearances, complex planning for associated developments, or another compelling reason.

e. An adequate justification for the recreational trails project based on the project eligibility criteria in subrule 165.4(2) and the evaluation criteria in subrule 165.9(2).

f. A formal resolution passed by the governing body of the responsible authority endorsing the application and the time line for project completion provided therein. The resolution is to also state that the proposed trail project will be adequately maintained and made available for the intended public use for a minimum of 20 years after completion of the project and acknowledge intent to provide all funds necessary to complete the project beyond any funding award.

165.8(3) *Funding requests.* An applicant is to specify in the application the amount of grant funding requested from the recreational trails program and may offer a matching fund contribution larger than 25 percent.

761—165.9(465B) Evaluation and approval.

165.9(1) The department will review each application, may verify the contents and may visit the trail site.

165.9(2) The department will evaluate each complete application primarily on the basis of whether the predicted use of the trail justifies the construction and maintenance costs, including but not limited to the following criteria:

a. Need, in terms of the population to be served and existing trails in the area.

b. Compatibility with local, areawide, regional or statewide plans.

c. Benefits of multiple uses and recreational opportunities.

d. Economic and tourism benefits to the local area.

e. Accessibility.

f. Project readiness for development.

g. Local match to be contributed to the project.

165.9(3) Completed applications are to be reviewed by a committee composed of representatives from state agencies with jurisdiction over transportation, tourism, cultural resources and natural resources. The committee is to recommend applications to the department by ranking them in order of funding priority.

165.9(4) The department is to prepare a list of applications and funding recommendations and present it to the commission for final approval and award of funding.

761—165.10(465B) Project agreement.

165.10(1) After the commission has approved funding for a recreational trails project, the department enters into a project agreement with the applicant.

a. The agreement is to specify the responsibilities for project planning, design, land acquisition, contracting, construction and materials inspection, and documentation and the criteria for each. The agreement is to also specify the overall funding level approved and contain an estimated budget for eligible work items.

b. By executing the agreement, the applicant agrees to comply with all local, state and federal laws, rules and regulations that may apply to the project.

165.10(2) The department will reimburse the authority for actual eligible project costs incurred as specified in the agreement, not to exceed the amounts authorized by the project agreement.

165.10(3) Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, are eligible for reimbursement if a project agreement is subsequently executed. Reimbursement is to be paid following execution of the project agreement.

165.10(4) The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project is to be audited.

165.10(5) The department may revoke funding commitments, seek repayment of funds already reimbursed, or take both actions if:

a. The terms of the project agreement have not been fulfilled.

b. An agreement has not been signed within six months after the project sponsor receives the signature copy.

c. The department finds that the application contained inaccuracies, omissions, errors or misrepresentations.

d. The time schedule for project completion was misrepresented or has not been maintained.

These rules are intended to implement Iowa Code chapter 465B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 178
"Project Cost Reporting Requirements for Cities and Counties"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 314.1A

State or federal law(s) implemented by the rulemaking: Iowa Code sections 309.1, 309.22, 309.93, 312.14, 314.1, and 314.1A

Public Hearing

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

September 30, 2024 1 to 1:30 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 669 636 465

Public Comment

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

Nicole Moore
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.460.0763
Email: nicole.moore@iowadot.us

Purpose and Summary

The intended benefit of the proposed rules is to implement cost reporting of projects that cities and counties construct.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No one will bear the costs of the proposed rulemaking.

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

The taxpayers and contractors of Iowa benefit by knowing project costs.

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 additional costs.

- Qualitative description of impact:

No additional costs.

3. Costs to the State:

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

None.

- Anticipated effect on state revenues:

None.

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

Since there are no additional costs incurred, the benefits of the rules are achieved by providing information on project costs.

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

The Department already has instructions on the Department's website that inform local jurisdictions how to report project costs to the Department. The rules and the website are duplicative; however, the rules are required by statute.

6. Alternative methods considered by the agency:

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

None.

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

Iowa Code section 314.1A requires the Department to adopt 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?

This chapter does not have an impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 178 and adopt the following **new** chapter in lieu thereof:

CHAPTER 178
PROJECT COST REPORTING REQUIREMENTS
FOR CITIES AND COUNTIES

761—178.1(314) Purpose and contact information.

178.1(1) The purpose of these rules is to establish requirements for the reporting by cities and counties of project cost information to the department, in accordance with Iowa Code section 314.1A.

178.1(2) Questions regarding this chapter may be directed to the Local Systems Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010 or www.iowadot.gov/local_systems.

761—178.2(309,314) Definitions.

"Bridge" means the same as defined in Iowa Code section 309.1.

"City" means a municipal corporation as defined in Iowa Code section 312.8 or 362.2.

"Construction" means the building or development of a road, street, bridge, or culvert in a new location when:

1. The new location deviates substantially from the existing alignment, and
2. The result is an entirely new road or street for the greater part of the length of the project.

"Culvert" means the same as defined in Iowa Code section 309.1.

"Day labor" means road, street, bridge, or culvert work, or materials that have not been subjected to bids. This includes work performed by permanent or temporary city or county employees, materials purchased by a city or county without taking formal bids, or contractor services that were not formally bid.

"Improvement" means a betterment to a road, street, bridge, or culvert. The work increases the value of the facility and enhances the facility, its traffic operations, or its safety beyond the original design. The work would not be so extensive as to be classified as construction or reconstruction, but it could involve rehabilitation, restoration, or resurfacing (3R) work.

"Reconstruction" means a significant change to the existing type of road, street, bridge, or culvert or its geometric or structural features. Some realignment and the use of current design criteria may be involved.

761—178.3(309,312,314) Detailed instructions furnished to cities and counties.

178.3(1) Each year, the department provides cities and counties a set of detailed instructions for reporting the following information:

a. The cost of day labor and contracts for construction, reconstruction, and improvement projects on the farm-to-market, secondary road, and municipal street systems.

b. The cost of purchasing, leasing, and renting construction and maintenance equipment.

c. The use of this equipment for construction, reconstruction, and improvement projects on the farm-to-market, secondary road, and municipal street systems.

178.3(2) These instructions constitute the form, content, and method of preparation acceptable to the department. Cities and counties include this information in the annual reports they submit to the department under Iowa Code sections 309.22 and 312.14.

761—178.4(314) Project reporting. Reporting of projects accomplished by day labor or contract is required for any construction, reconstruction, or improvement project that has a total cost of 90 percent or more of the applicable bid threshold. Other reporting requirements set out in the Iowa Code still apply.

178.4(1) *Types of projects.*

a. Bridge. Bridge project types include the following:

(1) Bridge. This project type includes removal of existing structures and all new construction, reconstruction, and improvement of bridges.

(2) Culvert. This project type includes new construction or installation of an individual box or pipe culvert with a span or diameter that is greater than 4 feet but no greater than 20 feet.

b. Road. Road project types include the following:

(1) Roadway construction. This project type includes but is not limited to all types of excavation, overhaul, clearing and grubbing, removal of pavement, and culverts included with grading.

(2) Surfaces. This project type includes but is not limited to:

1. Hot mix asphalt and Portland cement concrete pavements and overlays on roads, streets and shoulders.
2. Stabilized bases and granular surfacing on new grades.

(3) Roadside construction. This project type includes but is not limited to:

1. Erosion control structures, such as check dams and letdown structures.
2. Landscape treatments, such as seedbed preparation, seeding, sodding, mulching, fertilizing, and planting of shrubs and trees on newly graded roads.

3. Construction of shoulders on paved roads and rebuilding or raising entrances due to shoulder construction.

(4) Traffic control. This project type includes but is not limited to installation of major signs, traffic signals, railroad crossing signals, guardrail, roadway lighting, construction signing, and pavement markings on newly paved roads and streets.

(5) Miscellaneous. This project type includes but is not limited to construction, reconstruction, or installation of storm sewers, subdrains, retaining walls, noise barriers, and sidewalks.

178.4(2) *Contract work.* The cost of contract work on a project is the contract price plus additions and deductions.

178.4(3) *Day labor.* The cost of day labor on a project includes the following expenditures:

a. Labor. Labor cost includes the wages of city or county employees for their time devoted to the project, plus corresponding fringe benefits, such as but not limited to IPERS, FICA, and insurance.

b. Equipment. Equipment cost is calculated based on the equipment used on the project and the time the equipment is used. If an item of equipment is rented or leased, its rental or lease rate may be used to calculate cost. If an item of equipment is not rented or leased, its cost is to be calculated using the standard rate established by the department for that type of equipment or using a city- or county-established rate based on actual expense data. The department establishes equipment rates each year based on the latest "Rental Rate Blue Book for Construction Equipment."

c. Materials. Materials cost is the cost of materials and supplies consumed or expended on the project. The materials and supplies may be procured directly for the project or charged to the project from stock on hand. The cost of used material is its salvage value.

d. Overhead. Overhead cost is the prorata share of indirect costs to be allocated to day labor projects. Indirect costs are the city's or county's road- or street-related costs that cannot be charged directly to any project. The city or county may use its records to calculate the cost of overhead, or it may use a standard overhead rate of 10 percent of the labor cost, excluding fringe benefits.

These rules are intended to implement Iowa Code sections 309.1, 309.22, 309.93, 312.14, 314.1, and 314.1A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 380
"Motor Vehicles Operated by an Automated Driving System"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.519

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A and sections 321.1, 321.16, 321.20, 321.31, 321.381, 321.482, and 321.514 through 321.519

Public Hearing

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

September 27, 2024	Microsoft Teams Link
10:30 to 11 a.m.	Or dial: 515.817.6093
	Conference ID: 398 016 157

Public Comment

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

Kathleen Meradith-Eyers
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: kathleen.meradith-eyers@iowadot.us

Purpose and Summary

These proposed rules outline vehicle registration and exemption processes that driverless-capable vehicles are to follow to ensure safe operation of such vehicles as required by Iowa Code sections 321.514 through 321.519. These Iowa Code sections authorize automated driving system (ADS)-equipped vehicles to operate on public highways in Iowa under certain conditions and give the Department exclusive regulatory authority over these vehicles.

The intended benefit of these rules is to provide vehicle owners, vehicle manufacturers, the law enforcement community, the automotive industry, and any other interested parties with transparency regarding implementation of the authority given to the Department in Iowa Code section 321.519 to regulate these vehicles by doing the following: establishing clear and transparent processes to register the vehicles, including operational restrictions, if applicable; outlining the process to apply for an exemption if the vehicle cannot comply with all traffic laws and regulations; and providing clear and transparent appeal procedures relating to the Department's decisions and actions under the chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Driverless-capable vehicle owners and/or driverless-capable vehicle manufacturers do not incur any additional costs by completing the procedures outlined in these rules.

The costs for completing the underlying titling and registering of a driverless-capable vehicle are attributable to Iowa Code requirements.

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

Driverless-capable vehicle owners and/or driverless-capable vehicle manufacturers will benefit from having clear and consistent processes for registering these vehicles, seeking an exemption pursuant to Iowa Code section 321.515(1)"b," and appealing the Department's administrative decisions if disagreement occurs.

Law enforcement will benefit from the requirement that the vehicle's ADS level be indicated on the vehicle's registration record and the requirement that a copy of an exemption issued under Iowa Code section 321.515(1)"b" be available for viewing during a potential traffic stop.

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:

There is no quantitative impact beyond the impact of the underlying statute that requires these vehicles to be titled and registered and to be issued an exemption from the Department if applicable under Iowa Code section 321.515(1)"b."

- Qualitative description of impact:

Minor administrative work is needed for customers to complete the supplemental processes for registering or exempting a driverless-capable vehicle under the rules. Impacted vehicle owners/manufacturers may need to do the following as part of the registration process:

- Provide the Department with a copy of the vehicle's operational design domain prior to registering the vehicle
- Provide the Department with information regarding changes to the vehicle's operational design domain and operational capabilities
- Apply for a driverless-capable vehicle exemption from the Department under Iowa Code section 321.515(1)"b" if the vehicle is not capable of operating in compliance with traffic laws and regulations

3. Costs to the State:

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

There are no costs to the Department to implement the rules beyond those that would otherwise be required to administer the statute. The administrative work to notate the ADS level on the record or to review the operational design domain to evaluate operational restrictions is negligible since the number of these vehicles is extremely small (only one vehicle registered in Iowa meeting these criteria). If there is an increase in requests for registration of ADS vehicles and/or vehicle exemptions, the Department is well-positioned to process these requests with existing vehicle registration staff and program managers.

- Anticipated effect on state revenues:

There is no impact on state revenues other than what is provided in the underlying statute for titling and registering a vehicle.

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

The cost of inaction is lack of clear, consistent, and enforceable processes for registering and (if applicable) exempting ADS-equipped vehicles in Iowa. Additionally, inaction would result in the inability for law enforcement to understand the operational restrictions or level of automation of ADS vehicles operating in Iowa, which would negatively impact officers' ability to effectively enforce Iowa traffic laws.

There is no benefit to inaction.

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

There is no less costly or less intrusive method to achieve these benefits. These requirements are significantly simpler and less bureaucratic than the methods used in other states.

The requirement to notate the vehicle's ADS level on the registration record is consistent with national best practice.

6. Alternative methods considered by the agency:

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

No alternatives were considered by the Department.

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

Alternatives were not considered because this is a very new technology, and as such, the provisions are untested. To date, only one ADS-equipped vehicle has ever been titled and registered in Iowa, and the vehicle did not require any operational restrictions. No individual or entity has ever applied for an exemption under Iowa Code section 321.515(1)"b."

The chapter was developed after extensive discussion and input with industry stakeholders, and further adoption would be needed before any alternative regulatory methods could be considered based on customer and industry feedback.

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?

There is no small business impact. The proposed rules apply equally to personally owned vehicles as well as vehicles owned by a business. The documentation and reporting requirements are minimal and cannot be further reduced or simplified for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 380 and adopt the following **new** chapter in lieu thereof:

CHAPTER 380
MOTOR VEHICLES OPERATED BY AN AUTOMATED DRIVING SYSTEM

761—380.1(321) Applicability. This chapter applies to driverless-capable motor vehicles operated by an automated driving system.

761—380.2(321) Definitions. The definitions in Iowa Code section 321.514 are adopted and incorporated herein. In addition:

"Conventional human driver" means the same as defined in Iowa Code section 321.514 but does not include a driverless-capable vehicle passenger.

"Driverless-capable vehicle" as defined in Iowa Code section 321.514 means the vehicle meets the criteria for automation classification of Level 3, Level 4, or Level 5 as established in the April 30, 2021, edition of "Taxonomy and Definitions for Terms Related to Driving Automated Systems for On-

Road Motor Vehicles" by the Society of Automotive Engineers (SAE), which is accessible by web link on the department's website listed under rule 761—380.3(321).

"Driverless-capable vehicle passenger" means a person who does not control the in-vehicle accelerating, braking, steering, and transmission gear selection input devices in order to operate a motor vehicle and who is not otherwise expected to respond to a request to intervene issued by the automated driving system of a driverless-capable vehicle.

"SAE" means the Society of Automotive Engineers, which is an international association reputed for its standards development efforts, including its efforts to standardize definitions of driving automation systems.

761—380.3(321) Information and addresses. Information and forms pertaining to driverless-capable vehicles may be obtained 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/automatedtransportation/Policies-Procedures.

761—380.4(321) Registration of driverless-capable vehicles.

380.4(1) Upon registration of a driverless-capable vehicle under 761—subrule 400.3(16) or notification of a vehicle modification under 761—subrule 400.21(5), the department will notate the vehicle's SAE level of automation in the records system established under Iowa Code section 321.31. Any changes to the SAE level of automation are to be reported to the department by the vehicle owner, or manufacturer on behalf of the owner.

380.4(2) Upon request, the vehicle owner, or manufacturer on behalf of the owner, is to provide to the department the vehicle's operational design domain and associated operational capabilities, which the department may review to impose operational restrictions as provided in rule 761—400.21(321) as a condition of registration of the vehicle. Any subsequent material changes to the vehicle's operational design domain and associated operational capabilities related to any previously imposed operational restrictions are to be submitted to the department in order to determine whether the previously imposed operational restrictions should be modified or removed as a result of such changes.

761—380.5(17A,321) Driverless-capable vehicle exemption.

380.5(1) *Application.* The owner, or manufacturer on behalf of the owner, of a driverless-capable vehicle seeking an exemption under Iowa Code section 321.515(1)*"b"* may apply to the department to allow driverless operation of the vehicle. Applications are to be made on a form prescribed by the department and are to include:

a. Identification of the laws or regulations from which the driverless-capable vehicle is seeking an exemption.

b. Information describing how the vehicle will be operated under the exemption without posing a safety risk to the public.

380.5(2) *Issuance and display of exemption.* An exemption may be issued, subject to any operational restrictions as provided under rule 761—400.21(321), if the department has sufficient information to determine a public safety risk does not exist. The department will provide written notice of the exemption to the vehicle owner, and if applicable, to the manufacturer. The notice shall be maintained at all times in the driverless-capable vehicle and made available for display to any peace officer upon request.

380.5(3) *Revocation and reinstatement.*

a. The department may revoke a driverless-capable vehicle exemption in any of the following circumstances:

(1) If the exemption has been issued in conflict with the statutes or rules governing the exemption's issuance.

(2) If the exemption was issued based on false information.

(3) If there was a violation of Iowa Code sections 321.514 through 321.519, 761—Chapter 400 or this chapter.

(4) If the vehicle operating under the exemption is involved in a contributive motor vehicle accident attributable to the automated driving system performance in this or any other state and that accident results in death or serious injury.

