IOWA ADMINISTRATIVE BULLETIN

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PUBLIC HEARINGS

PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

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

Schedule for Rulemaking
2023

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
7	**Friday, September 15, 2023**	**October 4, 2023**
8	**Friday, September 29, 2023**	**October 18, 2023**
9	**Friday, October 13, 2023**	**November 1, 2023**

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****

EDUCATION DEPARTMENT[281]

Pathways for academic career and employment program; gap tuition assistance program, ch 25 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.
Workforce training and economic development funds, ch 27 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.
Educational and program standards for children's residential facilities, ch 35 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.
Individual career and academic plan, ch 49 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.
Iowa reading research center, ch 61 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.
Standards for practitioner and administrator preparation programs, rescind ch 77; adopt ch 79 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.
Standards for paraeducator preparation programs, ch 80 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.
Teacher and administrator quality programs, ch 83 IAB 8/23/23 **Regulatory Analysis**	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 12, 2023 9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Operation of environmental protection commission, ch 1 IAB 9/6/23 **Regulatory Analysis**	Wallace State Office Building Des Moines, Iowa Via video/conference call Contact Kelli Book Email: kelli.book@dnr.iowa.gov	September 26, 2023 9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Complaints, audits, enforcement options and administrative penalties, ch 10 IAB 9/6/23 **Regulatory Analysis**	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Kelli Book Email: kelli.book@dnr.iowa.gov	September 26, 2023 10 to 11 a.m.
Tax certification of pollution control or recycling property, ch 11 IAB 9/6/23 **Regulatory Analysis**	Conference Room 5 West Wallace State Office Bldg. Des Moines, Iowa Google Meet: meet.google.com/gar-xeni-bpq?authuser=0&hs=122	September 26, 2023 1 p.m.
Cross-media electronic reporting, ch 15 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Jim McGraw Email: jim.mcgraw@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Compliance, excess emissions, and measurement of emissions, ch 21 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Controlling air pollution, ch 22 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Air emission standards, ch 23 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Operating permits, ch 24 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Certificate of acceptance, ch 27 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Fees, ch 30 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Wendy Walker Email: wendy.walker@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Nonattainment new source review, ch 31 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.
Construction permit requirements for major stationary sources—PSD, ch 33 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	September 28, 2023 9 to 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Animal feeding operations, ch 65 IAB 9/6/23 **Regulatory Analysis**	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Email: AFO@dnr.iowa.gov	September 26, 2023 11 a.m. to 1 p.m.

NATURAL RESOURCE COMMISSION[571]

Operation of natural resource commission, ch 1 IAB 9/6/23 **Regulatory Analysis**	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Kelli Book Email: kelli.book@dnr.iowa.gov	September 26, 2023 9 to 10 a.m.
Conservation education, ch 12 IAB 9/6/23 **Regulatory Analysis**	Conference Room 4W Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Permits and easements for construction and other activities on public lands and waters, ch 13 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Casey Laskowski Email: casey.laskowski@dnr.iowa.gov	September 28, 2023 1 to 2 p.m.
Concessions, ch 14 IAB 9/6/23 **Regulatory Analysis**	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Kim Bohlen Email: kim.bohlen@dnr.iowa.gov	September 26, 2023 12 noon to 1 p.m.
General license regulations, ch 15 IAB 9/6/23 **Regulatory Analysis**	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Docks and other structures on public waters, ch 16 IAB 9/6/23 **Regulatory Analysis**	Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Email: iowa.stateparks@dnr.iowa.gov	September 26, 2023 12 noon to 1 p.m.
Leases and permits, ch 17 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Nathan Schmitz Email: nathan.schmitz@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.
Manufacturer's certificate of origin, ch 20 IAB 9/6/23 **Regulatory Analysis**	Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Agricultural lease program, ch 21 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Nathan Schmitz Email: nathan.schmitz@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Habitat and public access program, ch 22 IAB 9/6/23 **Regulatory Analysis**	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Wildlife habitat promotion with local entities program, ch 23 IAB 9/6/23 **Regulatory Analysis**	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Blufflands protection program and revolving loan fund, ch 24 IAB 9/6/23 **Regulatory Analysis**	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Certification of land as native prairie or wildlife habitat, ch 25 IAB 9/6/23 **Regulatory Analysis**	Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Lands and waters conservation fund program, ch 27 IAB 9/6/23 **Regulatory Analysis**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 12 noon to 1 p.m.
All-terrain vehicle registration revenue grant program, ch 28 IAB 9/6/23 **Regulatory Analysis**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 12 noon to 1 p.m.
Waters cost-share and grant programs, ch 30 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Nate Hoogeveen Email: nate.hoogeveen@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.
Publicly owned lakes watershed program, ch 31 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call us02web.zoom.us/j/82347854378?pwd=d3IvaGg4Ky9MUFVGeURiOW1OSFFEQT09 Meeting ID: 823 4785 4378 Passcode: t%im4H	September 28, 2023 10 a.m.
Resources enhancement and protection program: county, city, private open spaces and conservation education grant programs, ch 33 IAB 9/6/23 **Regulatory Analysis**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Michelle Wilson Email: michelle.wilson@dnr.iowa.gov	September 28, 2023 1 to 2 p.m.
Fish habitat promotion for county conservation boards, ch 35 IAB 9/6/23 **Regulatory Analysis**	Via video/conference call Contact Randy Schultz Email: randy.schultz@dnr.iowa.gov	September 28, 2023 12 noon to 1 p.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

State parks, recreation areas, and state forest camping, ch 61 IAB 9/6/23 **Regulatory Analysis**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Jessica Manken Email: jessica.manken@dnr.iowa.gov	September 26, 2023 12 noon to 1 p.m.
Waterfowl and coot hunting seasons, ch 91 IAB 9/6/23 **Regulatory Analysis**	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.
Deer hunting, ch 106 IAB 9/6/23 **Regulatory Analysis**	Conference Room 3EW Wallace State Office Bldg. Des Moines, Iowa	September 26, 2023 11 a.m. to 1 p.m.

LABOR SERVICES DIVISION[875]

Child labor, amendments to ch 32 IAB 8/23/23 **Regulatory Analysis**	Conference Room 106 150 Des Moines St. Des Moines, Iowa	September 26, 2023 9:30 to 10:30 a.m.
Request for extended inspection interval, 90.6(10) IAB 8/23/23 **Regulatory Analysis**	Conference Room 106 150 Des Moines St. Des Moines, Iowa	September 19, 2023 9:30 to 10 a.m.

REVENUE DEPARTMENT[701]

Settlement authority, rescind ch 3; amend chs 7, 10, 101, 108, 254, 300, 305, 504, 603, 700, 900; adopt ch 19 IAB 8/23/23 **Regulatory Analysis**	Room 430 Hoover State Office Bldg. Des Moines, Iowa Virtual: meet.google.com/kma-gexe-wrk	September 13, 2023 9:30 to 10:30 a.m.

UTILITIES DIVISION[199]

Organization and operation, ch 1 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 26, 2023 9 a.m.
Rulemaking, ch 3 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 4, 2023 9 a.m.
Declaratory orders, ch 4 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 21, 2023 9 a.m.
Procedure for determining the competitiveness of a communications service or facility, rescind ch 5 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 26, 2023 2 p.m.

UTILITIES DIVISION[199](cont'd)

Complaint procedures, ch 6 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 13, 2023 1 p.m.
Practice and procedure, ch 7 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 5, 2023 1:30 p.m.
Civil penalties, rescind ch 8 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 21, 2023 2 p.m.
Interstate natural gas pipelines and underground storage, rescind ch 12 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 20, 2023 2 p.m.
Utility records, ch 18 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 13, 2023 9 a.m.
Regulation of electric cooperatives and municipal electric utilities under Iowa Code chapter 476, ch 27 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 25, 2023 9 a.m.
Nonutility services—recordkeeping and cost allocations, ch 33 IAB 8/9/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 6, 2023 9 a.m.
Nonutility service, ch 34 IAB 8/9/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 6, 2023 10 a.m.
Equipment distribution program, ch 37 IAB 8/23/23 **Regulatory Analysis**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	September 18, 2023 2 p.m.

The following list will be updated as changes occur.

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

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

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

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]
CAPITAL INVESTMENT BOARD, IOWA[123]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
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  Banking Division[187]
  Credit Union Division[189]
  Insurance Division[191]
  Professional Licensing and Regulation Bureau[193]
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    Architectural Examining Board[193B]
    Engineering and Land Surveying Examining Board[193C]
    Landscape Architectural Examining Board[193D]
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  Employment Appeal Board[486]
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  Racing and Gaming Commission[491]
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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 1
"Operation of Environmental Protection Commission"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3(1)"a" and 455A.6
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.3

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held in person and via conference call as follows. Persons who wish to attend the conference call should contact Kelli Book 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 Kelli Book prior to the hearing to facilitate an orderly hearing.

September 26, 2023 9 to 10 a.m.	Wallace State Office Building Des Moines, Iowa 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:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.210.3408
Email: kelli.book@dnr.iowa.gov

Purpose and Summary

This proposed rulemaking governs the conduct and business operations of the Environmental Protection Commission (Commission). The Commission is required by law to adopt rules describing its procedures and operations pursuant to Iowa Code section 17A.3. This proposed rulemaking reduces and consolidates the Commission regulations by rescinding outdated and redundant provisions.

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. However, to the extent there are compliance costs, they would be borne by members of the Commission.

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

Members of the Commission and the citizens of Iowa would benefit from this proposed rulemaking. The rulemaking dictates the Commission's operational procedure, especially around its regular business meetings. This provides the public with knowledge and confidence to access those meetings and engage in local government.

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 proposed rulemaking does not have an economic impact or cost associated with it.

- Qualitative description of impact:

This proposed rulemaking was made easier to read and understand by removing unnecessary provisions. Additionally, provisions were deleted that were duplicative of statute. The proposed rulemaking has been streamlined as much as possible, providing regulation of the conduct and business operations of the Commission more succinctly and clearly.

3. Costs to the State:

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

This proposed rulemaking does not have any direct costs to the Department or any other agency.

- Anticipated effect on state revenues:

This 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:

There are no costs associated with this proposed rulemaking. However, the benefit of the proposed rulemaking is to provide a more succinct overview of the Commission's structure and business operations.

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:

There were no alternative methods seriously considered by the Commission.

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

The Commission is required by law to adopt rules describing its procedure and operation pursuant to Iowa Code section 17A.3.

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 567—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
GENERAL

CHAPTER 1
OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

567—1.1(17A,455A) Scope. This chapter governs the conduct of business by the environmental protection commission. Rulemaking proceedings and contested case proceedings are governed by other departmental rules.

567—1.2(17A,455A) Meeting location and notification.

1.2(1) *Time of meetings.* The commission generally meets monthly, but is required to meet at least quarterly. The director, chairperson, or a majority of commissioners may establish meetings.

1.2(2) *Notification of meetings.* The director will provide public notice of all meeting dates, locations, and agendas.

a. Notice of meetings is given by posting the agenda. The agenda lists the time, date, location, and topics to be discussed at the meeting. The agenda may include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

b. The agenda for each meeting will be posted at the Henry A. Wallace Building and on the department's website. The agenda will be provided to anyone who files a request with the department. The final agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. Any additions to the agenda after posting and distribution will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt additions to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda additions, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

c. Written materials provided to the commission with the agenda may be examined by the public. Copies of the materials may be distributed at the discretion of the director. The director may require a fee to cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.

567—1.3(17A,455A) Attendance and participation by the public.

1.3(1) *Attendance.* All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

1.3(2) *Participation.*

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

b. Items not on agenda. The commission will not act on a matter not on the agenda, except in accordance with paragraph 1.2(2)*"b."* Persons who wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference and may exclude those persons who fail to comply with that order.

567—1.4(17A,455A) Quorum and voting requirements.

1.4(1) *Quorum.* Five or more commissioners present at a meeting constitute a quorum.

1.4(2) *Voting.*

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

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

c. Voting requirements to go into closed session. Notwithstanding paragraph 1.4(2)*"a"* or 1.4(2)*"b,"* a vote to go into closed session shall require the concurrence of six or more members of the commission or the concurrence of all members present if fewer than six members are present.

567—1.5(17A,455A) Conduct of meeting.

1.5(1) *General.* Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting will be by voice or by roll call. Voting will be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson will announce the result of the vote.

1.5(2) *Voice votes.* All commission members present should respond when a voice vote is taken.

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

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

1.5(3) *Provision of information.* The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

567—1.6(17A,455A) Minutes, transcripts, and recordings of meetings.

1.6(1) *Audio recordings.* The director may record each meeting and shall record each closed session.

1.6(2) *Minutes.* The director will keep minutes of each meeting. Minutes will be reviewed and approved by the commission.

567—1.7(17A,455A) Officers and duties.

1.7(1) *Officers.* The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.7(2) *Duties.* The chairperson will preside at meetings and will exercise the powers conferred upon the chairperson. The vice chairperson will perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary will make recommendations to the commission on approval or revision of the minutes and act as parliamentarian.

1.7(3) *Elections.* Officers will be elected annually during May.

1.7(4) *Succession.*

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

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

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

These rules are intended to implement Iowa Code sections 17A.3(1)*"a"* and 455A.6.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 10
"Complaints, Audits, Enforcement Options and Administrative Penalties"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3(1), 455B.105(3), 455B.109(1), and 455K.12

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 455B, and 455K

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held in person and via conference call as follows. Persons who wish to attend the conference call should contact Kelli Book 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 Kelli Book prior to the hearing to facilitate an orderly hearing.

September 26, 2023 10 to 11 a.m.	Wallace State Office Building Des Moines, Iowa Via video/conference call

Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the and advise of specific needs.

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:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.210.3408
Email: kelli.book@dnr.iowa.gov

Purpose and Summary

This proposed Chapter 10 consolidates regulations related to environmental inspections, compliance, and enforcement. Those regulations are currently scattered across 567—Chapters 3, 10, 12, and 17 of the Environmental Protection Commission's (Commission's) rules.

In more detail, the proposed Chapter 10 will:

- Provide guidelines for submitting and responding to complaints;
- Provide the procedures for self-disclosures of environmental violations, which may result in immunity from administrative penalties;
- Identify the Department's compliance and enforcement framework; and
- Provide the policies and procedures for the assessment of administrative penalties.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated entities will bear the costs of the proposed rulemaking. However, the majority of costs associated with the proposed Chapter 10 originate with statute, not with this rulemaking. For example, the Department is required by law to enforce the state's environmental laws and to take enforcement actions against violations. It is further charged with promulgating rules around penalties, including, specifically, a range, schedule, and assessment process. Costs for self-audits are also found in statute, but audits are not mandatory, so entities can choose to avoid those costs at their discretion.

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

Citizens of Iowa will benefit from the proposed rulemaking. Environmental laws exist to protect human health and Iowa's natural resources.

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 either no costs or minimal costs to the public or regulated entities associated with this proposed rulemaking. The majority of the chapter is procedural and descriptive in nature. Other portions, such as self-audits, are optional, but the costs are minimal, and it is in a regulated entity's best interest to comply.

- Qualitative description of impact:

This proposed rulemaking provides transparency, consistency, and certainty to the regulated entities regarding compliance and enforcement.

3. Costs to the State:

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

The costs of this proposed rulemaking mostly originate in statute. The Department is required by law to enforce the environmental laws of this state, which include conducting inspections, responding to complaints, assessing administrative penalties when there are violations, and processing self-audit reports.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues from this proposed new chapter. While significant edits have been made pursuant to Executive Order 10, the underlying legal framework, especially around penalties, is status quo.

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

Inaction is not possible, or in the case of self-audits, is not advisable. Chapter 10 is mostly required by state law. Iowa Code requires the Department to enforce environmental laws and to conduct inspections and assess penalties for noncompliance. Self-audits are not mandatory, but there are legal standards that must be met to qualify for immunity.

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

Since the majority of Chapter 10 is required by state statute, other methods do not exist. The Department is required by law to enforce Iowa's environmental laws and federally delegated programs, which include conducting inspections and assessing penalties for noncompliance. Consistent with Executive Order 10, the Department is proposing to incorporate four chapters into one to make the administrative code more concise and better organized. The Department also is proposing to revise the rules for length and clarity.

6. Alternative methods considered by the agency:

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

Since these rules are mandated by state law and are narrowly tailored to meet statutory requirements, no alternative methods were seriously considered by the agency.

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

These rules are mandated by state law and are narrowly tailored to meet statutory 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?

No impact on small business is expected. These rules are mandated by state law and are narrowly tailored to statutory requirements. Additionally, the Department is proposing to strategically merge four chapters into one to make the administrative code more concise and better organized. The Department also is proposing to revise the rules for length and clarity. While significant edits have been made pursuant to Executive Order 10, the underlying legal framework, especially concerning penalties, is status quo.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
COMPLAINTS, AUDITS, ENFORCEMENT OPTIONS AND ADMINISTRATIVE PENALTIES

PART I
COMPLAINTS AND INVESTIGATIONS

567—10.1(455B) Complaints and investigations. The process to submit a complaint and to investigate a complaint is as follows:

10.1(1) *Submission requirements and investigations.* Complaints concerning alleged violations of departmental statutes or rules should be submitted to the appropriate department office, and the nature of the complaint must be summarized in a concise manner. Complaints will be investigated by the department if it appears that an investigation is needed to ensure compliance with applicable departmental statutes or rules.

10.1(2) *Known source of complaints.* In the case of a known complainant, the appropriate department office shall notify the complainant of the investigation results or of its decision not to investigate the complaint.

10.1(3) *Anonymous complaints.* Complaints may be submitted by anonymous sources and will be handled as discretionary investigations. In these cases, the department will not be able to notify the complainants of the results of the investigations.

This rule is intended to implement Iowa Code sections 455B.105(3) and 17A.3(1).

PART II
ENVIRONMENTAL AUDITS

567—10.2(455K) Environmental audits. This part sets forth rules governing voluntary disclosure of environmental noncompliance discovered as a result of an environmental self-audit conducted by or on behalf of a facility owner or operator under the provisions of Iowa Code chapter 455K.

567—10.3(455K) Notice of audit.

10.3(1) If a notice of audit is provided to the department, it must be submitted in writing and include the following information:

a. The name and location (address and city) of the facility to be audited;

b. The description of the facility or portion of the facility, activity, operation or management system to be audited, including applicable department permits or registration numbers;

c. The anticipated audit initiation date (day, month, and year);

d. The general scope of audit, with sufficient detail to determine if discovered violations would be included. If the scope of the audit changes before it is completed, an amended notice shall be submitted promptly;

e. The names of the persons conducting the audit; and

f. The anticipated audit completion date, not to exceed six calendar months.

10.3(2) The department will provide written acknowledgment of receipt for notices of audit which will include an assigned identification number.

567—10.4(455K) Request for extension. If notice of audit is given to the department, the audit must be completed within a reasonable time, not to exceed six calendar months from the date the notice of audit is received by the department unless a written request for extension has been filed with and granted by the department.

10.4(1) A request for extension must be filed in writing with the department at least 30 calendar days prior to expiration of the initial six-month period and provide sufficient information for the department to determine whether reasonable grounds exist to grant an extension.

10.4(2) The department will provide written determination either granting or denying a request for extension within 15 calendar days of receipt.

567—10.5(455K) Disclosure of violation. An owner or operator wishing to take advantage of the immunity provisions of Iowa Code chapter 455K must make a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through an environmental audit.

10.5(1) A disclosure of violation must be sent to the department in writing and include the following information:

a. Reference to the date of the relevant notice of audit and assigned identification number;

b. Time of initiation and completion of the audit, if applicable;

c. The names of the person or persons conducting the audit;

d. Affirmative assertion that a violation has been discovered;

e. Description of the violation and reason for believing a violation exists;

f. Date of discovery of the violation and interim measures, if applicable, to abate the violation;

g. Duration of the violation if it can be determined; and

h. The status and schedule of proposed final corrective measures, if applicable.

10.5(2) The department will provide written acknowledgement of receipt of a disclosure of violation, which will include either concurrence or rejection of the proposed final corrective measures and schedule.

567—10.6(455K) Public information. A notice of audit, request for extension, and disclosure of violation documents are considered public information. Copies of the environmental audit report should not be submitted to the department.

These rules are intended to implement Iowa Code chapter 455K.

PART III
ENFORCEMENT OPTIONS

567—10.7(455B) Enforcement options. In addition to administrative and civil actions for monetary penalty, the following enforcement options are available to the department to obtain information and seek compliance.

10.7(1) *Informal meeting.* Department staff may attempt to resolve a potential violation or obtain additional information with an informal meeting. The discussion will usually focus on corrective actions to be taken, and in most instances, only department staff and the facility representative will be present.

10.7(2) *Letter of inquiry (LOI).* The purpose of an LOI is to allow the regulated entity the opportunity to provide information that would be helpful for a determination of whether a violation has occurred.

10.7(3) *Letter of noncompliance (LNC).* An LNC may be used when no environmental harm or threat to human health or safety has occurred or is imminent, the regulated entity is not a repeat offender, the corrective action is not deemed an emergency, or the violation is considered insignificant. The letter is intended to provide the regulated entity with an opportunity to correct the identified deficiencies prior to further enforcement activity. In an LNC, the department may suggest remedial measures, set a date for returning to compliance, or request a response from the regulated entity within a specific time period as to how the identified problems will be resolved.

10.7(4) *Notice of violation (NOV).* When the other compliance and enforcement activities described in this division are not appropriate for a violation, or when the regulated entity has not returned to compliance, the department may issue an NOV. An NOV may be used when environmental harm or a threat to human health or safety has occurred or is imminent, a regulated entity is a repeat offender, a corrective action is deemed an emergency, or a violation is considered significant. An NOV identifies the nature of the violation and any required corrective action.

567—10.8(455B) Options to respond. Upon receiving an LOI, LNC, or NOV, a regulated entity has the option to respond to the department, even if a response is not specifically requested. In responding to an LNC or NOV, the regulated entity should clearly outline any disagreements with the LNC or NOV, provide any pertinent additional information, describe any current or planned corrective action, and provide a schedule for returning to compliance. The department will review written information submitted in response to the compliance and enforcement procedures described in this part and will include this information in the file of record. Nothing in this chapter adds to or takes away from the appeal rights provided in Iowa Code chapter 17A.

567—10.9(455B) Department discretion. At the department's sole discretion, the department may follow the compliance and enforcement procedures described in this part, commence with an LNC or NOV, or forego these options and commence with an administrative action, or the department may request referral to the attorney general.

These rules are intended to implement Iowa Code sections 455B.105(3) and 17A.3(1).

PART IV
ADMINISTRATIVE PENALTIES

567—10.10(455B) Criteria for screening and assessing administrative penalties. All formal enforcement actions are processed through the environmental protection division administrator of the department. The administrator shall screen each case to determine the most equitable and efficient means of redressing and abating a violation. In screening a violation to determine which cases may

be appropriate for administrative assessment of penalties or for purposes of assessing administrative penalties, the department will consider among other relevant factors the following:

10.10(1) *Economic benefit.* Costs saved or likely to be saved by a violator's noncompliance. Where a violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties to offset the economic benefit. Reasonable estimates of economic benefit should be made where clear data are not available.

10.10(2) *Gravity of the violation.* Factors include but are not limited to:

a. The actual or threatened harm to the environment or public health and safety.

b. Involvement of toxic or hazardous substances or potential long-term effects of the violation.

c. The degree to which ambient or source-specific standards are exceeded, where pertinent.

d. Federal program priorities, size of facility, or other pertinent factors.

e. Whether the violation is repeated or whether it violates an administrative or court order.

f. Whether the type of violation threatens the integrity of a regulatory program.

g. Expenses or efforts by the government in detecting, documenting, or responding to a violation.

10.10(3) *Culpability.* Factors include but are not limited to:

a. The degree of intent or negligence. The standard of care required by the laws of the state of Iowa will be considered.

b. Whether the case involves false reporting of required information, or tampering with monitoring devices.

c. Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

10.10(4) *Deterrent.* Whether the assessment of administrative penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or by others similarly situated.

10.10(5) *Other relevant factors.* The department will consider other relevant factors which arise from the circumstances of each case.

10.10(6) *Department discretion.* This screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action, nor does this procedure require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

567—10.11(455B) Assessment of administrative penalties. Except for operator discipline, administrative penalties shall be assessed through issuance of an administrative order or an administrative consent order of the director which recites the facts and the legal requirements which have been violated, and a general rationale for the prescribed penalty.

10.11(1) *Administrative order or administrative consent order.* An administrative order or administrative consent order may include cumulative penalties up to $10,000 for multiple violations and may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions. The administrative order is subject to contested case and appellate review. Operator discipline is governed by 567—Chapter 81.

10.11(2) *Determination of amount.* The amount of penalty for each day of violation shall be determined from evaluation of the factors outlined in rule 567—10.10(455B). The actual or reasonably estimated economic benefit shall always be assessed.

These rules are intended to implement Iowa Code section 455B.109.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 11
"Tax Certification of Pollution Control or Recycling Property"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 427.1(19)"d"
State or federal law(s) implemented by the rulemaking: Iowa Code section 427.1(19)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk and be directed to the appropriate hearing location:

September 26, 2023
1 p.m.

Conference Room 5W
Wallace State Office Building
Des Moines, Iowa
Google Meet:
meet.google.com/gar-xeni-bpq?authuser=0&hs=122

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 no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Amie Davidson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: amie.davidson@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 11 establishes and clarifies the process and eligibility criteria for properties to obtain a pollution control or recycling certification from the Department. This certification allows the property owner to apply for a property tax exemption through the property owner's local county assessor's office. The provision for the property owner to request and the Department to review and issue/deny a certification request is required by Iowa Code section 427.1. The review process ensures the tax benefit is only benefiting pollution control and recycling property consistent with the Iowa Code.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Owners of pollution control and recycling property who elect to seek a property tax exemption will bear the costs.

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

Owners of pollution control and recycling property who elect to seek a property tax exemption 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 owners to comply with the chapter are limited to the time required to complete the application form. It is anticipated it would be a de minimis cost. Additionally, certification will result in a tax benefit, so it is in the owner's best interest to bear these costs.

- Qualitative description of impact:

The value of the tax benefit will vary depending on the property type and location.

3. Costs to the State:

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

The costs are minimal and are solely in staff time. Staff are able to review certification applications in approximately one hour. All involved staff have other assigned duties.

- Anticipated effect on state revenues:

There is a minimal cost to state revenues. No fee is charged for the request for certification. Additionally, while the chapter has been edited for length and clarity consistent with Executive Order 10, the underlying legal framework is status quo.

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 section 427.1 directs the Department to promulgate rules on certification. 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?

Chapter 11 provides a benefit to property owners, including those who own small businesses, by establishing a process to ultimately receive a tax benefit.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
TAX CERTIFICATION OF POLLUTION CONTROL OR RECYCLING PROPERTY

567—11.1(427) Form. All requests for the department to certify air or water pollution control recycling property pursuant to Iowa Code section 427.1(19) shall be submitted on a form prescribed by the department. Through these forms, the department may request any information necessary to make a determination under 567—11.5(427).

567—11.2(427) Time of submission. A request may be submitted at any time. Taxpayers are reminded that failure to dispatch a request sufficiently in advance of the February 1 deadline for filing with the assessing authority may cause the applicant to fail to qualify for the first possible annual exemption.

567—11.3(427) Notice. The department shall notify the taxpayer of the decision within ten days of receipt of a complete request. The notice shall include either the certificate if the decision is to certify the property as requested, or a concise statement of reasons for denial if the decision is to deny the request or to certify a lesser portion of the property than requested. The determination of the department to deny or grant only a portion of the request may be appealed to the commission pursuant to 567—Chapter 7.

567—11.4(427) Issuance. Upon the decision of the department or the commission on appeal to certify all or any portion of the property for which a request has been made, two copies of the certificate will be signed by the director or the director's designee and mailed to the taxpayer. The certificate shall describe the property certified and state the date on which the department certified the property.

567—11.5(427) Criteria for determining eligibility.

11.5(1) *General.* Property which has been installed and is used primarily to meet an effluent standard, a water quality standard, an emission standard or to control hydrocarbons, fugitive dust, odors or other air contaminants in a reasonably adequate manner shall be considered to be used primarily to control or abate pollution of the water or air of the state. Property which has been installed to meet a standard more stringent than an emission or water quality standard shall be considered to be used primarily to enhance the quality of the water or air of the state. Personal property or improvements to real property as defined by Iowa Code section 427A.1 or any portion of the property used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, wastepaper products, waste paperboard, waste glass, or waste wood into new raw materials or products composed primarily of recycled material shall be considered recycling property. Each request will be considered in the context of its particular circumstances.

In the event that such property also serves other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation.

11.5(2) *Denial.* Property may be denied certification if it is not being operated in compliance with the rules of the department so as to effectively control or abate pollution or enhance the quality of the air or water of the state, or recycle property into new raw materials or products composed primarily of recycled material. Property which was constructed or installed without permits required from the department will be denied certification unless and until such time as the property has received after-the-fact approval from the department.

These rules are intended to implement Iowa Code section 427.1(19).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 15
"Cross-Media Electronic Reporting"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.105 and 554D

State or federal law(s) implemented by the rulemaking: 40 CFR Part 3 (Federal Cross-Media Electronic Reporting Rule) and Iowa Code section 455B.105 and chapter 554D

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 Jim McGraw 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 Jim McGraw prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.m.	Via video/conference call

Public Comment

Any interested person may submit written or oral 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:

Jim McGraw
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.689.1439
Email: jim.mcgraw@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 15 implements the requirements of the Federal Cross-Media Electronic Reporting Rule (CROMERR), codified in 40 CFR Part 3. The requirements apply to persons and signatories who submit electronic reports or other documents to the Department to satisfy requirements of Title 40 of the CFR for authorized environmental programs.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated entities will bear the costs.

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

Regulated entities 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:

CROMERR-compliant electronic document receiving systems are web-based and do not cost anything for the public to access or use. Persons electronically submitting reports and other documents also avoid printing and mailing costs.

- Qualitative description of impact:

The new chapter will have a neutral impact because the CROMERR requirements are already being implemented in the existing Chapter 15.

3. Costs to the State:

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

Department staff time is utilized to maintain the CROMERR-compliant electronic document receiving systems, provide training and web-accessible guidance documents on system usage, and answer user questions. Staff time is also utilized to perform identity and signature authority verification for each individual submitting an electronic signature agreement when the electronic document receiving system does not utilize a third-party signature verification service. The total costs assessed across the Department for third-party signature verification services vary based on the number of verifications performed, but typically range between $50 to $100 per month. The Office of the Chief Information Officer (OCIO) and Department contractor staff time is also utilized to maintain the electronic document receiving systems.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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 implementation of the federal CROMERR requirements far outweigh the associated costs. The regulated public has supported the Department's development and implementation of CROMERR-compliant electronic document receiving systems. Electronic submittal of reports and other documents reduces or eliminates document errors and missing information, which shortens document review and processing times for staff and speeds up approvals for the regulated public. Electronic documents are also easier to store and are more accessible to the public, and electronic storage eliminates the need to allot building space for physical records storage.

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. CROMERR is a federal rule, and its implementation is authorized by Iowa Code section 455B.105 and chapter 554D.

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 proposed new Chapter 15 provides a dedicated chapter that sets forth the CROMERR requirements in a streamlined and up-to-date format compared to the previous format.

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 new chapter will have a neutral impact on small business because the CROMERR requirements are already being implemented in the existing Chapter 15. There are no less restrictive alternatives or methods available for small businesses because the CROMERR requirements are federal requirements.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
CROSS-MEDIA ELECTRONIC REPORTING

567—15.1(455B,554D) Purpose. This rule implements 40 CFR Part 3, the federal cross-media electronic reporting rule (CROMERR), as amended through November 17, 2009.

15.1(1) *Applicability.* The provisions of 40 CFR Sections 3.1 and 3.2 are adopted by reference.

15.1(2) *Definitions.*

a. For the purpose of this chapter, the following definitions in 40 CFR Section 3.3 are adopted by reference: "Authorized program," "Copy of record," "Electronic document," "Electronic document receiving system," "Electronic signature," "Electronic signature agreement," "Electronic signature device," "Federal program," "Handwritten signature," and "Valid electronic signature."

b. The following definition applies to this chapter:

"Authorized signatory" means an individual authorized to sign documents under one or more authorized programs, in accordance with the specific requirements of each authorized program, and who signs a document submitted to one of the department's electronic document receiving systems pursuant to an electronic signature agreement.

15.1(3) *Use of electronic document receiving systems.*

a. Website announcement. When the director has announced on the department's website that electronic documents are being accepted in lieu of paper to satisfy requirements under one or more authorized programs, individuals who submit such electronic documents must use the CROMERR-compliant electronic document receiving system or systems as specified by the department.

b. Submittals requiring signature. Any electronic document submitted to the department must bear a valid electronic signature of an authorized signatory, if that signatory would be required under an authorized program to sign the paper document for which the electronic document substitutes.

c. Submittals not requiring signature. If no signature is required under an authorized program, individuals may submit electronic documents in lieu of paper to satisfy requirements of such programs through one or more of the department's CROMERR-compliant electronic document receiving systems without an electronic signature or an electronic signature agreement.

15.1(4) *Electronic signature agreement (ESA).*

a. Agreement to be executed. In order to sign and submit electronic documents in one of the departments' CROMERR-compliant electronic document receiving systems, a signatory must execute an ESA specific to that electronic document receiving system.

b. Form and content of agreement. All ESAs shall include the information and follow the format defined by the department in the specific CROMERR-compliant electronic document receiving system.

c. Verification. The identity and signature authority of each individual submitting an ESA shall be verified by the state of Iowa or by a third-party signature verification service. After verification, the department shall notify an individual electronically that electronic documents may be signed and submitted in a specific CROMERR-compliant electronic document receiving system.

d. Certification. Each document submission authorized by an electronic signature shall contain the following statement: "I certify under penalty of law that I have had the opportunity to review, in human-readable format, the content of the electronic document to which I here certify and attest, and I further certify under penalty of law that, based on the information and belief formed after reasonable inquiry, the statements and information contained in this submission are true, accurate, and complete. I understand that making any false statement, representation, or certification of this submission may result in criminal penalties."

15.1(5) *Valid electronic signature.*

a. Signatory. An authorized signatory may not allow another individual to use the electronic signature device unique to the authorized signatory's electronic signature.

b. Unique signature device. When the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The signatory shall:

(1) Protect the electronic signature device from compromise; and

(2) Report to the department, within one business day of discovery, any evidence that the security of the device or the signatory's electronic signature has been compromised.

15.1(6) *Effect of electronic signature and enforcement.* The provisions of 40 CFR Section 3.4 are adopted by reference.

This chapter is intended to implement Iowa Code section 455B.105 and chapter 554D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 21 "Compliance, Excess Emissions, and Measurement of Emissions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.133

State or federal law(s) implemented by the rulemaking: U.S. Clean Air Act, Section 110(a)(2)(C) (42 U.S.C. §7410), and Iowa Code sections 455B.133 and 455B.143

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 Christine Paulson 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 Christine Paulson prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.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:

Christine Paulson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: christine.paulson@dnr.iowa.gov

Purpose and Summary

This proposed rulemaking establishes the requirements for air quality compliance. Additionally, the rulemaking includes the rules for excess emissions and measurement of emissions that are currently provided in other chapters. These requirements are authorized under the federal Clean Air Act (CAA) and Iowa Code section 455B.133. Chapter 21 also includes provisions for requesting variances from air quality rules, as authorized by Iowa Code section 455B.143. Iowa's air quality program has been approved by the U.S. Environmental Protection Agency (EPA) as a program that establishes appropriate procedures to protect Iowa's air quality.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated sources of air pollution will bear the costs of the proposed rulemaking.

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

Citizens of Iowa will benefit from the proposed 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:

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

- Qualitative description of impact:

The affected facilities' costs associated with compliance activities, excess emissions, and measurement of emissions are varied and are typically included in general operating costs. These costs vary depending on a number of factors, such as the size and type of the facility and the quantity of affected emissions equipment.

3. Costs to the State:

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

There is a cost to the agency for Department staff to review a facility's air quality compliance status, evaluate reports or observations of excess emissions, and assess protocols for measurement of emissions (e.g., stack test protocols). Staff can typically review most types of reports in a matter of hours. However, some Department staff activities may take several days or weeks, such as when staff observe required stack tests onsite, a facility's testing returns values outside of the permitted emission limits, a facility has repeated excess emissions, or a facility's reports indicate noncompliance with air quality requirements.

- Anticipated effect on state revenues:

The proposed chapter will have a neutral impact on state revenues because the rules related to compliance, excess emissions, and measurement of emissions are already being implemented in existing 567—Chapters 21, 24, 25, 26, and 29.

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

The costs of the proposed Chapter 21 are significantly less than inaction (rescinding the rules in 567—Chapters 21, 24, 25, 26, and 29 and not replacing them). Without these provisions, owners and operators of sources of air emissions would not have standards for reporting noncompliance, mitigating and reporting excess emissions, or performing testing and monitoring of air emissions. Failure to appropriately undertake these actions could adversely impact the health of Iowa citizens and attainment of the National Ambient Air Quality Standards (NAAQS).

Failure to meet the NAAQS is not only unhealthy for the public, but can also result in a federal declaration of nonattainment for the affected pollutant(s). A nonattainment declaration triggers several requirements and timelines under the Clean Air Act that are intended to reduce air emissions so the area can again attain the NAAQS. These include the requirement to install the most stringent air pollution controls that are technologically feasible on existing sources, regardless of cost, and increased review stringency for new facilities that may want to locate into the nonattainment area.

In the absence of a state program establishing provisions for compliance, excess emissions, and measurement of emissions, the EPA would be required by the Clean Air Act to establish such programs in Iowa. The EPA may set more stringent standards than those currently found in 567—Chapters 21, 24, and 25, which could result in increased compliance costs for Iowa's regulated facilities.

For these reasons, stakeholders prefer to have the Department, rather than the EPA, administer these air quality programs that are specific to Iowa's needs. Additionally, by repromulgating the rules of Chapter 21, the Department will provide businesses and the public with more streamlined, up-to-date air quality requirements with increased program implementation effectiveness.

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 air quality programs are required by the U.S. Clean Air Act and Iowa Code section 455B.133.

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:

These air quality programs are required by the Clean Air Act and Iowa Code section 455B.133. The proposed Chapter 21 will help to protect air quality for Iowa's citizens by ensuring that emissions reporting, monitoring, and compliance continue and that the rules prescribing these activities are clear, current, and consolidated. In the Regulatory Analyses for 567—Chapters 25, 26, and 29, those chapters will be rescinded and not repromulgated. In the Regulatory Analysis for 567—Chapter 24 (IAB 9/6/23), the chapter will be rescinded and repromulgated to include the rules for operating permits.

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 eligible to use free technical assistance mandated by the U.S. Clean Air Act (42 U.S.C. §7661f). More information is available at www.iowadnr.gov/Environmental-Protection/Air-Quality/Small-Business-Assistance.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
COMPLIANCE, EXCESS EMISSIONS, AND MEASUREMENT OF EMISSIONS

567—21.1(455B) Definitions and compliance requirements. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this chapter. Additional definitions potentially applicable to this chapter are set forth in 567—Chapters 22 and 23. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim into these rules.

"Air pollution alert" means the action condition declared when the concentrations of air contaminants reach the level at which the first-stage control actions are to begin.

"Air pollution emergency" means the action condition declared when the air quality is continuing to degrade to a level that should never be reached, and that the most stringent control actions are necessary.

"Air pollution episode" means a combination of forecast or actual meteorological conditions and emissions of air contaminants that may or do present an imminent and substantial endangerment to the health of persons, during which the chief meteorological factors are the absence of winds that disperse air contaminants horizontally and a stable atmospheric layer that tends to inhibit vertical mixing through relatively deep layers.

"Air pollution forecast" means an air stagnation advisory issued to the department, the commission, and appropriate air pollution control agencies by an authorized Air Stagnation Advisory Office of the

National Weather Service predicting that meteorological conditions conducive to an air pollution episode may be imminent. This advisory may be followed by a prediction of the duration and termination of such meteorological conditions.

"Air pollution warning" means the action condition declared when the air quality is continuing to degrade from the levels classified as an air pollution alert, and where control actions in addition to those conducted under an air pollution alert are necessary.

"Equipment" means equipment capable of emitting air contaminants to produce air pollution.

"Excess emission" means any emission that exceeds any applicable emission standard prescribed in 567—Chapter 23 or 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), or 567—33.3(455B) or any emission limit specified in a permit or order.

"Existing equipment" means equipment, machines, devices, or installations that were in operation prior to September 23, 1970.

"Malfunction" means any sudden and unavoidable failure of control equipment or of a process to operate in a normal manner. Any failure that is caused entirely or in part by poor maintenance, careless operation, lack of an adequate maintenance program, or any other preventable upset condition or preventable equipment breakdown shall not be considered a malfunction.

"New equipment" means, except for any equipment or modified equipment to which 567—subrule 23.1(2) applies, any equipment or control equipment not under construction or for which components have not been purchased on or before September 23, 1970, and any equipment which is altered or modified after such date, which may cause, eliminate, reduce, or control the emission of air contaminants.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Shutdown" means the cessation of operation of any control equipment or process equipment or process for any purpose.

"Startup" means the setting into operation of any control equipment or process equipment or process for any purpose.

21.1(1) *New equipment.* All new equipment and all new control equipment, as defined herein, installed in this state shall perform in conformance with applicable emission standards specified in 567—Chapter 23.

21.1(2) *Existing equipment.* All existing equipment, as defined herein, shall be operated in conformance with applicable emission standards specified in 567—Chapter 23 or as otherwise specified herein, except that the performance standards specified in 567—subrule 23.1(2) shall not apply to existing equipment.

21.1(3) *Emissions inventory.* The person responsible for equipment as defined herein shall provide information on fuel use, materials processed, air contaminants emitted (including greenhouse gases as "greenhouse gas" is defined in 567—22.1(455B)), estimated rate of emissions, periods of emissions, or other air pollution information to the director upon the director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The information requested shall be submitted in the electronic format specified by the department, if electronic submittal is provided. All information in regard to both actual and allowable emissions shall be public records, and any publication of such data shall be limited to actual and allowable air contaminant emissions.

21.1(4) Reserved.

21.1(5) *Public availability of data.* Emission data obtained from owners or operators of stationary sources under the provisions of 21.1(3) and any correlations with applicable emission limitations or other control measures will be made available to the public on the department's website and upon request.

21.1(6) *Maintenance of record.* Each owner or operator of any stationary source, as defined herein, shall, upon notification from the director, maintain records of the nature and amounts of air contaminant emissions from such source and any other information as may be deemed necessary by the commission to determine whether such source is in compliance with the applicable emission limitations or other control measures. The information recorded shall be summarized and reported monthly to the director on forms furnished by the department. The initial reporting period shall commence 60 days from the

date the director issues notification of the record-keeping requirements. Records shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.

567—21.2(455B) Variances.

21.2(1) *Application for variances.* A person may make application for a variance from applicable rules or standards specified in this title.

a. Contents. Each application for a variance shall be submitted to the director and state the following:

(1) The name, address, email address, and telephone number of the person submitting the application or, if such person is a legal entity, the name and address of the individual authorized to accept service of process on its behalf and the name of the person in charge of the premises where the pertinent activities are conducted.

(2) The type of business or activity involved.

(3) The nature of the operation or process involved, including information on the air contaminants emitted and the estimated amount and rate of discharge of such emissions.

(4) The exact location of the operation or process involved.

(5) The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

(6) Each application shall contain certification of truth and accuracy by a responsible official as defined in 567—24.100(455B). This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information provided are true and accurate.

b. Variance extension. A person may make an application for a variance extension prior to expiration of an approved variance.

21.2(2) *Processing of applications.* Each application for a variance and its supporting material shall be reviewed, and an investigation of the facilities shall be made, by the department for evaluation of the following:

a. Whether or not the emissions involved will produce the following effects:

(1) Endanger or tend to endanger the health of persons residing in or otherwise occupying the area affected by said emissions.

(2) Create or tend to create safety hazards, such as (but not limited to) interference with traffic due to reduced visibility.

(3) Damage or tend to damage any property on land that is affected by said emissions and under other ownership.

b. The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

21.2(3) *Trial burns for alternative fuels.* An alternative fuel shall be defined as a fuel for which the emissions from combusting the fuel are not known and shall exclude natural gas, coal, liquid propane, and all petroleum distillates.

a. Variance from construction permit. The director may grant a variance for the purpose of testing an alternative fuel and quantifying the emissions from the alternative fuel, except as prohibited under 21.2(4)*"c."*

b. Baseline testing. In addition to submitting the information required in 21.2(1), the applicant may be required to submit baseline emission data for all applicable pollutants as a condition of approval.

c. Source testing. Emissions testing deemed necessary for any pollutant may be required as a condition of the variance and shall be conducted in accordance with 21.10(7)*"a."*

21.2(4) *Decision.*

a. Granting of variance. The director shall grant a variance when the director concludes that the action is appropriate. The variance may be granted subject to conditions specified by the director. The

director shall specify the time intervals as are considered appropriate for submission of reports on the progress attained.

b. Denial of variance. The director shall deny a variance when the director concludes that the action is appropriate. The applicant may request a review hearing before the commission if the application is denied.

c. Ineligibility for variance. The director shall not grant a variance from any of the following requirements:

(1) Case-by-case maximum achievable control technology (MACT), 567—paragraph 22.1(1)*"b"*;

(2) Prevention of significant deterioration (PSD), 567—Chapter 33, to the extent that variances may not be granted from the preconstruction review and permitting program specified under 567—Chapter 33 (formerly 567—22.4(455B)), or from any PSD requirement contained in a PSD permit issued under 567—Chapter 33, or from any PSD requirement contained in a PSD permit issued under 40 CFR Section 51.166 or 52.21;

(3) New source performance standards, 567—subrule 23.1(2);

(4) Emission standards for hazardous air pollutants, 567—subrule 23.1(3);

(5) Emission standards for hazardous air pollutants for source categories, 567—subrule 23.1(4); or

(6) Emission guidelines, 567—subrule 23.1(5).

567—21.3 Reserved.

567—21.4(455B) Circumvention of rules. No person shall build, erect, install, or use any article, machine, equipment, or other contrivance that conceals an emission that would otherwise constitute violation of these rules.

567—21.5(455B) Evidence used in establishing that a violation has occurred or is occurring. Notwithstanding any other provisions of these rules, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any provisions herein.

21.5(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source. The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

a. A monitoring method approved for the source and incorporated in an operating permit pursuant to 567—Chapter 24;

b. Compliance test methods specified in 567—21.10(455B);

c. Testing or monitoring methods approved for the source in a construction permit issued pursuant to 567—Chapter 22;

d. Any monitoring or testing methods provided in these rules; or

e. Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in this subrule.

21.5(2) Reserved.

567—21.6(455B) Temporary electricity generation for disaster situations. An electric utility may operate generators at an electric utility substation with a total combined capacity not to exceed two megawatts in capacity for a period of not longer than ten calendar days and only for the purpose of providing electricity generation in the event of a sudden and unforeseen disaster that has disabled standard transmission of electricity to the public. Department approval shall be required if the electric utility intends to operate generators for a period longer than ten calendar days. The electric utility shall provide an oral report to the appropriate department field office and to the department's air quality bureau and shall specify the anticipated duration within eight hours of commencing use of a generator or at the start of the first working day following the placement of a generator at each site. A written report shall be submitted to the department within 30 calendar days following the cessation of use of the generators. The written report shall state the nature of the sudden and unforeseen disaster, the location of each site, the number of generators used, the capacity of the generators used, the fuel type

of the generators, and the duration of use of each generator. For purposes of this rule, the definition of "disaster" shall be as defined in Iowa Code section 29C.2(4), and a disaster may occur before, with, or without a gubernatorial or federal disaster proclamation.

567—21.7(455B) Excess emission reporting.

21.7(1) *Excess emission during periods of startup, shutdown, or cleaning of control equipment.* Excess emission during a period of startup, shutdown, or cleaning of control equipment is not a violation of the emission standard if the startup, shutdown, or cleaning is accomplished expeditiously and in a manner consistent with good practice for minimizing emissions. Cleaning of control equipment that does not require the shutdown of the process equipment shall be limited to one six-minute period per one-hour period.

21.7(2) *Initial report of excess emission.*

a. An incident of excess emission (other than an incident of excess emission during a period of startup, shutdown, or cleaning) shall be reported to the appropriate regional office of the department within eight hours of the onset of the incident or at the start of the first working day following the onset of the incident. The reporting exemption for an incident of excess emission during startup, shutdown, or cleaning does not relieve the owner or operator of a source with continuous monitoring equipment of the obligation of submitting reports required in 21.10(6).

b. An initial report of excess emission is not required for a source with operational continuous monitoring equipment (as specified in 21.10(1)) if the incident of excess emission continues for less than 30 minutes and does not exceed the applicable emission standard by more than 10 percent or the applicable visible emission standard by more than 10 percent opacity.

c. The initial report shall be made by electronic mail (email), in person, or by telephone and shall include at a minimum the following:

(1) The identity of the equipment or source operation from which the excess emission originated and the associated stack or emission point.

(2) The estimated quantity of the excess emission.

(3) The time and expected duration of the excess emission.

(4) The cause of the excess emission.

(5) The steps being taken to remedy the excess emission.

(6) The steps being taken to limit the excess emission in the interim period.

21.7(3) *Written report of excess emission.* A written report of an incident of excess emission shall be submitted as a follow-up to all required initial reports to the department within seven days of the onset of the upset condition, and shall include as a minimum the following:

a. The identity of the equipment or source operation point from which the excess emission originated and the associated stack or emission point.

b. The estimated quantity of the excess emission.

c. The time and duration of the excess emission.

d. The cause of the excess emission.

e. The steps that were taken to remedy and to prevent the recurrence of the incident of excess emission.

f. The steps that were taken to limit the excess emission.

g. If the owner claims that the excess emission was due to malfunction, documentation to support this claim.

21.7(4) *Excess emissions.* An incident of excess emission (other than an incident during startup, shutdown, or cleaning of control equipment) is a violation. If the owner or operator of a source maintains that the incident of excess emission was due to a malfunction, the owner or operator must show that the conditions that caused the incident of excess emission were not preventable by reasonable maintenance and control measures. Determination of any subsequent enforcement action will be made following review of this report. If excess emissions are occurring, either the control equipment causing the excess emission shall be repaired in an expeditious manner or the process generating the emissions shall be shut down within a reasonable period of time. An expeditious manner is the time necessary to determine the

cause of the excess emissions and to correct it within a reasonable period of time. A reasonable period of time is eight hours plus the period of time required to shut down the process without damaging the process equipment or control equipment. In the case of an electric utility, a reasonable period of time is eight hours plus the period of time until comparable generating capacity is available to meet consumer demand with the affected unit out of service, unless the director shall, upon investigation, reasonably determine that continued operation constitutes an unjustifiable environmental hazard, issue an order that such operation is not in the public interest, and require a process shutdown to commence immediately.

567—21.8(455B) Maintenance and repair requirements.

21.8(1) *Maintenance and repair.* The owner or operator of any equipment or control equipment shall:

a. Maintain and operate the equipment or control equipment at all times in a manner consistent with good practice for minimizing emissions.

b. Remedy any cause of excess emissions in an expeditious manner.

c. Minimize the amount and duration of any excess emission to the maximum extent possible during periods of such emissions. These measures may include but not be limited to the use of clean fuels, production cutbacks, or the use of alternate process units or, in the case of utilities, purchase of electrical power until repairs are completed.

d. Implement measures contained in any contingency plan prepared in accordance with 21.8(2)*"c."*

e. Schedule, at a minimum, routine maintenance of equipment or control equipment during periods of process shutdown to the maximum extent possible.

21.8(2) *Maintenance plans.* A maintenance plan will be required for equipment or control equipment where in the judgment of the director a continued pattern of excess emissions indicative of inadequate operation and maintenance is occurring. The maintenance plan shall include but not be limited to the following:

a. A complete preventive maintenance schedule, including identification of the persons responsible for inspecting, maintaining, and repairing control equipment, a description of the items or conditions that will be inspected, the frequency of these inspections or repairs, and an identification of the replacement parts that will be maintained in inventory for quick replacement;

b. An identification of the equipment and air pollution control equipment operating variables that will be monitored in order to detect a malfunction or failure, the normal operating range of these variables, and a description of the method of monitoring and surveillance procedures.

c. A contingency plan for minimizing the amount and duration of any excess emissions to the maximum extent possible during periods of such emissions.

567—21.9(455B) Compliance with other requirements. The excess emissions provisions in 567—21.7(455B) and 567—21.8(455B) do not relieve the owner or operator of an emissions source subject to the new source performance standards (567—subrule 23.1(2)), the national emissions standards for hazardous air pollutants (567—subrule 23.1(3)), or the national emissions standards for hazardous air pollutants for source categories (567—subrule 23.1(4)) from complying with those requirements.

567—21.10(455B) Testing and sampling of new and existing equipment.

21.10(1) *Continuous monitoring of opacity from coal-fired steam generating units.* The owner or operator of any coal-fired or coal-gas-fired steam generating unit with a rated capacity of greater than 250 million Btu per hour heat input shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity. If an exhaust services more than one steam generating unit as defined in the preceding sentence, the owner has the option of installing opacity monitoring equipment on each unit or on the common stack. Such monitoring equipment shall conform to performance specifications specified in 21.10(9) and shall be operational within 18 months of the date these rules become effective. The director may require the owner or operator of any coal-fired or coal-gas-fired steam generating unit to

install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity whenever the compliance status, history of operations, ambient air quality in the vicinity surrounding the generator, or the type of control equipment utilized would warrant such monitoring.

21.10(2) and **21.10(3)** Reserved.

21.10(4) *Continuous monitoring of sulfur dioxide from sulfuric acid plants.* The owner or operator of any sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor sulfur dioxide emissions. The monitoring equipment shall conform to the minimum performance specifications specified in 21.10(9) and shall be operational within 18 months of the date these rules become effective.

21.10(5) *Maintenance of records of continuous monitors.* The owner or operator of any facility that is required to install, calibrate, maintain, and operate continuous monitoring equipment shall maintain, for a minimum of two years, a file of all information pertinent to each monitoring system present at the facility. Such information must include but is not limited to all emissions data (raw data, adjusted data, and any or all adjusted factors used to convert emissions from units of measurement to units of the applicable standard), performance evaluations, calibrations and zero checks, and records of all malfunctions of monitoring equipment or source and repair procedures performed.

21.10(6) *Reporting of continuous monitoring information.* The owner or operator of any facility required to install a continuous monitoring system or systems shall provide quarterly reports to the director, no later than 30 calendar days following the end of the calendar quarter, on forms provided by the director. This provision shall not excuse compliance with more stringent applicable reporting requirements. All periods of recorded emissions in excess of the applicable standards, the results of all calibrations and zero checks and performance evaluations occurring during the reporting period, the number of hours that the source was operated while the monitoring equipment was not in operation, and any periods of monitoring equipment malfunctions or source upsets and any apparent reasons for these malfunctions and upsets shall be included in the report.

21.10(7) *Tests by owner.* The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements.

a. General. The owner of new or existing equipment or the owner's authorized agent shall notify the department in writing not less than 30 days before a required test or before a performance evaluation of a continuous emission monitor to determine compliance with applicable requirements of 567—Chapter 23 or a permit condition. Such notice shall include the time, the date, the place, the name of the person who will conduct the tests, and other information as required by the department. If the owner or operator does not provide timely notice to the department, the department may not consider the test results or performance evaluation results to be a valid demonstration of compliance with applicable rules or permit conditions. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held not later than 15 days before the owner or operator conducts the compliance demonstration. A testing protocol shall be submitted to the department for review no later than 15 days before the owner or operator conducts the compliance demonstration. A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks (42 days) of the completion of the testing.

b. New equipment. Unless otherwise specified by the department, all new equipment shall be tested by the owner or the owner's authorized agent to determine compliance with applicable emission limits. Tests conducted to demonstrate compliance with the requirements of the rules or a permit shall be conducted within 60 days of achieving maximum production but no later than 180 days of startup, unless a shorter time frame is specified in the permit.

c. Existing equipment. The director may require the owner or the owner's authorized agent to conduct an emission test on any equipment if the director has reason to believe that the equipment does not comply with applicable requirements. Grounds for requiring such a demonstration of compliance include a modification of control or process equipment, age of equipment, or observation of opacities or

other parameters outside the range of those indicative of properly maintained and operated equipment. Testing may be required as necessary to determine actual emissions from a source where that source is believed to have a significant impact on the public health or ambient air quality of an area. The director shall provide the owner or agent not less than 30 days to perform the compliance demonstration and shall provide written notice of the requirement.

21.10(8) *Tests by department.* Representatives of the department may conduct separate and additional air contaminant emission tests and continuous monitor performance tests of an installation on behalf of the state and at the expense of the state. Sampling holes, safe scaffolding, and pertinent allied facilities, but not instruments or sensing devices, as needed, shall be requested in writing by the director and shall be provided by and at the expense of the owner of the installation at such points as specified in the request. The owner shall provide a suitable power source to the point or points of testing so that sampling instruments can be operated as required. Analytical results shall be furnished to the owner.

21.10(9) *Methods and procedures.* Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

a. Performance test (stack test). A stack test shall be conducted according to the U.S. Environmental Protection Agency (EPA) reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through March 29, 2023); 40 CFR 60, Appendix A (as amended or corrected through March 29, 2023); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through March 29, 2023). Each test shall consist of at least three separate one-hour test runs. Unless otherwise specified by the department, EPA method, or regulation, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs. The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through June 28, 2023); 40 CFR 60, Appendix F (as amended or corrected through March 29, 2023); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specifications and quality assurance procedures are conducted.

c. Permit and compliance demonstration requirements. After October 24, 2012, all stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or required in a permit issued by the department pursuant to 567—Chapter 22 or 33 shall be conducted using the methodology referenced in this rule. If stack sampling was required for a compliance demonstration pursuant to 567—Chapter 23 or for a performance test required in a permit issued by the department pursuant to 567—Chapter 22 or 33 before October 24, 2012, and the demonstration or test was not required to be completed before October 24, 2012, then the methodology referenced in this subrule applies retroactively.

21.10(10) *Exemptions from continuous monitoring requirements.*

a. The owner or operator of any source is exempt if it can be demonstrated that any of the conditions set forth in this subrule are met with the provision that periodic recertification of the existence of these conditions can be requested.

(1) An affected source is subject to a new source performance standard.

(2) Reserved.

(3) An affected steam generator is scheduled to be retired from service within five years of the date these rules become effective.

b. The director may provide a temporary exemption from the monitoring and reporting requirements during any period of monitoring system malfunction, provided that the source owner or

operator shows, to the satisfaction of the director, that the malfunction was unavoidable and is being repaired as expeditiously as practical.

21.10(11) *Extensions.* The owner or operator of any source may request an extension of time provided for installation of the required monitor by demonstrating to the director that good faith efforts have been made to obtain and install the monitor in the prescribed time.

567—21.11(455B) Continuous emission monitoring under the acid rain program. The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F, and K, as amended through August 30, 2016, are adopted by reference.

567—21.12(455B) Affected sources subject to Section 112(g). The owner or operator of an affected source subject to the requirements of the federal Clean Air Act, Section 112(g), shall comply with the requirements contained in permits issued by the department under 567—Chapters 22 and 33.