(5) If the vehicle is operated in violation of any of the motor vehicle laws of this or any other state that results in death or serious injury.

b. For incidents occurring outside the state of Iowa, revocation may only occur once the investigation of the incident is completed, and the vehicle's automated driving system performance was found to be involved in or contributive to a motor vehicle accident that resulted in a death or serious injury. The effective date of the suspension or revocation shall be 20 days after the department has mailed notice of the revocation to the vehicle owner, and manufacturer if applicable, by first class mail. To reinstate the exemption, the vehicle owner, or manufacturer on behalf of the owner, is to reapply for the exemption.

380.5(4) *Hearings.* A vehicle owner, or manufacturer on behalf of the owner, whose driverless-capable vehicle exemption has been revoked may contest the revocation in accordance with Iowa Code chapter 17A and 761—Chapter 13. The request for a hearing must be submitted to the director of the motor vehicle division at the address in rule 761—380.3(17A). The request will be deemed timely if it is delivered or postmarked on or before the effective date specified in the notice. The department will stay the revocation for the duration of the hearing proceedings.

761—380.6(321) Submission in aggregate. Information or application reported or submitted by a manufacturer on behalf of the owner to the department under rule 761—380.4(321) or rule 761—380.5(17A,321) may be reported or submitted in aggregate by vehicle make and model.

These rules are intended to implement Iowa Code chapter 17A and sections 321.1, 321.16, 321.20, 321.31, 321.381, 321.482, and 321.514 through 321.519.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 405
"Salvage and Other Title Designations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.52(4), 321.52(5), and 321.69(12)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321.1, 321.13, 321.24(4), 321.24(5), 321.24(6), 321.52, 321.69, 321H.2, and 322G.12; and 28 CFR 25.54

Public Hearing

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

September 27, 2024 2 to 2:30 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 256 985 764

Public Comment

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

Kathleen Meradith-Eyers
6310 SE Convenience Blvd.
Ankeny, Iowa 50021
Phone: 515.231.1230
Email: kathleen.meradith-eyers@iowadot.us

Purpose and Summary

The purpose of Chapter 405 is to outline clear standards for vehicle owners, buyers, sellers, insurers, and dealers regarding the titling and registration process for vehicles with title designations other than regular, such as "salvage," "junk," and "rebuilt." The chapter implements the Department's express authority under Iowa Code sections 321.24(5) and 321.24(6) to require out-of-state title designations when a vehicle has incurred prior damage; to determine the manner in which other states' rebuilt, salvage, or other designations are to be indicated on Iowa titles; and determine whether a "rebuilt" or "salvage" designation supersedes another designation.

The purpose of the chapter is also to outline procedures for the conduct of "salvage theft examinations" as required under Iowa Code section 321.52. This section requires the owner of a "salvage" designated vehicle to repair the vehicle and have a salvage theft examination performed by a specially certified peace officer before the owner may be issued a regular certificate of title to ensure that the parts used to repair the vehicle were lawfully obtained.

The chapter will provide individuals and businesses transparency and clarity on how to convert a foreign (out-of-state) vehicle into Iowa and how to convert a vehicle with a "salvage" designation to a "rebuilt" status, and robust consumer protection measures by ensuring vehicle records checks are in place so that unknowing individuals or fraudulent actors cannot conceal prior damage on a vehicle by converting to a clean title.

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 or fees associated with this chapter beyond the underlying statutory costs. Rather, the underlying statute requires certain vehicle title designations and requires salvage theft examinations in certain situations. These proposed rules simply describe the processes and documentation needed to title and register a vehicle with branding designations.

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

Vehicle buyers will benefit from the rules by having knowledge of the vehicle's value, condition, and history prior to purchasing the vehicle (via the title designation, if any). Title designations, and records checks of foreign vehicles to confirm the presence of title designations, protect consumers from the downstream effects of purchasing a potentially unsafe or falsely over-valued vehicle.

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:

The proposed rules have no quantitative impact beyond the collection of statutory fees required under Iowa Code section 321.52(4). This section sets fees for salvage theft examinations.

A salvage, rebuilt, etc. designation on a vehicle's title may reduce the vehicle's value (i.e., if it is "rebuilt" versus a never-salvaged vehicle), but any change in value is attributable to the vehicle's history, not the title designation that merely describes the history.

- Qualitative description of impact:

The proposed rules provide consumer protection benefits by establishing a consistent process related to vehicle title designations and conducting salvage theft examinations. The proposed rules provide vehicle buyers with transparency regarding the value and condition of the vehicle and provide the consumer protection safeguard that parts used to rebuild a salvaged vehicle are not stolen.

3. Costs to the State:

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

The Department incurs costs to provide salvage theft examination training and certification for law enforcement officers (four to six classes per year), and law enforcement officers incur time costs for completing the training. The Department incurs costs via staff time to complete vehicle records checks. However, these costs are attributable to the underlying requirements in Iowa Code sections 321.24 and 321.52.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues, other than the fees established in the underlying statute (Iowa Code section 321.52(5)) for salvage theft examinations.

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

There is no benefit to inaction. Rather, there is a substantial risk to vehicle owners, sellers, buyers, dealers, and insurers by inaction. Eliminating the records check process prior to titling a vehicle from out of state would permit unknowing individuals or fraudulent actors to conceal prior damage on a vehicle by converting to a clean title and could result in many negative downstream consequences to future vehicle buyers and operators.

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

There are no less costly or intrusive methods for achieving the purpose of the proposed rules.

All states adopt title designations to indicate a vehicle's prior damage history and all states participate in the National Motor Vehicle Titling Information System (NMVTIS) to complete vehicle history records checks. This proposed chapter follows national best practices outlined in the American Association of Motor Vehicle Administrators "Salvage and Junk Vehicle: Best Practice Recommendations for Jurisdictions on Branding and Handling Salvage, Rebuilt Salvage, Junk, and Flood-Damaged Vehicles" (December 2019).

The only less intrusive/costly method that could be adopted would be to change the underlying statute. However, in the few states that do have less restrictive laws (Kentucky and South Dakota), those states experience larger amounts of fraud and consumer complaints, which have severe negative consequences for consumers in those states and consumers from other states who buy vehicles from that state.

6. Alternative methods considered by the agency:

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

There were no alternative methods seriously considered due to the proposed rules' alignment with the underlying statutory authority and national best practices.

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

Not applicable.

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?

There is no small business impact. The proposed rules apply equally to personally owned vehicles as well as vehicles owned by a business. The same eligibility and application criteria apply and cannot be further reduced or simplified for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 405 and adopt the following **new** chapter in lieu thereof:

CHAPTER 405
SALVAGE AND OTHER TITLE DESIGNATIONS

761—405.1(321,322G) Applicability and information.

405.1(1) This chapter applies to motor vehicles subject to Iowa Code sections 321.24, 321.52, 321.69, and 322G.12.

405.1(2) Information regarding this chapter may be obtained by mail from the Motor Vehicle Division, Iowa Department of Transportation, 6310 SE Convenience Boulevard, Ankeny, Iowa 50201; by email at central.vehicle@iowadot.us; or on the department's website at www.iowadot.gov/mvd/vehicleregistration.

761—405.2(321,321H) Definitions.

405.2(1) The definitions in Iowa Code section 321.1 are hereby adopted. In addition:

"Authorized vehicle recycler" means a person licensed under Iowa Code chapter 321H.

"Bill of sale" means a document provided by the seller to the buyer containing the name, contact information of the seller, a description and identification number of the component part and, if applicable, the vehicle identification number (VIN) of the vehicle from which it was removed.

"Foreign jurisdiction" means a jurisdiction other than Iowa.

"New motor vehicle dealer" means a dealer licensed under Iowa Code chapter 322 to sell new motor vehicles that have not been sold "at retail" or previously registered in this or any other state.

"Regular foreign title" means a certificate of title issued by a foreign jurisdiction that allows the vehicle to be driven or moved upon a highway and is not designated as "salvage."

"Regular Iowa title" means an Iowa certificate of title that is not a salvage title.

"Salvage title" means either an Iowa or a foreign salvage title unless otherwise specified.

"Salvage theft examination certificate" means a certificate, including an electronic certificate in the form and manner prescribed by the department, issued by a peace officer who has been specially certified to conduct salvage theft examinations as provided in Iowa Code section 321.52.

"Wrecked or salvage vehicle" means a damaged motor vehicle that:

1. Has repair costs exceeding 70 percent of its fair market value before it became damaged, and
2. Had a fair market value of $500 or more before it became damaged.

405.2(2) Fair market value, for the purposes of this chapter, is to be determined by the motor vehicle division using any of the following: a bill of sale, an appraisal conducted by a motor vehicle dealer or a third-party appraiser, or a commercially available motor vehicle pricing guide.

761—405.3(321) Salvage title.

405.3(1) *Face of title.* Except for vehicles with a gross vehicle weight rating of 30,000 pounds or more, the word "SALVAGE" is to be printed on the face of an Iowa salvage title.

405.3(2) *Assignment.* A salvage title may be assigned only as provided in Iowa Code section 321.52(4). Except as provided in subrule 405.3(3), the transferee to whom a salvage title is assigned shall, within 30 days after the date of assignment, apply for a new Iowa salvage title, a regular title, or an Iowa junking certificate.

405.3(3) *Reassignment.* If a vacant reassignment space is available on the salvage title, a licensed new motor vehicle dealer or an authorized vehicle recycler may reassign the salvage title, and the dealer or recycler is not required to obtain a new Iowa salvage title. If all reassignment spaces on a salvage title assigned to the dealer or recycler have been used, the dealer or recycler is required to obtain a new Iowa salvage title in accordance with subrule 405.3(2). The words "ONLY NEW MOTOR VEHICLE DEALERS OR RECYCLERS MAY REASSIGN THIS TITLE" are to be printed on the dealer reassignment portion of Iowa salvage titles.

405.3(4) *Registration fees.*

a. An Iowa salvage title may be obtained without payment of the current registration fees or any delinquent registration fees or registration penalties. If the registration fees are delinquent at the time an Iowa salvage title is issued, no additional penalties accrue after issuance.

b. Any registration fees or registration penalties due at the time of issuance of an Iowa salvage title, together with the current registration fees if not already paid, are to be paid upon issuance of a regular title. However, a dealer is not required to pay current registration fees to obtain a regular title for a vehicle held for resale or trade. See rule 761—400.27(321,322) for any exceptions.

c. Notwithstanding any provision of this chapter to the contrary, an Iowa salvage title obtained by an insurer pursuant to the provisions under Iowa Code section 321.52(4) will be issued free and clear of all liens and claims of ownership, including any outstanding registration fees or registration penalties.

405.3(5) *Plates.* Registration plates shall not be assigned when an Iowa salvage title is issued.

405.3(6) *Application.* Application for an Iowa salvage title shall be made within 30 days after the date of assignment to the transferee.

761—405.4(321) Converting salvage title to regular title.

405.4(1) *Rebuilt designation.* When a person converts a salvage title to a regular title under Iowa Code section 321.52(4), a regular title and registration receipt issued will bear the designation "REBUILT-IA."

405.4(2) *Insurer's certification.* An insurer who has a title under Iowa Code section 321.52(4) may submit an insurer's certification in lieu of a salvage theft examination certificate.

a. An acceptable insurer's certification will:

(1) Include the name and address of the insurance company and the VIN, year and make of the salvage titled vehicle.

(2) Include a statement by the insurer certifying that the retail cost of repairs for all damages to the vehicle is less than $3,000.

(3) Be dated and signed by an authorized representative of the insurer.

b. The insurer's certification is not transferable if the insurer assigns the salvage title to another owner.

c. A regular title and registration receipt issued pursuant to this subrule is not required to have a designation of "REBUILT-IA." However, rule 761—405.7(321) applies to carry forward any designation on the title and registration receipt.

761—405.5(321) Foreign vehicles.

405.5(1) *Definitions.* The following definitions apply to foreign titles and the designations shown on them.

"Junked" is any designation from a foreign jurisdiction that means the vehicle is damaged or dismantled and is prohibited from ever again being driven upon a highway.

"Rebuilt" means the vehicle had been designated or titled as salvage but had the designation removed or was subsequently issued a regular title, and the vehicle is permitted to be driven and moved upon a highway.

"Salvage" means the vehicle is designated or titled as salvage or the vehicle is damaged and shall not be registered to be driven or moved upon a highway until it is no longer designated or titled as salvage.

405.5(2) *Foreign title with rebuilt designation.* If the prior title for a vehicle is a foreign title indicating that the vehicle was rebuilt, the Iowa title and registration receipt issued will contain the designation of "rebuilt" together with the two-letter abbreviation of the name of the jurisdiction that issued the foreign title. However, if a records check indicates that the vehicle was previously titled in Iowa with a designation of "prior salvage," the Iowa title and registration receipt issued shall contain the designation of "REBUILT-IA." If a records check indicates that the vehicle was previously titled in Iowa with a designation of "REBUILT-IA," the "REBUILT-IA" designation takes precedence and is to be carried forward to the Iowa title and registration receipt.

405.5(3) *Converting foreign salvage title to Iowa title.* If the prior title for a vehicle is a foreign title indicating that the vehicle is salvage, a regular Iowa title is not to be issued for the vehicle unless an Iowa salvage title is first issued. After an Iowa salvage title is issued for the vehicle, a regular Iowa title may be obtained pursuant to Iowa Code section 321.52(4) and rule 761—405.4(321). However, as provided in Iowa Code section 321.24(5), an owner who surrenders a foreign salvage title and obtains a salvage theft examination pursuant to Iowa Code section 321.52(4)*"b"* within 30 days of the date the owner was assigned the foreign salvage title is not required to first obtain an Iowa salvage title.

405.5(4) *Salvage titled vehicle leaving and reentering Iowa.* If a vehicle leaves Iowa with an Iowa salvage title and reenters Iowa with a regular foreign title, a regular Iowa title may be issued without a salvage theft examination. The regular Iowa title and registration receipt issued from the foreign title will be designated:

a. With the word "rebuilt" plus the two-letter abbreviation of the name of the jurisdiction that converted the salvage designation to a regular title, even if the foreign title does not indicate that the vehicle was rebuilt.

b. As specified in subrule 405.5(2), if the foreign title indicates that the vehicle was rebuilt.

405.5(5) *Designation carried forward.* If a vehicle leaves Iowa with a regular Iowa title and reenters Iowa with a regular foreign title and if the foreign title does not indicate that the vehicle was rebuilt and if a records check indicates that the vehicle had a designation listed in paragraphs 405.7(1) *"a"* through *"f,"* that designation shall be carried forward to the Iowa title and registration receipt issued from the foreign title.

405.5(6) *Foreign title with flood, fire, vandalism, or theft designation.* If the prior title for a vehicle is a foreign title indicating that the vehicle was damaged by flood, fire, or vandalism or is a recovered stolen vehicle and another designation is not required under this rule or rule 761—405.7(321), the Iowa title and registration receipt issued from the foreign title shall contain, as applicable, the designation of "flood," "fire," "vandalism," or "theft."

405.5(7) *Foreign title with a lemon buy-back designation.* See rule 761—405.7(321).

405.5(8) *Junking certificate.* For all vehicles subject to Iowa titling laws, an Iowa junking certificate is to be issued if either of the following applies:

a. The prior title for a vehicle is a foreign title indicating that the vehicle was junked, regardless of any other designation on the title, or

b. A records check for a vehicle with a foreign title indicates that the vehicle should have been or has been junked as defined in subrule 405.5(1).

761—405.6(321) Records check. Before a title is issued in Iowa, an electronic records check may be made pursuant to 28 CFR 25.54 (October 1, 2023). The purpose of the records check is to determine if the vehicle:

405.6(1) Has, ever had, or should have had a "salvage," "prior salvage," "rebuilt," "damage over 70 percent," "flood," "fire," "vandalism," "theft," "lemon buy-back," or equivalent designation(s) on a previous title. If such a designation is or should have been on a previous title, the Iowa title to be issued shall contain the designation required by this chapter.

405.6(2) Is or was ever a wrecked or salvage vehicle as defined in Iowa Code section 321.52. If a vehicle is a wrecked or salvage vehicle, an Iowa salvage title shall be issued. If the vehicle was a wrecked or salvage vehicle, the Iowa title to be issued shall contain the appropriate designation required by this chapter.

405.6(3) Should have been or was ever junked as defined in subrule 405.5(1). If the vehicle should have been or was ever junked, an Iowa junking certificate shall be issued.

761—405.7(321,322G) Designations.

405.7(1) The following designations for a vehicle shall be used on Iowa titles and registrations receipts and will be carried forward to all subsequent Iowa titles and registration receipts issued for the vehicle unless otherwise specified:

a. REBUILT-IA. This designation supersedes other designations. When a designation of "REBUILT-IA" is required pursuant to rule 761—405.4(321), it replaces any other designation.

b. Rebuilt together with a two-letter abbreviation of the name of a foreign jurisdiction. When this designation is required pursuant to subrule 405.5(2), it replaces any other designation except a "REBUILT-IA" designation.

c. Damage over 50 percent. The designation shall be used for applicable vehicle transfers and Iowa title and registration issuances occurring prior to July 1, 2021.

d. Damage over 70 percent. As required by Iowa Code section 321.69, a designation of "damage over 70 percent" shall be used when the seller or the buyer indicates on the damage disclosure statement that the person has knowledge that the motor vehicle sustained damage for which the cost of the repair exceeded 70 percent of the fair market value before the motor vehicle became damaged. This designation replaces any other designation except "rebuilt."

e. Flood, fire, vandalism or theft. The most recent designation applies. Unless superseded by a "REBUILT-IA," "rebuilt," "damage over 50 percent" or "damage over 70 percent" designation, a

designation of "flood," "fire," "vandalism" or "theft" shall be used as specified in subrule 405.5(6) and supersedes a "lemon buy-back" designation.

f. Lemon buy-back. Unless superseded by a "REBUILT-IA," "rebuilt," "damage over 50 percent," "damage over 70 percent," "flood," "fire," "vandalism" or "theft" designation, a designation of "lemon buy-back" shall be used:

(1) When a certificate of title is issued to a manufacturer of a motor vehicle pursuant to Iowa Code section 322G.12.