567—21.13(455B) Methodology and qualified observer. The federal method for visual determination of opacity of emissions and requirements for qualified observers as defined in 40 CFR Part 60, Appendix A, Method 9, as amended through November 14, 1990, is adopted by reference.

To qualify as an observer, a candidate must, after meeting the requirements established in 40 CFR Part 60, Appendix A, Method 9, have on record with the department a minimum of 250 readings of black plumes and 250 readings of white plumes, taken at approved smoke reading courses.

567—21.14(455B) Prevention of air pollution emergency episodes—general. The provisions for the purpose specified in 40 CFR Part 51, Appendix L, 1.0, are adopted by reference. For purposes of this chapter, adoption by reference of any portion of 40 CFR Part 51, Appendix L, is, unless otherwise noted, as amended through July 1, 1987.

567—21.15(455B) Episode criteria.

21.15(1) *Evaluation.* Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the commission or the director determines that the meteorological conditions are such that the accumulation of air contaminants in any place is reaching, or has reached, levels which could, if sustained or exceeded, lead to a substantial threat to the health of persons.

21.15(2) *Air pollution forecast.* Initial consideration of air pollution episode activities will be activated by receipt from the National Weather Service of an air pollution forecast. Receipt of such a forecast shall be the basis for activities such as, but not limited to, increased monitoring of the air contaminants in the area involved.

21.15(3) *Declaration.* In making determinations for the declaration of an air pollution episode condition, the commission or the director will be guided by the criteria stated in the following paragraphs:

a. Air pollution alert. The provisions for an air pollution alert as specified in 40 CFR Part 51, Appendix L, 1.1(b), are adopted by reference.

b. Air pollution warning. The provisions for an air pollution warning as specified in 40 CFR Part 51, Appendix L, 1.1(c), are adopted by reference.

c. Air pollution emergency. The provisions for air pollution emergency as specified in 40 CFR Part 51, Appendix L, 1.1(d), are adopted by reference.

d. Termination. Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met. As meteorological factors and air contaminants change, an appropriate change in episode level will be declared.

567—21.16(455B) Preplanned abatement strategies. The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, 1.3(a), are adopted by reference.

21.16(1) *Plan preparation.*

a. Any person responsible for the operation of a source of air contaminants as set forth in Tables I through III shall prepare standby plans for reducing the emission of air contaminants, which will be implemented upon the declaration of an air pollution episode and continued for the duration of the declared episode.

b. The provisions for plan preparation as specified in 40 CFR Part 51, Appendix L, 1.3(b), are adopted by reference.

21.16(2) *Plan content.* The provisions for plan content as specified in 40 CFR Part 51, Appendix L, 1.3(c), are adopted by reference.

21.16(3) *Review of plans.* Standby plans as required by this subrule shall be submitted to the director on or before January 1, 1973. Each standby plan shall be subject to review. If, in the opinion of the director, a standby plan does not provide for adequate reduction of emissions, the director may disapprove the plan, state the reasons for disapproval, and order the preparation of an amended standby plan within a time period specified in the order. The action of the director in securing a modification of a standby plan may be appealed to the commission.

21.16(4) *Availability.* The provisions for availability as specified in 40 CFR Part 51, Appendix L, 1.3(d), are adopted by reference.

567—21.17(455B) Actions taken during episodes.

21.17(1) *Emission reduction activities.* Any person responsible for the operation of a source of air contaminants as set forth in Tables I through III, herein, that is located within the area involved shall follow the actions specified below during periods of an air pollution alert, air pollution warning, or air pollution emergency as may be declared.

a. Air pollution alert. The provisions for an air pollution alert as specified in 40 CFR Part 51, Appendix L, 1.2(a), are adopted by reference.

b. Air pollution warning. The provisions for air pollution warning as specified in 40 CFR Part 51, Appendix L, 1.2(b), are adopted by reference.

c. Air pollution emergency. The provisions for air pollution emergency as specified in 40 CFR Part 51, Appendix L, 1.2(c), are adopted by reference.

d. Special conditions. The provisions for special conditions as specified in 40 CFR Part 51, Appendix L, 1.2(d), are adopted by reference.

21.17(2) Reserved.

TABLE I
ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS ALERT LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table I, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table I, Part B, are adopted by reference.

TABLE II
ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS WARNING LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table II, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table II, Part B, are adopted by reference.

TABLE III
ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS EMERGENCY LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table III, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table III, Part B, are adopted by reference.

These rules are intended to implement Iowa Code section 455B.133.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 22 "Controlling Air Pollution"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.133

State or federal law(s) implemented by the rulemaking: federal Clean Air Act Section 110(a)(2)(C) (42 U.S.C. §7410) and Iowa Code section 455B.133.

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 Christine Paulson 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 Christine Paulson prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.m.	Via video/conference call

Public Comment

Any interested person may submit written or oral 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:

Christine Paulson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.725.9510
Email: christine.paulson@dnr.iowa.gov

Purpose and Summary

Chapter 22 establishes the requirements for the preconstruction review and permitting program applicable to new or modified stationary sources of air pollutants. The Department evaluates all air construction permit applications to determine what impact the proposed emissions from a facility will have on meeting the National Ambient Air Quality Standards (NAAQS).

Iowa has operated an air construction permitting program since the 1970s as required under the Clean Air Act and as authorized in Iowa Code section 455B.133. Iowa's construction permit rules have been approved by the U.S. Environmental Protection Agency (EPA) to be included in Iowa's required state implementation plan. Citations to definitions in 567—Chapters 21 and 24 are to the definitions proposed in the Regulatory Analyses for those chapters (IAB 9/6/23).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated sources of air pollutants will bear the costs of the proposed rulemaking.

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

Citizens of Iowa will benefit from the proposed 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:

State law directs the Environmental Protection Commission (Commission) to collect the construction permit application fees specified in 567—Chapter 30 (as authorized by Iowa Code section 455B.133C). For minor sources, which are typically smaller facilities that emit lower amounts of air pollutants, the application fee is $385 per application. However, for minor sources that qualify for specific streamlined permit alternatives, the fee is $100 per application. Major sources, which are typically larger facilities that emit higher quantities of air pollutants, are charged an hourly rate of $115 per hour for application review by an engineer and $90 per hour for associated review of air quality modeling by an environment specialist. Facilities' incurred costs to prepare and submit the required applications vary greatly depending on facility size, number of emissions sources, and other factors.

- Qualitative description of impact:

Regulated sources of air emissions must demonstrate through the air construction permitting process that their proposed project emissions, when considered in conjunction with existing air emissions, will not impact the attainment or maintenance of the NAAQS. This is done through the installation of air pollution controls, the implementation of operating limits, and the monitoring and reporting of air emissions. The costs of these permitting-related actions vary by facility process and their quantity and type of air emissions.

3. Costs to the State:

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

Department staff review construction permit applications and write the permits. Department staff also ensure that construction permit requirements are being met by observing and evaluating facility emissions testing, 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 new Chapter 22 will have a neutral impact on state revenues because the construction permit rules are already being implemented in existing Chapter 22.

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

The costs of the proposed new Chapter 22 are significantly less than inaction (rescinding the construction permit requirements and not replacing them). Without the construction permit requirements, many facilities would not have limits on their air emissions, which could adversely impact the health of Iowa citizens and attainment of the NAAQS.

Failure to meet the NAAQS is not only unhealthy for the public but can also result in a federal declaration of nonattainment for the affected pollutant(s). A nonattainment declaration triggers several requirements and timelines under the Clean Air Act intended to reduce air emissions so the area can again attain the NAAQS. These include the requirement to install the most stringent air pollution controls that are technologically feasible on existing sources, regardless of cost, and increased review stringency for new facilities that may want to locate into the nonattainment area.

Further, many facilities obtain enforceable limits on emissions through construction permits to ensure the facilities are not subject to requirements for major sources of air pollution, such as Prevention of Significant Deterioration (PSD), Title V, and Maximum Achievable Control Technology (MACT) for hazardous air pollutants. These federal air programs include much stricter and more expensive requirements for control of emissions, monitoring, testing, recordkeeping and reporting. Currently, the limits established in construction permits are keeping many facilities out of these programs. Additionally, the construction permit rules include 40 permit exemptions developed with stakeholder

assistance and approval, as well as streamlined and less costly alternatives to standard permit application process.

In the absence of a state permitting program, EPA would administer a permitting program largely consisting of the PSD and Title V programs for major sources. No synthetic minor permits with enforceable emission limits or minor source permits would likely be available. Importantly, the existing exemptions to permitting and the streamlined application options would not be provided under an EPA-administered program.

For these reasons, stakeholders prefer to have the Department, rather than EPA, administer the construction permitting program that is specific to Iowa's needs. Additionally, by promulgating proposed Chapter 22, the Department will provide businesses and the public with more up-to-date air quality requirements with increased program implementation effectiveness.

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. An air permitting program is required by the Clean Air Act and Iowa Code section 455B.133.

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:

An air permitting program is required by the Clean Air Act and Iowa Code section 455B.133. The proposed rules provide a dedicated chapter that sets forth the permit requirements in a streamlined and up-to-date format compared to the previous format. Additionally, the proposed chapter will no longer include the operating permit rules (which will be moved to new Chapter 24) and will include the applicable air program definitions from Chapter 20 and the NAAQS currently adopted in Chapter 28. (Chapters 20 and 28 will be rescinded and not repromulgated.)

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?

Many small businesses are able to use one of the 40 exemptions from the requirement to obtain an air construction permit contained in Chapter 22, as well as streamlined and less costly alternatives to the standard permit application process. Additionally, small businesses are eligible to use free technical assistance mandated by the Clean Air Act (42 U.S.C. §7661f). More information is available at www.iowadnr.gov/Environmental-Protection/Air-Quality/Small-Business-Assistance.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
CONTROLLING AIR POLLUTION

567—22.1(455B) Definitions and permit requirements for new or existing stationary sources. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this chapter. Additional definitions potentially applicable to this chapter are set forth in 567—Chapters 21 and 23. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim in these rules.

"12-month rolling period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Air quality standard" means an allowable level of air contaminant or atmospheric air concentration established by the commission.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Anaerobic lagoon," for purposes of air quality rules in 567—Chapters 20 through 35, 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.

"Biodiesel fuel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fat such as, but not limited to, soybean oil. For purposes of this definition, "biodiesel fuel" must also meet the specifications of American Society for Testing and Material Specifications (ASTM) D 6751-02, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," and be registered with the U.S. Environmental Protection Agency as a fuel and a fuel additive under Section 211(b) of the Clean Air Act, 42 U.S.C. Sections 7401, et seq. as amended through November 15, 1990.

"Chimney" or *"stack"* means any flue, conduit or duct permitting the discharge or passage of air contaminants into the open air or constructed or arranged for this purpose.

"Combustion for indirect heating" means the combustion of fuel to produce usable heat that is to be transferred through a heat-conducting materials barrier or by a heat storage medium to a material to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

"Control equipment" means any equipment that has the function to prevent the formation of or the emission to the atmosphere of air contaminants from any fuel burning, incinerator or process equipment.

"Country grain elevator" means the same as defined in in 22.10(1).

"Diesel fuel" means a low sulfur fuel oil that complies with the specifications for grade 1-D or 2-D, as defined by the ASTM D 975-02, "Standard Specification for Diesel Fuel Oils," grade 1-GT or 2-GT, as defined by ASTM D 2880-00, "Standard Specification for Gas Turbine Fuel Oils," or grade 1 or 2, as defined by ASTM D 396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, diesel fuel may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended diesel fuel.

3. Construction permits or operating permits issued under 567—Chapter 22 that restrict equipment fuel use to diesel fuel shall be considered by the department to include the biodiesel fuel blends specified in paragraph "1," unless otherwise specified or in a permit issued under this chapter.

"Electric furnace" means a furnace in which the melting and refining of metals are accomplished by means of electrical energy.

"Electronic format," "electronic submittal," or *"electronic submittal format,"* for purposes of 567—Chapters 20 through 35, means a software, Internet-based, or other electronic means specified by the department for submitting air quality information or fees to the department related to but not limited to applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in 567—Chapters 20 through 35 may, as specified by the department, include electronic submittal as stated in the applicable rules.

"Emergency generator" means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency is an unforeseeable condition that is beyond the control of the owner or operator. An emergency generator does not include:

1. Peaking units at electric utilities.

2. Generators at industrial facilities that typically operate at low rates but are not confined to emergency purposes.

3. Any standby generators that are used during time periods when power is available from the electric utility.

"Emission limitation" or *"emission standard"* mean a requirement established by a state, local government, or the administrator that limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.

"EPA conditional method" means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

"EPA reference method" means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through March 29, 2023); 40 CFR 60, Appendix A (as amended or corrected through March 29, 2023); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through March 29, 2023).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through June 28, 2023); 40 CFR 60, Appendix F (as amended or corrected through March 29, 2023); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

"Equipment" means the same as defined in 567—21.1(455B).

"Excess air" means that amount of air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel or combustible waste material present.

"Existing equipment" means the same as defined in 567—21.1(455B).

"Foundry cupola" means a stack-type furnace used for melting of metals consisting of but not limited to the furnace proper, tuyeres, fans or blowers, tapping spout, charging equipment, gas cleaning devices and other auxiliaries.

"Fugitive dust" means any airborne solid particulate matter emitted from any source other than a flue or stack.

"Grain processing" means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for "feed mill equipment" as defined in 567—22.10(455B).

"Grain storage elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant that has a permanent grain storage capacity (grain storage capacity which is inside a building, bin, or silo) of more than 35,200 m^3 (ca. 1 million U.S. bushels).

"Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Heating value" means the heat released by combustion of one pound of waste or fuel measured in Btu on an as-received basis. For solid fuels, the heating value shall be determined by use of ASTM Standard D 2015-66.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently and from which the solid residues contain little or no combustible material.

"Initiation of construction, installation or alteration" means significant permanent modification of a site to install equipment, control equipment or permanent structures. Not included are activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility.

"New equipment" means the same as defined in 567—21.1(455B).

"Number 1 fuel oil" and *"number 2 fuel oil,"* also known as "distillate oil," mean fuel oil that complies with the specifications for fuel oil number 1 or fuel oil number 2, as defined by the ASTM D 396-02, "Standard Specification for Fuel Oils."

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, number 1 fuel oil or number 2 fuel oil may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as "biodiesel fuel" is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph "1" to be equivalent to the air pollutant emissions calculations for unblended number 1 fuel oil or unblended number 2 fuel oil.

3. Construction permits or operating permits issued under this chapter that restrict equipment fuel use to number 1 fuel oil or number 2 fuel oil shall be considered by the department to include the biodiesel fuel blends specified in paragraph "1," unless otherwise specified or in a permit issued under this chapter.

"One-hour period" means any 60-minute period commencing on the hour.

"Particulate matter" (except for the purposes of new source performance standards as defined in 40 CFR 60) means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions and includes gaseous emissions that condense to liquid or solid form as measured by EPA-approved reference methods.

"Plan documents" means the reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications and all other information pertaining to equipment.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

"$PM_{2.5}$" means particulate matter as defined in this rule with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA-approved reference method.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the

use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, "maximum capacity" means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years.
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years.
3. The number of hours specified in a state or federally enforceable limit.

If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit.

"Privileged communication" means information other than air pollutant emissions data, the release of which would tend to affect adversely the competitive position of the owner or operator of the equipment.

"Process" means any action, operation or treatment, and all methods and forms of manufacturing or processing, that may emit smoke, particulate matter, gaseous matter or other air contaminant.

"Process weight" means the total weight of all materials introduced into any source operation. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

"Process weight rate" means continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; or for a cyclical or batch source operation, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the number of hours of actual process operation during such a period. Where the nature of any process or operation, or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

"Six-minute period" means any one of the ten equal parts of a one-hour period.

"Smoke" means gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, and other combustible material, or ash, that form a visible plume in the air.

"Source operation" means the last operation preceding the emission of an air contaminant and that results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants but is not an air pollution control operation.

"Standard conditions" means a temperature of 68°F and a pressure of 29.92 inches of mercury absolute.

"Standard cubic foot" or *"SCF"* means the volume of one cubic foot of gas at standard conditions.

"Standard metropolitan statistical area" or *"SMSA"* means an area that has at least one city with a population of at least 50,000 and such surrounding areas as geographically defined by the U.S. Office of Management and Budget (Department of Commerce).

"Stationary source" means any building, structure, facility or installation that emits or may emit any air pollutant.

"Total suspended particulate" means particulate matter as defined in this rule.

"Untreated" as it refers to wood or wood products includes only wood or wood products that have not been treated with compounds such as, but not limited to, paint, pigment-stain, adhesive, varnish, lacquer, or resin or that have not been pressure treated with compounds such as, but not limited to, chromate copper acetate, pentachlorophenol or creosote. "Untreated" as it refers to seeds, pellets or other vegetative matter includes only seeds, pellets or other vegetative matter that has not been treated with pesticides or fungicides.

"Urban area" means any Iowa city of 100,000 or more population in the current census and all Iowa cities contiguous to such city.

"Variance" means a temporary waiver from rules or standards governing the quality, nature, duration or extent of emissions granted by the commission for a specified period of time.

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR Section 51.100(s) as amended through February 8, 2023.

22.1(1) *Permit required.* No person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon unless a permit is first obtained pursuant to this chapter, 567—31.3(455B), or 567—33.3(455B), or the equipment qualifies for an exemption under 22.1(2). An air quality construction permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon, unless the parameters in 22.1(1)*"c"* are met.

a. Existing equipment is not subject to this subrule, unless it has been modified, reconstructed, or altered on or after September 23, 1970.

b. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR Section 63.2 and 40 Section CFR 63.41 as adopted by reference in 567—subrule 23.1(4), unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. Construction prior to issuance of an air quality construction permit issued by the department may begin if the eligibility requirements stated in 22.1(1)*"c"*(1) are met. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in 22.1(3);

2. The applicant has notified the department of the applicant's intentions in writing five working days prior to initiating construction; and

3. The equipment or process is not subject to:

- Prevention of significant deterioration (PSD), as set forth in 567—Chapter 33;
- New source performance standards (NSPS), as set forth in 567—subrule 23.1(2);
- National emission standards for hazardous air pollutants (NESHAP), as set forth in 567—subrules 23.1(3) and 23.1(4);
- Emission guidelines, as set forth in 567—subrule 23.1(5);
- Nonattainment new source review, as set forth in 567—Chapter 31; or
- The equipment or process is a major source of hazardous air pollutants, as defined in 40 CFR Sections 63.2 and 63.41, and as adopted by reference in 567—subrule 23.1(4).

The equipment and processes are subject to PSD until the owner or operator of a proposed project legally obtains permitted limits that limit the project below the PSD thresholds (i.e., PSD synthetic minor status).

(2) The applicant must cease construction if the department's evaluation demonstrates that the construction, reconstruction or modification of the stationary source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through February 19, 2015.

(3) The applicant will be required to make any modification to the stationary source that may be imposed in the issued construction permit.

(4) The applicant must notify the department in writing of the actual start date of construction or reconstruction. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3)*"b."*

d. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as "country grain elevator," "country grain terminal elevator," "grain terminal elevator," and "feed mill equipment," as these terms are defined in 22.10(1), may elect

to comply with the requirements specified in 567—22.10(455B) as an alternative to the construction permitting requirements set forth in 22.1(1).

22.1(2) *Exemptions.* An owner or operator may opt to use one of the permitting exemptions in this subrule in lieu of obtaining an air quality construction permit if the equipment, control equipment, or process meets the conditions in the specific exemption and is not:

- Permitted under the provisions of the permit by rule for spray booths, as set forth in 567—22.8(455B);
- Subject to nonattainment new source review, as set forth in 567—Chapter 31; or
- Subject to PSD, as set forth in 567—Chapter 33;

A permitting exemption may be used only if a permit is not necessary to establish federally enforceable limits that restrict potential to emit.

An owner or operator shall keep records at the facility and will make the records available to the department upon request if any of the exemptions under the following paragraphs are claimed:

- 22.1(2)*"a"* (for equipment > 1 million Btu per hour input),
- 22.1(2)*"b,"*
- 22.1(2)*"e,"*
- 22.1(2)*"r,"* or
- 22.1(2)*"s."*

Records kept on site shall contain the following information:

- The specific exemption claimed; and
- A description of the associated equipment.

The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or indirect cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR Section 279.11 as amended through July 14, 2006, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in 567—22.1(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1(6), or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined

in 567—22.1(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—21.1(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. Fugitive dust controls, unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment that reduces or eliminates all emission to the atmosphere. An owner or operator electing to use this exemption shall provide to the department the following information:

(1) Name and location of the facility;

(2) Detailed description of each change being made;

(3) Date of the beginning of actual construction and date that operation will begin after the changes are made;

(4) Detailed emissions estimates showing:

1. The actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in 567—24.100(455B)); and

2. The accumulated emissions increases associated with each change when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction of the particular change commences).

(5) Documentation of the basis for all emissions estimates;

(6) Height of the emission point or stack and height of the highest building within 50 feet;

(7) Statement that the provisions of 567—Chapters 31 and 33 do not apply; and

(8) Written statement containing certification by a responsible official as defined in 567—24.100(455B) of truth, accuracy, and completeness that:

1. Accumulated emissions with other contemporaneous net increases have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23), and adopted in 567—33.3(455B);

2. The changes will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B);

3. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

The conditions listed below also apply to this exemption:

- If an owner or operator opts to use this exemption for equipment or a process not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project.
- If an owner or operator opts to use this exemption for equipment or a process that has already been constructed or modified and that does not have a construction permit for that construction or modification, the owner or operator shall not operate until the information listed above is provided to the department.
- If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.
- If an owner or operator wishes to obtain credit for emission reductions, an air quality construction permit must be obtained for the reduction prior to the time the reduction is made.

h. Equipment (other than anaerobic lagoons) or control equipment that emits odors, unless such equipment or control equipment also emits particulate matter or any other regulated air contaminant (as defined in 567—24.100(455B)).

i. Reserved.

j. Residential heaters, cookstoves, or fireplaces that burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

k. Asbestos demolition and renovation projects subject to 40 CFR Section 61.145 as adopted by reference in 567—subrule 23.1(3).

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems that include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only handheld aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration on forms provided by the department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form) certifying that the engine is in compliance with the following federal regulations:

(1) NSPS for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or

(2) NSPS for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and

(3) NESHAP for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR Section 1068.30 is exempt from the registration requirements of this paragraph).

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than 1 million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. "Maximum true vapor pressure" means the equilibrium partial pressure of the material considering:

(1) For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or

(2) For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in 567—24.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) "Small unit" means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp));
7. 2.5 tons per year of PM_{10};
8. 0.52 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); and
9. 5 tons per year of hazardous air pollutants (as defined in 567—24.100(455B)).

For the purposes of this exemption, "emission unit" means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified "small units."

An emission unit that emits hazardous air pollutants (as defined in 567—24.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in 567—24.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If a construction permit is requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an "exemption justification document." The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of "small unit" for the particular emission unit or group of similar emission units obtaining the exemption. Controls that may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections and shall be provided to the director or the director's representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.
2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.
3. If air pollution control equipment is used, the applicant shall maintain a copy of any report of manufacturer's testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.
4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2)*"w"*(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a "small unit," then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a substantial small unit. The owner or operator shall notify the department in writing at least ten days prior to commencing construction of any new or modified "substantial small unit" as defined in 22.1(2)*"w"*(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the "substantial small unit" as defined in 22.1(2)*"w"*(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, "substantial small unit" means a small unit that emits more than the following amounts, as documented in the exemption justification document:

1. 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);

2. 3.75 tons per year of sulfur dioxide;

3. 3.75 tons per year of nitrogen oxides;

4. 3.75 tons per year of volatile organic compounds;

5. 3.75 tons per year of carbon monoxide;

6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp));

7. 1.875 tons per year of PM_{10};

8. 0.4 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or

9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a "substantial small unit" only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a "cumulative notice threshold," as defined in 22.1(2)*"w"*(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within five working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) "Cumulative notice threshold" means the total combined emissions from all substantial small units using the small unit exemption that emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;
6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp));
7. 15 tons per year of PM_{10};
8. 10 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or
9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases that are hazardous air pollutants as defined in 567—24.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, recordkeeping or reporting requirements under 567—subrule 23.1(2), 23.1(3) or 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable handheld aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 1380x - 19,200 or 200,000 for GMAW, or

Y = the greater of 187x - 2,600 or 28,000 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 12,500 pounds per year for GMAW and 1,600 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 84x - 1,200 or 12,500 for GMAW, or

Y = the greater of 11x - 160 or 1,600 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—2.1(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp) as amended through November 29, 2004);
7. 2.5 tons per year of PM_{10};
8. 0.52 tons per year of $PM_{2.5}$ (does not apply to research and development activities that commenced on or before October 23, 2013); and
9. 5 tons per year of hazardous pollutants (as defined in 567—24.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in 22.1(2)*"kk"*(1). These records shall:

1. Include a list of equipment that is included under the exemption;
2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;
3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and
4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, "research and development activities" shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel;
2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products;
3. That do not manufacture more than de minimus amounts of commercial products; and
4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimus manner.

ll. A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC-containing material in a 12-month rolling period.

Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

nn. Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in 567—24.100(455B).

oo. A nonroad diesel fueled engine, as "nonroad engine" is defined in 40 CFR Section 1068.30 as amended through January 24, 2023, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer's nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or

2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

22.1(3) *Construction permits.* The owner or operator of a new or modified stationary source shall apply for a construction permit. Construction permit applications, including the information referenced above and in 567—22.1(455B) through 567—22.10(455B), shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in 567—Chapter 65.

a. Regulatory applicability determinations. If requested in writing, the director will review the design concepts of equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the equipment. If the review is requested, the requester shall supply the following information and submit a fee as required in 567—Chapter 30:

(1) Preliminary plans and specifications of equipment and related control equipment.

(2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.

(3) The estimated emission rates of any air contaminants that are to be considered.

(4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.

(5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department. Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while the employee is doing work for that corporation. The application for a permit to construct shall include the following information:

(1) A description of the equipment or control equipment covered by the application;

(2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;

(3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;

(4) The physical and chemical characteristics of the air contaminants;

(5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B);

(8) Reserved.

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects that are intended to be located at a site only for the duration of the specific, identified construction project; and

(10) Application fee.

1. The owner or operator shall submit a fee as required in 567—Chapter 30 to obtain a permit under 22.1(1), 567—22.4(455B), 567—22.5(455B), 567—22.8(455B), 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33;

2. For application submittals from a minor source as defined in 567—Chapter 30, the department shall not initiate review and processing of a permit application submittal until all required application fees have been paid to the department; and

(11) Quantity of greenhouse gas emissions for all applications for projects that will or do have greenhouse gas emissions. For all applications for projects that will not or do not have greenhouse gas emissions, the applicant shall indicate in the application that no greenhouse gases will be emitted and the applicant will not be required to file an inventory of greenhouse gases with that application, unless requested by the department.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

(2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

(3) In the case of an animal feeding operation, the information required in 567—Chapter 65;

(4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

(5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

(6) A description of available water supplies to prove that adequate water is available for dilution;

(7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal

equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

(8) Any additional information needed by the department to determine compliance with these rules.

567—22.2(455B) Processing permit applications.

22.2(1) *Incomplete applications.* The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) *Public notice and participation.* A notice of intent to issue a construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) *Final notice.* The department shall notify the applicant in writing of the issuance or denial of a construction permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

567—22.3(455B) Issuing permits.

22.3(1) *Stationary sources other than anaerobic lagoons.* In no case shall a construction permit that results in an increase in emissions be issued to any facility that is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan (SIP). If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit. A construction permit shall be issued when the director concludes that the preceding requirement has been met and:

a. That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and

b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B), and

c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and

d. That the applicant has met all other applicable requirements.

22.3(2) *Anaerobic lagoons.* A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of 567—Chapter 65.

22.3(3) *Conditions of approval.* A permit may be issued subject to conditions that shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

(1) The date or dates required by 22.3(3)*"b"* for which the notice is being submitted.
(2) Facility name.
(3) Facility address.
(4) DNR-assigned facility number.
(5) DNR air construction permit number.
(6) The name or the number of the emission unit or units in the notification.
(7) The emission point number or numbers in the notification.
(8) The name and signature of a company official.
(9) The date the notification was signed.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. Reserved.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least seven days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (email), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department's Internet website. The owner or operator will be notified by the department at least ten days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirement under local, state or federal law.

22.3(4) *Denial of a permit.*

a. When an application for a construction permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) *Modification of a permit.* The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

22.3(6) *Limits on hazardous air pollutants.* The department may limit a source's hazardous air pollutant potential to emit, as defined in 567—24.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) *Revocation of a permit.* The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued

the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

22.3(8) *Ownership change of permitted equipment.* The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change;

b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and

c. The construction permit number of the equipment changing ownership.

567—22.4(455B) Major stationary sources located in areas designated attainment or unclassified (PSD). As applicable, the owner or operator of a stationary source shall comply with the rules for new source review (NSR) for the PSD as set forth in 567—Chapter 33. An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

567—22.5(455B) Major stationary sources located in areas designated nonattainment. As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in 567—31.20(455B). An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

567—22.6 Reserved.

567—22.7(455B) Alternative emission control program (bubble concept).

22.7(1) *Applicability.* The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR Section 81.316) or located in an area with an approved SIP demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

a. The applicant is presently in compliance with EPA-approved SIP requirements, or

b. The applicant is subject to a consent order to meet an EPA-approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

Emission limits for individual emission points included in 567—23.3(455B) (except 23.3(2)*"d,"* 23.3(2)*"b"*(3), and 23.3(3)*"a"*(3)) and 567—23.4(455B) (except 23.4(12)*"b"* and 23.4(6)) may be replaced by alternative emission limits. Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

22.7(2) *Demonstration requirements.* The applicant for the alternative emission control program shall have the burden of demonstrating that:

a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Clean Air Act;

b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact (in the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff);

c. The pollutants being exchanged are comparable and within the same pollutant category;

d. Hazardous air pollutants designated in 40 CFR Part 61, as adopted by reference in 23.1(3), will not be exchanged for nonhazardous air pollutants;

e. The alternative program will not result in any delay in compliance by any source. Specific situations may require additional demonstration as specified in 44 FR 71780-71788, December 11, 1979, or as requested by the director.

f. The owner or operator of any facility applying for an alternative emission control program that involves the trade-off of sulfur dioxide emissions shall install, calibrate, maintain and operate continuous sulfur dioxide monitoring equipment consistent with EPA reference methods (40 CFR Part 60, Appendix B). The equipment shall be operational within three months of EPA approval of an alternative emission control program.