(2) When the prior certificate of title for a motor vehicle is a foreign title indicating that the vehicle was returned to the manufacturer pursuant to Iowa Code chapter 322G or a law of another state similar to Iowa Code chapter 322G.

405.7(2) An Iowa salvage title will be issued with a designation of "salvage" unless a designation listed in subrule 405.7(1) is required.

761—405.8(321) Salvage theft examination. Except for foreign salvage titles assigned to licensed new motor vehicle dealers, authorized vehicle recyclers, or educational institutions, a salvage theft examination may only be conducted on a vehicle with an Iowa salvage title. The vehicle is not to be examined until it has been completely repaired, except for minor body parts such as trim, body marking or paint.

405.8(1) *General procedure.* In addition to requirements in Iowa Code section 321.52(4)*"d,"* the following procedures apply to salvage theft examinations:

a. An applicant may request a salvage theft examination by contacting an investigator of the department's motor vehicle division and identity protection by email at invbureau@iowadot.us, on the department's website at www.iowadot.gov/biip, or by contacting an Iowa local law enforcement agency.

b. The applicant is to bring the following documents to the inspection:

(1) The repair affidavit under Iowa Code section 321.52(4)*"d,"* which may be found on the department's website and is to be submitted in an electronic format to the department or the Iowa local law enforcement agency.

(2) The permit authorized in Iowa Code section 321.52(4)*"d"* to operate the vehicle to and from the examination location, which must be printed and signed by the owner and kept in the vehicle to be considered valid.

(3) A bill of sale for all component parts replaced.

c. Payment for the salvage theft examination is to be made electronically and is due at the time the examination is scheduled. If the examination is not completed within three years from the date the affidavit and payment were submitted, a new fee is due.

d. The peace officer shall return to the owner upon completion of the examination the following: the salvage title or the certified copy of the salvage title, the permit to drive on the repair affidavit (if applicable), and the bills of sale.

405.8(2) *Certificates.* Upon completion of the examination, the salvage theft examination certificate will be completed electronically. However, if a peace officer finds it necessary to use a physical salvage theft examination certificate, the salvage theft examination certificate is to be a controlled form furnished by the department.

a. The owner of the vehicle may obtain a copy of the salvage theft examination certificate upon written request to the department.

b. The salvage theft examination certificate is not transferable to a different party or owner.

These rules are intended to implement Iowa Code sections 321.1, 321.13, 321.24, 321.52, 321.69, 321H.2, and 322G.12; and 28 CFR 25.54.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 411
"Persons With Disabilities Parking Permits"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.16, 321L.2, and 321L.8

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 321L and section 321.16

Public Hearing

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

September 30, 2024 9 to 9:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 665 260 986

Public Comment

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

Sara Siedsma
6310 SE Convenience Blvd.
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 411 is to comply with Iowa Code chapter 321L outlining the procedures for eligible persons to obtain a permit to park in a location designated for persons with disabilities. The Iowa Code authorizes the Department to issue the following types of persons with disabilities parking permits: (1) Persons with disabilities registration plates, (2) Persons with disabilities parking stickers, and (3) Persons with disabilities removable windshield placard. The chapter outlines the application and issuance procedures for eligible persons to obtain a persons with disabilities parking sticker or a persons with disabilities removable windshield placard. The requirements and procedures for applying for and obtaining a persons with disabilities registration plate are contained in Chapter 401.

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 or fees associated with this chapter. Rather, it creates a consistent framework for the application, issuance, renewal, return, and revocation processes associated with the persons with disabilities permits.

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

Persons seeking to obtain a persons with disabilities parking permit will benefit from this chapter by knowing the application, issuance, renewal, return, and revocation process for the permits.

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:

There are no additional quantitative impacts that were not already anticipated as a result of the underlying statute, which requires the Department to issue persons with disabilities parking permits to qualified applicants.

In 2023, the Department issued 1,783 persons with disabilities parking stickers and 98,398 persons with disabilities removable windshield placards.

- Qualitative description of impact:

The result of reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more user-friendly version of information the public relies on for understanding how to obtain a persons with disabilities parking permit.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statute. The statute requires the Department to issue persons with disabilities parking permits to qualified applicants.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond what is required by the underlying statute.

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

The benefit of the proposed chapter is consistency and transparency in the processes and requirements for obtaining a persons with disabilities parking permit in Iowa.

The cost of inaction is the inability for qualified applicants to understand quickly and efficiently what is required to obtain and renew a persons with disabilities parking permit in Iowa.

There is no benefit of inaction.

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

There is no less costly or less intrusive method to achieve the purpose of the proposed rules. Establishing the basic application, issuance, renewal, return, and revocation process in the Iowa Administrative Code helps ensure the process is clear for applicants and is consistently applied.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives for the proposed rules. The Department is required by the Iowa Code to issue persons with disabilities parking permits to qualified applicants.

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

No alternatives were considered for the proposed 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?

There is no small business impact beyond what was already anticipated under the statute. The rules establish that an organization (e.g., a corporation, partnership, sole proprietorship, business trust, estate, trust, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity lawfully doing business in the state of Iowa) that has a program for transporting persons with disabilities or elderly persons is eligible to obtain and renew a persons with disabilities parking permit without having to supply a statement of disability from a health care provider. This process cannot be further streamlined or simplified for small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 411 and adopt the following **new** chapter in lieu thereof:

CHAPTER 411
PERSONS WITH DISABILITIES PARKING PERMITS

761—411.1(321L) Definitions.

411.1(1) The definitions in Iowa Code section 321L.1 are hereby made part of and fully incorporated in this chapter.

"Health care provider" means a licensed medical professional listed in Iowa Code section 321L.2(1).

"Nonexpiring removable windshield placard" means a removable windshield placard issued on or before December 31, 2016, to a person with a lifelong disability.

"Organization" means an applicant that is a corporation, partnership, sole proprietorship, business trust, estate, trust, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity lawfully doing business in the state of Iowa that has a program for transporting persons with disabilities or elderly persons.

"Standard removable windshield placard" means a removable windshield placard issued on or after January 1, 2017, to a person with a lifelong disability.

"Statement of disability" means the communication originating from the applicant's health care provider as described in Iowa Code section 321L.2, which attests that the applicant is a person with a disability as defined in Iowa Code section 321L.1(8) and, if applicable, identifies the period of time during which the applicant is expected to be disabled.

"Temporary removable windshield placard" means a removable windshield placard issued to a person with a statement of disability that indicates the disability is temporary.

411.1(2) Reserved.

This rule is intended to implement Iowa Code sections 321L.1 and 321L.2.

761—411.2(321L) Application for persons with disabilities parking permit.

411.2(1) *General.*

a. A person seeking a persons with disabilities parking permit pursuant to Iowa Code section 321L.2 shall complete Form 411055 and include a statement of disability and any required supporting documentation. The applicant is to indicate which of the following permits the applicant is seeking:

(1) Temporary removable windshield placard.
(2) Standard removable windshield placard.
(3) Persons with disabilities parking sticker.

(4) Persons with disabilities special registration plates.

b. An applicant seeking persons with disabilities special registration plates must also submit an application as described in 761—subrule 401.2(3).

c. An organization seeking a persons with disabilities removable windshield placard shall complete Form 411355 and include the name of its authorized representative; the mailing address, telephone number, and signature of its authorized representative; and, if required to obtain one, the organization's federal employer identification number or federal tax identification number. An application made by an organization does not have to include a statement of disability.

d. An applicant who provides a certification of disability from the U.S. Department of Veterans Affairs in lieu of a statement of disability must also self-certify, under penalty of perjury, that the nature of the applicant's disability certified by the U.S. Department of Veterans Affairs is a lifelong disability that impairs the applicant's mobility to the extent defined in Iowa Code section 321L.1(8).

411.2(2) *Application forms and submission.*

a. Applications may be obtained by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; by telephone at 515.237.3110; by facsimile at 515.237.3056; by email at vscusto@iowadot.us; or on the department's website at www.iowadot.gov/mvd/vehicleregistration/persons-with-disabilities. Applications may also be obtained from a driver's license service center or county treasurer's office.

b. Completed applications are to be submitted by any method in paragraph 411.2(2)*"a."*

This rule is intended to implement Iowa Code sections 321L.1, 321L.2 and 321L.8.

761—411.3(321L) Removable windshield placards.

411.3(1) *Nonexpiring removable windshield placards.*

a. Period of validity. A nonexpiring removable windshield placard issued on or before December 31, 2016, remains valid until the occurrence of any condition set forth in Iowa Code section 321L.3(1), the procedure set forth in rule 761—411.6(321L), and as otherwise specified by statute or rule.

b. Replacement. A lost, stolen, or damaged nonexpiring removable windshield placard will be replaced with a standard removable windshield placard.

411.3(2) *Standard removable windshield placards.*

a. Period of validity. A standard removable windshield placard may be issued only to a person with a lifelong disability and is valid for a period of five years.

b. Renewal. A person who holds a valid standard removable windshield placard may renew the placard by submitting a new statement of disability indicating the applicant has a continuing need for the placard and a new persons with disabilities parking permit application pursuant to rule 761—411.2(321L).

411.3(3) *Temporary removable windshield placards.* A temporary removable windshield placard may be issued to the applicant if the applicant's statement of disability indicates the applicant's disability is temporary. An organization is not eligible to apply for a temporary removable windshield placard.

a. Period of validity. A temporary removable windshield placard shall be valid for the period of time indicated on the statement of disability, but not to exceed six months.

b. Renewal. A person who holds a valid temporary removable windshield placard may renew the placard by submitting a new statement of disability and a new persons with disabilities parking permit application pursuant to rule 761—411.2(321L).

411.3(4) *Removable windshield placards for an organization.* An organization may be issued a removable windshield placard. The placard shall bear the name of the organization and the signature of its authorized representative.

a. Period of validity. A removable windshield placard issued to an organization shall be valid for four years.

b. Renewal. The organization may renew a placard issued to it by submitting a new persons with disabilities parking permit application pursuant to rule 761—411.2(321L) provided the organization continues to provide the service for which the placard was issued. If at any time the organization ceases providing the service for which the placard was issued, the organization shall immediately surrender the placard to the department.

411.3(5) *Display of placards.* A removable windshield placard displayed when the vehicle is parked in a persons with disabilities parking space as prescribed in Iowa Code section 321L.4 shall be displayed in a manner that allows the entire placard to be visible through the vehicle's windshield.

This rule is intended to implement Iowa Code sections 321L.1, 321L.2 and 321L.4.

761—411.4(321L) Persons with disabilities parking stickers.

411.4(1) *Eligibility.* A persons with disabilities parking sticker may be issued only to an eligible person under Iowa Code section 321L.2 with a lifelong disability. An organization is not eligible for a persons with disabilities parking sticker.

411.4(2) *Period of validity.* The special registration plate parking sticker is valid for such period of time that the registration for the vehicle remains valid.

411.4(3) *Display.* The special registration plate parking sticker shall be affixed to the lower right corner of the rear registration plate, as required by rule 761—400.53(321). A persons with disabilities parking sticker shall not be placed on persons with disabilities special plates issued under Iowa Code section 321.34(14).

This rule is intended to implement Iowa Code sections 321L.1, 321L.2 and 321L.4.

761—411.5(321L) Return of persons with disabilities parking permit. A persons with disabilities parking permit issued pursuant to this chapter and Iowa Code section 321L.2 shall be returned to the department, to a driver's license service center, or to any law enforcement office within ten days of an occurrence of any of the events set forth in Iowa Code section 321L.3(1) and in the manner prescribed in Iowa Code section 321L.3(3).

This rule is intended to implement Iowa Code section 321L.3.

761—411.6(17A,321,321L) Revocation of a persons with disabilities parking permit—service, appeal and stay.

411.6(1) *Revocation.* A person's or organization's persons with disabilities parking permit shall be revoked if the department determines it has been issued in conflict with the statutes or rules governing the permit's issuance.

411.6(2) *Service of notice.* Notice of revocation is served by first-class mail to the mailing address on the applicable application for a persons with disabilities parking permit. The department may prepare an affidavit of mailing verifying a notice was mailed by first-class mail using its records in conjunction with U.S. Postal Service records, and the affidavit may be attested to and certified in accordance with Iowa Code section 622.1.

411.6(3) *Appeal.* The person or organization may contest the decision of the department in accordance with 761—Chapter 13. The request will be deemed timely if it is delivered or postmarked within ten days of the receipt of notice of revocation.

411.6(4) *Stay.* When the department receives a properly submitted, timely appeal request, the department shall stay the revocation pending resolution of the appeal.

This rule is intended to implement Iowa Code chapter 17A and sections 321.16, 321L.2 and 321L.4.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 480
"Abandoned Vehicles"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.89

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321.1, 321.18, 321.71, 321.89 and 321.90

Public Hearing

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

September 30, 2024 10 to 10:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 292 792 560

Public Comment

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

Sara Siedsma
6310 SE Convenience Blvd.
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 480 is to implement Iowa Code section 321.89, which authorizes the Department to adopt rules outlining the procedures to be followed when a police authority or private entity acting on behalf of a police authority disposes of an abandoned vehicle and seeks reimbursement from or seeks to remit unclaimed proceeds to the Department.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Iowa Code section 321.89 requires a vehicle abandoned on a public highway to be taken into custody by law enforcement or a private entity acting on behalf of law enforcement and be disposed of if it is unclaimed. The statute also requires law enforcement and private entities acting on behalf of law enforcement to be reimbursed from the Road Use Tax Fund (RUTF) when their costs for processing an abandoned vehicle exceed the profits they received from selling the abandoned vehicle and also require any unclaimed profits that exceed processing costs to be remitted to the Department to be deposited into the RUTF.

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

Law enforcement agencies and private entities acting on behalf of law enforcement agencies will benefit from these rules by knowing the process for submitting a request for expense reimbursement to remitting unclaimed proceeds to the Department upon disposal of an abandoned vehicle.

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 calendar year 2023, there were 2,175 vehicles that were involved in a request to the Department for either abandoned vehicle towing and storage fee reimbursement or deposit of excess funds resulting from the disposal of an abandoned vehicle. In calendar year 2023, the Department paid out $207,000 in reimbursements from the RUTF and received $322,000 in excess funds to be deposited into the RUTF from the disposal of abandoned vehicles. In other words, the excess funds deposited into the RUTF exceeded the reimbursements paid out by about $115,000.

- Qualitative description of impact:

The result of reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more reader-friendly version of the information law enforcement agencies and private entities acting on behalf of law enforcement agencies use when submitting a request for expense reimbursement or remitting unclaimed proceeds to the Department upon disposal of an abandoned vehicle.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statute. Iowa Code section 321.89 requires a vehicle abandoned on a public highway to be taken into custody by law enforcement or a private entity acting on behalf of law enforcement and be disposed of if it is unclaimed. The statute also requires the Department to establish a procedure for entities to request expense reimbursement and remit unclaimed proceeds resulting from the sale of the abandoned vehicle.

- Anticipated effect on state revenues:

In calendar year 2023, there were 2,175 vehicles that were involved in a request to the Department for either abandoned vehicle towing and storage fee reimbursement or deposit of excess funds resulting from the disposal of an abandoned vehicle. In calendar year 2023, the Department paid out $207,000 in reimbursements from the RUTF and received $322,000 in excess funds to be deposited into the RUTF from the disposal of abandoned vehicles. In other words, the excess funds deposited into the RUTF exceeded the reimbursements paid out by about $115,000.

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

The benefit of the proposed chapter is consistency and transparency in the process of submitting a request for expense reimbursement or remitting unclaimed proceeds to the Department upon disposal of an abandoned vehicle. The cost of the proposed rules is the same as the costs required by the underlying statute.

The cost of inaction is the inability for law enforcement and private entities acting on behalf of law enforcement to quickly and efficiently understand what is required to request expense reimbursement and remit unclaimed proceeds resulting from the sale of the abandoned vehicle. Accordingly, entities processing abandoned vehicles would have no mechanism to be reimbursed when their costs of processing an abandoned vehicle exceed the profits they received from selling the abandoned vehicle, and there would be no guidance in place on how to remit any unclaimed profits that exceed processing costs to the Department to be deposited into the RUTF.

There is no benefit of inaction.

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

There is no less costly or less intrusive method to achieve the purpose of the proposed rules, which is to quickly and efficiently provide information to law enforcement and private entities acting on behalf of law enforcement regarding what is required to request expense reimbursement and remit unclaimed proceeds resulting from the sale of the abandoned vehicle.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives for the proposed rules. The Department is required by the Iowa Code to establish a procedure for entities to request expense reimbursement and remit unclaimed proceeds resulting from the sale of the abandoned vehicle.

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

No alternatives were considered for the proposed 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?

There is no small business impact beyond what was already anticipated under the statute. The proposed rules apply equally to private entities processing abandoned vehicles on behalf of a law enforcement agency.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 480 and adopt the following **new** chapter in lieu thereof:

CHAPTER 480
ABANDONED VEHICLES

761—480.1(321) Definitions. The definitions in Iowa Code sections 321.1 and 321.89(1) apply to this chapter. In addition:

"Abandoned vehicle," when used in Iowa Code section 321.89 and this chapter, means only those vehicles subject to registration as referred to in Iowa Code section 321.18.

"Bidder registry" means a record of all persons who have registered to bid at a public auction.

"Public auction," when used in Iowa Code section 321.89, means an auction open to the general public.

761—480.2(321) Information. Information, forms and instructions are available from: Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278 or the department's website at www.iowadot.gov/mvd/vehicleregistration/abandoned-vehicles.

761—480.3(321) General provisions.

480.3(1) If a police authority has designated a private entity to process an abandoned vehicle, the police authority shall provide to the private entity a certificate of disposal form prescribed by the department. On the form, the police authority shall provide a description of the vehicle and list the

name and address of the last registered owner, all known lienholders of record, and any other known claimants to the vehicle.

480.3(2) A police authority or private entity processing an abandoned vehicle shall maintain records for three years from the sale at a public auction or transfer of a motor vehicle to a demolisher. The records are to be open to inspection by any peace officer or any employee of the department. The required documents to be made available for inspection include:

a. The motor vehicle record request results letter issued by the department with lien information or evidence that a motor vehicle record was reviewed for owners and liens through other legal means.

b. The impound report with the date of abandonment.

c. One copy of the dated notice sent by the police authority or private entity to each owner and lienholder or proof of publication of notice with the publication date visible.

d. One copy of an actual newspaper page advertising each public auction with advertisement and date visible.

e. A copy of the certificate of disposal for the private entity.

f. The bidder registry for the police authority or private entity designated by a police authority holding a public auction.

g. A copy of affidavit of sale on a form prescribed by the department.

480.3(3) A police authority or private entity shall verify that the provisions of this chapter have been executed, prior to the sale of the abandoned vehicle, on a form prescribed by the department.

480.3(4) A purchaser in good faith of a motor vehicle sold as a result of the abandoned vehicle process takes the motor vehicle free of all rights of all persons, including holders of preexisting liens, notwithstanding any police authority or private entity's noncompliance with this chapter.

480.3(5) Upon presentation of a sales receipt, a county official shall process the registration and issuance of title to the purchaser free of all rights of all persons, including holders of preexisting liens, notwithstanding any police authority or private entity's noncompliance with this chapter.

761—480.4(321) Auction requirements.

480.4(1) *Auction.* A public auction may be by electronic means, by sealed bid, or a conventional oral auction. The highest bidder is awarded the property. When the auction is a conventional oral auction, bidders shall register and bring the bid deposit with them to the auction on the day and at the location and time specified for the sale, if a bid deposit is required. Bidders bid against one another until bidding stops.

a. A police authority or a private entity designated by a police authority holding a public auction may set the initial bid at an amount that equals the actual cost of storage and towing.

b. A police authority or private entity is limited to two attempts at selling an abandoned vehicle at a public auction. If the police authority or private entity cannot make a satisfactory sale at two public auctions, or if a sale cannot otherwise be made with enough proceeds to cover the expenses and costs in carrying out the abandoned vehicle process, the police authority or private entity shall sell or dispose of the vehicle to a demolisher for junk.

480.4(2) *Advertisement.* Any attempt to sell a vehicle by public auction shall be advertised at least seven days in advance using two or more modes of appropriate media widely accessible and targeted to individuals within the county where the auction will take place or where the vehicle is physically located. Appropriate media modes include the following:

a. A newspaper that meets the requirements set forth in Iowa Code section 618.3.

b. Notice posted in a conspicuous manner viewable to the public at the location where the public auction will occur or in a location where it is permissible to post community announcements. If the public auction is to be conducted by electronic means, the location means the specific website to be used for the auction.

c. Notice posted to a community website or on a social media platform available to the public.

480.4(3) *Bidder registry.* Each auctioned vehicle sold or offered for sale at a public auction requires a bidder registry. The bidder registry shall be maintained for at least three years by the police

authority or private entity designated by a police authority and open for inspection by any peace officer or department employee. The bidder registry shall contain:

a. The full name of the bidder.

b. The bona fide address of the bidder.

c. A telephone number of the bidder.

d. The date of the auction.

e. The auctioned vehicle's make, model, model year, and vehicle identification number.

f. The location of the auction.

480.4(4) *Odometer statement.*

a. When an odometer disclosure statement is required pursuant to Iowa Code section 321.71 but the auctioned vehicle's seller cannot attest to the true mileage reading of the vehicle's odometer, the seller's odometer disclosure statement shall:

(1) Reflect the odometer mileage reading at the time of sale.

(2) Be marked indicating "odometer discrepancy," certifying the odometer mileage reading is not the actual mileage.

b. The subsequent title issued for the vehicle shall record the vehicle's mileage is "not actual."

761—480.5(321) Claims procedure—expense reimbursement and unclaimed proceeds.

480.5(1) *General.* The following requirements are applicable to a claim under this subrule:

a. A police authority may only report an abandoned vehicle to the department if it is remitting unclaimed profits or requesting reimbursement.

b. A private entity designated by a police authority to process an abandoned vehicle may request reimbursement of expenses that are in excess of the proceeds of the sale of the abandoned vehicle.

c. If a police authority has designated a private entity to process an abandoned vehicle, the police authority is eligible for reimbursement of only the towing expense.

d. A police authority or private entity requesting reimbursement is to submit Form 411090 (Abandoned Vehicle Report) to the department. Other forms may be accepted if they contain all information deemed necessary by the department.

e. Form 411090 is also required when remitting unclaimed profits.

f. The only reimbursable expense includes losses incurred in disposing of a vehicle abandoned on a public highway.

480.5(2) *Documentation.* Form 411090 submitted for expense reimbursement or for remittance of unclaimed proceeds must be accompanied by the following:

a. The police authority's impound report showing the date the vehicle was taken into custody, including a complete description of the vehicle. The date of abandonment is the date the vehicle was taken into custody unless the police authority declares a different date of abandonment. The abandonment date shall be used to calculate the 20-day notification required under Iowa Code section 321.89(3).

b. A copy of the notice sent to the owner and lienholder(s) or proof of publication of notice. The notice must display a sent or published date within the 20-day time frame required under Iowa Code section 321.89(3) to qualify the claim for reimbursement.

c. A completed certificate of disposal.

d. Detailed receipts showing payment for each expense incurred. A receipt must identify the date(s) of occurrence of the expense; for example, a receipt for storage must identify the beginning and ending dates. A receipt for both towing and storage must show separately the towing charge and the storage charge per day.

480.5(3) *Time frames.* Claims for allowable reimbursement expenses under Iowa Code section 321.89 must be submitted to the department within 90 days after the sale or disposal of the abandoned vehicle. The police authority shall send unclaimed proceeds from the sale or disposal of the vehicle to the department within 10 days after the specified 90-day claiming period expires.

480.5(4) *Rates.* The department establishes the following maximum expense reimbursement rates:

a. Towing—$50 per vehicle.

b. Notice—actual postage or publication cost.

c. Storage—$5 per day, not to exceed 45 days per vehicle.

(1) If a police authority provides its own storage facility for abandoned vehicles, the department shall not reimburse the police authority for use of that facility.

(2) When the vehicle is held for an evidentiary hearing for more than 45 days, the police authority or private entity shall submit proof of the evidentiary hearing to obtain reimbursement.

d. Advertising—only actual costs of up to $20 per auction, or advertising receipt totals for two auctions, whichever is less, not to exceed $40 total.

e. Auction expenses—10 percent of the vehicle's sale price or $10 per vehicle, whichever is less. A receipt is not required for auction expense reimbursement.

These rules are intended to implement Iowa Code sections 321.1, 321.18, 321.71, 321.89 and 321.90.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 636
"Motorized Bicycle Rider Education"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)"j"

State or federal law(s) implemented by the rulemaking: Iowa Code sections 307.12(1)"j" and 321.189

Public Hearing

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

September 30, 2024 1 to 1:30 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 460 336 395

Public Comment

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

Sara Siedsma
6310 SE Convenience Blvd.
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 636 is to comply with Iowa Code section 321.189(7) by outlining the application, renewal, and eligibility requirements for motorized bicycle (moped) rider education programs, sponsors, and instructors in the state.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Individuals under 16 years old seeking a moped license who are required by Iowa Code section 321.189(7) to complete a moped rider education course approved by the Department prior to licensure will bear the costs.

Private and commercial sponsors of moped rider education who are required by the rules to pay a $25 application fee to the Department will also bear the costs.

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

Moped rider education sponsors and instructors will benefit from these rules by knowing the application and eligibility requirements to become an approved sponsor or instructor. Applicants for a moped license will benefit from the availability of moped rider education programs, sponsors and instructors that meet eligibility criteria established by the Department.

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 calendar year 2023, the Department approved or renewed 26 moped rider education programs, inclusive of approved instructors. A private or commercial sponsor is required to pay a $25 application fee. Public sponsors are not charged an application fee. The Department collected $150 in application fees in 2023.

- Qualitative description of impact:

The result of reorganizing and streamlining the proposed chapter will create a positive impact by producing a more reader-friendly version of the information sponsors and instructors use to determine the application and eligibility criteria for obtaining approval.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statute. Iowa Code section 321.189(7) requires individuals under 16 years old seeking a moped license to complete a moped rider education course approved by the Department prior to licensure.

- Anticipated effect on state revenues:

In calendar year 2023, the Department collected $150 in moped rider sponsor application fees.

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

The benefit of the proposed chapter is consistency and transparency in the application process and eligibility for sponsor and instructor approval. The cost of the proposed rules is the same as the costs required by the underlying statute.

The cost of inaction is the inability for sponsors and instructors to be approved to provide moped rider education courses in Iowa.

There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules, which is to quickly and efficiently provide information to sponsors and instructors seeking information regarding the application and eligibility requirements to become a sponsor or instructor.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives for the proposed rules. The Department is required by the Iowa Code to approve moped rider education courses.

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

No alternatives were considered for the proposed 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?

There is no substantial impact on small business because of the rules. All private and public sponsors must meet the same eligibility criteria to provide moped rider education courses in the state. Private and commercial sponsors are charged a nominal $25 application fee that has not been determined to be a substantial barrier to program approval.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 636 and adopt the following **new** chapter in lieu thereof:

CHAPTER 636
MOTORIZED BICYCLE RIDER EDUCATION

761—636.1(307,321) Information and location. Applications, forms and information regarding this chapter are available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.244.8725; or by facsimile at 515.239.1837.

761—636.2(307,321) Definitions.

"Approved course" means the motorized bicycle rider education course approved by the department.

"Instructor" means a person approved by the department to instruct a motorized bicycle rider education course.

"Program approval" means department approval of an entity's motorized bicycle rider education course and instructors.

"Sponsor" means an entity that delivers the approved course.

761—636.3(307,321) Application, renewal and fees.

636.3(1) *Application and renewal.*

a. Any sponsor must apply to the department for program approval in a manner determined by the department prior to the beginning of the first class offered in the approved course and annually thereafter. An instructor of an approved course must be listed on the application and approved by the department.

b. Program approval is valid for a calendar year or remainder of a calendar year and expires on December 31 but remains valid for an additional 30 days after the expiration date.

c. Unless otherwise approved by the department, an application for renewal is due to the department within 60 days of the expiration date.

636.3(2) *Fees.* The initial application and annual renewal fee are $25 for a private or a commercial sponsor. The fee is to be paid in a manner approved by the department.

761—636.4(307,321) Course requirements.

636.4(1) *Classroom instruction.* The course approved by the department must include a minimum of six clock hours of classroom instruction that includes the instructional components contained in subrule 636.4(3).

636.4(2) *Driving instruction.* Motorized bicycle rider driving experiences in addition to classroom instruction are permissible but not required.

636.4(3) *Course content.* Every motorized bicycle rider education course must include the following instructional components:

a. Operator and motorized bicycle preparation.

(1) Knowledge of Iowa driving laws.

(2) Knowledge of vehicle registration requirements.

(3) Vehicle inspection.
(4) Protective clothing and devices.
(5) Risk assessment.
(6) Route selection.
b. Basic control skills.
(1) Starting procedures.
(2) Speed control.
(3) Turning.
(4) Stopping.
c. Safe driving practices.
(1) Use of lights and warning devices.
(2) Signaling.
(3) Maintaining directional control.
(4) Perception skills and observation.
(5) Use of mirrors.
(6) Recognition of hazards.
(7) Speed control.
(8) Lane positioning.
(9) Concerns and conflicts regarding intersections.
(10) Following distances.
(11) Lateral separation.
d. Complex situations.
(1) Limited visibility.
(2) Adverse weather.
(3) Critical situations.
(4) Malfunctions.
e. Motorized bicycle care.
(1) Inspection.
(2) Maintenance.

636.4(4) *Evaluation.* Each student shall be evaluated by the instructor to determine successful completion of the course.

761—636.5(307,321) Instructor qualifications. To qualify as an instructor of an approved course, an individual must:

636.5(1) Possess a valid driver's license allowing unaccompanied driving other than a temporary restricted license and be able to operate a motorized bicycle.

636.5(2) Have a clear driving record for the previous two years. A clear driving record means the instructor has:

a. Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

b. No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

c. Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

d. No record of a law enforcement investigative report indicating a contributive motor vehicle accident that caused the death or serious injury of another person.

e. No record of a law enforcement investigative report indicating two or more contributive motor vehicle accidents in a two-year period.

761—636.6(307,321) Cancellation or denial.

636.6(1) *Cancellation.* The department shall cancel program approval if the sponsor or instructor fails to comply with the applicable provisions of this chapter or if the course or instructors are no

longer approved. However, an approved program that meets the applicable provisions of this chapter except for an approved instructor may retain program approval if the department approves an alternate instructor.

636.6(2) *Denial.* The department shall deny an initial or renewal application if the applicant does not meet the criteria for approval under this chapter.

These rules are intended to implement Iowa Code sections 307.12(1)*"j"* and 321.189.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapters 700, 710, 715, 716, and 717
"Aeronautics Programs Administration; Airport Improvement Program; Air Service Development Program; Commercial Service Vertical Infrastructure Program; General Aviation Vertical Infrastructure Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 328.12

State or federal law(s) implemented by the rulemaking: Iowa Code section 8.57(5) and chapters 328, 330 and 330A

Public Hearing

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

September 24, 2024 9 to 9:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 442 802 945

Public Comment

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

Tim McClung, Aviation Director
Iowa DOT Modal Transportation Bureau
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1689
Email: tim.mcclung@iowadot.us

Purpose and Summary

Proposed Chapter 700 establishes the procedures for a governmental subdivision to apply for and use state or federal funds for the improvement of airports, air service, and air navigation facilities. The chapter implements Iowa Code chapters 328, 330, and 330A. The chapter name is changed from Aeronautics Administration to Aeronautics Programs Administration. The following chapters are being rescinded and their content combined into this repromulgated chapter:

- Chapter 710 (Airport Improvement Program)
- Chapter 715 (Air Service Development Program)
- Chapter 716 (Commercial Service Vertical Infrastructure Program)
- Chapter 717 (General Aviation Vertical Infrastructure Program)

The consolidation of five chapters into one simplifies and significantly reduces size, while creating consistencies and better understanding of aviation program administration.

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 direct expenses created by this rulemaking. The proposed rules provide guidelines for the use and application process for state and federal funds made available for the development and promotion of aeronautics in this state.

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

Public-owned airport sponsors, pilots, passengers, the public and all entities relying on a safe and operational air transportation system 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:

There are no direct expenses created by this rulemaking. The chapter provides guidance for public-owned airports seeking state and federal funds. There are typically 40 to 50 grants issued each year for approximately $8 million in state funding that helps support a strong aviation system in Iowa. There are 40 to 70 federal grant applications channeled through the Department and approved annually by the Iowa Transportation Commission. Airports generate $1.8 billion in economic activity each year in Iowa that includes more than 250 on-airport businesses, and 1 million visitor arrivals.

- Qualitative description of impact:

Well-maintained and wisely developed airports are important to supporting the movement of people and goods in Iowa. This chapter supports that activity, providing clear guidance for making funds available for aviation system investment. Airports support important services, such as passenger air service, charter, flight training, air cargo, air ambulance, public safety, aerial application, and important time savings that keep businesses in Iowa competitive.

3. Costs to the State:

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

There are no implementation or enforcement costs related to this chapter.

- Anticipated effect on state revenues:

There are no impacts on state revenues related to this chapter.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed rules continue providing guidelines for the use and application process for state and federal funds made available for the development and promotion of aeronautics in this state. The combined chapter provides a significant reduction in the number of chapters and word count of previous aeronautics program rules. The new combined chapter streamlines and simplifies aeronautics program rules for the public, airport sponsors, and the Department.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

These proposed rules do not impose additional costs or burdens to airport sponsors or the Department. Less costly and less intrusive methods do not exist.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No viable alternatives were found for the proposed rules that provide guidelines for the use of and application process for state and federal funds made available for the development and promotion of aeronautics in this state.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

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?

This chapter does not affect small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 700 and adopt the following **new** chapter in lieu thereof:

AERONAUTICS

CHAPTER 700
AERONAUTICS PROGRAMS ADMINISTRATION

761—700.1(328,330,330A) Purpose. These rules establish the procedures for a governmental subdivision to apply for state or federal funds for the improvement of airports, air service, and air navigation facilities.

761—700.2(328,330,330A) Definitions. The definitions in Iowa Code sections 328.1, 330.1, and 330A.2 apply to this chapter. In addition:

"FAA" means the Federal Aviation Administration.

"Sponsor" means the person or governmental subdivision that has the authority for improving, maintaining and operating an aviation facility.

"Vertical infrastructure" means the same as defined in Iowa Code section 8.57(5).