22.7(3) *Approval process.*

a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.

b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.

c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the SIP. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

567—22.8(455B) Permit by rule.

22.8(1) Permit by rule for spray booths. Spray booths that comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B). An owner or operator required to apply for a permit by rule under this subrule shall submit fees as required in 567—Chapter 30.

a. Definition. "Sprayed material" is material applied by spray equipment when used in a surface coating process in a spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule.

b. Facilities that facility-wide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

c. Facilities that facility-wide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) that is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any

spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep SDS or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

d. Facilities that facility-wide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by 22.1(1) and 22.1(3), unless otherwise exempt.

e. Certification. Facilities that claim to be permitted by provisions of this rule must submit to the department a written notification as directed by the department, certifying that the facility meets the following conditions:

(1) All spray booths and associated equipment are in compliance with the provisions of 22.8(1);

(2) All spray booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

(3) All spray booths and associated equipment currently are or will be in compliance with or otherwise exempt from the NESHAP for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

22.8(2) Reserved.

567—22.9(455B) Special requirements for visibility protection.

22.9(1) to **22.9(3)** Reserved.

22.9(4) *Notification.* For the purpose of the regional haze program under 40 CFR Section 51.308, as amended through January 10, 2017, the department shall notify in writing the owner, operator or designated representative of a source of the department's determination that the source may cause or contribute to visibility impairment in any mandatory Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

22.9(5) *Analysis.* The owner, operator, or designated representative of a source notified pursuant to 22.9(4) shall prepare and submit an analysis to the department after receipt of written notification by the department that an analysis is required.

22.9(6) *Control technology implementation.* Following the department's review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source notified pursuant to 22.9(4) shall:

a. Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).

b. Install, operate, and maintain the control technology as required by permits issued by the department.

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in 22.10(1). This rule does not apply to equipment located at grain processing plants or grain storage elevators, as "grain processing" and "grain storage elevator" are defined in 567—22.1(455B). Compliance with the requirements of this rule does not alleviate any affected person's duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2)*"ooo"*), may apply. An owner or operator subject to this rule shall submit fees as required in 567—Chapter 30.

22.10(1) *Definitions.* For purposes of 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

"Country grain elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives more than 50 percent of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Country grain terminal elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as "permanent storage capacity" is defined in this subrule;
3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Feed mill equipment," for purposes of 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

"Grain," as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

"Grain processing" means the same as defined in 567—22.1(455B).

"Grain storage elevator" means the same as defined in 567—22.1(455B).

"Grain terminal elevator," for purposes of 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of more than 88,100 m^3 (2.5 million U.S. bushels), as "permanent storage capacity" is defined in this subrule;
3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;
4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Permanent storage capacity" means grain storage capacity which is inside a building, bin, or silo.

22.10(2) *Methods for determining potential to emit (PTE).* The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the PTE for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}).

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B), except that "maximum capacity" means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the

applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1) and in 567—24.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as "feed mill equipment" is defined in 22.10(1), shall calculate the PTE for PM and PM_{10} for the feed mill equipment as specified in the definition of "potential to emit" in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) *Classification and requirements for permits, emissions controls, recordkeeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.* The requirements for construction permits, operating permits, emissions controls, recordkeeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A "new" Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility's PTE is less than 15 tons of PM_{10} per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department's receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in 22.10(3)*"a"*(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM_{10} on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to 22.10(3)*"a"*(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement BMP for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing

the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department's Internet website). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Recordkeeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility's potential PM_{10} emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM_{10} emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM10 per year and is less than or equal to 50 tons of PM10 per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM_{10} prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will

grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) BMP. The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Recordkeeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM_{10} emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will increase the facility's PTE for PM_{10} such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM_{10} at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM_{10} at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM_{10} per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM_{10} at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility's annual PTE for PM_{10} is equal to or greater than 100 tons per year as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM_{10} is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in 567—22.106(455B).

22.10(4) *Feed mill equipment.* This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as "feed mill equipment" is defined in 22.10(1). For purposes of this subrule, the owner or operator of "existing"

feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of "new" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of "existing" feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of "new" feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in 22.10(2), to determine if operating permit requirements specified in 567—24.100(455B) through 567—24.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM_{10} for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

567—22.11(455B) Ambient air quality standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 CFR Part 50 (1972) and as amended at 38 Federal Register (FR) 22384 (September 14, 1973), 43 FR 46258 (October 5, 1978), 44 FR 8202, 8220 (February 9, 1979), 52 FR 24634-24669 (July 1, 1987), 62 FR 38651-38760, 38855-38896 (July 18, 1997), 71 FR 61144-61233 (October 17, 2006), 73 FR 16436-16514 (March 27, 2008), 73 FR 66964-67062 (November 12, 2008), 75 FR 6474-6537 (February 9, 2010), 75 FR 35520-35603 (June 22, 2010), 78 FR 3086-3287 (January 15, 2013), and 80 FR 65291-65468 (October 26, 2015). The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws and regulations.

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 23
"Air Emission Standards"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.133

State or federal law(s) implemented by the rulemaking: U.S. Clean Air Act sections 110 (42 U.S.C. §7410), 111 (42 U.S.C. §7411), and 112 (42 U.S.C. §7412) and Iowa Code section 455B.133

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 Christine Paulson 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 Christine Paulson prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.m.	Via video/conference call

Public Comment

Any interested person may submit written or oral 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:

Christine Paulson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.725.9510
Email: christine.paulson@dnr.iowa.gov

Purpose and Summary

Chapter 23 establishes the air emission standards for specific air pollutants and types of air emitting sources. The standards in Chapter 23 include adoption by reference of the U.S. Environmental Protection Agency's (EPA's) New Source Performance Standards (NSPS) and the federal standards for controlling hazardous air pollutants known as the National Emission Standards for Hazardous Air Pollutants (NESHAP). Additionally, general emissions rates for criteria pollutants, such as particulate matter and sulfur dioxide, have been established to implement the National Ambient Air Quality Standards (NAAQS). Citations to rules in 567—Chapter 24 are to the newly proposed chapter in the Regulatory Analysis for 567—Chapter 24 (IAB 9/6/23).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Regulated sources of air pollutants will bear the costs of the proposed rulemaking.

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

Citizens of Iowa will benefit from the proposed 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:

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

- Qualitative description of impact:

Regulated sources of air emissions must comply with the applicable emissions standards set to attain or maintain the NAAQS and to provide reasonable public health protections from hazardous air pollutants (HAP). This is achieved through the installation of air pollution controls, the implementation of operating limits, instituting work practices, the monitoring and reporting of air emissions, and onsite recordkeeping. The costs of complying with these emission standards vary by the standard, type of facility process, category of air emissions, and quantity and type of emissions.

3. Costs to the State:

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

Department staff review permit applications and write permits that include the emission standards and associated requirements. Department staff also ensure that emissions standards and permit requirements are being met by observing and evaluating facility emissions testing, conducting facility inspections, reviewing compliance reports, and providing outreach and compliance assistance to regulated facilities. The Department also reports emissions and compliance information to the public, state, and federal partners.

- Anticipated effect on state revenues:

The new chapter will have a neutral impact on state revenues because the rules for air emission standards are already being implemented in existing Chapter 23.

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

The costs of the proposed new Chapter 23 are significantly less than inaction (repealing the air emission standards in Chapter 23 and not replacing them). Without these standards, many facilities would not have limits on their air emissions, which could adversely impact the health of Iowa citizens and attainment of the NAAQS.

Failure to meet the NAAQS is not only unhealthy for the public but can also result in a federal declaration of nonattainment for the affected pollutant(s). A nonattainment declaration triggers several requirements and timelines under the Clean Air Act intended to reduce air emissions so the area can again attain the NAAQS. These include the requirement to install the most stringent air pollution controls that are technologically feasible on existing sources, regardless of cost, and increased review stringency for new facilities that may want to locate into the nonattainment area.

In the absence of a state program establishing air emission standards, EPA would be required by the Clean Air Act to establish such a program in Iowa. EPA may set more stringent standards than those currently set in Chapter 23 for pollutants such as particulate matter and sulfur dioxide, which could result in increased compliance costs for Iowa's regulated facilities. Further, Iowa's adoption of the NSPS and NESHAP allows the Department, rather than EPA, to be the primary agency to implement these requirements in Iowa and to provide timely outreach and compliance assistance to affected facilities.

For these reasons, stakeholders prefer to have the Department, rather than EPA, administer the air emission standards that are specific to Iowa's needs. Additionally, by repromulgating the proposed new Chapter 23, the Department will provide businesses and the public with more up-to-date air quality requirements with increased program implementation effectiveness.

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. Air emissions standards are required under the Clean Air Act and Iowa Code section 455B.133.

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:

Air emissions standards are required by the Clean Air Act and Iowa Code section 455B.133. The proposed Chapter 23 will provide a dedicated chapter that sets forth the air emission standards in a streamlined and up-to-date format compared to the previous format. Additionally, the proposed chapter will include the applicable air program definitions from Chapter 20, which will be rescinded and not repromulgated.

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 eligible to use free technical assistance mandated by the Clean Air Act (42 U.S.C 7661f). More information is available at www.iowadnr.gov/Environmental-Protection/Air-Quality/Small-Business-Assistance.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
AIR EMISSION STANDARDS

567—23.1(455B) Emission standards.

23.1(1) *In general.* The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in 23.1(3). The federal standards for hazardous air pollutants for source categories (national emission standards for hazardous air pollutants for source categories) shall be applicable as specified in 23.1(4). The federal emission guidelines (emission guidelines) shall be applicable as specified in 23.1(5). Compliance with emission standards specified elsewhere in this chapter shall be in accordance with 567—Chapter 21.

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through June 28, 2023, are adopted by reference, except §60.530 through §60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is provided in the table below. A different date for adoption by reference may be

included with the subpart designation in the table. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

Federal New Source Performance Standards (NSPS)
Adopted by Reference in 23.1(2)

23.1(2) paragraph	Affected source category	40 CFR Part 60 Subpart	Date of adoption (if different than 23.1(2) introductory paragraph) or note if federal standard is not adopted
a	Fossil fuel-fired steam generators	D	1/20/2011
b	Incinerators	E	N/A
c	Portland cement plants	F	N/A
d	Nitric acid plants	G	N/A
e	Sulfuric acid plants	H	N/A
f	Hot mix asphalt plants	I	N/A
g	Petroleum refineries	J - Ja	Not adopted. No facilities in Iowa. Paragraph reserved.
h	Secondary lead smelters	L	Not adopted. No facilities in Iowa. Paragraph reserved.
i	Secondary brass and bronze ingot production plants	M	N/A
j	Iron and steel plants	N	N/A
k	Sewage treatment plants	O and Subpart E of 40 CFR 503	N/A
l	Steel plants	AA	N/A
m	Primary copper smelters	P	Not adopted. No facilities in Iowa. Paragraph reserved.
n	Primary zinc smelters	Q	Not adopted. No facilities in Iowa. Paragraph reserved.
o	Primary lead smelters	R	Not adopted. No facilities in Iowa. Paragraph reserved.
p	Primary aluminum reduction plants	S	Not adopted. No facilities in Iowa. Paragraph reserved.
q	Wet process phosphoric acid plants in the phosphate fertilizer industry	T	N/A
r	Superphosphoric acid plants in the phosphate fertilizer industry	U	N/A
s	Diammonium phosphate plants in the phosphate fertilizer industry	V	N/A
t	Triple super phosphate plants in the phosphate fertilizer industry	W	N/A
u	Granular triple superphosphate storage facilities in the phosphate fertilizer industry	X	N/A
v	Coal preparation plants	Y	N/A

w	Ferroalloy production	Z	N/A
x	Kraft pulp mills	BB	February 27, 2014
y	Lime manufacturing plants	HH	N/A
z	Electric utility steam generating units	Da	January 20, 2011
aa	Stationary gas turbines	GG	N/A
bb	Petroleum storage vessels	K	N/A
cc	Petroleum storage vessels	Ka	N/A
dd	Glass manufacturing plants	CC	N/A
ee	Automobile and light-duty truck surface coating operations at assembly plants	MM	N/A
ff	Ammonium sulfate manufacture	PP	N/A
gg	Surface coating of metal furniture	EE	N/A
hh	Lead-acid battery manufacturing plants	KK	February 27, 2014
ii	Phosphate rock plants	NN	N/A
jj	Graphic arts industry	QQ	N/A
kk	Industrial surface coating	SS	N/A
ll	Metal coil surface coating	TT	N/A
mm	Asphalt processing and asphalt roofing manufacturing	UU	N/A
nn	Equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemicals manufacturing industry	VV and VVa	N/A
oo	Beverage can surface coating	WW	N/A
pp	Bulk gasoline terminals	XX	N/A
qq	Pressure sensitive tape and label surface coating operations	RR	N/A
rr	Metallic mineral processing plants	LL	N/A
ss	Synthetic fiber production facilities	HHH	N/A
tt	Equipment leaks of VOC in petroleum refineries	GGG	N/A
uu	Flexible vinyl and urethane coating and printing	FFF	N/A
vv	Petroleum dry cleaners	JJJ	N/A
ww	Electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983	AAa	N/A
xx	Wool fiberglass insulation manufacturing plants	PPP	N/A
yy	Iron and steel plants	Na	N/A

zz	Equipment leaks of VOC from on-shore natural gas processing plants	KKK	N/A
aaa	On-shore natural gas processing: SO2 emissions	LLL	N/A
bbb	Nonmetallic mineral processing plants	OOO	N/A
ccc	Industrial-commercial-institutional steam generating units	Db	January 20, 2011
ddd	Volatile organic liquid storage vessels	Kb	N/A
eee	Rubber tire manufacturing plants	BBB	N/A
fff	Industrial surface coating: surface coating of plastic parts for business machines	TTT and TTTa	N/A
ggg	VOC emissions from petroleum refinery wastewater systems	QQQ	N/A
hhh	Magnetic tape coating facilities	SSS	N/A
iii	Polymeric coating of supporting substrates	VVV	N/A
jjj	VOC emissions from synthetic organic chemical manufacturing industry air oxidation unit processes	III	N/A
kkk	VOC emissions from synthetic organic chemical manufacturing industry distillation operations	NNN	N/A
lll	Small industrial-commercial-institutional steam generating units	Dc	January 20, 2011
mmm	VOC emissions from the polymer manufacturing industry	DDD	N/A
nnn	Municipal waste combustors	Ea	N/A
ooo	Grain elevators	DD	N/A
ppp	Mineral processing plants	UUU	N/A
qqq	VOC emissions from synthetic organic chemical manufacturing industry reactor processes	RRR	N/A
rrr	Municipal solid waste landfills, as defined by 40 CFR 60.751	WWW	April 10, 2000
sss	Municipal waste combustors	Eb	N/A
ttt	Hospital/medical/infectious waste incinerators (HMIWI)	Ec (partial adoption)*	N/A
uuu	New small municipal waste combustion units	AAAA	N/A
vvv	Commercial and industrial solid waste incineration	CCCC	December 1, 2000
www	Other solid waste incineration (OSWI) units	EEEE	N/A

xxx	Reserved	N/A	N/A
yyy	Stationary compression ignition internal combustion engines	IIII	N/A
zzz	Stationary spark ignition internal combustion engines	JJJJ	N/A
aaaa	Stationary combustion turbines	KKKK	N/A
bbbb	Nitric acid plants	Ga	N/A
cccc	Sewage sludge incineration units	LLLL	N/A

*The provisions in 60.50c(a) through (h) (exceptions to Subpart Ec requirements) and 60.51(c) (Subpart Ec definitions) are adopted by reference. No other provisions of Subpart Ec are adopted.

23.1(3) *Emission standards for hazardous air pollutants.* The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through October 7, 2020, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

Federal Emission Standards for Hazardous Air Pollutants (NESHAP)
Adopted by Reference in 23.1(3)

23.1(3) paragraph	Affected source category	40 CFR Part 61 Subpart Adopted	Date of adoption (if different than 23.1(3) introductory paragraph) or note if standard is not adopted
a	Asbestos	M	N/A
b	Beryllium	C	Not adopted. No facilities in Iowa. Paragraph reserved.
c	Beryllium rocket motor firing	D	Not adopted. No facilities in Iowa. Paragraph reserved.
d	Mercury	E	N/A
e	Vinyl chloride	F	N/A
f	Equipment leaks of benzene (fugitive emission sources)	J	N/A
g	Equipment leaks of volatile hazardous air pollutants (fugitive emission sources)	V	N/A
h	Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities	P	Not adopted. No facilities in Iowa. Paragraph reserved.

i	Inorganic arsenic emissions from glass manufacturing plants	N	N/A
j	Inorganic arsenic emissions from primary copper smelters	O	Not adopted. No facilities in Iowa. Paragraph reserved.
k	Benzene emissions from coke by-product recovery plants	L	N/A
l	Benzene emissions from benzene storage vessels	Y	N/A
m	Benzene emissions from benzene transfer operations	BB	N/A
n	Benzene waste operations	FF	N/A

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through March 29, 2023, are adopted by reference, except those provisions that cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (Fbio) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities.

For the purpose of this subrule and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this subrule.

"Hazardous air pollutant" or *"HAP"* means the same as "hazardous air pollutant" set forth in 567—24.100(455B).

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. "Area source" means any stationary source of hazardous air pollutants that is not a "major source."

"Maximum achievable control technology (MACT) emission limitation for existing sources," as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

"Maximum achievable control technology (MACT) emission limitation for new sources," as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

"Maximum achievable control technology (MACT) floor," as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

23.1(4)*"a,"* general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference in the table below.

Federal Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories Adopted by Reference in 23.1(4)

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
a	General provisions	A	N/A
b	Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j)	B	N/A
c	Reserved	N/A	N/A
d	Compliance extensions for early reductions of hazardous air pollutants	D	N/A
e	Reserved	N/A	N/A
f	Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry	F	N/A
g	Emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater	G	N/A
h	Emission standards for organic hazardous air pollutants for equipment leaks	H	N/A
i	Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks	I	N/A
j	Emission standards for hazardous air pollutants for polyvinyl chloride and copolymers production	Subparts J and HHHHHHH	Not adopted. No facilities in Iowa. Paragraph reserved.
k	Reserved	N/A	N/A
l	Emission standards for coke oven batteries	L	N/A
m	Perchloroethylene air emission standards for dry cleaning facilities	M	N/A
n	Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks	N	N/A
o	Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations	O	N/A
p	Reserved	N/A	N/A

q	Emission standards for hazardous air pollutants for industrial process cooling towers	Q	N/A
r	Emission standards for hazardous air pollutants for gasoline distribution: (Stage 1)	R	N/A
s	Emission standards for hazardous air pollutants for pulp and paper (noncombustion)	S	N/A
t	Emission standards for hazardous air pollutants: halogenated solvent cleaning	T	N/A
u	Emission standards for hazardous air pollutants: Group I polymers and resins	U	N/A
v	Reserved	N/A	N/A
w	Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production	W	N/A
x	National emission standards for hazardous air pollutants from secondary lead smelting	X	Not adopted. No facilities in Iowa. Paragraph reserved.
y	Emission standards for marine tank vessel loading operations	Y	N/A
z	Reserved	N/A	N/A
aa	Emission standards for hazardous air pollutants for phosphoric acid manufacturing	AA	N/A
ab	Emission standards for hazardous air pollutants for phosphate fertilizers production	BB	N/A
ac	National emission standards for hazardous air pollutants: petroleum refineries	CC	Not adopted. No facilities in Iowa. Paragraph reserved.
ad	Emission standards for hazardous air pollutants for off-site waste and recovery operations	DD	N/A
ae	Emission standards for magnetic tape manufacturing operations	EE	N/A
af	Reserved	N/A	N/A
ag	National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities	GG	N/A
ah	Emission standards for hazardous air pollutants for oil and natural gas production	HH	N/A

ai	Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations	II	Not adopted. No facilities in Iowa. Paragraph reserved.
aj	Emission standards for hazardous air pollutants for HAP emissions from wood furniture manufacturing operations	JJ	N/A
ak	Emission standards for hazardous air pollutants for the printing and publishing industry	KK	N/A
al	Emission standards for hazardous air pollutants for primary aluminum reduction plants	LL	Not adopted. No facilities in Iowa. Paragraph reserved.
am	Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills	MM	October 11, 2017
an	Reserved	N/A	N/A
ao	Emission standards for tanks—level 1	OO	N/A
ap	Emission standards for containers	PP	N/A
aq	Emission standards for surface impoundments	QQ	N/A
ar	Emission standards for individual drain systems	RR	N/A
as	Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process	SS	N/A
at	Emission standards for equipment leaks—control level 1	TT	N/A
au	Emission standards for equipment leaks—control level 2 standards	UU	N/A
av	Emission standards for oil-water separators and organic-water separators	VV	N/A
aw	Emission standards for storage vessels (tanks)—control level 2	WW	N/A
ax	Emission standards for ethylene manufacturing process units: heat exchange systems and waste operations	XX	N/A
ay	Emission standards for hazardous air pollutants: generic maximum achievable control technology (generic MACT)	YY	October 8, 2014
az to bb	Reserved	N/A	N/A

bc	Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants	CCC	Not adopted. No facilities in Iowa. Paragraph reserved.
bd	Emission standards for hazardous air pollutants for mineral wool production	DDD	N/A
be	Emission standards for hazardous air pollutants from hazardous waste combustors	EEE	N/A
bf	Reserved	N/A	N/A
bg	Emission standards for hazardous air pollutants for pharmaceutical manufacturing	GGG	N/A
bh	Emission standards for hazardous air pollutants for natural gas transmission and storage	HHH	N/A
bi	Emission standards for hazardous air pollutants for flexible polyurethane foam production	III	N/A
bj	Emission standards for hazardous air pollutants: Group IV polymers and resins	JJJ	N/A
bk	Reserved	N/A	N/A
bl	Emission standards for hazardous air pollutants for Portland cement manufacturing operations	LLL	N/A
bm	Emission standards for hazardous air pollutants for pesticide active ingredient production	MMM	N/A
bn	Emission standards for hazardous air pollutants for wool fiberglass manufacturing	NNN	N/A
bo	Emission standards for hazardous air pollutants for amino/phenolic resins production	OOO	N/A
bp	Emission standards for hazardous air pollutants for polyether polyols production	PPP	N/A
bq	Emission standards for hazardous air pollutants for primary copper smelting	QQQ	Not adopted. No facilities in Iowa. Paragraph reserved.
br	Emission standards for hazardous air pollutants for secondary aluminum production	RRR	N/A
bs	Reserved	N/A	N/A
bt	Emission standards for hazardous air pollutants for primary lead smelting	TTT	Not adopted. No facilities in Iowa. Paragraph reserved.

bu	Emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units	UUU	Not adopted. No facilities in Iowa. Paragraph reserved.
bv	Emission standards for hazardous air pollutants: publicly owned treatment works (POTW)	VVV	N/A
bw	Reserved	N/A	N/A
bx	Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese	XXX	Not adopted. No facilities in Iowa. Paragraph reserved.
by and bz	Reserved	N/A	N/A
ca	Emission standards for hazardous air pollutants: municipal solid waste landfills	AAAA	April 20, 2006
cb	Reserved	N/A	N/A
cc	Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast	CCCC	N/A
cd	Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing)	DDDD	October 29, 2007
ce	Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline)	EEEE	July 17, 2008
cf	Emission standards for hazardous air pollutants for miscellaneous organic chemical (MON) manufacturing	FFFF	July 14, 2006
cg	Emission standards for hazardous air pollutants for solvent extraction for vegetable oil production	GGGG	N/A
ch	Emission standards for hazardous air pollutants for wet-formed fiberglass mat production	HHHH	N/A
ci	Emission standards for hazardous air pollutants for surface coating of automobiles and light-duty trucks	IIII	N/A
cj	Emission standards for hazardous air pollutants: paper and other web coating	JJJJ	N/A
ck	Emission standards for hazardous air pollutants for surface coating of metal cans	KKKK	N/A
cl	Reserved	N/A	N/A

cm	Emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products	MMMM	N/A
cn	Emission standards for hazardous air pollutants: surface coating of large appliances	NNNN	N/A
co	Emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles	OOOO	N/A
cp	Emission standards for surface coating of plastic parts and products	PPPP	N/A
cq	Emission standards for hazardous air pollutants for surface coating of wood building products	QQQQ	N/A
cr	Emission standards for hazardous air pollutants: surface coating of metal furniture	RRRR	N/A
cs	Emission standards for hazardous air pollutants: surface coating of metal coil	SSSS	N/A
ct	Emission standards for hazardous air pollutants for leather finishing operations	TTTT	N/A
cu	Emission standards for hazardous air pollutants for cellulose products manufacturing	UUUU	N/A
cv	Emission standards for hazardous air pollutants for boat manufacturing	VVVV	N/A
cw	Emission standards for hazardous air pollutants: reinforced plastic composites production	WWWW	N/A
cx	Emission standards for hazardous air pollutants: rubber tire manufacturing	XXXX	N/A
cy	Emission standards for hazardous air pollutants for stationary combustion turbines	YYYY	November 19, 2020
cz	Emission standards for stationary reciprocating internal combustion engines	ZZZZ	N/A
da	Emission standards for hazardous air pollutants for lime manufacturing plants	AAAAA	April 20, 2006
db	Emission standards for hazardous air pollutants: semiconductor manufacturing	BBBBB	N/A

dc	Emission standards for hazardous air pollutants for coke ovens: pushing, quenching, and battery stacks	CCCCC	N/A
dd	Emission standards for industrial, commercial and institutional boilers and process heaters	DDDDD	Not adopted. Paragraph reserved.
de	Emission standards for hazardous air pollutants for iron and steel foundries	EEEEE	N/A
df	Emission standards for hazardous air pollutants for integrated iron and steel manufacturing	FFFFF	July 13, 2006
dg	Emission standards for hazardous air pollutants: site remediation	GGGGG	November 29, 2006
dh	Emission standards for hazardous air pollutants for miscellaneous coating manufacturing	HHHHH	N/A
di	Emission standards for mercury emissions from mercury cell chlor-alkali plants	IIIII	N/A
dj	Emission standards for hazardous air pollutants for brick and structural clay products manufacturing	JJJJJ	Not adopted. No facilities in Iowa. Paragraph reserved.
dk	Emission standards for hazardous air pollutants for clay ceramics manufacturing	KKKKK	Not adopted. No facilities in Iowa. Paragraph reserved.
dl	Emission standards for hazardous air pollutants: asphalt processing and asphalt roofing manufacturing	LLLLL	N/A
dm	Emission standards for hazardous air pollutants: flexible polyurethane foam fabrication operations	MMMMM	N/A
dn	Emission standards for hazardous air pollutants: hydrochloric acid production	NNNNN	N/A
do	Reserved	N/A	N/A
dp	Emission standards for hazardous air pollutants: engine test cells/stands	PPPPP	N/A
dq	Emission standards for hazardous air pollutants for friction materials manufacturing facilities	QQQQQ	N/A
dr	Emission standards for hazardous air pollutants: taconite iron ore processing	RRRRR	Not adopted. No facilities in Iowa. Paragraph reserved.
ds	Emission standards for hazardous air pollutants for refractory products manufacturing	SSSSS	N/A

dt	Emission standards for hazardous air pollutants: primary magnesium refining	TTTTT	Not adopted. No facilities in Iowa. Paragraph reserved.
du and dv	Reserved	N/A	N/A
dw	Emission standards for hazardous air pollutants for hospital ethylene oxide sterilizer area sources	WWWWW	N/A
dx	Reserved	N/A	N/A
dy	Emission standards for hazardous air pollutants for electric arc furnace steelmaking area sources	YYYYY	N/A
dz	Emission standards for hazardous air pollutants for iron and steel foundry area sources	ZZZZZ	N/A
ea	Reserved	N/A	N/A
eb	Emission standards for hazardous air pollutants for gasoline distribution area sources: bulk terminals, bulk plants and pipeline facilities	BBBBBB	N/A
ec	Emission standards for hazardous air pollutants for area sources: gasoline dispensing facilities	CCCCCC	N/A
ed to eg	Reserved	N/A	N/A
eh	Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations	HHHHHH	N/A
ei	Reserved	N/A	N/A
ej	Emission standards for hazardous air pollutants for area sources: industrial, commercial, and institutional boilers	JJJJJJ	N/A
ek	Reserved	N/A	N/A
el	Emission standards for hazardous air pollutants for acrylic and modacrylic fibers production area sources	LLLLLL	N/A
em	Emission standards for hazardous air pollutants for carbon black production area sources	MMMMMM	N/A
en	Emission standards for hazardous air pollutants for chemical manufacturing of chromium compounds area sources	NNNNNN	N/A
eo	Emission standards for hazardous air pollutants for flexible polyurethane foam production and fabrication area sources	OOOOOO	N/A

ep	Emission standards for hazardous air pollutants for lead acid battery manufacturing area sources	PPPPPP	November 19, 2020
eq	Emission standards for hazardous air pollutants for wood preserving area sources	QQQQQQ	N/A
er	Emission standards for hazardous air pollutants for clay ceramics manufacturing area sources	RRRRRR	N/A
es	Emission standards for hazardous air pollutants for glass manufacturing area sources	SSSSSS	N/A
et	Emissions standards for hazardous air pollutants for secondary nonferrous metals processing area sources	TTTTTT	N/A
eu	Reserved	N/A	N/A
ev	Emission standards for hazardous air pollutants for area sources	VVVVVV	N/A
ew	Emission standards for hazardous air pollutants for area sources: plating and polishing	WWWWWW	N/A
ex	Emission standards for hazardous air pollutants for area sources: metal fabrication and finishing	XXXXXX	N/A
ey	Reserved	N/A	N/A
ez	Emission standards for hazardous air pollutants for area sources: aluminum, copper, and other nonferrous foundries	ZZZZZZ	N/A
fa	Reserved	N/A	N/A
fb	National emission standards for hazardous air pollutants for area sources: chemical preparations industry	BBBBBBB	N/A
fc	Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing	CCCCCCC	N/A
fd	Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing	DDDDDDD	N/A

23.1(5) *Emission guidelines.* The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through March 21, 2011, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. A different CFR reference and date for adoption by reference may be included with the subpart designation indicated in the paragraphs of this subrule. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B),

determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60, as adopted by reference in 23.1(2), also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60 as amended through April 10, 2000.

(1) Definitions. For the purpose of 23.1(5)*"a,"* the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

"Municipal solid waste landfill" or *"MSW landfill"* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to 567—24.101(455B) only because of applicability to 23.1(5)*"a"*(2), the following apply for obtaining and maintaining a Title V operating permit under 567—24.104(455B):

- The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.
- The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 24.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the air quality bureau, department of natural resources, no later than September 20, 1999.
- The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under 23.1(5)*"a"*(3), or the owner or operator meets the conditions for control system removal specified in 40 CFR §60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill's design capacity exceeds the established thresholds in 23.1(5)*"a"*(3)"1," the NMOC emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5)*"a"*(3)"1."

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the director and U.S. Environmental Protection Agency:

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5)*"a"*(3)"3";

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and recordkeeping requirements. The recordkeeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5)*"a"*(6)"2," planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5)*"a"*(3) shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5)*"a"*(3)"1" whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5)*"a"*(3) shall be accomplished within 30 months of the date when the condition in 23.1(5)*"a"*(3)"1" is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

b. Emission guidelines for hospital/medical/infectious waste incinerators (40 CFR Part 62, Subpart HHH). The provisions in 62.14400(b) (exceptions to Subpart HHH requirements) and 62.14490 (Subpart HHH definitions) as amended through May 13, 2013, are adopted by reference. No other provisions of Subpart HHH are adopted.

c. Emission guidelines and compliance schedules for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999. Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with requirements established in Subpart III of 40 CFR Part 62 and 40 CFR §62.3916 as adopted through August 24, 2004.

d. Reserved.

e. Emission guidelines and compliance times for existing sewage sludge incineration units (40 CFR Part 62, Subpart LLL). Emission guidelines and compliance times for control of designated pollutants from affected sewage sludge incineration (SSI) units that commenced construction or reconstruction on or before October 14, 2010, shall be in accordance with federal standards established in Subpart LLL of 40 CFR Part 62 as amended through April 29, 2016.

23.1(6) *Calculation of emission limitations based upon stack height.* This rule sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. The rule does not limit the actual physical stack height for any source.

For the purpose of this subrule, definitions of "stack," "a stack in existence," "dispersion technique," "good engineering practice (GEP) stack height," "nearby" and "excessive concentration" as set forth in 40 CFR §51.100(ff) through (kk) as amended through June 14, 1996, are adopted by reference.

567—23.2(455B) Open burning. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this rule. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim in these rules.

"Garbage" means all solid and semisolid putrescible and nonputrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing and serving of food or of material intended for use as food but excluding recognized industrial by-products.

"Landscape waste" means any vegetable or plant wastes except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery and yard trimmings.

"Open burning" means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.

"Refuse" means garbage, rubbish and all other putrescible and nonputrescible wastes, except sewage and water-carried trade wastes.

"Residential waste" means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes, and any locally recyclable goods or plastics.

"Rubbish" means all waste materials of nonputrescible nature.

"Trade waste" means any refuse resulting from the prosecution of any trade, business, industry, commercial venture (including farming and ranching), or utility or service activity, and any governmental or institutional activity, whether or not for profit.

23.2(1) *Prohibition.* No person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3).

23.2(2) *Variances from rules.* Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance from the open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard (NAAQS).

23.2(3) *Exemptions.* The open burning exemptions specified in this subrule do not provide exemptions from any other applicable environmental regulations. In particular, the exemptions contained in this subrule do not absolve any person from compliance with the rules for solid waste disposal, including ash disposal, and solid waste permitting contained in 567—Chapters 100 through 130 or the rules for storm water runoff and storm water permitting contained in 567—Chapters 60 and 64. The following exemptions apply unless prohibited by local ordinances or regulations, except that the exemptions for open burning of trees and tree trimming (23.2(3)*"b"*), landscape waste (23.2(3)*"d"*), residential waste (23.2(3)*"f"*), agricultural structures (23.2(3)*"i"*), and demolished buildings (23.2(3)*"j"*) are unavailable within the cities of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

a. Disaster rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists. Burning of any structures or demolished structures shall be conducted in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants.

b. Trees and tree trimmings. The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording

in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be used to ignite trees and tree trimmings.

This exemption shall not apply within the area classified as the PM10 (inhalable) particulate Group II area of Mason City. This Group II area is described as follows: the area in Cerro Gordo County, Iowa, in Lincoln Township including Sections 13, 24 and 25; in Lime Creek Township including Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35; in Mason Township the W ½ of Section 1, Sections 2, 3, 4, 5, 8, 9, the N ½ of Section 11, the NW ¼ of Section 12, the N ½ of Section 16, the N ½ of Section 17 and the portions of Sections 10 and 15 north and west of the line from U.S. Highway 18 south on Kentucky Avenue to 9th Street SE; thence west on 9th Street SE to the Minneapolis and St. Louis railroad tracks; thence south on Minneapolis and St. Louis railroad tracks to 19th Street SE; thence west on 19th Street SE to the section line between Sections 15 and 16.

c. Flare stacks. The open burning or flaring of waste gases, providing such open burning or flaring is conducted in compliance with 23.3(2)*"d"* and 23.3(3)*"e."*

d. Landscape waste. The disposal by open burning of landscape waste originating on the premises. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

e. Recreational fires. Open fires for cooking, heating, recreation and ceremonies, provided they comply with 23.3(2)*"d."* Burning rubber tires is prohibited from this activity.

f. Residential waste. Backyard burning of residential waste at dwellings of four-family units or less. The adoption of more restrictive ordinances or regulations of a governing body of the political subdivision, relating to control of backyard burning, shall not be precluded by these rules.

g. Training fires. For purposes of 23.2(3), a "training fire" is a fire set for the purposes of conducting bona fide training of public or industrial employees in firefighting methods. For purposes of this paragraph, "bona fide training" means training that is conducted according to the National Fire Protection Association 1403 Standard on Live Fire Training Evolutions (2002 Edition) or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

(1) A training fire on a building is conducted with the building structurally intact.

(2) The training fire does not include the controlled burn of a demolished building.

(3) If the training fire is to be conducted on a building, written notification is provided to the department on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building, and is postmarked or delivered to the director at least ten working days before such action commences.

(4) Notification shall be made in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) as amended through January 16, 1991.

(5) All asbestos-containing materials shall be removed prior to the training fire.

(6) Asphalt roofing may be burned in the training fire only if notification to the director contains testing results indicating that none of the layers of asphalt roofing contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department's limit on the burning of asphalt roofing shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3)*"j."*

(7) Rubber tires shall not be burned during a training fire.

h. Paper or plastic pesticide containers and seed corn bags. The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the

premises. Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper or plastic pesticide containers and seed corn bags that can be disposed of by open burning shall not exceed one day's accumulation or 50 pounds, whichever is less. However, when the burning of paper or plastic pesticide containers or seed corn bags causes a nuisance, the director may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion products.

i. Agricultural structures. The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning; all chemicals and asphalt roofing are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures. The asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) as amended through January 16, 1991, requires the burning of agricultural structures to be conducted in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation."

For the purposes of this subrule, "agricultural structures" means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. "Agricultural structures," for asbestos NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes.

j. Controlled burning of a demolished building. A city, as "city" is defined in Iowa Code section 362.2(4), with approval of its council, as "council" is defined in Iowa Code section 362.2(8), may conduct a controlled burn of a demolished building. A city is the only party that may conduct such a burn and is responsible for ensuring that all of the following conditions are met:

(1) Prohibition. The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area where area-specific state implementation plans require the control of particulate matter.

(2) Notification requirements. For each building proposed to be burned, the city fire department or a city official, on behalf of the city, shall submit to the department a completed notification postmarked at least 10 working days prior to commencing demolition and at least 30 days before the proposed controlled burn commences. Documentation of city council approval shall be submitted with the notification. Information required to be provided shall include the exact location of the burn site; the approximate distance to the nearest neighboring residence or business; the method used by the city to notify nearby residents of the proposed burn; an explanation of why alternative methods of demolition debris management are not being used; and information required by 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991. Notification shall be provided on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building. For burns conducted outside the city limits, the city shall send to the chairperson of the applicable county board a copy of the completed DNR notification Form 542-8010 and documentation of city council approval. Notification to the county board shall be postmarked, faxed or sent by email at least 30 days before the proposed controlled burn commences.

(3) Asbestos removal requirements. All asbestos-containing materials shall be removed before the building to be burned is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos NESHAP, as amended through January 16, 1991.

(4) Requirements for asphalt roofing. During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city's limit on the burning of asphalt roofing shall include both the controlled burning of a demolished building and training fires, as specified in 23.2(3)*"g."*

(5) Building size limit. For each proposed controlled burn located within the city limits, more than one demolished building may be included in the burn, provided that the sum total of all building material to be burned at a designated site does not exceed 1,700 square feet in size. For a controlled burn site located outside the city limits, the sum total of all building material to be burned, per day, may not exceed 1,700 square feet in size. For purposes of this subparagraph, "square feet" includes both finished and unfinished basements and excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

(6) Time of day requirements. The controlled burning of a demolished building may be conducted only between the hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

(7) Prohibited materials. Rubber tires, chemicals, furniture, carpeting, household appliances, vinyl products (such as flooring or siding), trade waste, garbage, rubbish, landscape waste, residential waste, and other nonstructural materials shall not be burned.

(8) Limits on the number and location of burns. For burns conducted within the city limits, each city may undertake no more than one controlled burn of demolished building material in every 0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city shall undertake no more than one controlled burn of demolished building material per day. A burn site outside the city limits must be located at least 0.6 of a mile from any building inhabited by a person, as "person" is defined in Iowa Code section 362.2(17).

(9) Requirements for burn access and supervision. The city shall control access to all demolished building burn sites. Representatives of the city who are city employees or who are hired by the city shall supervise the burning of demolished building material at all times.

(10) Recordkeeping requirements. The city shall retain at least one copy of all notifications and supplementary information required to be sent to the department under 23.2(3)*"j"*(2). Additionally, the city shall maintain a map of the exact location of each burn site and supporting documentation showing the date of each demolished building burn and the square feet of building material burned on each date. All maps, notifications and associated records shall be maintained by the city clerk, as "clerk" is defined in Iowa Code section 362.2(7), for a period of at least three years and shall be made available for inspection by the department upon request.

(11) Variance from this paragraph. In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from the specific conditions for controlled burning of a demolished building and may request that the director conduct a review of the ambient air impacts of the request. The director shall approve or deny the request in accordance with 567—subrule 21.2(4).

(12) Compliance with other applicable environmental regulations. Compliance with the exemption requirements in this paragraph shall not absolve a city of the responsibility to comply with any other applicable environmental regulations. In particular, a city conducting a controlled burn of a demolished building shall comply with all applicable solid waste disposal, including ash disposal, and solid waste permitting rules contained in 567—Chapters 100 through 130, as well as all applicable storm water discharge and storm water permitting rules contained in 567—Chapters 60 and 64.

567—23.3(455B) Specific contaminants.

23.3(1) *General.* The emission standards contained in this rule shall apply to each source operation unless performance standard for the process is specified in 23.1(2) through 23.1(5), in which case the performance standard shall apply.

23.3(2) *Particulate matter.* No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 21.

a. General emission rate.

(1) For sources constructed, modified or reconstructed on or after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot (dscf) of exhaust gas.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from the equations below, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas.

The process weight rates up to 60,000 lb/hr shall be accomplished by the use of the equation:

$$E=4.10 \times P^{0.67},$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation:

$$E=55.0 \times P^{0.11}—40,$$

where E = rate of emission in lb/hr, and

P = process weight in tons/hr

b. Combustion for indirect heating. Emissions of particulate matter from the combustion of fuel for indirect heating or for power generation shall be limited by the ASME Standard APS-1, Second Edition, November 1968, "Recommended Guide for the Control of Dust Emission—Combustion for Indirect Heat Exchangers." For the purpose of this paragraph, the allowable emissions shall be calculated from equation (15) in that standard, with Comax2=50 micrograms per cubic meter. The maximum ground level dust concentrations designated are above the background level. For plants with 4,000 million Btu/hour input or more, the "a" factor shall be 1.0. In plants with less than 4,000 million Btu/hour input, appropriate "a" factors, less than 1.0, shall be applied. Pertinent correction factors, as specified in the standard, shall be applied for installations with multiple stacks. However, for fuel-burning units in operation on January 13, 1976, the maximum allowable emissions calculated under APS-1 for the facility's equipment configuration on January 13, 1976, shall not be increased even if the changes in the equipment or stack configuration would otherwise allow a recalculation and a higher maximum allowable emission under APS-1.

(1) Outside any standard metropolitan statistical area, the maximum allowable emissions from each stack, irrespective of stack height, shall be 0.8 pounds of particulates per million Btu input.

(2) Inside any standard metropolitan statistical area, the maximum allowable emission from each stack, irrespective of stack height, shall be 0.6 pounds of particulates per million Btu input.

(3) For a new fossil fuel-fired steam generating unit of more than 250 million Btu per hour heat input, 23.1(2)*"a"* shall apply. For a new unit of between 150 million and 250 million (inclusive) Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.2 pounds of particulates per million Btu of heat input. For a new unit of less than 150 million Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.6 pounds of particulates per million Btu of heat input.

(4) Measurements of emissions from a particulate source will be made in accordance with the provisions of 567—Chapter 25.

(5) For fuel-burning sources in operation prior to July 29, 1977, which are not subject to 23.1(2) and which significantly impact a primary or secondary particulate standard nonattainment area, the emission limitations specified in this subparagraph apply. A significant impact shall be equal to or exceeding 5 micrograms of particulate matter per cubic meter of air (24-hour average) or 1 microgram of particulate matter per cubic meter of air (annual average) determined by an EPA-approved single source dispersion model using allowable emission rates and five-year worst-case meteorological conditions. In the case where two or more boilers discharge into a common stack, the applicable stack emission limitation shall be based upon the heat input of the largest operating boiler. The plantwide allowable emission limitation

shall be the weighted average of the allowable emission limitations for each stack or the applicable APS-1 plantwide standard as determined under 23.3(2)*"b,"* whichever is more stringent.

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input, the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 250 million Btu per hour and less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu heat input, and the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per million Btu heat input. All sources regulated under this subparagraph shall demonstrate compliance by October 1, 1981; however, a source is considered to be in compliance with this subparagraph if by October 1, 1981, it is on a compliance schedule to be completed as expeditiously as possible, but no later than December 31, 1982.

c. Fugitive dust.

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions that require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.

1. Use, where practical, of water or chemicals for control of dusts in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.

2. Application of suitable materials, such as but not limited to asphalt, oil, water or chemicals on unpaved roads, material stockpiles, race tracks and other surfaces which can give rise to airborne dusts.

3. Installation and use of containment or control equipment, to enclose or otherwise limit the emissions resulting from the handling and transfer of dusty materials, such as but not limited to grain, fertilizer or limestone.

4. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to give rise to airborne dusts.

5. Prompt removal of earth or other material from paved streets or to which earth or other material has been transported by trucking or earth-moving equipment, erosion by water or other means.

6. Reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts.

(2) Nonattainment areas. 23.3(2)*"c"*(1) notwithstanding, no person shall allow, cause or permit any visible emission of fugitive dust in a nonattainment area for particulate matter to go beyond the lot line of the property on which a traditional source is located without taking reasonable precautions to prevent emission. "Traditional source" means a source category for which a particulate emission standard has been established in 23.1(2), 23.3(2)*"a,"* 23.3(2)*"b"* or 567—23.4(455B) and includes a quarry operation, haul road or parking lot associated with a traditional source. This paragraph does not modify the emission standard stated in 23.1(2), 23.3(2)*"a,"* 23.3(2)*"b"* or 567—23.4(455B) but rather establishes a separate requirement for fugitive dust from such sources. For guidance on the types of controls which may constitute reasonable precautions, see "Identification of Techniques for the Control of Industrial Fugitive Dust Emissions," as adopted by the commission on May 19, 1981, which is available from the department upon request.

(3) Redesignated areas. Reasonable precautions implemented pursuant to the nonattainment area provisions of 23.3(2)*"c"*(2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 21.

(1) Residential heating equipment. Residential heating equipment serving dwellings of four family units or less is exempt.

(2) Gasoline-powered vehicles. No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) Diesel-powered vehicles. No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity for longer than five consecutive seconds.

(4) Diesel-powered locomotives. No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) Startup and testing. Initial start and warmup of a cold engine; the testing of an engine for trouble, diagnosis or repair; or engine research and development activities, is exempt.

(6) Uncombined water. The provisions of this paragraph shall apply to any emission that would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

23.3(3) *Sulfur compounds.* The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

a. Sulfur dioxide from use of solid fuels.

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Louisa, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in 23.3(3)*"a"*(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit that has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

b. Sulfur dioxide from use of liquid fuels.

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

c. Sulfur dioxide from sulfuric acid manufacture. After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

d. Acid mist from sulfuric acid manufacture. After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

e. Other processes capable of emitting sulfur dioxide. After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

567—23.4(455B) Specific processes.

23.4(1) *General.* The provisions of this rule shall not apply to those facilities for which performance standards are specified in 23.1(2). The emission standards specified in this rule shall apply and those specified in 23.3(2)*"a"* and 23.3(2)*"b"* shall not apply to each process of the types listed in the following subrules, except as provided below.

EXCEPTION: Whenever the director determines that a process complying with the emission standard prescribed in this rule is causing or will cause air pollution in a specific area of the state, the specific emission standard may be suspended and compliance with the provisions of 567—23.3(455B) may be required in such instance.

23.4(2) *Asphalt batching plants.* No person shall cause, allow or permit the operation of an asphalt batching plant in a manner such that the particulate matter discharged to the atmosphere exceeds 0.15 grain per standard cubic foot of exhaust gas.

23.4(3) *Cement kilns.* Cement kilns shall be equipped with air pollution control devices to reduce the particulate matter in the gas discharged to the atmosphere to no more than 0.3 percent of the particulate matter entering the air pollution control device. Regardless of the degree of efficiency of the air pollution control device, particulate matter discharged from such kilns shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(4) *Cupolas for metallurgical melting.* The emissions of particulate matter from all new foundry cupolas, and from all existing foundry cupolas with a process weight rate in excess of 20,000 pounds per hour, shall not exceed the amount specified in 23.3(2)*"a,"* except as provided in 567—Chapter 21.

The emissions of particulate matter from all existing foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour shall not exceed the amount determined from the table below, except as provided in 567—Chapter 21.

ALLOWABLE EMISSIONS FROM
EXISTING SMALL FOUNDRY CUPOLAS

Process weight rate (lb/hr)	Allowable emission (lb/hr)
1,000	3.05
2,000	4.70
3,000	6.35
4,000	8.00
5,000	9.58
6,000	11.30
7,000	12.90
8,000	14.30
9,000	15.50
10,000	16.65
12,000	18.70
16,000	21.60
18,000	23.40
20,000	25.10

23.4(5) *Electric furnaces for metallurgical melting.* The emissions of particulate matter to the atmosphere from electric furnaces used for metallurgical melting shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(6) *Sand handling and surface finishing operations in metal processing.* This subrule shall apply to any new foundry or metal processing operation not properly termed a combustion, melting, baking or pouring operation. For purposes of this subrule, a new process is any process that has not started operation, or the construction of which has not been commenced, or the components of which have not been ordered or contracts for the construction of which have not been let on August 1, 1977. No person shall allow, cause or permit the operation of any equipment designed for sand shakeout, mulling, molding, cleaning, preparation, reclamation or rejuvenation or any equipment for abrasive cleaning, shot blasting, grinding, cutting, sawing or buffing in such a manner that particulate matter discharged from any stack exceeds 0.05 grains per dry standard cubic foot of exhaust gas, regardless of the types and number of operations that discharge from the stack.

23.4(7) *Grain handling and processing plants.* The owner or operator of equipment at a permanent installation for the handling or processing of grain, grain products and grain by-products shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas, except as follows:

a. The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as "country grain elevator" is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

b. The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as "country grain terminal elevator" is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as "grain terminal elevator" is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

c. The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as "country grain terminal elevator" is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as "grain terminal elevator" is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.

23.4(8) *Lime kilns.* No person shall cause, allow or permit the operation of a kiln for the processing of limestone such that the particulate matter in the gas discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(9) *Meat smokehouses.* No person shall cause, allow or permit the operation of a meat smokehouse or a group of meat smokehouses that consume more than 10 pounds of wood, sawdust or other material per hour such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas.

23.4(10) *Phosphate processing plants.*

a. and *b.* Reserved.

c. Nitrophosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of nitrophosphate in a manner that produces more than 0.06 pound of fluoride per ton of phosphorus pentoxide or equivalent input.

d. No person shall allow, cause or permit the operation of equipment for the processing of phosphate ore, rock or other phosphatic material (other than equipment used for the manufacture of phosphoric acid, diammonium phosphate or nitrophosphate) in a manner that the unit emissions of fluoride exceed 0.4 pound of fluoride per ton of phosphorous pentoxide or its equivalent input.

e. Notwithstanding 23.4(10)*"c"* and *"d,"* no person shall allow, cause or permit the operation of equipment for the processing of phosphorous ore, rock or other phosphatic material, including but not limited to phosphoric acid, in a manner that emissions of fluorides exceed 100 pounds per day.

f. "Fluoride" means elemental fluorine and all fluoride compounds as measured by reference methods specified in Appendix A to 40 CFR Part 60 as amended through March 12, 1996.

g. Calculation. The allowable total emission of fluoride shall be calculated by multiplying the unit emission specified above by the expressed design production capacity of the process equipment.

23.4(11) *Portland cement concrete batching plants.* No person shall cause, allow or permit the operation of a Portland cement concrete batching plant such that the particulate matter discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(12) *Incinerators.* A person shall not cause, allow or permit the operation of an incinerator unless provided with appropriate control of emissions of particulate matter and visible air contaminants.

a. Particulate matter. A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of 1,000 or more pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of less than 1,000 pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.35 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

b. Visible emissions. A person shall not allow, cause or permit the operation of an incinerator in a manner such that it produces visible air contaminants in excess of 40 percent opacity; except that visible air contaminants in excess of 40 percent opacity but less than or equal to 60 percent opacity may be emitted for periods aggregating not more than 3 minutes in any 60-minute period during an operation breakdown or during the cleaning of air pollution control equipment.

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of 567—Chapter 65.

23.5(2) Criteria for approval of industrial anaerobic lagoons constructed or expanded on or after July 1, 1982.

a. Lagoons designed to treat 100,000 gallons per day (gpd) or less shall be located at least 1,250 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

b. Lagoons designed to treat more than 100,000 gpd shall be located at least 1,875 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

c. The criteria in 23.5(2) shall apply except in situations in which Iowa Code section 455B.134(3)*"e"*(2) is successfully invoked.

d. Compliance with the requirements of 23.5(2) shall not constitute an exemption from compliance with any other applicable environmental regulations. In particular, compliance with these requirements shall not absolve any person from compliance with the requirements set forth in 567—Chapter 64 that are applicable to industrial anaerobic lagoons.

These rules are intended to implement Iowa Code section 455B.133.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 24
"Operating Permits"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.133

State or federal law(s) implemented by the rulemaking: U.S. Clean Air Act Amendments of 1990, Sections 501 through 507 (42 U.S.C. §7661 through §7661f)

Public Hearing

A public hearing at which persons may present their views orally will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk and be directed to the appropriate hearing location:

September 28, 2023 9 to 11 a.m.	Via video/conference call

Public Comment

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

Christine Paulson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.725.9510
Email: christine.paulson@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 24 includes the provisions for air quality operating permits (previously included in 567—Chapter 22). Air quality operating permits include Title V Operating Permits, Acid Rain Permits, and Small Source Operating Permits (SSOPs). Operating permits help to protect air quality for Iowa's citizens by ensuring that emissions equipment continues to perform as designed. These rules have been significantly revised from the current provisions in 567—Chapter 22 to remove unnecessary and obsolete rules and to update and clarify other rules. Citations to 567—Chapters 22 and 23 are to the newly proposed chapters in the Regulatory Analyses for those chapters (IAB 9/6/23).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Industrial and other facilities that meet the Title V Operating Permit criteria pay fees associated with Title V permit applications and annual emissions inventories as set forth in 567—Chapter 30 (as authorized by Iowa Code section 455B.133). No application fees are applied to Acid Rain Permits or SSOPs. Additionally, affected facilities incur costs to prepare and submit the required applications and submit annual emissions inventories. These costs are unchanged from the existing operating permit rules in 567—Chapter 22.

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

Operating permits have helped to protect air quality for Iowa's citizens by ensuring that emissions equipment continues to perform as designed.

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:

Pursuant to 567—Chapter 30, Title V Operating Permit application fees are $100 per hour, and the Title V Operating Permit annual emissions fee is $70 per ton of actual air emissions of specific pollutants. Facilities' incurred costs to prepare and submit the required applications and submit annual emissions inventories vary greatly depending on facility size, number of emissions sources, and other factors.

- Qualitative description of impact:

Facilities subject to Title V must demonstrate that they are in compliance with all applicable air quality requirements prior to obtaining a Title V Operating Permit (Permit). If a facility is not in compliance, an agreed-upon Compliance Plan will be included in the final Permit. Additionally, depending on a facility's emissions and applicable requirements, the Permit may include Operation & Maintenance Plans or Compliance Assurance Monitoring Plans for specific equipment or operations. All facilities with a Permit must also submit Semi-Annual Monitoring Reports and an Annual Compliance Certification each year. The costs of these permitting-related actions vary by facility process and the facility's quantity and type of air emissions.

3. Costs to the State:

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

Department staff review applications and write the operating permits. Department staff also inspect facilities, review Title V emissions inventories, review reports, report information to the public and state and federal partners, and provide outreach and assistance to ensure compliance with the operating permits.

- Anticipated effect on state revenues:

The proposed chapter will have a neutral impact on state revenues because the operating permit rules were already being implemented in 567—Chapter 22.

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

The costs of the proposed rulemaking and inaction (repealing the operating permit rules and not replacing them) are largely the same because, in the absence of a state operating permit program, the U.S. Environmental Protection Agency (EPA) would administer the program as provided in 40 CFR Part 70. However, the benefits of repromulgating revised operating permit rules exceed the costs of inaction because 40 CFR Part 70 does not replace word-for-word what is in the Department's rules. Rather, 40 CFR Part 70 gives the states flexibility, and the Department has chosen, therefore, to promulgate rules specifying which 40 CFR Part 70 options were chosen by the Department to implement in Iowa. Additionally, by repromulgating the proposed rules, the Department will provide businesses and the public with more streamlined, up-to-date air quality requirements and increased effectiveness.

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. An operating permit program is required by the federal Clean Air Act, federal regulations, and Iowa Code section 455B.133.

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:

An operating permit program is required by the federal Clean Air Act, federal regulations, and Iowa Code section 455B.133. The proposed rulemaking provides a dedicated chapter that sets forth the operating permit requirements in a streamlined and up-to-date format compared to the previous format.

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 eligible to use free technical assistance mandated by the U.S. Clean Air Act (42 U.S.C §7661f). More information is at www.iowadnr.gov/Environmental-Protection/Air-Quality/Small-Business-Assistance. While facilities subject to the Title V or Acid Rain regulations are not eligible for this assistance, some facilities with SSOPs may be eligible.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
OPERATING PERMITS

567—24.1 to **24.99** Reserved.

567—24.100(455B) Title V operating permits—definitions. For purposes of this chapter and unless otherwise stated, the following terms shall have the meaning indicated in this rule:

"12-month rolling period" means the same as defined in 567—22.1(455B).

"40 CFR Part 70" means Part 70 or any specific section within Part 70 that is cited in this chapter, as amended through May 6, 2020, unless otherwise noted.

"40 CFR Part 72" means Part 72 or any specific section within Part 72 that is cited in this chapter, as amended through March 28, 2011, unless otherwise noted.

"Act" means the Clean Air Act, 42 U.S.C. §7401, et seq.

"Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that immediately precedes that date and that is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain affected sources are calculated using a one-year period.

2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Affected source," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Affected state," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Affected unit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Allowable emissions" means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4);

2. The applicable existing source emission standard contained in 567—Chapter 23; or

3. The emissions rate specified in the air construction permit for the source.

"Allowance," as this definition is set forth in 40 CFR §72.2, is adopted by reference.

"Applicable requirement," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Area source" means any stationary source of hazardous air pollutants that is not a major source as defined in 567—24.100(455B).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that "40 CFR 51" means "Title 40 of the Code of Federal Regulations, Part 51."

"Country grain elevator" means the same as defined in 567—subrule 22.10(1).

"Designated representative" means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in Chapter 24, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

"Draft Title V permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Electronic format," "electronic submittal," and *"electronic submittal format"* mean the same as defined in 567—22.1(455B).