761—700.3(328,330,330A) Information and forms. Program information, forms, and application and submission instructions are available on the department's website at www.iowadot.gov/aviation. Requests for such materials or assistance may also be made by calling the modal transportation bureau at 515.239.1048. The mailing address is: Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—700.4(330) Federal airport improvement program.

700.4(1) *Federal preapplications.* Federal preapplications are submitted to the department.

700.4(2) *Applicant eligibility.* A governmental subdivision owning a public airport that is listed in the FAA's National Plan of Integrated Airport Systems (NPIAS) is eligible to apply for federal funds. The NPIAS published report is available at the FAA website: www.faa.gov/airports. An airport that receives federal primary commercial service entitlement funds is not required to submit preapplications.

700.4(3) *Project eligibility.* Projects are to meet the FAA eligibility guidelines for federal airport improvement projects. Federal airport improvement program guidelines are available at the FAA website: www.faa.gov/airports.

700.4(4) *Preapplication.*

a. The department will distribute preapplication instructions and forms annually to each eligible applicant.

b. The completed preapplication for federal airport improvement funds are submitted to the department according to the method and time frame specified in the annual application instructions.

700.4(5) *Project prioritization.*

a. The department will review each completed preapplication for project eligibility and consistency with the state aviation system plan. The department will prioritize projects based on the goals and objectives in the state aviation system plan.

b. The commission is responsible for approving the prioritization of the preapplications.

c. The department will submit the preapplications with priorities identified to the FAA, and the FAA will contact the applicant directly concerning all subsequent action on the preapplication.

761—700.5(328) State airport improvement program.

700.5(1) *Applicant eligibility.*

a. A governmental subdivision owning or establishing a public airport is eligible to apply to the department for state airport improvement funds.

b. Participation in air service development projects is limited to airports currently receiving scheduled airline or commuter air service options and are designated as commercial service airports in the Iowa aviation system plan. An airport that loses air service completely may remain eligible for participation in the two following and consecutive annual application cycles if 100 percent of the grant amounts are used according to conditions of the air service grant and solely toward efforts to reestablish air service for that affected airport.

700.5(2) *Eligible project activities.*

a. Statewide projects administered by the department include but are not limited to planning studies, aviation weather systems, airport markings, immediate safety enhancements, wildlife mitigations, windsocks, education, and outreach.

b. Airport projects may include but are not limited to runway, taxiway, and apron surfaces; lighting and navigational aids; obstruction removal; grading, drainage, and surfacing airfield surfaces and protection areas; signage, security access control and lighting; planning; and other airport enhancements. A project that involves airfield infrastructure is to comply with the airport master plan or airport layout plan as adopted by the governmental subdivision.

c. Air service development activities eligible for reimbursement include but are not limited to marketing, entry support, data collection, and items defined on the annual application.

700.5(3) *Funding.* The department establishes the maximum percentage of state share for eligible projects and may annually set a maximum dollar amount per award. Funding criteria are included in application instructions provided to airport sponsors.

700.5(4) *Application for funding.*

a. The department will make available the application instructions and forms to each public airport in Iowa. Applications are to be submitted to the department by the due date specified in the instructions.

b. Immediate safety enhancement project applications may be submitted at any time during the year to the department according to instructions that are part of the application form.

700.5(5) *Review and approval.* The department will review each completed application and evaluate the impact of the project on the aviation system considering the following factors: state system plan airport roles, goals and objectives; justification provided; ability to enhance aeronautical activity for the airport and system; local participation; and multijurisdictional support of the airport. The department will recommend projects to the commission for approval.

761—700.6(328) Commercial service vertical infrastructure program.

700.6(1) *Purpose.* The purpose of the commercial service vertical infrastructure program is to provide funding for vertical infrastructure improvements at Iowa's commercial service airports.

700.6(2) *Applicant eligibility.* Airports currently receiving scheduled airline or commuter air service and designated as commercial service airports in the Iowa aviation system plan are eligible to apply to the department for funding. An airport that loses air service completely may remain eligible for participation in the two following and consecutive annual application cycles if the airport is actively seeking reestablishment of air service.

700.6(3) *Eligible project activities.* Facilities eligible for reimbursement include but are not limited to terminal building, hangar, fuel facility, and maintenance facility construction or renovation. Activities may include associated design, land acquisition, grading and foundation work.

700.6(4) *Funding.* Unless otherwise appropriated, funds are distributed to commercial service airports using a 50/40/10 formula. Fifty percent of funds are allocated equally between each airport, forty percent are allocated based on the percentage of enplaned passengers at each airport versus the total number of enplaned passengers in the state, and ten percent are allocated based on the percentage of the air cargo tonnage at each airport versus the total tonnage in the state.

700.6(5) *Application for funding.* The department will make available application instructions and forms to eligible airports. Applications are to be submitted to the department by the due date specified in the instructions.

700.6(6) *Review and approval.* The department will review each completed application for eligibility and recommend projects and funding levels to the commission for approval.

761—700.7(328) General aviation vertical infrastructure program.

700.7(1) *Purpose.* The purpose of the general aviation vertical infrastructure program is to provide funding for vertical infrastructure improvements at Iowa's general aviation airports.

700.7(2) *Applicant eligibility.* A governmental subdivision owning or establishing a public airport is eligible to apply to the department for funding.

700.7(3) *Eligible project activities.* Facilities eligible for reimbursement include but are not limited to terminal building, hangar, fuel facility, and maintenance facility construction or renovation. Activities may include associated design, land acquisition, grading and foundation work.

700.7(4) *Funding.* The department establishes the maximum percentage of state share for eligible projects and may annually set a maximum dollar amount per award. Funding criteria are included in application instructions provided to airport sponsors.

700.7(5) *Application for funding.* The department will make available application instructions and forms to eligible airports. Applications are to be submitted to the department by the due date specified in the instructions.

700.7(6) *Review and approval.* The department will review each completed application and evaluate the impact of the project on the aviation system considering the following factors: state system plan airport roles, goals and objectives; justification provided; ability to enhance aeronautical activity for the airport and system; local participation; and multijurisdictional support of the airport. The department will recommend projects to the commission for approval.

761—700.8(328,330,330A) Project administration. After a project has been approved by the commission, the department will offer the award in an agreement that specifies responsibilities of the sponsor. The agreement is to specify the amount of state funds, the contract period, and the responsibilities for project planning, development, payment process, and reporting. The department may inspect the project for compliance with the agreement and may audit all project costs incurred. Payments to the airport sponsor for eligible project costs are made on a cost reimbursement basis. Project-related engineering fees are an eligible expense and are reimbursed in compliance with the agreement.

These rules are intended to implement Iowa Code section 8.57(5) and 328, 330 and 330A.

ITEM 2. Rescind and reserve **761—Chapter 710**.

ITEM 3. Rescind and reserve **761—Chapter 715**.

ITEM 4. Rescind and reserve **761—Chapter 716**.

ITEM 5. Rescind and reserve **761—Chapter 717**.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 720
"Iowa Airport Registration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 328.12 and 328.19 and 2016 Iowa Acts, chapter 1131, section 3

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A; Iowa Code sections 328.1, 328.12, 328.19, and 328.35; and 2016 Iowa Acts, chapter 1131, section 3

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 10 to 10:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 577 170 7

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tim McClung, Aviation Director
Iowa DOT Modal Transportation Bureau
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1689
Email: tim.mcclung@iowadot.us

Purpose and Summary

Iowa Code section 328.19 requires airports open for use by the public to register and meet minimum safety standards promulgated by the Department. This proposed chapter promulgates airport registration rules and minimum safety standards. It also identifies airport closing requirements to ensure public safety and addresses repayment of financial assistance as required by previous legislation.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Owners and operators of airports making application to the Department for airport registration to make an airport open for public use (without prior approval) will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The public, including pilots, aircraft passengers, and all entities relying on a safe and operational air transportation system, 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:

Following initial inspection and airport registration certification, airports will subsequently be inspected no less than every three years. Minimum safety standards focus on runways, approach zones, obstacle-free areas, and other airport facility requirements. There are typically 30 to 40 airports inspected every year that are provided a report with deficiencies and needed corrective actions that must be taken to maintain airport registration and safety of the public.

- Qualitative description of impact:

Airport registration allows airport owners and operators to keep airports open to the public for use without permission. Inspections provide clear safety benefits to pilots and the traveling public by ensuring airport facilities are maintained to minimum safety standards. Airports are typically very responsive to inspection discrepancies to meet safety requirements and maintain standards.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department has a dedicated airport inspector whose primary duty is to inspect public-use airports throughout Iowa for safety deficiencies. Sometimes, costs of mitigating developing safety issues are funded through grants from the Department's State Aviation Program that are usually paid from the State Aviation Fund with user-generated revenues from aircraft registration fees and aviation fuel taxes. Grants are only available to public-owned airports.

- Anticipated effect on state revenues:

Airports are ultimately required to maintain facilities to minimum safety standards. The annual State Aviation Program can be used as a potential funding resource for safety-related enhancements at public-owned airports. Safety projects score high in the program and spending on safety-related aviation programming is paid for with user-generated revenues from aircraft registration fees and aviation fuel taxes. Programming amounts vary year to year.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa has 3,000 registered aircraft, 5,700 pilots and large numbers of visiting aircraft to the state. One million passengers visit Iowa's commercial airports each year by air. There are 62 businesses providing aviation services, 16 helicopter air ambulance bases, six military aviation units, and 400-plus aerial applicators that all rely on safe and well-maintained public-use airport facilities. Aviation supports $6.4 billion in annual economic activity in Iowa. Safe and operational airport facilities are key to supporting much of this activity. If this chapter went away, the maintenance of public use airports would be reduced, and both safety and accessibility would be compromised.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Proposed rules include an update of minimum safety standards that modernize the chapter. While the rule is not less restrictive, changes have been incorporated to simplify and improve processes and provide better opportunities for addressing airport deficiencies with corrective actions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

For many years, safety rules have been vetted with the Department, stakeholder, and public input. While some recommendations for change are being made and have been well accepted by stakeholders, the only alternative would be to no longer offer airport registration or rely on self-assessment by airports. The history of finding safety discrepancies supports the need for state involvement in this arena.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

As experience shows with discrepancy reports, the airport registration process does hold airport owners responsible and is needed for meeting minimum safety standards. Deficiencies are often identified that need corrective action to maintain airport safety.

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?

This chapter does not affect small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 720 and adopt the following **new** chapter in lieu thereof:

CHAPTER 720
IOWA AIRPORT REGISTRATION

761—720.1(328) Scope and contact information.

720.1(1) This chapter establishes airport registration and airport closing requirements for airports open for use by the public.

720.1(2) Questions regarding this chapter may be directed to the Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1468; or through the department's website at www.iowadot.gov/aviation.

761—720.2(328) Definitions. The definitions in Iowa Code section 328.1 apply to this chapter. In addition:

"Obstruction" means any structure, object of natural growth, or use of land that impedes the airspace required for the takeoff or landing of aircraft at an airport.

"Private use" means available for use by the owner or other persons authorized by the owner.

"Public use" means available for use by the public without prior approval from the owner or operator.

761—720.3(328) Public-use airport. Airport registration requirements apply to public-use airports.

720.3(1) *Registration.* An airport is to apply to the department when seeking a public-use airport certificate of registration. If following an inspection, the airport meets minimum safety standards, the department will issue the airport a public-use airport certificate of registration.

720.3(2) *Registration renewal.* Each public-use airport certificate of registration renews automatically each year unless the certificate is revoked. When an airport is to be inspected by the department, the airport will be provided with an airport registration application and will need to apply for registration renewal.

720.3(3) *Airport inspection.* Each registered public-use airport is subject to inspection by the department at any reasonable time, but the airport will be inspected no less than every three years. If the inspection by the department reveals an unsafe condition or a failure to meet the minimum safety standards, the department will record that fact and notify the airport in writing with necessary

corrective actions. Failure to implement corrective actions may result in airport registration revocation or denial. Federal Aviation Administration (FAA) inspection of an airport certified under 14 CFR Part 139 may be accepted in lieu of an inspection by the department.

720.3(4) *Posting.* The airport certificate of registration is to be posted in a prominent place available to the public at the airport. If there are no buildings at the airport, the certificate is to be displayed at the office of the airport manager or caretaker. If a certificate of registration is revoked by the department, it must be removed from public view and destroyed.

761—720.4(328) Revocation or denial. The department may revoke or deny a certificate of registration pursuant to Iowa Code section 328.19.

761—720.5(328) Corrective action plan. If an airport is not in compliance with minimum safety standards, the airport may submit a proposed corrective action plan that identifies a time period up to six years to bring the airport into compliance. The plan must be reasonable and attainable. The plan is subject to approval by the department, and if approved, the department may issue a certificate of registration that can be revoked at any time if an unsafe condition develops.

761—720.6(328) Minimum safety standards. The minimum safety standards for a public-use airport are as follows:

720.6(1) *Runways.*

a. Width. The minimum usable runway width will be 50 feet.

b. Marking of paved runways. Marking of paved runways will be in accordance with FAA Circular 150/5340-1M (Standards for Airport Markings) as amended through May 10, 2019.

c. Marking of nonpaved runways. Marking of nonpaved runways will use high-visibility yellow airport marking cones no less than 36 inches in diameter and 24 inches tall.

(1) Runway edge marking cones are to be placed 200 feet apart outlining the length of the runway surface.

(2) Runway ends are to be marked using six marking cones placed perpendicular to the runway heading.

(3) Displaced thresholds are to be marked by adding three marking cones from each runway edge at the point of the threshold location along the length of the runway surface.

d. Surfaces. Runway surfaces will be free of foreign debris and surface deficiencies that could impede the ability of aircraft to land or take off.

e. Winter operations.

(1) During and following winter events, runways and other operational areas are to be cleared as quickly as practical.

(2) To the extent possible, snow pile height is to be minimized.

(3) Notices to Air Missions (NOTAMS) are to be issued with the FAA to alert aircraft operators when an airport is unusable or unsafe for aircraft operations. NOTAMS should identify the closure of an airport or affected runways and provide a reasonable estimate of when the airport will be cleared and reopened for public use.

(4) If an airport does not intend to conduct winter operations for a winter season, it will be noted in the FAA's Airport Master Record and Chart Supplement so pilots are aware snow removal and other winter operations will not occur.

f. Unusable and unsafe runways. When a runway has become temporarily unusable or unsafe for aircraft operations, the affected area will be marked by suitable flags, barriers or flares clearly showing the boundaries of the unsafe or unusable area.

(1) Affected runways are to be marked in accordance with guidelines in rule 761—720.7(328).

(2) NOTAMS are to be issued to close the airport or affected runways and provide a reasonable estimate of when the airport is to be reopened for public use.

g. Line of sight. Runway sight distance will provide an unobstructed line of sight from any point 5 feet above the runway surface to any point 5 feet above the runway surface for the entire length of the runway, or the sponsor shall note in the FAA's Airport Master Record and Chart Supplement, so pilots are aware of the line-of-sight obstruction.

720.6(2) *Approach zones.*

a. Approach surface. The approach zone of a runway extends from the runway end (or displaced threshold) and is longitudinally centered on the runway centerline for a horizontal distance of 1,000 feet. The width is 250 feet starting at the runway end and widens out to 450 feet at the farthest point from the runway.

b. Approach obstructions. Approaches are to remain free of obstructions above a glide path of a 20:1 ratio within the approach zone of each usable runway. If an obstruction exists in an approach zone that impedes the airspace required for the takeoff or landing of aircraft, the obstruction should be removed. If removal of the obstruction is not possible, the runway threshold is to be displaced. The runway length remaining between the displaced threshold and the departure end of the runway is the landing distance available.

c. Crops in approach zones. Crops are not considered an approach zone obstacle.

d. Consideration for vehicles and trains. When the approach zone to any runway crosses a road or railroad, the glide path on a 20:1 ratio shall pass at least 17 feet above an interstate highway, 15 feet above any other public roadway, 10 feet above a private road, and 23 feet above a railroad.

720.6(3) *Obstruction-free areas.*

a. General obstruction-free areas. The following areas of the airport will be free of obstructions with the exception of operational and frangible equipment that is essential for operation of the airport. For this subrule, obstructions include any object of natural growth, terrain, construction hazards, equipment, crops or grass taller than 8 inches, or other items that would provide a potential hazard to aircraft operations on the ground or in the air:

(1) Paved runways.

1. Within 125 feet of the centerline.
2. Within 200 feet of the runway end.

(2) Nonpaved runways.

1. Within 60 feet of the centerline.
2. Within 10 feet of runway edge markers along the entire length of the runway.

(3) Automated weather observing equipment.

1. Any airport property or easement located within a 100-foot radius.
2. Reserved.

b. Building obstruction-free areas. In no case may a building be constructed closer than 125 feet from a runway centerline of a paved runway or 50 feet from the edge of a nonpaved runway.

720.6(4) *Facilities.*

a. Wind indicator. The airport is to be equipped with an 18-inch diameter or larger windsock, blaze orange in color. If the airport is lighted for night operation, the windsock is to be lighted.

b. Fire extinguishers. At least one operational fire extinguisher capable of extinguishing all classes of fires is to be readily accessible to aircraft fueling or ramp areas.

c. Lighting. If an airport is published to have lighting for night operation:

(1) The system is to be operable.

(2) The airport is to be lighted from dusk to dawn or have an operable air-to-ground controller for the lighting system.

761—720.7(328) Airport closing.

720.7(1) *Notice.* When an airport ceases operation for any reason, the sponsor must notify the department, destroy the certificate of registration and mark the landing area to clearly indicate that the airport is closed to air traffic.