"Emergency generator" means the same as defined in 567—22.1(455B).

"Emissions allowable under the permit," as this definition is set forth in 40 CFR 70.2, is adopted by reference.

"Emissions unit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"EPA conditional method" means the same as defined in 567—22.1(455B).

"EPA reference method" means the same as defined in 567—22.1(455B).

"Existing hazardous air pollutant source" means any source as defined in 40 CFR 61 as adopted by reference in 567—subrule 23.1(3) and 40 CFR §63.72 as adopted by reference in 567—subrule 23.1(4) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

"Facility" means, with reference to a stationary source, any apparatus that emits or may emit any air pollutant or contaminant.

"Federal implementation plan" means a plan promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and that

includes enforceable emission limitations or other control measures, means, or techniques and provides for attainment of the relevant national ambient air quality standard.

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator including, but not limited to, the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4); the requirements of such other state rules or orders approved by the Administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

"Final Title V permit" means the version of a Title V permit issued by the department that has completed all required review procedures.

"Fugitive emissions" are those emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

"Hazardous air pollutant" means any of the air pollutants listed in Section 112 of the Act and 40 CFR §63.2 as adopted by reference in 567—subrule 23.1(4).

"High-risk pollutant" means one of the hazardous air pollutants listed in Table 1 in 40 CFR §63.74 as adopted by reference in 567—subrule 23.1(4).

"Major source" means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant that has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as "marginal" or "moderate," 50 tpy or more in areas classified or treated as classified as "serious," 25 tpy or more in areas classified or treated as classified as "severe" and 10 tpy or more in areas classified or treated as classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

For carbon monoxide nonattainment areas (1) that are classified or treated as classified as "serious" and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

For particulate matter (PM_{10}), nonattainment areas classified or treated as classified as "serious," sources with the potential to emit 70 tpy or more of PM_{10}.

For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

"Manually operated equipment" means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system that is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

"Maximum achievable control technology (MACT) emission limitation for existing sources" means the definition adopted by reference in 567—subrule 23.1(4).

"Maximum achievable control technology (MACT) emission limitation for new sources" means the definition adopted by reference in 567—subrule 23.1(4).

"Maximum achievable control technology (MACT) floor" means the definition adopted by reference in 567—subrule 23.1(4).

"New Title IV affected source or unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

"Nonattainment area" means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

"Permit modification" means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found in 567—24.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found in 567—24.120(455B) through 567—24.146(455B). This definition of "permit modification" shall be used solely for purposes of this chapter governing Title V operating permits.

"Permit revision" means any permit modification or administrative permit amendment.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 567—subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, "maximum capacity" means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

"Proposed Title V permit," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Regulated air contaminant" means the same as "regulated air pollutant."

"Regulated air pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

- Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and
- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM_{10}, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

"Regulated air pollutant or contaminant (for fee calculation)," which is used only for purposes of 567—Chapter 30, means any regulated air pollutant or contaminant except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM_{10};
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act;
5. Greenhouse gas, as defined in 567—22.1(455B).

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
   - The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or
   - The delegation of authority to such representative is approved in advance by the permitting authority;
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional Administrator of EPA); or
4. For Title IV affected sources:
   - The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
   - The designated representative for any other purposes under this chapter or the Act.

"Section 502(b)(10) changes," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"State implementation plan" or *"SIP"* means the plan adopted by the state of Iowa and approved by the Administrator that provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the Administrator, pursuant to the Act.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

"Stationary source categories" means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;

4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants — The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) code 325193 or 312140;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;
27. Any other stationary source category, that as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

"Subject to regulation," as this definition is set forth in 40 CFR §70.2, is adopted by reference.

"Title V permit" means an operating permit under Title V of the Act.

567—24.101(455B) Applicability of Title V operating permit requirements.

24.101(1) Except as provided in 567—24.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit and shall submit fees as required in 567—Chapter 30:

a. Any affected source subject to the provisions of Title IV of the Act;

b. Any major source;

c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);

d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;

e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;

f. Any source category designated by the Administrator pursuant to 40 CFR §70.3 as amended through December 19, 2005.

24.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to 24.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

24.101(3) Reserved.

567—24.102(455B) Source category exemptions.

24.102(1) All sources listed in 24.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in 24.102(3).

24.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

24.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters;

b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as adopted by reference in 567—subrule 23.1(3);

c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as adopted by reference in 567—subrule 23.1(4).

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as adopted by reference in 567—subrule 23.1(4).

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as adopted by reference in 567—subrule 23.1(4).

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as adopted by reference in 567—subrule 23.1(4).

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as adopted by reference in 567—subrule 23.1(4).

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as adopted by reference in 567—subrule 23.1(4).

567—24.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit emissions fees are not required from insignificant activities pursuant to 567—paragraph 30.4(2)*"f."*

24.103(1) *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR §70.5, these activities need not be included in the Title V permit application:

a. Mobile internal combustion and jet engines, marine vessels, and locomotives.

b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain that were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

c. Equipment or control equipment that eliminates all emissions to the atmosphere.

d. Equipment (other than anaerobic lagoons) or control equipment that emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.

e. Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.

f. Residential wood heaters, cookstoves, or fireplaces.

g. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

h. Recreational fireplaces.

i. Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.

j. Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems that include any industrial waste are not exempt.

k. Retail gasoline and diesel fuel handling facilities.

l. Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.

m. Equipment used for hydraulic or hydrostatic testing.

n. General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.

o. Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

p. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).

q. Administrative activities including, but not limited to, paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.

r. Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.

s. Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.

t. Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

u. Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.

v. Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Act.

w. Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.

x. Water treatment or storage systems, as follows:

(1) Systems for potable water or boiler feedwater.

(2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Act.

y. Lawn care, landscape maintenance, and groundskeeping activities.

z. Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.

aa. Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

bb. Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

cc. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

dd. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

ee. Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3)*"g"* is required at least ten working days before such action commences.)

ff. Activities associated with the construction, repair, or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks, and other vehicles related to the control of fugitive emissions of such roads or other areas.

gg. Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

hh. Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves, and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

ii. Construction activities at a source solely associated with the modification or building of a facility, an emission unit, or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 567—22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

jj. Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair, or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

24.103(2) *Insignificant activities that must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit that has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM_{10},

0.52 tons per year of $PM_{2.5}$ (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—22.1(455B)) occurred on or before October 23, 2013),

2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013),

2,500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1,000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of "high-risk pollutant" is found in 567—24.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces or indirect cooling units using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in this subparagraph (24.103(2)*"b"*(2)). Used oils meeting the specification from 40 CFR §279.11 as amended through July 14, 2006, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in 24.103(2)*"a."*

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject to any of the following federal regulations are not considered to be insignificant activities for purposes of this rule (567—24.103(455B)):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);

2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); or

3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

567—24.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

24.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

24.104(2) Sources making permit revisions pursuant to 567—24.110(455B) shall not be in violation of this rule.

567—24.105(455B) Title V permit applications.

24.105(1) *Duty to apply.* For each source required to obtain a Title V operating permit, the owner or operator or designated representative, where applicable, shall submit a complete and timely application in the electronic format specified by the department, if electronic submittal is provided. An owner or operator of a source required to obtain a Title V permit pursuant to 24.101(1) shall submit all required fees as required in 567—Chapter 30.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Reserved.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD, or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to 567—24.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to 567—24.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in 567—24.110(455B) shall submit to the department a written notification as specified in 567—24.110(455B) at least 30 days prior to the proposed change.

(6) Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in 567—24.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in 567—24.111(455B).

(7) Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in 567—24.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in 567—24.112(455B).

(8) Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in 567—24.113(455B) shall submit to the department an application for a significant permit modification as specified in 567—24.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to 24.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

24.105(2) *Standard application form and required information.* To apply for a Title V permit, the standard application form shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by 567—30.4(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by 24.101(1)*"c"* and 24.101(1)*"d,"* then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of 567—24.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity.

Unless otherwise specified in 24.128(4), nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

b. A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the applicant.

c. The following emissions-related information shall be submitted to the department:

(1) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(2) Identification and description of air pollution control equipment.

(3) Identification and description of compliance monitoring devices or activities.

(4) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(5) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(6) Calculations on which the information in subparagraphs (1) to (5) above is based.

(7) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

e. Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

f. An explanation of any proposed exemptions from otherwise applicable requirements.

g. Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to 24.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to 24.108(11) and 567—24.112(455B).

h. A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements

for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

i. Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with 24.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by 24.108(3), 24.108(4), or 24.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

24.105(3) *Hazardous air pollutant early reduction application.* Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with the Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4)*"d."*

24.105(4) *Acid rain application content.* The acid rain application content shall be as prescribed in the acid rain rules found in 567—24.128(455B) and 567—24.129(455B).

24.105(5) *More than one Title V operating permit for a stationary source.* Following application made pursuant to 24.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

567—24.106(455B) Annual Title V emissions inventory.

24.106(1) *Emissions fee.* Fees shall be paid as set forth in 567—Chapter 30.

24.106(2) *Emissions inventory and documentation due dates.* The emissions inventory shall be submitted through the electronic format specified by the department. An owner or operator shall, by

March 31, submit documentation of actual emissions for the previous calendar year. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

24.106(3) *Correction of errors.* If an owner or operator, or the department, finds an error in a Title V emissions inventory, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory. Corrected forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

567—24.107(455B) Title V permit processing procedures.

24.107(1) *Action on application.*

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 567—24.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under 567—24.112(455B), the permitting authority has complied with the requirements for public participation under 24.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under 24.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The Administrator has received a copy of the proposed permit and any notices required under 24.107(7), and has not objected to issuance of the permit under 24.107(7) within the time period specified therein;

(6) If the Administrator has properly objected to the permit pursuant to the provisions of 40 CFR §70.8(d) as amended to July 21, 1992, or 24.107(7), then the permitting authority may issue a permit only after the Administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality, or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

c. Prioritization of applications. The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to 567—subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4)*"d."*

d. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth

in 567—24.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

e. Decision to deny a permit application. The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit, the provisions of 24.107(1)*"d"* shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

f. Fact sheet. A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to the EPA and to any other person who requests it.

g. Relation to construction permits. The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and 567—subrule 22.1(1).

24.107(2) *Confidential information.* If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the Administrator. Requests for confidentiality must comply with 561—Chapter 2.

24.107(3) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations, or levels of technology existing on the date the initial application is deemed complete.

24.107(4) *Certification of truth, accuracy, and completeness.* Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

24.107(5) *Early reduction application evaluation.* Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4)*"d."*

24.107(6) *Public notice and public participation.*

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial, or renewal of a permit; or significant modification, revocation, or reissuance of a permit.

b. Notice shall be given by posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. The public notice shall include the following:

(1) Identification of the Title V source.

(2) Name and address of the permittee.

(3) Name and address of the permitting authority processing the permit.

(4) The activity or activities involved in the permit action.

(5) The emissions change involved in any permit modification.

(6) The air pollutants or contaminants to be emitted.

(7) The time and place of any possible public hearing.

(8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed and the times at which they shall be available for public inspection.

d. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

e. Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person's interest in the subject matter and the nature of the issues proposed to be raised at the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

f. The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

g. The permitting authority shall provide notice and opportunity for participation by affected states as provided by 24.107(7).

24.107(7) *Permit review by the EPA and affected states.*

a. Transmission of information to the Administrator. Except as provided in 24.107(2) or waived by the Administrator, the director shall make available to the Administrator each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be provided in a computer-readable format compatible with the Administrator's national database management system.

b. Review by affected states. The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to 24.107(6), except to the extent that 24.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the Administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

c. EPA objection. No permit for which an application must be transmitted to the Administrator shall be issued if the Administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 24.107(7)*"a."* Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

24.107(8) *Public petitions to the Administrator regarding Title V permits.*

a. If the Administrator does not object to a proposed permit, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make an objection pursuant to 40 CFR §70.8(d).

b. Any person who petitions the Administrator pursuant to the provisions of 40 CFR §70.8(d) shall notify the department by certified mail of such petition immediately, and in no case more than ten days following the date the petition is submitted to the EPA. Such notice shall include a copy of the petition submitted to the EPA and a separate written statement detailing the grounds for the objection(s)

and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the Administrator's objection.

c. If the Administrator objects to the permit as a result of a petition filed pursuant to 40 CFR §70.8(d), then the director shall not issue a permit until the Administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the Administrator's objection, and the Administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR §70.7, then the director may thereafter issue only a revised permit that satisfies the Administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

24.107(9) *A Title V permit application may be denied if:*

a. The director finds that a source is not in compliance with any applicable requirement; or

b. An applicant knowingly submits false information in a permit application.

24.107(10) *Retention of permit records.* The director shall keep all records associated with each permit for a minimum of five years.

567—24.108(455B) Permit content. Each Title V permit shall include the following elements:

24.108(1) Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

c. If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

d. If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the compliance extension.

e. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

f. For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

24.108(2) Permit duration. The permit shall specify a fixed term not to exceed five years except:

a. Permits issued to Title IV affected sources shall have a fixed term of five years.

b. Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

24.108(3) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative

of the source's compliance with the permit, as reported pursuant to 24.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (as amended through October 24, 2012) available from the department;

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

d. As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

24.108(4) Record keeping. With respect to record keeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

a. Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) the analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement; and

b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

24.108(5) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 24.107(4).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

24.108(6) Risk management plan. Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

24.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

d. Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.

(2) Exceedances of applicable emission rates.

(3) The use of any allowance prior to the year for which it was allocated.

(4) Contravention of any other provision of the permit.

24.108(8) Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

24.108(9) Other provisions. The Title V permit shall contain provisions stating the following:

a. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

c. The permit may be modified; revoked, reopened, and reissued; or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records directly to the Administrator of the EPA along with a claim of confidentiality.

24.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to 567—30.4(455B).

24.108(11) Emissions trading. A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

24.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director. Such terms and conditions:

a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

b. Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

24.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

a. Shall include all terms required under 24.108(1) to 24.108(13) and 24.108(15) to determine compliance;

b. Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

c. May extend the permit shield described in 24.108(18) to all terms and conditions that allow such increases and decreases in emissions.

24.108(14) Federally enforceable requirements.

a. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

b. Notwithstanding paragraph *"a"* of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR §70.7 or §70.8.

24.108(15) Compliance requirements. All Title V permits shall contain the following elements with respect to compliance:

a. Consistent with the provisions of 24.108(3) to 24.108(5), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to ensure compliance with the terms

and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of 24.107(4).

b. Inspection and entry provisions which require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

c. A schedule of compliance consistent with 24.105(2)*"h,"* and 24.105(2)*"j,"* and 24.105(3).

d. Progress reports, consistent with an applicable schedule of compliance and with the provisions of 24.105(2)*"h"* and 24.105(2)*"j,"* to be submitted at least every six months, or more frequently if specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the Administrator and the director.

f. Such additional provisions as the director may require.

g. Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

h. If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

24.108(16) Emergency provisions.

a. For the purposes of a Title V permit, an "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

b. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of 24.108(16)*"c"* are met.

c. Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and

(4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of 24.108(5)*"b."* This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

24.108(17) Permit reopenings.

a. A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the Administrator pursuant to the Act, provided that:

(1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;

(2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR §70.4(b)(10)(i) or (ii) as amended through October 6, 2009; or

(3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

b. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

24.108(18) Permit shield. The provisions for a permit shield as set forth in 40 CFR §70.6(f) are adopted by reference.

24.108(19) Emission trades. For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

567—24.109(455B) General permits. The provisions for general permits as set forth in 40 CFR §70.6(d) are adopted by reference.

567—24.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

24.110(1) A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

a. The changes are not major modifications under any provision of any program required by Section 110 through Section 112 of the Act, or major modifications of this chapter;

b. The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

c. The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

d. The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in 567—24.140(455B) through 567—24.144(455B));

e. The changes comply with all applicable requirements; and

f. For each such change, the permitted source provides to the department and the Administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the Administrator:

(1) A brief description of the change within the permitted facility,

(2) The date on which the change will occur,

(3) Any change in emission as a result of the change,

(4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit;

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit; and

(7) Any permit term or condition no longer applicable as a result of the change.

24.110(2) Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

24.110(3) Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of 24.110(1).

24.110(4) The permit shield provided in 24.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

567—24.111(455B) Administrative amendments to Title V permits.

24.111(1) An administrative permit amendment is a permit revision that does any of the following:

a. Corrects typographical errors;

b. Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

c. Requires more frequent monitoring or reporting by the permittee; or

d. Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

24.111(2) Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the Administrator under Title IV of the Act.

24.111(3) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

24.111(4) The director shall submit to the Administrator a copy of each Title V permit revised under this rule.

24.111(5) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

567—24.112(455B) Minor Title V permit modifications.

24.112(1) Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

a. Do not violate any applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Title V permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;

e. Are not modifications under any provision of Title I of the Act; and

f. Are not required to be processed as a significant modification under 567—24.113(455B).

24.112(2) An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

a. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to 24.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

d. Completed forms to enable the department to notify the Administrator and affected states as required by 24.107(7).

24.112(3) The department shall notify the Administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of 24.107(7). The department shall promptly send to the Administrator any notification required by 24.107(7).

24.112(4) The director shall not issue a final Title V permit modification until after the Administrator's 45-day review period or until the Administrator has notified the director that the Administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or 15 days after the end of the Administrator's 45-day review period provided for in 24.107(7), whichever is later, the director shall:

a. Issue the permit modification as proposed;

b. Deny the permit modification application;

c. Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

d. Revise the draft permit modification and transmit to the Administrator the proposed permit modification, as required by 24.107(7).

24.112(5) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in 24.112(4)*"a"* to 24.112(4)*"c,"* the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

24.112(6) Permit shield. The permit shield under 24.108(18) shall not extend to minor Title V permit revisions.

567—24.113(455B) Significant Title V permit modifications.

24.113(1) Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor or administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting

or recordkeeping permit terms, and any change in the method of measuring compliance with existing requirements.

24.113(2) Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the Administrator, as those requirements that apply to Title V permit issuance and renewal.

24.113(3) Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

24.113(4) For a change that is subject to the requirements for a significant permit modification (pursuant to 567—24.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

567—24.114(455B) Title V permit reopenings. The provisions for Title V permit reopenings set forth in 40 CFR §70.7(f) are adopted by reference.

567—24.115(455B) Suspension, termination, and revocation of Title V permits.

24.115(1) Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay the Title V permit fees.

e. The permittee has failed to pay an administrative, civil, or criminal penalty imposed for violations of the permit.

24.115(2) If the director suspends, terminates, or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).

567—24.116(455B) Title V permit renewals.

24.116(1) An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the Administrator and affected states.

24.116(2) Except as provided in 567—24.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with 567—24.105(455B).

567—24.117 to **24.119** Reserved.

567—24.120(455B) Acid rain program—definitions. The terms used in 567—24.120(455B) through 567—24.146(455B) shall have the meanings set forth in Title IV of the Act, 42 U.S.C. §7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through March 28, 2011, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

"Department" means the department of natural resources and is the state acid rain permitting authority.

"Electronic format," "electronic submittal," and *"electronic submittal format"* mean the same as defined in 567— 22.1(455B).

"Title V operating permit" means a permit issued under 567—24.100(455B) through 567—24.116(455B) implementing Title V of the Act.

567—24.121 Reserved.

567—24.122(455B) Applicability. The applicability of the acid rain program as set forth in 40 CFR §72.6 is adopted by reference. A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR §72.6(c).

567—24.123(455B) Acid rain exemptions.

24.123(1) *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

24.123(2) *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

24.123(3) *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.

567—24.124 Reserved.

567—24.125(455B) Standard requirements.

24.125(1) *Permit requirements.* Permit requirements as set forth in 40 CFR §72.9(a) are adopted by reference.

24.125(2) *Monitoring requirements.* Monitoring requirements as set forth in 40 CFR §72.9(b) are adopted by reference.

24.125(3) *Sulfur dioxide requirements.* Sulfur dioxide requirements as set forth in 40 CFR §72.9(c) are adopted by reference.

24.125(4) *Nitrogen oxides requirements.* Nitrogen oxides requirements as set forth in 40 CFR §72.9(d) are adopted by reference.

24.125(5) *Excess emissions requirements.* Excess emissions requirements as set forth in 40 CFR §72.9(e) are adopted by reference.

24.125(6) *Recordkeeping and reporting requirements.* Recordkeeping and reporting requirements as set forth in 40 CFR §72.9(f) are adopted by reference.

24.125(7) *Liability.* Liability provisions as set forth in 40 CFR §72.9(g) are adopted by reference.

24.125(8) *Effect on other authorities.* The provisions for the effect on other authorities as set forth in 40 CFR §72.9(h) is adopted by reference.

567—24.126(455B) Designated representative—submissions. The provisions for submission by designated representatives as set forth in 40 CFR 72, Subpart B, are adopted by reference.

567—24.127(455B) Designated representative—objections. The provisions for disputes regarding a designated representative as set forth in 40 CFR §72.25 are adopted by reference.

567—24.128(455B) Acid rain applications—requirement to apply. The requirement to apply for an acid rain permit as set forth in 40 CFR §72.30 is adopted by reference.

24.128(1) *Duty to reapply.* The duty to reapply, as set forth in 40 CFR §72.30(c) is adopted by reference.

24.128(2) *Submission of copies.* The designated representative shall submit the application in the electronic format specified by the department, if electronic submittal is provided.

567—24.129(455B) Information requirements for acid rain permit applications. A complete acid rain permit application shall be submitted on a form approved by the department and include the following elements:

24.129(1) Identification of the affected source for which the permit application is submitted;

24.129(2) Identification of each affected unit at the source for which the permit application is submitted;

24.129(3) A complete compliance plan for each unit, in accordance with 567—24.131(455B);

24.129(4) The standard requirements under 567—24.125(455B); and

24.129(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

567—24.130(455B) Acid rain permit application shield and binding effect of permit application. The provisions for an acid rain permit application shield and the binding effect of a permit application as set forth in 40 CFR §72.32 are adopted by reference.

567—24.131(455B) Acid rain compliance plan and compliance options—general. The general provisions for an acid rain compliance plan and compliance options as set forth in 40 CFR §72.40 are adopted by reference.

567—24.132 Reserved.

567—24.133(455B) Acid rain permit contents—general. The general provisions for acid rain permit contents as set forth in 40 CFR §72.50 are adopted by reference.

567—24.134(455B) Acid rain permit shield. The general provisions for an acid rain permit shield as set forth in 40 CFR §72.51 are adopted by reference.

567—24.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with 567—24.100(455B) through 567—24.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 567—24.135(455B) through 567—24.145(455B).

567—24.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the Administrator within ten working days following a determination by the department that the acid rain permit application is complete.

567—24.137(455B) Acid rain permit issuance procedures—statement of basis.

24.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

24.137(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

24.137(3) The department will submit to the Administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

567—24.138(455B) Issuance of acid rain permits.

24.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to 24.107(6) and 24.107(7)), the department will address any objections by the Administrator, incorporate all necessary changes and issue or deny the acid rain permit.

24.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the Administrator in accordance with 567—24.100(455B) through 567—24.116(455B),

the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

24.138(3) Following the Administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR §70.8(c), the Administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with 567—24.133(455B) and 567—24.134(455B).

24.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the Administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

24.138(5) Permit issuance deadline and effective date.

a. and *b.* Reserved.

c. Each acid rain permit issued in accordance with 24.138(5)*"a"* shall take effect by the later of January 1, 2000, or, where the permit governs a unit under 24.122(1)*"c,"* the deadline for monitor certification under 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

24.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

24.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

567—24.139(455B) Acid rain permit appeal procedures.

24.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the Administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference in 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

24.139(2) No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

24.139(3) The Administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

24.139(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under 567—24.125(455B);

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 567—25.2(455B);

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

24.139(5) The department will serve written notice on the Administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

24.139(6) The department will serve written notice on the Administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 24.107(7) and 24.107(8).

567—24.140(455B) Permit revisions—general.

24.140(1) 567—24.140(455B) through 567—24.145(455B) shall govern revisions to any acid rain permit issued by the department.

24.140(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

24.140(3) The terms of the acid rain permit shall apply while the permit revision is pending.

24.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the Administrator in accordance with 40 CFR §70.8(c), as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 567—24.143(455B).

24.140(5) The standard requirements of 567—24.125(455B) shall not be modified or voided by a permit revision.

24.140(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 567—24.131(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

24.140(7) For permit revisions not described in 567—24.141(455B) and 567—24.142(455B), the department may, in its discretion, determine which of these rules is applicable.

567—24.141(455B) Permit modifications.

24.141(1) Permit modifications shall follow the permit issuance requirements of 567—24.135(455B) through 567—24.139(455B) and 24.113(2) and 24.113(3).

24.141(2) For purposes of applying 24.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with 567—24.140(455B) through 567—24.145(455B).

24.141(3) The following permit revisions are permit modifications:

a. Relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator;

b. Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period; and

c. Reserved.

d. At the option of the designated representative submitting the permit revision, the permit revisions listed in 24.142(2).

567—24.142(455B) Fast-track modifications. The requirements for fast-track modifications as set forth in 40 CFR §72.82 are adopted by reference.

567—24.143(455B) Administrative permit amendment.

24.143(1) Administrative amendments shall follow the procedures set forth in 567—24.111(455B). The department will submit the revised portion of the permit to the Administrator within ten working days after the date of final action on the request for an administrative amendment.

24.143(2) The following permit revisions are administrative amendments:

a. Activation of a compliance option conditionally approved by the department, provided that all requirements for activation under 24.131(3) are met;

b. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the Administrator in accordance with Subpart B of 40 CFR Part 72;

c. Correction of typographical errors;

d. Changes in names, addresses, or telephone numbers;

e. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the Administrator and the department in accordance with Subpart B of 40 CFR Part 72;

f. Termination of a compliance option in the permit, provided that all requirements for termination under 24.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

g. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with 567—24.125(455B);

h. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing Section 407 of the Act are met; and

i. Incorporation of changes that the Administrator has determined to be similar to those in paragraphs *"a"* through *"h"* of this subrule.

567—24.144(455B) Automatic permit amendment. The provisions for automatic permit amendments as set forth in 40 CFR §72.84 are adopted by reference.

567—24.145(455B) Permit reopenings. The provisions for permit reopenings as set forth in 40 CFR §72.85 are adopted by reference.

567—24.146(455B) Compliance certification—annual report.

24.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the Administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR §72.90.

24.146(2) The submission of complete compliance certifications in accordance with 24.146(1) and 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under 24.108(15)*"e"* with regard to the acid rain portion of the source's Title V operating permit.

567—24.147 Reserved.

567—24.148(455B) Sulfur dioxide opt-ins. The provisions for sulfur dioxide opt-ins as set forth in 40 CFR Part 74 as amended through April 28, 2006, are adopted by reference.

567—24.149 to **24.299** Reserved.

567—24.300(455B) Operating permit by rule for small sources. Except as provided in 24.300(11), any source that otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources that comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B).

24.300(1) *Definitions for operating permit by rule for small sources.* For the purposes of 567—24.300(455B), the definitions shall be the same as the definitions found in 567—24.100(455B).

24.300(2) *Registration for operating permit by rule for small sources.*

a. Except as provided in 24.300(3) and 24.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in 24.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a MACT standard.

c. Nothing in this rule shall prevent any stationary source that has had a Title V operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or upon rescission of a Title V operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in 24.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

24.300(3) *Exceptions to eligibility.*

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 24.300(2)*"a"* and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

c. Sources which meet the registration criteria established in 24.300(2)*"a"* and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories), or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

24.300(4) *Stationary source with de minimus emissions.* Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 24.300(8). Only the recordkeeping and reporting provisions listed in 24.300(4)*"b"* shall apply to a stationary source with de minimus emissions or operations as specified in 24.300(4)*"a"*:

a. De minimus emission and usage limits. For the purpose of this rule, a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding hazardous air pollutants (HAPs)), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in numbered paragraphs "1" to "9" below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane),

tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;

8. 500,000 gallons of distillate oil combusted; or

9. 71,400,000 cubic feet of natural gas combusted.

b. Record keeping for de minimus sources. Upon registration with the department, the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable recordkeeping requirements of this rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimus sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or EPA, the owner or operator of a stationary source not maintaining records pursuant to 24.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in paragraph *"a"* above.

24.300(5) *Provision for air pollution control equipment.* The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

24.300(6) *Emission limitations.*

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

(3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph *"a"* of this subrule.

24.300(7) *Recordkeeping requirements for non-de minimus sources.* Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable recordkeeping requirements in this rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 24.300(4) shall comply with the applicable provisions of 24.300(7) (recordkeeping requirements) and 24.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in 24.300(4)*"a."*

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 24.300(7)*"c"* below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years and be made available to local, state, or EPA staff upon request.

c. Recordkeeping requirements for emission units and emission control equipment. Recordkeeping requirements for emission units are specified below in 24.300(7)*"c"*(1) through 24.300(7)*"c"*(4). Recordkeeping requirements for emission control equipment are specified in 24.300(7)*"c"*(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 567—subrule 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include MSDS, manufacturer's product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used and show at least the product manufacturer, product name and code, VOC, and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make, and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and

2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make, and model and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, or maintenance and any other deviations from design parameters.

24.300(8) *Registration and reporting requirements.*

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained

in 567—24.104(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to 567—24.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under 567—24.101(455B).

2. Within 12 months of becoming subject to 567—24.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source that would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete, the registration form must provide all information required pursuant to 24.300(8)*"b."*

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, and predicted actual emissions from the source and to determine whether the source is subject to the exceptions listed in 24.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—24.100(455B);

(4) Requirements for certification. Facilities that claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

"I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 24.300(8)*"b."* I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of 567—24.300(455B) only if all applicable requirements of 567—24.300(455B) are met and if the registration is not denied by the director under 567—24.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete." The certification must be signed by one of the following individuals:

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined in 567—24.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

24.300(9) *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for a Title V operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 24.300(8)*"b"* for the new or modified source.

24.300(10) *Violations.*

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including 567—24.101(455B) through 567—24.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in 24.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in 24.300(6).

24.300(11) *Suspension, termination, and revocation of an operating permit by rule for small sources.*

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates, or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt

requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).

24.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change; and

b. The name, address, and telephone number of the responsible official, the contact person, and the owner of the equipment both before and after the change of ownership.

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 27
"Certificate of Acceptance"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.145

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.133, 455B.143, and 455B.145

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 Jim McGraw 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 Jim McGraw prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.m.	Via video/conference call

Public Comment

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

Jim McGraw
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.689.1439
Email: jim.mcgraw@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 27 provides political subdivisions, such as municipalities and counties, with the conditions necessary to obtain and maintain a certificate of acceptance (delegation) of a local air pollution control program. The Linn County and Polk County local air programs are currently the only two local air programs in Iowa with certificates of acceptance.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Industrial and other facilities located in Linn and Polk Counties will bear the costs.

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

Citizens who live in Linn and Polk Counties 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:

Both local air programs charge fees to facilities with air emissions in their counties to process and issue air construction permits and annual operating permits. Facilities' incurred costs for local air program construction and operating permits vary greatly depending on facility size, number of emissions sources, and other factors. Both local air programs also charge fees for open burning permits. Current fee schedules are available on the local programs' websites. For state fiscal year 2024, Linn County fees will allow Linn County to provide for a minimum local funding commitment of $347,660 and Polk County fees will allow for a minimum local funding commitment of $508,774.

- Qualitative description of impact:

Local air program fees cover a portion of the costs incurred to implement core air quality program activities, which include ambient air monitoring, construction permitting, and compliance activities, such as inspections and observing stack testing.

3. Costs to the State:

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

Staff time is utilized to oversee the Iowa Code chapter 28E agreements that DNR has with both local air programs and to conduct biannual reviews of the performance of the programs. This includes reviewing and issuing Title V operating permits that the local air program staff have processed and drafted. In Linn County, DNR staff also review and issue Prevention of Significant Deterioration (PSD) permits that have been processed and drafted by Linn County staff.

Under a portion of DNR's Clean Air Act, Sections 103 and 105, grant funds and Clean Air Act Title V emissions fee revenue are passed through to both local air programs through the Iowa Code chapter 28E agreements. These agreements are negotiated annually and specify the extent and manner of cooperation between DNR and the local air programs in conducting programs for the abatement, control, and prevention of air pollution within their jurisdictions. For state fiscal year 2024, DNR has budgeted to provide a cost reimbursable not to exceed the amount of $824,299 in pass-through funding support to Linn County and a cost reimbursable not to exceed the amount of $981,684 to Polk County from these funding sources.

- Anticipated effect on state revenues:

The new chapter will have a neutral impact on state revenues because the rules are already being implemented in existing Chapter 27.

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

Linn and Polk Counties are the two most populous counties in Iowa. It is critical that Chapter 27 be repromulgated to ensure that the requirements of the federal Clean Air Act continue to be implemented in Linn and Polk Counties in a manner that is consistent with DNR's implementation of these requirements in the other 97 counties in Iowa.

Chapter 27 is also needed to evaluate any future local air programs that may apply for a certificate of acceptance. The evaluation will ensure that new local air programs will meet the requirements for the collection and assessment of information regarding air quality, the permitting of sources of air emissions, the enforcement of emission limits, and the attainment and maintenance of ambient air quality standards.

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 intent of the Iowa Code provisions was to allow political subdivisions that can meet the required program implementation criteria to administer air quality programs in their jurisdictions.

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 proposed new Chapter 27 sets forth conditions necessary to obtain and maintain a certificate of acceptance in a streamlined and up-to-date format compared to the previous format.

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?

Both local air programs provide easy staff accessibility for small businesses that may need permitting and compliance assistance. Many small businesses are also able to use one of the numerous exemptions from the requirement to obtain an air construction permit that exist in the local air program ordinances.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27
CERTIFICATE OF ACCEPTANCE

567—27.1(455B) General. Political subdivisions shall meet the conditions specified in this chapter if the political subdivisions pursue acceptance of the local air pollution control program and to obtain a certificate of acceptance from the director, as provided in Iowa Code section 455B.145.

567—27.2(455B) Certificate of acceptance. The governing body of a political subdivision may make application for a certificate of acceptance.

27.2(1) *Forms.* Each application for a certificate of acceptance shall be submitted to the director on forms available from the department.

27.2(2) *Processing of applications.* The director shall make an investigation of the program or portion of a program covered by an application for a certificate of acceptance to evaluate conformance with applicable provisions of Iowa Code section 455B.145.

a. Granting of certificate. A certificate of acceptance may be granted by the director if the program is consistent with Iowa Code chapter 455B, division II, and the rules established in this chapter.

b. Review of program. The director shall provide for a review of the program activities at intervals as the director prescribes for evaluation of the continuation of the certificate. Following the review, the director may continue the certificate in effect or suspend the certificate, in conformance with Iowa Code sections 455B.134(12) and 455B.145.

567—27.3(455B) Ordinance or regulations.

27.3(1) *Legal aspects.* Each local control program considered for a certificate of acceptance must be conducted under an appropriate ordinance or set of regulations, as specified in Iowa Code section 455B.145 and this rule.

27.3(2) *Legal authority.* The ordinance or regulations shall provide authority to the local control agency as follows:

a. Scope of control. Authority and responsibility for air pollution control within the entire area included in the jurisdiction involved.

b. Degree of control. Authority to prevent, abate and control air pollution from all sources within its area of jurisdiction, in accordance with requirements consistent with the provisions specified in these rules.

c. Enforcement. Legal authority to enforce its requirements and standards.

d. Inspection and tests. Legal authority to make inspections, perform emission tests and obtain data, reports or other information relating to sources of air pollution which may be necessary to prepare air contaminant emission inventories, and to evaluate control measures needed to meet specified goals.

27.3(3) *Control of air pollution.* The ordinance or regulations shall contain provisions applicable to the control or prohibition of emissions of air contaminants as listed below.

a. Emission control. Requirements specifying maximum concentrations, density or rates of discharge of emissions of air contaminants from specified sources.

(1) These requirements may be included in the ordinance or regulations, or in standards adopted by the local control agency under the authority granted by such ordinance or regulations.

(2) These requirements shall not establish an emission standard for any specific source that is in excess of the emission standard specified in 567—Chapter 23 for that source.

b. Prohibition of emissions. Provisions prohibiting the installation of equipment having a potential for air pollution without adequate control equipment. Such restriction may be included in the building code applicable to the jurisdiction covered by the local control agency.

c. Open burning. Provisions prohibiting open burning, including backyard burning, in urban areas within the jurisdiction of the local control agency.

(1) Provisions relating to backyard burning may consist of a program requiring the prohibition of such burning within a reasonable period of time.

(2) Provisions applicable to open burning may include a variance procedure, so long as no variance which would prevent the attainment or maintenance of ambient air quality standards for suspended particulates and carbon monoxide is issued.

d. Requirements for permits. Provisions requiring installation and operating permits for all new or altered equipment capable of emitting air contaminants into the atmosphere installed within the jurisdiction of the local control agency.

27.3(4) *Enforcement.* The ordinance or regulations of the local control agency shall include an effective mechanism for enforcing the provisions specified thereunder, as listed below.

a. Procedures. The local control ordinance or regulations shall specify that any violation of its provisions is subject to civil and criminal penalties.

b. Penalties. The penalties specified in such ordinance or regulations shall include fines, injunctive relief and sealing of equipment found to be not in compliance with applicable provisions of the ordinance or regulations.

c. Procedures for granting variances or extensions of time to attain compliance status. The local control agency shall maintain on file a record of the names, addresses, sources of emissions, types of emissions, rates of emissions, reason for granting, conditions and length of time specified, relating to all variances or extension of time granted and shall make such records available to the commission or the department upon request.

567—27.4(455B) Administrative organization.

27.4(1) *Administrative facilities.* Each local control program considered for a certificate of acceptance must have the administrative facilities necessary for effective operation of such program including, but not limited to, those listed below.

a. Agency. Designation of a legally constituted body within the organizational structure of the applicable political subdivision or combination of political subdivisions, as the administrative authority for the local control program.

b. Procedures. Adoption of definite administrative procedures for developing, promulgating and enforcing requirements and standards for air pollution control within the jurisdiction of the local control agency.

c. Staff. Employment of a technical and clerical staff deemed adequate to conduct the air pollution control activities in the local control program.

(1) Key technical staff personnel shall have received training or experience in air quality management program procedures.

(2) At least one member of the technical staff shall be assigned full-time duty in the operation of the local control program.

27.4(2) *Financial support.* Each local control program considered for a certificate of acceptance shall have adequate financial support for the operation of effective program activities.

27.4(3) *Physical facilities.* Each local control program considered for a certificate of acceptance must have the physical facilities necessary for the operation of effective program activities, including those listed below.

a. Office space. Sufficient office space and equipment to accommodate the members of the technical and clerical staff.

b. Laboratory facilities. The laboratory space and equipment shall be adequate for the effective exercise of the specific functions required in the operation of the local control program.

c. Transportation facilities. These facilities shall include provisions for transportation of personnel to service air monitoring equipment, visits to sources of emissions for investigative purposes and other appropriate program activities.

567—27.5(455B) Program activities. Each local control program considered for a certificate of acceptance must conduct air pollution control activities adequate to provide adequate control of air pollution within the jurisdiction of the local control program, including, but not limited to, those listed below. In conducting these program activities, the local control agency shall make every effort to meet the specified ambient air quality objectives applicable to the state of Iowa.

27.5(1) *Evaluation of problems.* Conduct activities to determine the actual and potential air pollution problems within the jurisdiction of the local control agency, and comparison of the present air quality in that jurisdiction with the air quality standards and objectives promulgated for this state. The air quality within the jurisdiction shall be determined by an air monitoring program, using sampling techniques and laboratory determinations compatible with those used in the air pollution control program of this state. The air monitoring program of the local control agency shall give attention to the air contaminants considered to be indices of pollution in this state.

27.5(2) *Control activities.* Conduct activities to abate or control emissions of air contaminants from existing equipment or from new or altered equipment located within the jurisdiction of the local control agency.

a. A program of plant inspections shall be conducted with respect to control of emissions from existing equipment. These activities should include the collection of data related to the types of emissions and the rate of discharge of emissions from each source involved, along with stack sampling when deemed appropriate.

b. Procedures for plan review and the issuing of permits relating to the installation or alteration such that the emission of air contaminants is significantly altered, shall be conducted with respect to control of emissions from new or altered sources. These procedures may include provisions for permits relating to the use of the equipment involved.

This chapter is intended to implement Iowa Code sections 455B.133, 455B.143, and 455B.145.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 30 "Fees"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.133(8)"a"(2), 455B.133B, and 455B.133C

State or federal law(s) implemented by the rulemaking: Federal Clean Air Act and Iowa Code sections 455B.133, 455B.133B, and 455B.133C

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 Wendy Walker 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 Wendy Walker prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.m.	Via video/conference call

Public Comment

Any interested person may submit written or oral 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:

Wendy Walker
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.725.9570
Email: wendy.walker@dnr.iowa.gov

Purpose and Summary

Chapter 30 defines specific air quality fees owed by air contaminant sources. These fees directly support the air quality program, which exists to prevent, abate, and control air pollution in the state of Iowa. The Air Contaminant Source Fund (Iowa Code section 455B.133B) was established to receive emissions and operating permit fees. The Air Quality Fund (Iowa Code section 455B.133C) was established to receive construction permit and asbestos notifications fees. Citations to 567—Chapter 22 are to the rules, subrules, and paragraphs proposed in the Regulatory Analysis for that chapter (IAB 9/6/23).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Industrial facilities are required to pay fees to fund air quality permitting requirements. Building owners seeking to renovate or demolish a building are required to pay an asbestos notification fee.

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

Industrial facilities will receive timely permits. Renovations and demolitions will be reviewed for asbestos-containing materials. Citizens will be able to access regulatory information.

More broadly speaking, all Iowa citizens will benefit. These fees fund the air quality program, which exists to prevent, abate, and control air pollution in the state of Iowa.

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 fees listed in the proposed Chapter 30 are as follows: asbestos notification, $100; minor source construction permit, $385; minor registration permit, permit by rule or permit template, $100; major source construction permitting, $115 per hour, and dispersion modeling, $90 per hour; Title V operating permit application fees, $100 per hour; and Title V operating permit emissions fee, $70 per ton.

- Qualitative description of impact:

The 2014 Air Quality Bureau Stakeholder Report (www.legis.iowa.gov/docs/publications/DF/662287.pdf) provides a thorough discussion of the programmatic need and impact on stakeholders.

3. Costs to the State:

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

The fees collected provide funding for approximately 72 percent of the Department's air quality programmatic costs, which include the implementation and enforcement of relevant state and federal laws. The cost to implement and enforce the proposed Chapter 30 is provided by the fees collected.

- Anticipated effect on state revenues:

There will be minimal impact on state revenues. The federal Clean Air Act amendments require that the fees deposited into the Air Contaminant Source Fund be used solely for activities associated with Title V sources. The Air Quality Fund established fees to fully fund the major source construction permit and asbestos program. The minor source construction permit fees, also received in the Air Quality Fund, are intended to subsidize the state and federal funds for the minor source construction permitting program. Additional funding for the air quality program comes from state and federal dollars.

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

The fees in the Air Contaminant Source Fund generated $7,522,000 in revenues in FY 2022. The fees in the Air Quality Fund generated $1,350,000 in revenues in FY 2022. Combined, the revenues from these two funds provided funding for 72 percent of the air quality program. The balance comes from a combination of state and federal moneys. If this chapter was rescinded and not repromulgated, the Department would lose the administrative rules on air quality fees. Although the Iowa Code still authorizes the collection of the fees, the Department would not have the specific fees set forth in rule, which may cause confusion for stakeholders.

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 funding the activities. As noted above, the fees must not exceed programmatic costs.

6. Alternative methods considered by the agency:

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

The 2014 Air Quality Stakeholders Report discusses alternate funding methods. Additionally, state law directs the Environmental Protection Commission (Commission) to collect these fees.

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

No additional federal or state resources were available to fund the activities.

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 federal Clean Air Act mandates small business assistance (42 U.S.C 7661f). More information can be found at www.iowadnr.gov/Environmental-Protection/Air-Quality/Small-Business-Assistance.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 30 and adopt the following **new** chapter in lieu thereof:

CHAPTER 30
FEES

567—30.1(455B) Purpose. This chapter sets forth requirements to pay fees for specified activities. The department shall not initiate review and processing of an application submittal from a minor source until all required fees have been paid to the department. Fees are nonrefundable, except as provided in 30.1(4).

30.1(1) *Definition.* For purposes of this chapter, the following definition shall apply:

"Application submittal" means one or more applications required under 567—22.1(455B) and submitted at the same time or required to be submitted under 567—22.4(455B), 567—22.5(455B), 567—Chapter 31 or 567—Chapter 33.

30.1(2) *Duty to correct errors.* If an owner or operator, or the department, finds an error in a fee assessed or collected under this chapter, the owner or operator shall submit to the department revised forms making the necessary corrections to the fee and shall submit the correct fee. Corrected forms shall be submitted as soon as possible after the error is discovered or upon notification by the department. If the error correction results in a determination by the department that a fee was overpaid or that a duplicate fee was submitted, the department will return the overpaid balance of the fee to the applicant.

30.1(3) *Exemption to fee requirements for administrative amendments.* A fee shall not be required for any of the following:

a. Corrections of typographical errors;

b. Corrections of word processing errors;

c. Changes in the name, address, or telephone number of any person identified in a permit, or similar minor administrative changes at the source; and

d. Changes in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility and coverage, and liability between the current permittee and the new permittee has been submitted to the department.

30.1(4) *Refund of application fee minus administrative cost for permit applications at minor sources.* The department may refund the application fee minus administrative costs if the owner or

operator requests to withdraw the application prior to commencement of the technical review of the application.

567—30.2(455B) Fees associated with new source review applications. Each owner or operator required to provide an application submittal, including air quality modeling as applicable; registration; permit by rule; and template under 567—subrule 22.1(1), 567—22.4(455B), 567—22.5(455B), 567—22.8(455B), 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33, shall pay fees as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with forms supplied by the department.

30.2(1) *Payment of regulatory applicability determination fee.* Each owner or operator requesting a regulatory applicability determination, as specified in 567—paragraph 22.1(3)*"a,"* shall pay fees as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with forms provided by the department.

30.2(2) Reserved.

567—30.3(455B) Fees associated with asbestos demolition or renovation notification.

30.3(1) *Payment of fees established.* The owner or operator of a site subject to the national emission standard for hazardous air pollutants (NESHAP) for asbestos notifications, adopted by reference in 567—paragraph 23.1(3)*"a,"* shall submit a fee with each required original or each annual notification for each demolition or renovation, including abatement. Fees shall be paid as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with the notification forms provided by the department.

30.3(2) *Fee not required.* A fee shall not be required for the following:

a. Notifications when the total amount of asbestos to be removed or disturbed is less than 260 linear feet, less than 160 square feet, and less than 35 cubic feet of facility components and is below the reporting thresholds as defined in 40 CFR 61.145 as amended on January 16, 1991;

b. Notifications of training fires as required in 567—paragraph 23.2(3)*"g"*;

c. Controlled burning of demolished buildings as required in 567—paragraph 23.2(3)*"j"*;

d. Revised, canceled, and courtesy notifications. A revision to a previously submitted courtesy notification due to applicability of the notification requirements in 567—paragraph 23.1(3)*"a"* is considered an original notification and is subject to the fee requirements of 30.3(1).

567—30.4(455B) Fees associated with Title V operating permits.

30.4(1) *Payment of Title V application fee.* Each owner or operator required to apply for a Title V permit, or a renewal of a Title V permit, shall pay fees as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with forms supplied by the department.

30.4(2) *Payment of Title V annual emissions fee.*

a. Fee required. Any person required to obtain a Title V permit shall pay an annual fee based on the first 4,000 tons of each regulated air pollutant and shall be paid on or before July 1 of each year. The Title V emissions fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The commission shall not set the fee higher than $70 per ton without adopting the change pursuant to formal rulemaking.

b. Fee and documentation due dates. The fee shall be submitted annually by July 1 with forms specified by the department.

c. Operation in Iowa. The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while it is operating in Iowa.

d. Title V exempted stationary sources. No fee shall be required for emissions until the year in which sources exempted under 567—subrules 24.102(1) and 24.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

e. Insignificant activities. No fee shall be required for insignificant activities as defined in 567—24.103(455B).

567—30.5(455B) Fee stakeholder meetings. Prior to each March commission meeting, the director shall convene fee stakeholder meetings as specified in Iowa Code sections 455B.133B and 455B.133C for the purposes of reviewing a draft budget and providing recommendations to the department regarding establishing or adjusting fees. Any stakeholder may attend meetings of the fee stakeholder meetings. The meetings will be open to the public. The date of each meeting shall be posted on the department's website 14 days prior to the meeting date.

567—30.6(455B) Process to establish or adjust fees and notification of fee rates.

30.6(1) *Setting the fees.* The department shall submit the proposed budget and fees for major and minor source construction permit programs, the Title V operating permit program, and the asbestos NESHAP program for the following fiscal year to the commission no later than the March commission meeting of each year, at which time the proposal will be available for public comment until such time as the commission acts on the proposal or until the May commission meeting, whichever occurs first. The department's calculated estimate for each fee shall not produce total revenues in excess of limits specified in Iowa Code sections 455B.133B and 455B.133C during any fiscal year. If an established fee amount must be adjusted, the commission shall set the fees no later than the May commission meeting of each year.

Adjusted or established fees shall become effective on July 1. A fee not adjusted by the commission shall remain in effect as previously established until the fee is adjusted by the commission.

30.6(2) *Fee types and dollar caps on fee types.* The commission may set fees for the fee types and activities specified in this subrule and shall not set a fee in the fee schedule higher than the levels specified in this subrule without adopting the change pursuant to formal rulemaking:

a. New source review applications from major sources, which may include:
(1) Review of each application for a construction permit: $115 per hour;
(2) Review of each application for a prevention of significant deterioration permit: $115 per hour;
(3) Review of each plantwide applicability limit request, renewal, or reopening: $115 per hour;
(4) Review of each regulatory applicability determination: $115 per hour; and
(5) Air quality modeling review: $90 per hour.

b. New source review applications from minor sources, which may include:
(1) Each application for a construction permit: $385;
(2) Each application for a registration permit: $100;
(3) Each application for a permit by rule: $100; and
(4) Each application for a permit template: $100.

c. Asbestos notifications: $100.

d. Review of each initial or renewal Title V operating permit application: $100 per hour.

e. Title V annual emissions: $70 per ton.

30.6(3) *Notification of fee schedule.* Following the initial setting of any fee by the commission, the department shall make available to the public a fee schedule at least 30 days prior to its effective date. If any established fee amount is adjusted, the department shall make available to the public a revised fee schedule at least 30 days prior to its effective date. The fee schedule shall be posted on the department's website.

These rules are intended to implement Iowa Code sections 455B.133, 455B.133B, and 455B.133C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 31
"Nonattainment New Source Review"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.133

State or federal law(s) implemented by the rulemaking: U.S. Clean Air Act, Title 1, Part D, and Iowa Code section 455B.133.

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 Christine Paulson 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 Christine Paulson prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.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:

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Purpose and Summary

Proposed Chapter 31 establishes the requirements for the preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants in areas that do not meet the national ambient air quality standards (NAAQS). Areas where the NAAQS are not being met are referred to as nonattainment areas.

Iowa's nonattainment rules have been approved by the U.S. Environmental Protection Agency (EPA) into Iowa's required State Implementation Plan (SIP). The nonattainment new source review rules work in conjunction with emissions control plans developed in areas that have been designated as nonattainment to allow the areas to meet the NAAQS within timelines specified in the U.S. Clean Air Act (CAA).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

New and existing industrial and other facilities that are located in a nonattainment area that are major sources of the applicable air pollutant, and are newly constructing or undertaking a significant

modification that will result in potential emissions of the specific pollutant above designated thresholds, will bear the costs.

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

Citizens located in the nonattainment area 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 Environmental Protection Commission (Commission) to collect the permit application fees specified in 567—Chapter 30 (as authorized by Iowa Code section 455B.133C). Permit application fees are $115 per hour for engineer staff review and $90 per hour for associated review of required air quality modeling. Facilities' incurred costs to prepare and submit the required applications vary greatly depending on facility size, number of emissions sources, and other factors.

- Qualitative description of impact:

Sources subject to the requirements of Chapter 31 must demonstrate through the air construction permitting process that their proposed project emissions will not impact the control strategy for the nonattainment area. This is done through the installation of air pollution controls, the implementation of operating limits, and the monitoring and reporting of air emissions. The costs of these actions vary by the type of facility process and amount of air emissions.

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 observe and evaluate facility emissions testing, review reports, report information for requirements included in permits to the public and state and federal partners, and provide outreach and assistance to ensure compliance with the permits.

- Anticipated effect on state revenues:

The proposed chapter will have a neutral impact on state revenues because the rules are already being implemented in existing Chapter 31.

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

The costs of the proposed Chapter 31 and inaction (rescinding the permit rules in Chapter 31 and not replacing them) are largely the same because, in the absence of a state nonattainment permit program, the EPA would administer the program as provided in 40 Code of Federal Regulations (CFR) §51.165 and 40 CFR Part 51, Appendix S. However, the benefits of repromulgating revised nonattainment rules exceed the costs of inaction because 40 CFR §51.165 and Appendix S of 40 CFR Part 51 do not word-for-word replace what is in the Department's rules. Rather, the applicable federal regulations give flexibility to states for an EPA-approved nonattainment permit program, and the Department has chosen with stakeholder approval the rule options in 40 CFR §51.165 and Appendix S of 40 CFR Part 51 to implement in Iowa. Stakeholders prefer to have the Department, rather than the EPA, administer the nonattainment permit program in Iowa. Additionally, by repromulgating Chapter 31, the Department will provide businesses and the public with more streamlined, up-to-date air quality requirements with increased program implementation effectiveness.

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 nonattainment permit program is required by the CAA, federal regulations, and Iowa Code section 455B.133.

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 nonattainment permit program is required by the CAA, federal regulations, and Iowa Code section 455B.133. Proposed Chapter 31 provides a dedicated chapter that sets forth the nonattainment permit requirements in a streamlined and up-to-date format compared to the previous format.

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 nonattainment permit program requirements are not applicable to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 31 and adopt the following **new** chapter in lieu thereof:

CHAPTER 31
NONATTAINMENT NEW SOURCE REVIEW

567—31.1(455B) Permit requirements relating to nonattainment areas.

31.1(1) This chapter implements the nonattainment new source review (NNSR) program contained in Part D of Title I of the federal Clean Air Act and as promulgated under 40 CFR §51.165 as amended through March 30, 2011, and 40 CFR Part 51, Appendix S, as amended through July 1, 2011.

31.1(2) The NNSR program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part D of Title I of the federal Clean Air Act as amended through November 15, 1990. The NNSR program applies only in areas that do not meet the national ambient air quality standards (NAAQS).

31.1(3) Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the NAAQS, that are lower than those standards, or that cannot be classified on the basis of current data.

31.1(4) A list of Iowa's nonattainment area designations is found at 40 CFR §81.316. An owner or operator required to apply for a construction permit under this chapter or requesting a plantwide applicability limit (PAL) shall submit fees as required in 567—Chapter 30.

567—31.2 Reserved.

567—31.3(455B) Nonattainment new source review (NNSR) requirements for areas designated nonattainment.

31.3(1) *Definitions.* For the purpose of NNSR, the following definitions shall apply:

"Act" means the Clean Air Act, 42 U.S.C. §7401, et seq., as amended through November 15, 1990.

"Actual emissions" means:

1. The actual rate of emissions of a regulated new source review (NSR) pollutant from an emissions unit, as determined in accordance with paragraphs "2" through "4," except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 567—31.9(455B). Instead, the definitions of projected actual emissions and baseline actual emissions shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the U.S. Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

"Baseline actual emissions," for the purposes of this rule, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs "1" through "4."

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph "1"(b) of this definition.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the

project, or the date on which a complete permit application is received by the department for a permit required either under this rule or under a plan approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 31.3(3)*"b"*(7).

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs "2"(b) and "2"(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit's potential to emit.

4. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph "1," for other existing emissions units in accordance with the procedures contained in paragraph "2," and for a new emissions unit in accordance with the procedures contained in paragraph "3."

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" or *"BACT"* means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61, and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by title and part, so that "40 CFR 51" or "40 CFR Part 51" means "Title 40 Code of Federal Regulations, Part 51."

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

"Continuous emissions monitoring system" or *"CEMS"* means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or *"CERMS"* means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or *"CPMS"* means all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this rule, there are two types of emissions units as described in paragraphs "1" and "2."

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph "1" of this definition. A replacement unit is an existing emissions unit.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR §52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

"Lowest achievable emissions rate" or *"LAER"* means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation that is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation that is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition that was established after December 12, 1976, pursuant to 40 CFR §52.21 or under regulations approved pursuant to 40 CFR Subpart I or §51.166; or the source is approved to use under any permit issued under regulations approved pursuant to this rule;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition that was established after December 21, 1976, pursuant to 40 CFR §52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I, or 40 CFR §51.166;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 567—31.9(455B) of this chapter for a PAL for that pollutant. Instead, the definition in 567—31.9(455B) shall apply.

4. For the purpose of applying the requirements of 31.3(8) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

5. Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act.

"Major stationary source" means:

1. Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the Act, according to definitions in 31.3(1).

(a) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(b) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(c) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(d) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(e) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator as amended through [the effective date of these rules]).

(f) 70 tons per year of PM_{10} in any serious nonattainment area for PM_{10}.

2. For the purposes of applying the requirements of 31.3(8) to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source that emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the following emission thresholds apply in areas subject to Subpart 2 of Part D, Title I of the Act:

(a) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(b) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(c) 100 tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(d) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(e) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(f) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

3. Any physical change that would occur at a stationary source not qualifying under 31.3(1) as a major stationary source, if the change would constitute a major stationary source by itself.

4. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

5. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants

(furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140); fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the SIP.

"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero: the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements of 31.3(2)*"b,"* and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(c) Reserved.

3. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

4. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emission or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) The department has not relied on a decrease in actual emissions in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or has not relied on a decrease in actual emissions in demonstrating attainment or reasonable further progress; and

(d) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

5. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

6. Actual emissions shall not apply for determining creditable increases and decreases or after a change.

"Nonattainment new source review program" or *"NNSR program"* means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this rule, or a program that implements 40 CFR Part 51,

Appendix S, Sections I through VI, as amended through October 25, 2012. Any permit issued under such a program is a major NSR permit.

"Pollution prevention" means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. "Pollution prevention" does not mean recycling (other than certain in-process recycling practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or *"PEMS"* means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of significant deterioration permit" or *"PSD permit"* means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR §51.166, or under the program in 40 CFR §52.21.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and
2. Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
4. In lieu of using the method set out in paragraphs "1" through "3," may elect to use the emissions unit's potential to emit, in tons per year.

"Reasonable period" means an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

"Regulated NSR pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;

3. Any pollutant that is identified as a constituent or precursor of a general pollutant listed under paragraph "1" or "2," provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

(c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the department demonstrates to the EPA's satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations.

(d) Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the department demonstrates to the EPA's satisfaction or the EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

4. $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs "1" through "4" of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR §60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not alter the basic design parameters of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Reviewing authority" means the department of natural resources.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification but do not come from the major stationary source or major modification itself. For the purpose of this rule, "secondary emissions" must be specific, be well defined, be quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. "Secondary emissions" includes emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction of operation of the major stationary source of major modification. "Secondary emissions" does not include any emissions that come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

(a) Carbon monoxide: 100 tons per year (tpy)

(b) Nitrogen oxides: 40 tpy

(c) Sulfur dioxide: 40 tpy

(d) Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

(e) Lead: 0.6 tpy

(f) PM_{10}: 15 tpy

(g) $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions, 40 tpy of sulfur dioxide emissions, or 40 tpy of nitrogen oxide emissions unless the department demonstrates to the EPA's satisfaction that the emissions

of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations.