720.7(2) *Marking.* All marking indicating a usable runway is to be obliterated. The sponsor will place at a central location a yellow X in accordance with FAA Advisory Circular 150/5340-1M (Standards for Airport Markings) as amended through May 10, 2019.

720.7(3) *Temporary closing.* When conditions, not related to a winter event, require the temporary closing of a runway, the runway is to be marked on both ends with a yellow X in accordance with FAA Advisory Circular 150/5340-1M (Standards for Airport Markings) as amended through May 10, 2019.

720.7(4) *Repayment of financial assistance.* Within 30 days of closing an airport (other than temporary closing), the sponsor is to request from the department a review of contractual obligations that require repayment of financial assistance. The department will provide a determination detailing grant obligations that must be repaid. Any repayment of grants is to be made to the department in no more than five equal annual installments, beginning one year from the airport's closure date. If an alternative future use of the airport facility is planned for a project that creates jobs and expands the economy, the sponsor may, within 30 days of the department's determination, request forgiveness of repayment. The request must include a plan detailing the alternative future use of the airport facility, an explanation of how the alternative future use creates jobs and expands the economy, a cost-benefit analysis from the sponsor, a commitment of private investment in the project equal to at least two times the amount of repayment due to the state, and a commitment from the sponsor, or associated political subdivision(s), to complete the alternative use project within five years. The department will review the request for forgiveness of repayment and approve or deny the request within 60 days of receipt.

761—720.8(17A) Hearing and appeal process. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13.

These rules are intended to implement Iowa Code chapter 17A and sections 328.1, 328.12, 328.19 and 328.35.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 750
"Aircraft Registration"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 328.12
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 328

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 11 to 11:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 449 766 788

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tim McClung, Aviation Director
Iowa DOT Modal Transportation Bureau
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1689
Email: tim.mcclung@iowadot.us

Purpose and Summary

Proposed Chapter 750 establishes procedures for the registration and collection of aircraft registration fees and use tax for civil aircraft in Iowa. Aircraft registration fees are deposited to the State Aviation Fund for use on safety, planning, and airport development projects as recommended by the Department and approved by the Iowa Transportation Commission.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Aircraft owners bear the cost of aircraft registration fees and use taxes required to be collected in Iowa Code chapter 328.

- Classes of persons that will benefit from the proposed rulemaking:

Pilots, passengers, and all aviation stakeholders rely on a safe and operational aviation system. Aircraft registration is required by Iowa law to fund the aviation system. Both the Department and aviation stakeholders stand to benefit from clear rules that help in the administration of aircraft registration laws.

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:

The rules outline procedures that implement aircraft registration required in Iowa Code chapter 328. An average of $80 million in aircraft are sold in Iowa each year and approximately 3,000 aircraft are registered with the Department that renew aircraft registration each year. Total registration fees collected each year are approximately $2 million and an average of $4.9 million in one-time use tax is collected each year.

- Qualitative description of impact:

Aircraft registration is in place to collect aircraft registration fees from aircraft owners that then pay for aviation safety and infrastructure projects throughout Iowa. Use tax is collected to pay into the General Fund for State of Iowa expenditures. Fees and use tax pay for aviation system needs and provide additional revenue to the State of Iowa.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Department staff time is used to administer initial aircraft registrations, renewals, compliance efforts and customer service. Minimal direct expenses of less than $5,000 are borne to administer the aircraft registration system.

- Anticipated effect on state revenues:

The annual State Aviation Program is a funding resource for safety, planning, and airport development projects at airports throughout Iowa. Iowa law requiring aircraft registration fees adds approximately $2 million in revenue toward the State Aviation Program. The collection of the one-time use tax at the first aircraft registration is a revenue source to the State's General Fund averaging $4.9 million annually. This chapter facilitates the collection of those state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Iowa has 3,000 registered aircraft, 5,700 pilots and large numbers of visiting aircraft to airports throughout Iowa. One million passengers visit Iowa's commercial airports each year by air. There are 62 businesses providing aviation services, 16 helicopter air ambulance bases, six military aviation units, and more than 400 aerial applicators that all rely on safe and well-maintained public-use airport facilities. Aviation is a $6.4 billion annual industry in Iowa. Safe and operational airport facilities are key to supporting much of this activity. A lack of action on these rules would create chaos in the administration of aircraft registration laws.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The chapter helps implement collection of aircraft registration fees required in Iowa law. No direct expenses are incurred by the rules.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department determined there were no alternative methods to rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The chapter is needed to implement aircraft registration requirements in Iowa Code chapter 328.

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?

This chapter does not affect small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 750 and adopt the following **new** chapter in lieu thereof:

CHAPTER 750
AIRCRAFT REGISTRATION

761—750.1(328) General.

750.1(1) *Scope.* This chapter establishes the procedures for registration of civil aircraft pursuant to Iowa Code chapter 328.

750.1(2) *Contact.* Information, instructions, and forms are available from the modal transportation bureau or on the department's website at www.iowadot.gov/aviation. Application forms may also be obtained from aircraft dealers. The mailing address for aircraft registration is the Iowa Department of Transportation, Modal Transportation Bureau, Aircraft Registration, 800 Lincoln Way, Ames, Iowa 50010.

750.1(3) *Definitions.* The definitions in Iowa Code section 328.1 apply to this chapter. In addition, the following definition is established for the purpose of Iowa Code section 328.21(8):

"Specified minimum level of aviation services to the general public" means the use of aircraft that provide nonagricultural aviation services, including aircraft rental, flight training, or passenger and cargo air carrier operations.

This rule is intended to implement Iowa Code chapter 328.

761—750.2(328) Registration. When an aircraft is registered in Iowa, the model year of the aircraft is used to determine the number of times the aircraft was previously registered, and a reduction of the registration fee is computed accordingly. "Model year," except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For the purpose of registration, the model year advances one year each January 1.

This rule is intended to implement Iowa Code section 328.21.

761—750.3(328) First registration procedure.

750.3(1) *Registration requirement.* A civil aircraft that has an FAA-assigned N number is subject to registration in Iowa unless it is exempt by statute.

750.3(2) *Application.*

a. The owner of an unregistered aircraft is to submit to the department an application for aircraft registration on a form prescribed by the department.

b. The application is to include the registration fee and the required use tax or evidence of tax exemption.

c. Following review of the application, the department may request additional information or documents from the owner.

d. Upon receipt of a completed application, registration fee, and use tax or evidence of tax exemption, the department will issue to the applicant an aircraft registration certificate for the aircraft.

This rule is intended to implement Iowa Code sections 328.20, 328.21, 328.26, 328.27, 328.44, and 328.45.

761—750.4(328) Aircraft not airworthy. An aircraft that is not airworthy is not subject to registration fees if the owner submits with the registration application a written, signed explanation of the aircraft's condition and an estimate of the date when the aircraft will be airworthy. The department will mark the record of the aircraft until the owner notifies the department that the aircraft is airworthy or until the aircraft is no longer subject to registration in Iowa.

This rule is intended to implement Iowa Code section 328.21.

761—750.5(328) Renewal notice. Thirty days before the end of the registration year, the department will send a renewal notice to the owner of each registered aircraft. The renewal notice will include the registration fee due for the upcoming registration year and the descriptive data recorded for the aircraft.

This rule is intended to implement Iowa Code sections 328.20, 328.21, 328.26, 328.27, 328.37, and 328.56A.

761—750.6(328) Penalty on registration fees.

750.6(1) *Aircraft moved into Iowa.* The penalty on the registration fee accrues from the first day of the month following 30 days from the date the aircraft is moved into Iowa.

750.6(2) *When delinquency extends beyond the current year.* When the penalty on a delinquent registration fee extends beyond the current year, the penalty continues to accrue until paid. The penalty accrues only on the fee applicable at the time the delinquency accrued and is to apply to subsequent registration fees that have not been paid.

750.6(3) *Specific penalty date.* When a specific penalty date is provided by statute or rule, the penalty accrues from that date, even if the day is a Saturday, Sunday or holiday.

This rule is intended to implement Iowa Code sections 328.50 to 328.52.

761—750.7(328) Application for special certificate. When applying to the department for a special certificate, the applicant is to submit reasonable proof of bona fide status as a manufacturer, transporter or dealer. Manufacturer or dealer applicants are to verify that no aircraft have been held in a dealer special certificate inventory for a period of more than three years.

This rule is intended to implement Iowa Code sections 328.28 and 328.29.

761—750.8(328) Lien. The department has the authority to record a lien against the federal aircraft title and sue to collect unpaid fees and penalties.

This rule is intended to implement Iowa Code sections 328.47 to 328.49.

761—750.9(17A) Hearing and appeal process. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13.

This rule is intended to implement Iowa Code chapter 17A.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 11
"Employer Records and Reports"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 96
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 96

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 11 a.m.	Microsoft Teams Join the meeting now Meeting ID: 226 168 911 223 Passcode: R9yHG3 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 189 181 10#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Workforce Development no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

These proposed rules are for employer submission of records for unemployment.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The general public will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public 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:

The Department discerns incidental administrative costs to businesses to file records.

- Qualitative description of impact:

There is no qualitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department discerns incidental administrative costs to the Department to file records.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

These administrative rules comply with federal and state law. There is limited administrative cost for compliance.

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:

Not applicable.

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. Rescind 871—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
EMPLOYER RECORDS AND REPORTS

871—11.1(96) Records. Each employer shall keep records and submit reports at such times as the department may require, and shall comply with the instructions printed upon any report forms issued by the department pertaining to the preparation and return of such reports.

871—11.2(96) Filing of multiple worksite report. Each employer having more than one physical worksite at which workers are employed shall file a Multiple Worksite Report (BLS 3020) for each quarter, providing monthly employment for the three payroll periods that include the twelfth of each month and the amount of wages subject to the unemployment insurance law for each location within this state. This report is required as a supplement to the Employer's Contribution and Payroll Report.

Failure to provide this report may result in the assessment of a penalty as provided for in rule 871—23.60(96).

871—11.3(96) Filing of industry verification statement. Each employer shall complete the Industry Verification Statement, BLS 3023VS or 3023VM, for the purpose of verifying the primary products or services of each physical worksite.

These rules are intended to implement Iowa Code chapter 96.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 12
"Forms and Informational Matters"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 96
State or federal law(s) implemented by the rulemaking: Federal Reports Act of 1942

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 11:30 a.m.	Microsoft Teams Join the meeting now Meeting ID: 286 694 738 87 Passcode: DN6QGY Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 632 284 65#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Workforce Development no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rebecca Stonawski
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: rebecca.stonawski@iwd.iowa.gov

Purpose and Summary

This proposed rule provides the federal and state forms required as they pertain to the Research and Information Bureau of Iowa Workforce Development.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The general public will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public 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:

There is no quantitative impact.

- Qualitative description of impact:

There is no qualitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs are incidental administrative costs.

- Anticipated effect on state revenues:

There is no impact.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The forms comply with the Iowa Code and federal law.

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:

These rules comply with federal and state law at an incidental administrative cost.

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. Rescind 871—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
FORMS AND INFORMATIONAL MATTERS

871—12.1(96) Federal restriction—forms. The research and information services division uses many federally prepared and supplied forms that contain an office of management and budget (OMB) number and an approved expiration date. The department, which receives and uses in its normal operations such federal forms through a federally appointed special agent, is subject to all of the provisions, restrictions, sanctions and penalties imposed by the Federal Reports Act of 1942 and subsequent amendments.

Form No. Name and description of form.

12.1(1) *Federal forms.*

a. BLS 790, Bureau of Labor Statistics Report on Employment, Payroll and Hours. A research and information services division shuttle schedule sent each month, to a sample of Iowa employers, to collect employment, payroll and hours worked information.

b. BLS 3020, Multiple Worksite Report (65-5519) [reference 345—2.3(96)]. A research and information services division form required each quarter of Iowa employers subject to the unemployment insurance law.

c. BLS 3023VS, Industry Verification Statement (single worksite). A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided by an employer to ensure that the correct North American Industry Classification System code is assigned to the employer's unemployment insurance account.

d. BLS 3023VM, Industry Verification Statement (multiple worksites). A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided at each worksite by an employer to ensure that the correct North American Industry Classification System code is assigned to each employer location.

e. BLS 2877, Occupational Employment Survey. Sent twice a year to a sample of employers. Voluntary. Used to obtain confidential information on occupational employment and occupational wages by industry. Forms differ by industry.

12.1(2) *State form.* E-Z Form—for Occupational Employment Survey. Short form for collecting confidential occupational employment and occupational wages. Voluntary.

This rule is intended to implement Iowa Code chapter 96.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 26
"Contested Case Proceedings"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 96
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 96

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 26, 2024 10:30 a.m.	Microsoft Teams Join the meeting now Meeting ID: 262 021 762 472 Passcode: ZF4Pn4 Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 772 679 764#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Workforce Development no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

The purpose of this proposed chapter is to provide procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The general public will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public 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:

The Department allocates significant resources to contested case proceedings. However, there is no expectation of changes in expenses due to the updated administrative code.

- Qualitative description of impact:

Not applicable.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department allocates significant resources to contested case proceedings. However, there is no expectation of changes in expenses due to the updated administrative code.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

By federal and state law, Iowa is required to provide contested case hearings regarding employment. These administrative rules help to minimize costs while following legal requirements.

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:

By federal and state law, Iowa is required to provide contested case hearings regarding employment. These administrative rules help to minimize costs while following legal requirements.

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. Rescind 871—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26
CONTESTED CASE PROCEEDINGS

871—26.1(17A,96) Applicability. The rules in this chapter govern the procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

871—26.2(17A,96) Definitions. Terms defined in the Iowa employment security law and the Iowa administrative procedure Act and that are used in these rules shall have the same meaning as provided

by such laws. In addition, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Contested case" means a proceeding defined in Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case in Iowa Code section 17A.10A. It specifically includes any appeal from a determination of a representative of the department or any appeal or request for a hearing by an employer or employing unit from an experience rating, charge determination or other decision affecting its liability. Except as provided in subrule 26.16(4), a final decision of the employment appeal board of the department of inspections, appeals, and licensing shall constitute final agency action. A presiding officer's decision shall be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections, appeals, and licensing or if the appeal is made directly to the district court in lieu of filing an appeal with the employment appeal board of the department of inspections, appeals, and licensing.

"Presiding officer" means an administrative law judge employed by the department of inspections, appeals, and licensing.

871—26.3(17A,96) Appeal of unemployment benefits contested case.

26.3(1) An unemployment benefits contested case must be filed by a party within ten calendar days of mailing the initial determination of benefits as determined by the postmark or date stamp to the party's last-known address. The appeal must be in writing and delivered by mail, facsimile, email, online, or in person to the department of inspections, appeals, and licensing's unemployment insurance appeals bureau at UIAB Administrative Hearings Division, 502 East 9th Street, Des Moines, Iowa 50319. An online appeal is filed by completing and submitting an online appeal form available on the workforce development website.

26.3(2) The appeal should state the following:

a. The name, address and social security number of the claimant;

b. A reference to the decision from which the appeal is taken; and

c. The grounds upon which the appeal is based.

26.3(3) Notwithstanding the provisions of subrule 26.3(1), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 calendar days from the mailing date of the quarterly statement of benefit charges.

26.3(4) Also notwithstanding the provisions of subrule 26.3(1), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 calendar days from the mailing date of the quarterly billing of benefit charges.

871—26.4(17A,96) Appeal of employer liability contested case.

26.4(1) An appeal from a decision of the tax bureau of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers, must be filed by a party no later than 30 calendar days of mailing the tax bureau's decision as determined by the postmark or date stamp to the party's last-known address. The appeal must be in writing and delivered by mail, facsimile, email, online, or in person to Tax Bureau, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.4(2) The appeal should state the following:

a. The name, address, and Iowa employer account number of the employer;

b. The name and title of the person filing the appeal;

c. A reference to the decision from which the appeal is taken; and

d. The grounds upon which the appeal is based.

871—26.5(17A,96) Notice of hearing.

26.5(1) Notices of hearing shall be sent to all parties at their last-known address at least ten days in advance of the hearing date by first-class mail, email, or other electronic means. Notices of hearing shall contain the information required by Iowa Code section 17A.12(2) and any additional information required by statute or rule.

26.5(2) Unless otherwise precluded, the parties in a contested case may waive any provision of this chapter pursuant to Iowa Code section 17A.10.

26.5(3) A hearing will be promptly scheduled and conducted by telephone unless a party requests that it be held in person. In-person hearings will be located at the Wallace State Office Building or at a site designated by UIAB. The party requesting an in-person hearing will ordinarily be required to travel the greater distance if all parties are not located near the same hearing site. A request for an in-person hearing may be denied if factors such as the distance between the parties, the number of parties or the health of any party make it impractical or impossible to conduct a fair hearing in person. An in-person hearing may be scheduled at the discretion of the presiding officer to whom the contested case is assigned or by the manager or chief administrative law judge of the appeals bureau. At the discretion of the presiding officer, witnesses or representatives may be allowed to participate via telephone in an in-person hearing.

26.5(4) Whenever it appears that other parties should be joined to dispose of all issues in a contested case, the presiding officer may so order and may grant such continuance to hold such additional proceedings upon notice to all parties.

26.5(5) Any number of appeals involving similar issues of law or fact may be consolidated for hearing so long as no substantial rights of any party would be prejudiced by so doing.

871—26.6(17A,96) Recusal. A presiding officer shall withdraw from participation in the hearing or the making of any decision in a contested case in accordance with provisions outlined in chapter 481—10.9(17A).

871—26.7(17A,96) Withdrawals, dismissals, and continuance.

26.7(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of a presiding officer. Requests for withdrawal may be made in writing or orally, provided the oral request is recorded by a presiding officer.

An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

26.7(2) A hearing may be postponed by the presiding officer for reasons stated in subrule 481—10.17(3), either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement should be made not less than three days prior to the scheduled hearing and may be in writing or oral, provided the oral request is recorded by the presiding officer. A party shall not be granted more than one postponement except in the case of extreme emergency.

26.7(3) For good cause shown, the presiding officer may reopen the record, and with notice to all parties, schedule another hearing.

"Good cause," for purposes of this rule, is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include but are not limited to death, sudden illness, or accident involving the party or the party's immediate family (spouse, partner, children, parents, sibling) or other circumstances evidencing an emergency situation that was beyond the party's control and was not reasonably foreseeable.

Examples of circumstances that do not constitute good cause include but are not limited to a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

26.7(4) If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections, appeals, and licensing upon the issuance of the presiding officer's final decision in the case.

26.7(5) If good cause for reopening has not been shown, the presiding officer may make a decision based upon whatever evidence is properly in the record or, in appropriate cases, may enter default as set forth in rule 871—26.13(17A,96).

871—26.8(17A,96) Discovery. Discovery procedures are subject to rule 481—10.13(17A).

871—26.9(17A,96) Ex parte communications. Ex parte communication is subject to rule 481—10.23(17A).

871—26.10(17A,96) Motions. Motion practice is subject to rule 481—10.15(10A,17A) with the following exceptions:

1. Written responses to motions may be filed within five days after the motion is served.
2. Motions pertaining to the hearing must be filed and served at least five days prior to the hearing date.

871—26.11(17A,96) Prehearing conference. Prehearing conferences are subject to rule 418—10.16(10A,17A), with the exception that requests for a prehearing conference must be filed within three days prior to hearing.

871—26.12(17A,96) Subpoenas for witnesses and documents. Subpoenas are subject to rule 481—10.14(10A,17A) and Iowa Code section 17A.13, with the exception that subpoena requests must be filed within three days prior to hearing.

871—26.13(17A,96) Conduct of hearings. The conduct of hearings is governed by rule 481—10.20(17A), with the exception of the additional following subrules:

26.13(1) The presiding officer shall begin each hearing with a brief statement identifying the parties and issues, outlining the history of the case, advising the parties of their appeal rights and announcing what matters, if any, will be officially noticed. Any party may inspect and use any portion of the administrative file necessary for the presentation of its case. The administrative file may include information from the claimant's files maintained in the agency's computer system.

26.13(2) Each party shall be afforded an opportunity for an opening statement and final arguments.

26.13(3) The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing.

26.13(4) If, during the course of a hearing, it appears to the presiding officer that an issue not set forth in the notice of hearing may affect the presiding officer's decision, the presiding officer shall so notify the parties and announce willingness to continue taking testimony on the underlying factual matters if the parties agree to waive on record further notice and make no objection to continuing. If any party objects, the presiding officer shall postpone or continue the hearing and cause new notices of hearing, containing all relevant issues, to be sent to the parties. Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing.

26.13(5) If factual issues generally relevant to a party's eligibility or liability for benefits but unrelated to the underlying facts in controversy in the present contested case are exposed, the presiding officer may remand the issue to the appropriate section of the department for investigation and preliminary determination.

26.13(6) If a party fails to appear for the hearing, the presiding officer may proceed with the hearing or decide the appealing party is in default and dismiss the appeal as provided in Iowa Code

section 17A.12(3). If no decision has been issued, the absent party may make a written request to reopen the record for good cause as defined in subrule 26.7(3). The presiding officer may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the case hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party responds to the notice of hearing after the record has been closed and any party that has participated is no longer on the telephone line or present, the presiding officer shall not take the evidence of the late party and the party may file a written request to reopen the record.

c. Once a decision has been entered, the absent party may file an appeal to the employment appeal board to request a new hearing.

26.13(7) Whenever necessary, the presiding officer may require the attendance at a hearing of department employees having knowledge of the facts in controversy or having technical knowledge concerning the issues raised in appeal.

a. If the primary issue is the claimant's ability to work, availability for work or work search, the department may be named as respondent. The presiding officer may call department personnel having knowledge of the facts in controversy as witnesses.

b. If the issue on appeal is an offer of or recall to work or a job referral by a local workforce development center, both the employer making the offer or recall and the workforce development center representative making the referral may be witnesses at the hearing.

c. If the issue on appeal is the claimant's refusal of employment because of wages, the presiding officer may take the testimony of the workforce development representative having knowledge of prevailing wages in the vicinity. The presiding officer may also obtain testimony and evidence of the hours and other conditions of work for similar jobs in the area.

26.13(8) At the discretion of the presiding officer, witnesses may be excluded from the hearing room or telephone hearing until called to testify. The presiding officer shall admonish such witnesses not to discuss the case amongst themselves until after the record has been closed. All witnesses shall be subject to examination by the presiding officer and by all parties.

26.13(9) The presiding officer may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

26.13(10) If the parties agree that no dispute of material facts exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant material evidence either by stipulation or otherwise as agreed by the parties, without the necessity of a formal evidentiary hearing.

871—26.14(17A,96) Evidence. Rules of evidence are followed in accordance with Iowa Code section 17A.14.

871—26.15(17A,96) Recording costs.

26.15(1) The presiding officer shall electronically record all evidentiary hearings, prehearing conferences and hearings on motions, all of which constitute a part of the record of the contested case. A party may, at its own expense, also record any hearing electronically or by certified shorthand reporter.

26.15(2) Upon request of a party, the department shall provide a copy of the whole or a part of the record at a cost, unless there is further appeal, in which event the record shall be provided to all parties at no cost.

871—26.16(17A,96) Decisions.

26.16(1) The presiding officer shall issue a written, signed decision as soon as practicable after the closing of the record in a contested case. Each decision shall:

a. Set forth the issues, the appeal rights, a concise history of the case, the findings of essential facts, the reasons for the decision and the actual disposition of the case;

b. Be based on the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs, even if none of such evidence would be admissible in a jury trial in the Iowa district court; and

c. Be sent by first-class mail, email, or other electronic transmission to each of the parties in interest and their representatives.

26.16(2) Copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development, filed according to hearing (appeal) number and indexed by the social security number of the claimant.

26.16(3) A presiding officer's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. A presiding officer's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

26.16(4) A presiding officer's decision constitutes final agency action in an employer liability contested case.

a. Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

b. Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

26.16(5) In a claimant benefit contested case, final agency action shall be a presiding officer's decision, if no aggrieved party appealed the decision to the employment appeal board within 15 days, or the decision of the employment appeal board, if the aggrieved party appealed the decision to that tribunal.

a. Once final agency action has been established, any party who is aggrieved or adversely affected by the agency action has 30 days to file a petition for judicial review with the district court.

b. Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the date that the decision becomes final as a result of the failure to appeal the decision to the employment board. Applications for rehearing filed before this date will be forwarded to the employment appeal board as appeals to that tribunal. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

c. Any party in interest may file a petition for judicial review within 30 days after the denial of the request for rehearing.

These rules are intended to implement Iowa Code chapters 17A and 96.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 41
"Request for Waiver of Administrative Rule"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 8:30 a.m.	Microsoft Teams Join the meeting now Meeting ID: 294 646 210 897 Passcode: UBmwFZ Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 451 996 139#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Workforce Development no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rebecca Stonawski
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: rebecca.stonawski@iwd.iowa.gov

Purpose and Summary

This proposed chapter provides guidance to the public on requesting waivers of rules for the Department of Workforce Development.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The general public will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public 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:

There is no quantitative impact.

- Qualitative description of impact:

There is no qualitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

None.

- Anticipated effect on state revenues:

None.

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:

Not applicable.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Chapter 41 provides the standards by which the public may pursue waivers of rules for the Department of Workforce Development.

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. Rescind 871—Chapter 41 and adopt the following **new** chapter in lieu thereof:

CHAPTER 41
REQUEST FOR WAIVER OF ADMINISTRATIVE RULE

871—41.1(17A) Requests for waiver of rules. Any person may file a request for waiver of an administrative rule of the workforce development department[871] by writing a proper request, which is received by the Division Administrator, Division of Unemployment Insurance Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All requests for waiver of an administrative rule should be in writing and meet all requirements set out in this chapter. A request is deemed filed when it is received by the division administrator. The agency should provide the requester with a file-stamped copy of the request if the requester provides the agency an extra copy for this purpose. The request should be emailed, typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA WORKFORCE DEVELOPMENT

(Name of person requesting waiver)	}	Request for waiver of (specify rule for which waiver is requested)

The petition should provide the following information:

1. The name and address of the person or entity for whom a waiver is requested.
2. A description and citation of the specific rule for which a waiver is requested.
3. The specific waiver requested, including the precise scope and time period that the waiver will extend.
4. Relevant facts that the requester believes would justify a waiver. This statement should include a signed statement from the petitioner attesting to the accuracy of the facts.
5. A history of the agency's action relative to the requester.
6. Any information regarding the agency's treatment of similar cases, if known.
7. The name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request, or who otherwise possesses knowledge of the matter with respect to the waiver request.
8. Signed release of information authorizing persons with knowledge regarding requests to furnish the agency with information pertaining to the waiver, if necessary.

871—41.2(17A) Procedural requirements.

41.2(1) The department should acknowledge a request upon receipt. Within 30 days after receipt of a request for waiver of an administrative rule, the agency verifies that the requester has provided a copy to anyone who is required to receive one by provision of law. The agency may also require the requester to send a copy of the request to other persons who would have an interest in the subject matter.

41.2(2) The agency grants or denies a request for waiver of all or a portion of a rule as soon as practical. This will be done within 120 days of its receipt, unless requester agrees to a later date. However, if a waiver request has been filed in a contested case proceeding, the agency shall grant or deny the request no later than the time at which the final decision in that contested case is issued. Failure of the agency to grant or deny such a request within the required time period is a denial of that request by the agency. If the request for waiver relates to a time requirement of an administrative rule, the request must be received before the time specified in the rule has expired. Within seven days of its issuance, any response issued under this rule shall be transmitted, normally by depositing it in the mail, to the requester or the person to whom the response pertains and to any other person entitled to such notice by any provision of law.

871—41.3(17A) Criteria for waiver.

41.3(1) The director of the workforce development department decides whether circumstances justify the granting of a waiver, given relevant facts. The requester assumes the burden of persuasion involving a request for waiver of an administrative rule. The requester must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person for whom the waiver is requested; the waiver of the rule on the basis of the particular circumstances relevant to that specified person would be consistent with public interest; 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 the waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

41.3(2) The agency will deny a request for waiver of an administrative rule if the request waives any statute in whole or part. The agency should deny any request if it does not comply with the provisions of this rule. The agency may grant waiver of a rule if it finds that application of all or a portion of the rule to the circumstances of the specified person would not, to any extent, advance or

serve any purposes of the rule. The agency will deny a request unless there are exceptional circumstances justifying an exception to the general application of the rule in otherwise similar circumstances. A waiver will be denied if the material facts presented in the request are not true or material facts have been withheld. The agency may request additional information from the requesting party relative to the application and surrounding circumstances.

871—41.4(17A) Public inspection. All waiver requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at Workforce Development Department, 1000 East Grand Avenue, Des Moines, Iowa. Identifying information concerning individuals as unemployment benefit claimants and taxpayers and other identifying information may be withheld by the agency in order to protect the confidentiality of parties as required by Iowa Code chapter 96.

These rules are intended to implement Iowa Code chapter 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 42
"Public Records and Fair Information Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 22.11
State or federal law(s) implemented by the rulemaking: Iowa Code section 22.11

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 9 a.m.	Microsoft Teams Join the meeting now Meeting ID: 226 075 875 966 Passcode: HP7XHC Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 367 660 289#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Workforce Development no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rebecca Stonawski
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: rebecca.stonawski@iwd.iowa.gov

Purpose and Summary

This is the Department's adoption of the rules of the Governor's Task Force on Uniform Rules of Agency Procedure related to public records and fair information practices.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The general public will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public 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:

None.

- Qualitative description of impact:

None.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

None.

- Anticipated effect on state revenues:

None.

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:

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:

Not applicable.

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. Rescind 871—Chapter 42 and adopt the following **new** chapter in lieu thereof:

CHAPTER 42
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of workforce development 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.

871—42.1(22,84A) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the Department of Workforce Development".

"Person" means an individual, corporation, governmental entity, estate, trust, partnership, association, or any other legal entity.

"Personally identifiable information." In lieu of the words "an individual in a record that identifies the individual and that is contained in a record system", insert "a person in a record that identifies the person and that is contained in a record system".

"Record system." In lieu of the words "an individual, number, symbol, or other unique retriever assigned to an individual", insert "a person, number, symbol or other unique retriever assigned to the person".

871—42.3(22,84A) Request for access to records.

42.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "director". Also, in lieu of the words "(insert agency name and address)", insert "Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319".

42.3(2) *Office hours.* In lieu of the words "(insert customary office 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".

42.3(4) *Response to requests.* In lieu of the words "X.4", insert "42.4(22,84A)".

42.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour".

871—42.4(22,84A) Access to confidential records. In lieu of the words "rule X.3", insert "rule 42.3(22,84A)".

871—42.6(22,84A) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319".

871—42.7(22,84A) Consent to disclosure by the subject of a confidential record. Remove the parentheses around "(and, where applicable, the time period during which the record may be disclosed)".

871—42.9(22,84A) Disclosure without the consent of the subject.

42.9(1) An open record is routinely disclosed without the consent of the subject.

42.9(2) To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

a. For a routine use as defined in rule 871—42.10(22,84A).

b. To another governmental agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such governmental agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

c. To the legislative services agency under Iowa Code section 2A.3.

d. Disclosure in the course of employee disciplinary proceedings.

e. In response to a court order or subpoena.

f. To the citizens' aide under Iowa Code section 2C.9(3).

871—42.10(22,84A) Routine use.

42.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject, for a purpose that is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

42.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, and agent, or on the custodian's own initiative, determine what constitutes legitimate need to use a confidential record.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections, appeals, and licensing for matters in which it is performing services or functions on behalf of the agency.

d. Disclosure to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

871—42.11(22,84A) Release to a subject.

42.11(1) The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 871—42.6(22,84A). However, the agency will not release the following records to the subject:

a. The identity of a person providing information to the agency when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report should be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

42.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

871—42.12(22,84A) Availability of records.

42.12(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by law or rule.

42.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Labor market records made available to the agency under an agreement with the United States Department of Labor, Bureau of Labor Statistics, and withheld from public inspection pursuant to 29 Code of Federal Regulations 70 dated July 1, 1987.

b. County economic development survey records made available to the agency under an agreement with the department of workforce development, and withheld from public inspection pursuant to Iowa Code section 96.11(7).

c. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

d. Tax records made available to the agency pursuant to Iowa Code sections 422.20 and 422.72.

e. Records that are exempt from disclosure under Iowa Code section 22.7.

f. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

g. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) *"d."*

h. Those portions of the agency's staff manuals, instructions or other statements issued that set forth criteria or guidelines to be used by the agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement

of cases, when disclosure of these statements would, pursuant to Iowa Code sections 17A.2 and 17A.3:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

i. Records that constitute attorney work product, attorney-client communications, or that are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

j. Unemployment insurance division tax and claim records pursuant to Iowa Code section 96.11(6) unless the records become part of the record in a hearing before an administrative law judge in a contested case pursuant to Iowa Code chapter 96.

42.12(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 871—42.4(22,84A). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 42.4(3).

871—42.13(22,84A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 871—42.1(22,84A). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

42.13(1) The record systems maintained by the agency are:

a. Labor market records. These records are collected from employing units under an agreement with the United States Department of Labor, Bureau of Labor Statistics, for the purposes of analyzing and distributing general labor market information including current employment statistics, employment by occupation statistics, local area unemployment statistics, wage and hour statistics, and permanent mass layoff and plant closing statistics. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

b. County economic development survey records. These records are collected from employing units and individuals under an agreement with the department of workforce development, for the purposes of providing local economic development groups with statistical information on the number and characteristics of individuals available for employment within a county as well as providing employee wage by occupation and benefit information. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

c. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11). Some of these records are stored in an automated data processing system and may be retrieved by a personal identifier.

d. Other groups of records routinely available for public inspection. This paragraph describes groups of records maintained by the agency other than in a record system as defined in rule 871—42.1(22,84A):

(1) Rulemaking. Rulemaking records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(2) Committee records. Agendas, minutes, and materials presented to the department of workforce development coordinating committee are available from the custodian, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5(4). Coordinating committee records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code sections 21.3 and 84A.2(4). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, brochures, etc., are available at the administrative office of the agency. These may contain information about persons, including agency staff or members of agency committees. These records are not stored on an automated data processing system and may not be retrieved by a personal identifier.

(4) Statistical reports. Periodic reports of labor market information are available from the agency. Statistical reports do not contain information about persons.

(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraph 42.12(2)*"g."* These records may contain information about a person collected under the authority of Iowa Code section 84A.1.

(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(7) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the administrative office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the custodian of the record, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals do not contain information about persons.

(8) All other records that are not exempted from disclosure by law.

42.13(2) All data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

871—42.14(22,84A) Applicability. This chapter does not:

1. Require the agency to index or retrieve records that contain information about persons by that person's name or other personal identifier.

2. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency that are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings are governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 43
"Petitions for Rulemaking"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 84A and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 84A and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 9:30 a.m.	Microsoft Teams Join the meeting now Meeting ID: 278 082 236 697 Passcode: gvqDfq Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 449 351 964#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Workforce Development no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rebecca Stonawski
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: rebecca.stonawski@iwd.iowa.gov

Purpose and Summary

The proposed chapter provides the Department's rules on petitions for rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The general public will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public 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:

None.

- Qualitative description of impact:

None.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

None.

- Anticipated effect on state revenues:

None.

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:

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:

This chapter provides the Department's rules on petitions for rulemaking.

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. Rescind 871—Chapter 43 and adopt the following **new** chapter in lieu thereof:

CHAPTER 43
PETITIONS FOR RULEMAKING

871—43.1(17A,84A) Petition for rulemaking. Any person may file a petition for rulemaking with the department of workforce development at 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency should provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be emailed, typewritten, or legibly handwritten in ink, and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULEMAKING

The petition should provide the following information:

1. A statement of the specific rulemaking action sought by the petitioner, including the text or a summary of the contents of the proposed rule or amendment to a rule, and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of the petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the proposed action that is the subject of the petition.
6. Any request by the petitioner for a meeting provided for by rule 871—43.4(17A,84A).

43.1(1) The petition should be dated and signed by the petitioner or the petitioner's representative. It should also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

43.1(2) The agency may deny a petition because it does not substantially conform to the required form.

871—43.2(17A,84A) Briefs. The petitioner may attach a brief to the petition in support of the action. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

871—43.3(17A,84A) Inquiries. Inquiries concerning the status of a petition for rulemaking may be made to Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

871—43.4(17A,84A) Agency consideration.

43.4(1) Within 14 days after the filing of a petition, the agency should submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the agency should schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Any person may submit comments on the substance of the petition.

43.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency should in writing, deny the petition and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rulemaking proceedings on the subject of the petition. The petitioner is deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to the petitioner.

43.4(3) Denial of the petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 84A.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapter 44
"Declaratory Orders"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 84A and 17A
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 84A and 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 10 a.m.	Microsoft Teams Join the meeting now Meeting ID: 289 208 802 199 Passcode: G9k8zc Dial in by phone +1 469.998.6043 Find a local number Phone conference ID: 525 008 60#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Workforce Development no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Rebecca Stonawski
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Email: rebecca.stonawski@iwd.iowa.gov

Purpose and Summary

This proposed chapter provides direction on declaratory orders for the Department.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The general public will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public 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:

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:

None.

- Anticipated effect on state revenues:

None.

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:

Not applicable.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

This chapter provides the foundational rules for declaratory orders by the Department.

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. Rescind 871—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44
DECLARATORY ORDERS

871—44.1(17A) Petition for declaratory order. Any person may file a petition with the agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of workforce development at 1000 East Grand Avenue, Des Moines, Iowa 50319. If the petition deals with a statute within the express jurisdiction of one of the divisions, it shall be forwarded to that division for determination. Service of petitions for district court review of all agency decisions, rulings and actions (where such service is required by Iowa Code chapter 17A) will be made by the agency. Declaratory orders made by the divisions are considered final rulings for the agency with regard to Iowa Code chapter 17A.

A petition is deemed filed when it is received by that office. The agency shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency with an extra

copy for this purpose. The petition should be emailed, typewritten or legibly handwritten in ink and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition should provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 871—44.4(17A,84A).

The petition should be dated and signed by the petitioner or the petitioner's representative. It should also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

871—44.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the agency should give notice of the petition to all persons not served by the petitioner pursuant to rule 871—44.6(17A) to whom notice is required by any provision of law. The agency may also give notice to any other persons.

871—44.3(17A) Intervention.

44.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order are allowed to intervene in a proceeding for a declaratory order.

44.3(2) Any person who files a petition for intervention prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of workforce development.

44.3(3) A petition for intervention should be filed at 1000 East Grand Avenue, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The agency will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention should be typewritten or legibly handwritten in ink and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention should provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition should be dated and signed by the intervenor or the intervenor's representative. It should also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

871—44.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of workforce development may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

871—44.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

871—44.6(17A) Service and filing of petitions and other papers.

44.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order should be served upon each of the parties of record to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

44.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the director of the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

44.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 871—26.11(17A,96).

871—44.7(17A) Consideration. Upon request by petitioner, the department of workforce development schedules a brief and informal meeting between the original petitioner, all intervenors and a member of the staff of the department of workforce development to discuss the questions raised. The agency may solicit comments from any person on the questions raised, and any person may submit comments.

871—44.8(17A) Action on petition.

44.8(1) After receipt of a petition or a declaratory order, the director of the department of workforce development or designee takes action on the petition as required by Iowa Code section 17A.9(5).

44.8(2) The date an order is issued or refused is defined in rule 877—26.2(17A,96).

871—44.9(17A) Refusal to issue order.

44.9(1) The department of workforce development will not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department of workforce development to issue an order.

c. The agency does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is instead based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a previously made agency decision.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that petitioner.

j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

44.9(2) A refusal to issue a declaratory order will indicate the specific grounds for the refusal and constitutes final agency action on the petition.

44.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue a ruling.

871—44.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order contains the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

871—44.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order are mailed promptly to the original petitioner and all intervenors.

871—44.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of workforce development, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and

is not binding on the department of workforce development. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

ARC 8205C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rulemaking related to collection of debt

The Department of Health and Human Services hereby rescinds Chapter 10, "Collection of Delinquent Debts," and Chapter 11, "Collection of Public Assistance Debts," and adopts a new Chapter 11, "Collection of Debt," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 421.65.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 217.34, 234.12, 239B.14 and 249A.5.

Purpose and Summary

Chapter 11 defines debt offset procedures for the legacy Department of Public Health (641—Chapter 179, editorially transferred to 441—Chapter 10) and Department of Human Services (441—Chapter 11). Debt offset is intended to recoup overpayment or other debt owed to the Department. Impacted Department programs include but are not limited to Supplemental Nutrition Assistance Program, Family Investment Program, Medicaid, PROMISE JOBS, and Child Care Assistance.

Through the debt offset program, money is collected from individuals or entities having been identified as receiving an overpayment or otherwise owing funds to the Department. Repayment may include withholding part or all of federal or state tax refunds or other state payments owed to the debtor. Money collected is credited back to the program(s) making the claim.

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 7365C**. A public hearing was held on the following date(s):

- February 14, 2024
- February 26, 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 July 23, 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 October 9, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **441—Chapter 10**.

ITEM 2. Rescind 441—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
COLLECTION OF DEBT

441—11.1(217) Definitions.

"Current" means that amount which is due and owing within the previous 12 months from the date of submission to the department of administrative services or that amount which is due and owing from the date the repayment agreement or court order is implemented, if less than 12 months, before the date of submission to the department of administrative services.

"Current repayment" means that payment of the cumulative sum due and owing in accordance with a repayment agreement or court order for the preceding 12 months or the date of the order or agreement if the order or agreement is more recent.

"Debtor" means a current or former recipient of public assistance that has been determined by the department to be responsible for the repayment of a particular debt. For the Supplemental Nutrition Assistance Program (SNAP), "debtor" shall include all adult members of the SNAP household participating at the time the SNAP overpayment or program violation occurred and shall include nonrecipients found guilty of violating SNAP rules by committing an act such as, but not limited to, trafficking. For child care assistance, "debtor" may include the current or former provider or current or former recipient of child care assistance. For Medicaid, "debtor" shall include any current or former Medicaid member, or the parents of a current or former Medicaid member who was under the age of 21 when the parents completed the application and had responsibility for reporting changes, who received services or benefits as a result of client or agency error or administrative overpayment or who owes a debt of unpaid premium payments for medical assistance.

"Public assistance" means family investment program, SNAP, Medicaid, state supplementary assistance, PROMISE JOBS, child care assistance, refugee cash assistance, and hawki program.

"Repayment agreement" means an agreement entered into voluntarily between the department and the debtor for the repayment of debts and detailed on a form issued by the department.

"Written notification" means the notification sent to a debtor by the department on a form issued by the department.

441—11.2(217) Establishment of claim.

11.2(1) *Accounts.* The department will maintain an account for each debt that has occurred containing the following information:

a. A debtor name and account number.
b. Program in which the debt occurred.
c. Date the debt was discovered.
d. Inclusive dates of the debt.

e. Total dollar amount of each debt.

f. Primary cause of the debt.

g. Any transaction applied to this debt.

11.2(2) *Notice of debt.* A claim is established when the first written notice of the debt is issued to the household.

11.2(3) *Change in debt.* An additional written notification of debt will be issued if a change occurs in the amount or period of the debt.

11.2(4) *Collection action.* No collection action will be initiated on:

a. A debt for which no notice of debt has been issued to the household.

b. A debt that is in appeal status.

c. A debt that is in suspended status due to an exception to policy.

441—11.3(217) Application of payment. Payment will be applied only to debts subject to collection pursuant to subrule 11.2(4).

11.3(1) *Application of payment to a single program area.*

a. If there is more than one debt in a program, payment will be applied:

(1) First to all debts that have an agreement in chronological order of discovery, and

(2) Then to debts that do not have an agreement in chronological order of discovery until all debts have been paid in full or the full payment amount has been exhausted.

b. For SNAP, payment will be applied first to all debts with an agreement and then to debts without an agreement. Within those two groupings, payment will be applied in the following order:

(1) First to state-only debts in chronological order of discovery,

(2) Then to intentional program violation (IPV) debts in chronological order of discovery,

(3) Then to inadvertent household error (IHE) debts in chronological order of discovery, and

(4) Then to agency error debts in chronological order of discovery.

11.3(2) *Application of payment to multiple program areas.* If there are debts in more than one program area of public assistance, payments received will be applied to those program areas as indicated by the mode of repayment (SNAP benefits, FIP benefits) or as indicated by the client at the time of payment.

11.3(3) *Application of undesignated cash payment.* If an undesignated cash payment is received, it will be applied to each program area proportionally based on the cumulative balance of all debts in all program areas combined.

441—11.4(217) Setoff against state income tax refund, rebate, or other state payments, including, for example, state employee wages.

11.4(1) *Criteria for setoff.*

a. A claim against a debtor may be made by the department for public assistance debts when:

(1) A debtor has failed to negotiate a repayment agreement for that program area of public assistance, or

(2) A repayment agreement is not current, and

(3) The cumulative balance of the applicable debts in 11.4(1)*"a"*(1) and (2) exceeds $50.

b. A claim against a debtor will not be made by the department for debts when:

(1) The debt is in suspended status due to an exception to policy or is in an appeal status, or

(2) The debt is being recovered through grant or benefit reduction.

11.4(2) *Frequency of submission.* The department will submit to the department of administrative services twice each month a list of those debtors who have a debt meeting the criteria in subrule 11.4(1).

11.4(3) *Pre-setoff notice.* The department will mail written notification to a debtor to inform the debtor of the amount the department intends to claim and apply to debts in each program when:

a. The department is notified by the department of administrative services that the debtor is entitled to a state income tax refund, rebate, or other state payment;

b. The department makes claim against the debtor.

11.4(4) *Method for division of joint payments.* When either spouse wishes to request a division of a jointly or commonly owned right to payment, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, the spouse's proportionate share of a jointly or commonly owned right to payment, as determined by the department of administrative services, shall be released by the department of administrative services unless:

a. Other claims are made on that portion of the jointly or commonly owned right to payment, or

b. That spouse was also a member of the same household and the spouse's income and resources were or should have been considered in the calculation of public assistance.

11.4(5) *Appeal rights.* When a debtor wishes to contest the claim of the department, a written request shall be submitted to the department within 15 days after the written notification is mailed. When the request is received within the 15-day limit, a hearing will be granted pursuant to rules in 441—Chapter 7.

a. If the department is upheld in the final decision, the setoff process shall continue and the refund, rebate, or other state payment will be applied to the appropriate delinquent debts.

b. If the department is reversed in the final decision, the debtor's refund, rebate, or other state payment will be released to the debtor by the department of administrative services.

11.4(6) *Debt setoff.* If the department has not received a request for an appeal hearing or a request for division of a jointly or commonly owned right to payment within 15 days after the date the written notification is mailed, the department will notify a debtor of the final decision regarding the claim by mail.

11.4(7) *Application of setoff.* The department will apply any setoff received from the department of administrative services as a result of this rule to the debtor's debts as indicated on the written notification mailed to the debtor and in accordance with rule 441—11.3(217).

Any amount remaining after the setoff shall be released back to the individual.

441—11.5(234) Setoff against federal income tax refund or other federal payments, including, for example, federal employee wages.

11.5(1) *Criteria for setoff.*

a. Debtors not participating in SNAP shall be subject to collection action through the treasury offset program (TOP) which includes, but is not limited to, federal salary offset and federal tax refund offset.

(1) Debtors shall be referred to TOP if they are delinquent in repaying their SNAP debt and there is a claim or combination of claims with an unpaid balance that exceeds $25.

(2) No claim that is less than three months old or more than ten years old as of January 31 of the offset year shall be referred. EXCEPTION: Claims that have had a final judgment entered are not subject to the ten-year time limit.

(3) Debtors are delinquent in repaying their SNAP debt if:

1. A repayment agreement has not been signed and 120 days have elapsed since the due date of the demand letter as defined in 441—subrule 65.21(4) minus any days the claim was not subject to collection action because of an appeal.

2. A repayment agreement has been signed but the debtor has failed to make the agreed-upon payments and has failed to make up the missed payments. The debtor shall be referred to TOP when 120 days have elapsed since the first of the month following the month that the debtor failed to make the agreed-upon payment and has not subsequently made up the missed payment.

b. A claim against an individual will not be referred to TOP by the department of inspections, appeals, and licensing (DIAL) for debts when:

(1) The debt is in suspended status due to an exception to policy or is in an appeal status, or

(2) The debt is being recovered through benefit reduction.

11.5(2) *Setoff under TOP.* DIAL shall, by December 1 of each year, submit a notification of liability for delinquent claims to the Department of the Treasury.

11.5(3) *Pre-setoff notice.* DIAL shall notify a debtor identifying the amount the department intends to refer to TOP for offset.

11.5(4) *Offset fee.* For each offset that the Department of the Treasury effects against an individual referred to TOP, Treasury will charge the individual a fee.

11.5(5) *Appeal rights.* When an individual wishes to contest the delinquent status of a claim as identified by DIAL, a written request shall be submitted to DIAL within 60 days of the date of the pre-offset notice. When the request is received within the 60-day limit, a review shall be granted.

DIAL shall determine if the claim is past due and legally enforceable and shall notify the individual in writing of the decision.

11.5(6) *Application of setoff.* DIAL shall apply any setoff received as a result of this rule to the individual's SNAP debts.

Any amount remaining after the setoff shall be released back to the individual.

These rules are intended to implement Iowa Code sections 217.34, 234.12, 239B.14, and 249A.5.

[Filed 8/9/24, effective 10/9/24]
[Published 9/4/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/24.

ARC 8207C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to administration

The Director of the Workforce Development Department hereby rescinds Chapter 1, "Administration," 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 chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Chapter 1 is the foundational Iowa Administrative Code chapter for the Department. It provides the mission and the overall general organizational structure for the organization.

As part of the Department's review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicates statutory language and uses restrictive terms. This text is removed from the chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 10, 2024, as **ARC 8130C**. A public hearing was held on the following date(s):

- July 30, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Department on August 14, 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 October 9, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 871—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ADMINISTRATION

871—1.1(84A) Mission and overall organization.

1.1(1) *Mission.* We power Iowa's possibilities by connecting workers to opportunities and employers to workforce solutions.

1.1(2) *Vision.* To create, enable and sustain the most future ready workforce in the nation.

1.1(3) *Overall organization.* The chief executive officer of the department is the director of the department of workforce development who shall be appointed by the governor with the approval of two-thirds of the members of the senate and is responsible directly to the governor.

This rule is intended to implement Iowa Code chapter 84A.

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ARC 8206C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to customer and administrative services division

The Director of the Workforce Development Department hereby rescinds Chapter 2, "Customer and Administrative Services Division," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapters 17A and 84A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 84A.

Purpose and Summary

Chapter 2 originally provided the mission and organizational structure for the Customer Services Bureau; the Financial Management Bureau; the Business Management Bureau; the Special Projects, Premises, and Forms Management Bureau; the Budget and Reporting Bureau; the Employee Services Bureau; and Planning and Information Services. Because this organizational structure has significantly changed and needs to be updated, Chapter 2 is being rescinded.

As part of the Department's review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicates statutory language and uses restrictive terms. This text is removed from the chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 10, 2024, as **ARC 8131C**. A public hearing was held on the following date(s):

- July 30, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Department on August 14, 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 October 9, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **871—Chapter 2**.

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[Published 9/4/24]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/24.

ARC 8208C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Adopted and Filed

Rulemaking related to new Iowan centers

The Director of the Workforce Development Department hereby rescinds Chapter 14, "New Iowan Centers," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Chapter 14 was originally created to provide administrative rules for New Iowan Centers. However, this program no longer exists. This rulemaking removes Chapter 14 from the Department's rules.

In addition, as part of the Department's review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicates statutory language and uses restrictive terms. Rescinding this chapter removes the duplicative and restrictive language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 10, 2024, as **ARC 8132C**. A public hearing was held on the following date(s):

- July 30, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Director of the Department on August 14, 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 October 9, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **871—Chapter 14**.

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The Administrative Code Editor provides this informational notice that beginning with the July 10, 2024, issue of the Iowa Administrative Bulletin and the Iowa Administrative Code Supplement, the Legislative Services Agency is transitioning to new document processing software for these publications. Nonsubstantive changes to the style and format of these publications, as well as the Iowa Administrative Code, can be expected as a result of this transition. While the software has been tested extensively, errors resulting from this transition may still occur. To report any errors that may result from this transition, please contact the Publications Editing Office at AdminCode@legis.iowa.gov or 515.281.3355.