2. Notwithstanding the significant emissions rate for ozone, "significant" means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

3. For the purposes of applying the requirements of 31.3(8) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs "1," "2," and "5" shall apply to nitrogen oxides emissions.

4. Notwithstanding the significant emissions rate for carbon monoxide, "significant" means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the department has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

5. Notwithstanding the significant emissions rates for ozone under paragraphs "1" and "2," any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act shall be considered a significant net emissions increase.

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR §51.100(s) as amended through February 8, 2023.

31.3(2) *Applicability procedures.*

a. This subrule adopts a preconstruction review program to satisfy the requirements of Sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under Subpart C of 40 CFR Part 81 as amended through August 5, 2013, and shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under Section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

b. Each plan shall use the specific provisions of subparagraphs (1) through (6) of this paragraph. Deviations from these provisions will be approved only if the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in subparagraphs (1) through (6) of this paragraph.

(1) Except as otherwise provided in 31.3(2)*"c,"* and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subparagraphs (3) through (6) of this paragraph. The procedure

for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) Reserved.

(6) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs (3) and (4) of this paragraph as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

c. The plan shall require that for any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 567—31.9(455B).

31.3(3) *Creditable offsets.*

a. For sources and modifications subject to any preconstruction review program, the baseline for determining credit for emissions reductions is the emissions limit in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The SIP does not contain an emissions limitation for that source or source category.

b. Providing that:

(1) Where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the SIP for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure that would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(3) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours may be generally credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subparagraph, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements above may be generally credited only if the shutdown or curtailment occurred on or after the date the construction permit application is filed; or

the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of this subparagraph;

(4) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of the EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(5) All emission reductions claimed as offset credit shall be federally enforceable;

(6) Procedures relating to the permissible location of offsetting emissions shall be followed that are at least as stringent as those set out in 40 CFR Part 51, Appendix S, Section IV.D, as amended on October 25, 2012;

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or the state has not relied on it in demonstration attainment or reasonable further progress;

(8) and (9) Reserved.

(10) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

31.3(4) *Fugitive emissions.* The department may provide that the provisions of this subrule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140); fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

31.3(5) *Enforceable procedures.*

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state, or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

31.3(6) *Reasonable possibility.* Except as otherwise provided in 31.3(6)*"f,"* the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of 31.3(6)*"f,"* that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs "1" through "3" of the definition of "projected actual emissions" for calculating projected actual emissions. Deviations from these provisions will be approved only if the state specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in 31.3(6)*"a"* through *"f."*

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in 31.3(6)*"a"* to the department. Nothing in 31.3(6)*"b"* shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in 31.3(6)*"a"*(2); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under 31.3(6)*"c"* setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in 31.3(6)*"a,"* exceed the baseline actual emissions (as documented and maintained under 31.3(6)*"a"*(3)), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained under 31.3(6)*"a"*(3). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(1) The name, address, and telephone number of the major stationary source;

(2) The annual emissions as calculated pursuant to 31.3(6)*"c"*; and

(3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

f. A reasonable possibility under this subrule occurs when the owner or operator calculates the project to result in either:

(1) A projected actual emissions increase of at least 50 percent of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant; or

(2) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions," sums to at least 50 percent of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subparagraph, and not also within the meaning of 31.3(6)*"f"*(1), then 31.3(6)*"b"* through *"e"* do not apply to the project.

31.3(7) *Availability of records.* The owner or operator of the source shall make the information required to be documented and maintained pursuant to this subrule available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR §70.4(b)(3)(viii) as amended through October 6, 2009.

31.3(8) *Applicability to nitrogen oxides emissions.* The requirements of this subrule applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen

oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NOX waiver applying the standards set forth under Section 182(f) of the Act and the waiver continues to apply.

31.3(9) *Offset ratios.*

a. In meeting the emissions offset requirements of 31.3(3), the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in 31.3(9)*"b"* through *"d."*

b. The plan shall require that in meeting the emissions offset requirements of 31.3(3) for ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) In any marginal nonattainment area for ozone—at least 1.1:1;

(2) In any moderate nonattainment area for ozone—at least 1.15:1;

(3) In any serious nonattainment area for ozone—at least 1.2:1;

(4) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC).

c. Notwithstanding the requirements of 31.3(9) for meeting the requirements of 31.3(3), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Subpart 2, Part D, Title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act.

d. In meeting the emissions offset requirements of 31.3(3) for ozone nonattainment areas that are subject to Subpart 1, Part D, Title I of the Act (but are not subject to Subpart 2, Part D, Title I of the Act, including eight-hour ozone nonattainment areas subject to 40 CFR §51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

31.3(10) *Applicability to PM_{10} precursors.* The requirements of this rule applicable to major stationary sources and major modifications of PM_{10} shall also apply to major stationary sources and major modifications of PM_{10} precursors.

31.3(11) *Specifications for emissions offsets.* In meeting the emissions offset requirements of 31.3(3), the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subrule. The offset requirements in 31.3(3) for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

567—31.4(455B) Preconstruction review permit program.

31.4(1) Sources shall comply with the requirements of Section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in 31.3(1). The definitions in 31.3(1) for "major stationary source" and "major modification" planning to locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, apply when that source or modification would cause or contribute to a violation of any national ambient air quality standard.

31.4(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 μg/m^3	5 μg/m^3		25 μg/m^3	
PM_{10}	1.0 μg/m^3	5 μg/m^3			
$PM_{2.5}$	0.3 μg/m^3	1.2 μg/m^3			
NO_2	1.0 μg/m^3				
CO			0.5 mg/m^3		2 mg/m^3

31.4(3) A proposed major source or major modification subject to this rule may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the proposed construction permit application shall be denied.

31.4(4) The requirements of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the Act.

567—31.5 to **31.8** Reserved.

567—31.9(455B) Actuals PALs. Except as provided in 31.9(1), the provisions for actuals PALs as specified in 40 CFR §51.165(f) as amended through March 30, 2011, are adopted by reference.

31.9(1) The following portions of actuals PALs in 40 CFR §51.165(f) are modified to read as follows:

a. 40 CFR §51.165(f)(2): Definitions. The definitions in paragraphs (f)(2)(i) through (xi) of this section shall be applicable to actuals PALs for purposes of paragraphs (f)(1) through (15) of this section. Any terms not defined in paragraphs (f)(2)(i) through (xi) shall have the meaning prescribed by 567—31.3(455B) or the meaning prescribed by the Act.

b. 40 CFR §51.165(f)(8)(ii)(B): The reviewing authority shall have discretion to reopen the PAL permit for the following:

c. 40 CFR §51.165(f)(10)(ii): Application deadline. A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. In order to be considered timely, the application shall be submitted at least 6 months prior to, but not earlier than 18 months prior to, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

d. 40 CFR §51.165(f)(15)(i): Each PAL shall comply with the requirements contained in paragraphs (f)(1) through (15) of this section.

e. 40 CFR §51.165(f)(15)(ii): Any PAL issued prior to January 15, 2014, may be superseded with a PAL that complies with the requirements of paragraphs (f)(1) through (15) of this section.

31.9(2) Reserved.

567—31.10(455B) Validity of rules. If any provision of 567—31.3(455B) through 567—31.9(455B), or the application of such provision to any person or circumstance, is held invalid, the remainder of these rules, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

These rules are intended to implement Iowa Code section 455B.133.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 33
"Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD)"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.133

State or federal law(s) implemented by the rulemaking: Federal Clean Air Act Section 110(a)(2)(C) (42 U.S.C. §7410) and Iowa Code section 455B.133

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 Christine Paulson 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 Christine Paulson prior to the hearing to facilitate an orderly hearing.

September 28, 2023 9 to 11 a.m.	Via video/conference call

Public Comment

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

Christine Paulson
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.725.9510
Email: christine.paulson@dnr.iowa.gov

Purpose and Summary

Chapter 33 establishes the requirements for the preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants. These requirements are established to prevent significant deterioration (PSD) of air quality.

Iowa's PSD rules have been approved by the U.S. Environmental Protection Agency (EPA) into Iowa's required State Implementation Plan (SIP). Iowa has administered an EPA-approved PSD program since 1987.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

New and existing industrial and other facilities that meet the criteria of a PSD major source of air pollutants, and are newly constructing or undertaking a significant modification that will result in potential emissions of specific pollutants above designated thresholds, must apply for and obtain a PSD permit.

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

PSD permits have helped to protect air quality for Iowa's citizens by ensuring that Iowa's largest emitting facilities are meeting the National Ambient Air Quality Standards while allowing economic growth to continue.

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 Environmental Protection Commission to collect the permit application fees specified in Chapter 30 (as authorized by Iowa Code section 455B.133C). PSD permit application fees are $115 per hour and $90 per hour for associated review of required PSD air quality modeling. Facilities' incurred costs to prepare and submit the required applications vary greatly depending on facility size, number of emissions sources, and other factors.

- Qualitative description of impact:

Sources subject to PSD must demonstrate through the air construction permitting process that their proposed project emissions, when considered in conjunction with existing air emissions, will not impact the attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), and that the source meets other related PSD requirements. This is done through the installation of air pollution controls, the implementation of operating limits, and the monitoring and reporting of air emissions. The costs of these actions vary by the type of facility process and level of air emissions.

3. Costs to the State:

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

DNR staff review PSD permit applications and write the PSD permits. DNR staff also observe and evaluate facility emissions testing, review reports, report information for requirements included in PSD permits to the public and state and federal partners, and provide outreach and assistance to ensure compliance with the PSD permits.

- Anticipated effect on state revenues:

The new chapter will have a neutral impact on state revenues because the PSD permit rules are already being implemented in existing Chapter 33.

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

The costs of the proposed new Chapter 33 and inaction (rescinding the PSD permit rules in Chapter 33 and not replacing them) are largely the same because, in the absence of a state PSD permit program, EPA would administer the program as provided in 40 Code of Federal Regulations (CFR) Section 52.21. However, the benefits of repromulgating revised PSD rules ultimately exceed the costs of inaction because CFR Section 52.21 does not word-for-word replace what is in the DNR's rules. Rather, 40 CFR Sections 51.166 and 52.21 give flexibility to states that qualify for an EPA-approved PSD program, and DNR has chosen with stakeholder approval the rule options in 40 CFR Sections 51.166 and 52.21 to implement in Iowa. Stakeholders prefer to have DNR, rather than EPA, administer the PSD program in Iowa. Additionally, by repromulgating the new proposed Chapter 33 rules, DNR will provide businesses and the public with more streamlined, up-to-date air quality requirements with increased program implementation effectiveness.

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 PSD permit program is required by the federal Clean Air Act, federal regulations, and Iowa Code section 455B.133.

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 PSD permit program is required by the federal Clean Air Act, federal regulations, and Iowa Code section 455B.133. The proposed new Chapter 33 rules provide a dedicated chapter that sets forth the PSD permit requirements in a streamlined and up-to-date format compared to the previous format.

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 PSD permit program requirements are not applicable to small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33
CONSTRUCTION PERMIT REQUIREMENTS FOR MAJOR STATIONARY SOURCES—
PREVENTION OF SIGNIFICANT DETERIORATION (PSD)

567—33.1(455B) Purpose. This chapter implements the major new source review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment new source review (NNSR) program applies. The rules for the NNSR program are set forth in 567—Chapter 31. In areas that meet the NAAQS, the prevention of significant deterioration (PSD) program applies. Collectively, the NNSR and PSD programs are referred to as the major NSR program. An owner or operator required to apply for a construction permit under 567—Chapter 33 shall submit fees as specified in 567—Chapter 30.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions. An owner or operator requesting a PAL under 567—33.9(455B) shall submit fees as required in 567—Chapter 30.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22 and the rules for Title V operating permits in 567—Chapter 24.

567—33.2 Reserved.

567—33.3(455B) PSD construction permit requirements for major stationary sources.

33.3(1) *Definitions.* Definitions included in this subrule apply to the provisions set forth in this rule (PSD program requirements). For purposes of this rule and unless otherwise noted, the definitions herein apply. Definitions that are adopted by reference from 40 CFR 51.166 or 52.21 are as amended through July 19, 2021, unless otherwise noted. The following phrases contained in 40 CFR 51.166 are not adopted by reference: "it shall also provide that," "mechanism whereby," "the plan may provide that," "the plan provides that," "the plan shall provide," and "the plan shall provide that." Additionally, the term "the plan" shall mean "State Implementation Plan" or "SIP."

For purposes of this rule, the following terms have the meanings indicated in this subrule:

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

"Actual emissions" means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs "2" through "4," except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 567—33.9(455B). Instead, the requirements specified under the definitions for "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The applicable SIP emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

"Baseline actual emissions," for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as "regulated NSR pollutant" is defined in this subrule, and as determined in accordance with paragraphs "1" through "4."

1. For any existing electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph "1"(b).

2. For an existing emissions unit, other than an electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) as amended through November 29, 2005.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs "2"(b) and "2"(c).

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph "1," for other existing emissions units in accordance with the procedures contained in paragraph "2," and for a new emissions unit in accordance with the procedures contained in paragraph "3."

"Baseline area" means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 μg/m3 (annual average) for sulfur dioxide (SO2), nitrogen dioxide (NO2) or PM_{10}; or equal to or greater than 0.3 μg/m3 (annual average) for $PM_{2.5}$.

2. Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA under 40 CFR Part 51, Subpart I, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of "baseline date" specified in this subrule.

"Baseline concentration" means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph "2";

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date" means:

1. Either "major source baseline date" or "minor source baseline date" as follows:

(a) The "major source baseline date" means, in the case of PM_{10} and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, February 8, 1988; and in the case of $PM_{2.5}$, October 20, 2010.

(b) The "minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through October 20, 2010, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA under 40 CFR Part 51, Subpart I, submits a complete application under the relevant regulations. The trigger date for PM_{10} and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988. For $PM_{2.5}$, the trigger date is October 20, 2011.

2. The "baseline date" is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through October 20, 2010, or under regulations specified in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of

permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, that mark the initiation of the change.

"Best available control technology" or *"BACT"* means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by title and part, so that "40 CFR 51" or "40 CFR Part 51" means "Title 40 Code of Federal Regulations, Part 51."

"Clean coal technology" means the definition of "clean coal technology" set forth in 40 CFR 52.21(b)(34) and is adopted by reference.

"Clean coal technology demonstration project" means the definition of "clean coal technology demonstration project" set forth in 40 CFR 52.21(b)(35) and is adopted by reference.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

"Continuous emissions monitoring system" or *"CEMS"* means the definition of "continuous emissions monitoring system" set forth in 40 CFR 52.21(b)(44) and is adopted by reference.

"Continuous emissions rate monitoring system" or *"CERMS"* means the definition of "continuous emissions rate monitoring system" set forth in 40 CFR 52.21(b)(47) and is adopted by reference.

"Continuous parameter monitoring system" or *"CPMS"* means the definition of "continuous parameter monitoring system" set forth in 40 CFR 52.21(b)(46) and is adopted by reference.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph "1." A replacement unit is an existing emissions unit.

"Enforceable permit condition," for the purpose of this chapter, means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through October 20, 2010, or under construction or Title V operating permit rules.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

"Innovative control technology" means the definition of "innovative control technology" set forth in 40 CFR 52.21(b)(19) and is adopted by reference.

"Lowest achievable emissions rate" or *"LAER"* means the definition of "lowest achievable emissions rate" or "LAER" set forth in 40 CFR 52.21(b)(53) and is adopted by reference.

"Low terrain" means any area other than high terrain.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under 567—33.9(455B) shall apply.

"Major source baseline date" is defined under the definition of "baseline date."

"Major stationary source" means:

1. (a) Any one of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 50 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140);

- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.

(b) Notwithstanding the stationary source size specified in paragraph "1"(a), any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source if the change would constitute a major stationary source by itself.

2. A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

3. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in paragraph "1"(a) or to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"Minor source baseline date" is defined under the definition of "baseline date."

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the SIP.

"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under 33.3(2); and
- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this definition of "net emissions increase" shall be determined as provided for under the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) of the definition of "baseline actual emissions," which describe provisions for multiple emissions units, shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

3. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

7. The definition of "actual emissions," paragraph "2," shall not apply for determining creditable increases and decreases.

"Nonattainment area" means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

"Permitting authority" means the Iowa department of natural resources or the director thereof.

"Pollution prevention" means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. "Pollution prevention" does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or *"PEMS"* means the definition of "predictive emissions monitoring system" set forth in 40 CFR 52.21(b)(45) and is adopted by reference.

"Prevention of significant deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP or means the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

"Project" means a physical change in, or change in method of operation of, an existing major stationary source.

"Projected actual emissions," for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. For purposes of this definition, "regular" shall be determined by the department on a case-by-case basis.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs "1" through "3," may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means the definition of "reactivation of a very clean coal-fired electric utility steam generating unit" set forth in 40 CFR 52.21(b)(38) and is adopted by reference.

"Regulated NSR pollutant" means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas;

(c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations;

(d) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of "subject to regulation."

5. Notwithstanding paragraphs "1" through "4," the definition of "regulated NSR pollutant" shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

6. Particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs "1" through "4" are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameter(s) of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means the definition of "repowering" set forth in 40 CFR 52.21(b)(37) and is adopted by reference.

"Reviewing authority" means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

"Secondary emissions" means emissions that occur as a result of the construction or operation of a major stationary source or major modification but do not come from the major stationary source or major modification itself. For the purposes of this chapter, "secondary emissions" must be specific, well-defined, and quantifiable, and must impact the same general areas as the stationary source modification which causes the secondary emissions. "Secondary emissions" includes emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. "Secondary

emissions" does not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions
- PM_{10}: 15 tpy
- $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions (unless the department demonstrates to EPA's satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations)
- Ozone: 40 tpy of volatile organic compounds or NO_x
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H_2S): 10 tpy
- Total reduced sulfur (including H_2S): 10 tpy
- Reduced sulfur compounds (including H_2S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 × 10-6 megagrams per year (3.5 × 10-6 tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. "Significant" means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph "1," any emissions rate.

3. Notwithstanding paragraph "1," "significant," for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area and have an impact on such area equal to or greater than 1 μg/m3 (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"State implementation plan" or *"SIP"* means the plan adopted by the state of Iowa and approved by the Administrator that provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) (as amended through September 15, 2011) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph "4," and shall not be subject to regulation

if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.

2. For purposes of paragraphs "3" and "4," the term "tpy CO_2 equivalent emissions (CO_2e)" shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, "Global Warming Potentials," (as amended through December 24, 2014). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO_2e.

3. The term "emissions increase," as used in this paragraph and in paragraph "4," shall mean that both a significant emissions increase (as calculated using the procedures specified in 33.3(2)*"c"* through *"h"*) and a significant net emissions increase (as specified in 33.3(1), in the definitions of "net emissions increase" and "significant") occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO2e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO2e rather than calculated by applying the value specified in 33.3(1), in paragraph "2" of the definition of "significant."

4. Beginning January 2, 2011, the pollutant GHGs are subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not a GHG, and also will emit or will have the potential to emit 75,000 tpy CO2e or more, or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not a GHG, and also will have an emissions increase of a regulated NSR pollutant and an emissions increase of 75,000 tpy CO2e or more.

"Temporary clean coal technology demonstration project" means the definition of "temporary clean coal technology demonstration project" set forth in 40 CFR 52.21(b)(36) and is adopted by reference.

"Title V permit" means an operating permit under Title V of the Act.

"Volatile organic compounds" or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR 51.100(s) as amended through February 8, 2023.

33.3(2) *Applicability.* The requirements of this rule (PSD program requirements) apply to the construction of any new "major stationary source" as defined in 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act.

In addition to the provisions set forth in 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through January 17, 2017, are adopted by reference. Provisions set forth in 567—33.3(455B) through 567—33.9(455B) that are adopted by reference from 40 CFR 51.166 or 52.21 are as amended through July 19, 2021, unless otherwise noted. The following phrases contained in 40 CFR 51.166 are not adopted by reference: "it shall also provide that," "mechanism whereby," "the plan may provide that," "the plan provides that," "the plan shall provide," and "the plan shall provide that." Additionally, the term "the plan" shall mean "State Implementation Plan" or "SIP."

a. The requirements of 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule (PSD program requirements) otherwise provides.

b. No new major stationary source or major modification to which the requirements of 33.3(10) through 33.3(18)*"e"* apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in 33.3(2)*"i"* and *"j,"* and consistent with the definition of "major modification" contained in 33.3(1), a project is a major modification for a "regulated NSR pollutant"

if it causes two types of emissions increases: a "significant emissions increase" and a "net emissions increase" that is "significant." The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs 33.3(2)*"e"* through *"h"* of this subrule. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

e. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "projected actual emissions" and the "baseline actual emissions" for each existing emissions unit equals or exceeds the significant amount for that pollutant.

f. Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the "potential to emit" from each new emissions unit following completion of the project and the "baseline actual emissions" for a new emissions unit before the project equals or exceeds the significant amount for that pollutant.

g. Reserved.

h. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs 33.3(2)*"e"* through *"g"* of this subrule, as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

i. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with rule requirements under 567—33.9(455B).

j. Reserved.

33.3(3) *Ambient air increments.* The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through October 20, 2010, are adopted by reference.

33.3(4) *Ambient air ceilings.* The provisions for ambient air ceilings as specified in 40 CFR 52.21(d) are adopted by reference.

33.3(5) *Restrictions on area classifications.* The provisions for restrictions on area classifications as specified in 40 CFR 52.21(e) are adopted by reference.

33.3(6) *Exclusions from increment consumption.* The provisions by which the SIP may provide for exclusions from increment consumption as specified in 40 CFR 51.166(f) are adopted by reference.

33.3(7) *Redesignation.* The provisions for redesignation as specified in 40 CFR 52.21(g) are adopted by reference.

33.3(8) *Stack heights.* The provisions for stack heights as specified in 40 CFR 52.21(h) are adopted by reference.

33.3(9) *Exemptions.* The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) are adopted by reference.

33.3(10) *Control technology review.* The provisions for control technology review as specified in 40 CFR 52.21(j) are adopted by reference.

33.3(11) *Source impact analysis.* The provisions for a source impact analysis as specified in 40 CFR 52.21(k) are adopted by reference.

33.3(12) *Air quality models.* The provisions for air quality models as specified in 40 CFR 52.21(l) are adopted by reference.

33.3(13) *Air quality analysis.* The provisions for an air quality analysis as specified in 40 CFR 52.21(m) are adopted by reference.

33.3(14) *Source information.* The provisions for providing source information as specified in 40 CFR 52.21(n) are adopted by reference.

33.3(15) *Additional impact analyses.* The provisions for an additional impact analysis as specified in 40 CFR 52.21(o) are adopted by reference.

33.3(16) *Sources impacting federal Class I areas—additional requirements.* The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) are adopted by reference.

33.3(17) *Public participation.*

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by posting on a publicly available website identified by the department, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. The electronic notice shall be available for the duration of the public comment period and shall include the notice of public comment, the draft permit(s), information on how to access the administrative record for the draft permit(s) and how to request or attend a public hearing on the draft permit(s). The department may use other means if necessary to ensure adequate notice to the affected public. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to the proposed source or modification, the control technology required, and other appropriate considerations. At least 30 days' notice shall be provided for any public hearing.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection at the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the proposed source or modification.

c. Reopening of the public comment period.

(1) If comments submitted during the public comment period raise substantial new issues concerning the permit, the department may, at its discretion, take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified;
2. Prepare a revised fact sheet;
3. Prepare a revised fact sheet and reopen the public comment period; or

4. Reopen or extend the public comment period to provide interested persons an opportunity to comment on the comments submitted.

(2) The public notice provided by the department pursuant to this rule shall define the scope of the reopening. Department review of any comments filed during a reopened comment period shall be limited to comments pertaining to the substantial new issues causing the reopening.

33.3(18) *Source obligation.*

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c. Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

d. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

e. Reserved.

f. Except as otherwise provided in subparagraph (8), the following specific provisions shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where there is a "reasonable possibility," within the meaning of subparagraph (8), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method for calculating projected actual emissions as specified in 33.3(1), paragraphs "1" through "3" of the definition of "projected actual emissions."

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" in 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner's or operator's determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in 33.3(18)*"f."* The owner or operator is not required to obtain a determination from the department regarding the project's projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require

the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);

2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, "regular" shall be determined by the department on a case-by-case basis); and

3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is "significant" as defined in 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;

2. The annual emissions as calculated pursuant to subparagraph (4); and

3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(8) A "reasonable possibility" under this paragraph (33.3(18)*"f"*) occurs when the owner or operator calculates the project to result in either:

1. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

2. A projected actual emissions increase that, when added to the amount of emissions excluded under 33.3(1), paragraph "3" of the definition of "projected actual emissions," equals at least 50 percent of the amount that is a "significant emissions increase," as defined under 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this numbered paragraph, and not also within the meaning of numbered paragraph "1" of this subparagraph (subparagraph (8)), then the provisions of subparagraphs (3) through (7) do not apply to the project.

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to 33.3(18)*"f"* available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

33.3(19) *Innovative control technology.* The provisions for innovative control technology as specified in 40 CFR 51.166(s) are adopted by reference.

33.3(20) *Conditions for permit issuance.* Except as explained below, a permit may not be issued to any new "major stationary source" or "major modification" as defined in 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be

considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	(μg/m^3)	(μg/m^3)	(μg/m^3)	(μg/m^3)	(μg/m^3)
SO_2	1.0	5	———	25	———
PM_{10}	1.0	5	———	———	———
$PM_{2.5}$	0.3	1.2	———	———	———
NO_2	1.0	———	———	———	———
CO	———	———	500	———	2,000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

33.3(21) *Administrative amendments.*

a. Upon request for an administrative amendment, the department may take final action on any such request and may incorporate the requested changes without providing notice to the public or to affected states, provided that the department designates any such permit revisions as having been made pursuant to 33.3(21).

b. An administrative amendment is a permit revision that does any of the following:

(1) Corrects typographical errors;

(2) Corrects word processing errors;

(3) Identifies a change in name, address or telephone number of any person identified in the permit or provides a similar minor administrative change at the source; or

(4) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

33.3(22) *Permit rescission.* Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under 567—22.4(455B) shall remain in effect unless and until it expires or is rescinded under 40 CFR 52.21(w) or this chapter. The provisions for permit rescission as set forth in 40 CFR 52.21(w) are adopted by reference. The department will consider requests for rescission that meet the conditions specified in this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. Posting of an announcement of rescission on a publicly available website identified by the department 60 days prior to the proposed date for rescission shall be considered adequate notice.

567—33.4 to **33.8** Reserved.

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) are adopted by reference, except that the term "Administrator" shall mean "the department of natural resources."

567—33.10(455B) Exceptions to adoption by reference. All references to Clean Units and Pollution Control Projects set forth in 40 CFR 51.166 and 52.21 are not adopted by reference.

This chapter is intended to implement Iowa Code section 455B.133.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 65
"Animal Feeding Operations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 459.103, 459A.104, and 459B.104

State or federal law(s) implemented by the rulemaking: Animal Agricultural Compliance (Iowa Code 4559, 459A, and 459B) and federal Clean Water Act

Public Hearing

A public hearing at which persons may present their views orally or in writing in person and via conference call as follows. Persons who wish to attend the conference call should contact Kelli Book 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 Kelli Book prior to the hearing to facilitate an orderly hearing.

September 26, 2023 11 a.m. to 1 p.m.	Wallace State Office Building Des Moines, Iowa 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:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: AFO@dnr.iowa.gov

Purpose and Summary

Chapter 65 regulates animal feeding operations (AFOs). The chapter regulates the siting, construction, and operation of all types of AFO structures and associated facilities. These proposed rules reduce and consolidate the AFO regulations. This is accomplished by removing redundant or outdated provisions. The rules also implement more protective AFO siting requirements in sensitive karst topography and formally adopts a floodplain siting map as required by state law.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Producers and owners of AFOs as well as certified manure applicators will bear the costs.

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

Citizens of Iowa will benefit. The regulations exist to protect human health and the environment.

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 for each facility to comply with the proposed rules will vary depending on the type and size of the facility.

One-time costs:

Construction costs

Regardless of the regulations, producers would have costs from building animal feeding operation structures; therefore, actual construction costs will not be considered in this section. However, the regulations do require the involvement of more protective construction standards, generally involving consultants and engineering fees. The fees will vary depending on location and size. Below are the estimates of the consulting and engineering fees for confinement buildings:

- Small animal feeding barn (<500 animal units). No manure management plan (MMP) is required, so no crop consultant is needed; in general, there will be no additional costs to a producer other than the construction costs.
- Below permit size sites (between 501 and 999 animal units). An MMP is required along with soil sampling, submission of a construction design statement (CDS) and separation distance maps. Consultant fees are approximately $2,000 per site.
- Permit size sites (>1,000 animal units). An MMP is required along with soil sampling, submission of an application, master matrix, CDS, and separation distance maps. Consultant fees are approximately $3,500 per site.
- Large permit size sites. An MMP is required along with soil sampling, submission of an application, master matrix, CDS, separation distance maps and engineering fees including design, inspection and construction certification. Consultant and engineering fees are approximately $24,000 per site.

Below are the estimates for the consulting and engineering fees for large open feedlots and animal truck washes with 1,000 or more animal units that obtain construction and National Pollutant Discharge Elimination System (NPDES) permits:

This type of facility would have similar costs for consulting and engineering as the large confinements noted above. The preparation and submittal of applications for this type of facility would include the development of separation distance maps, geotechnical soil studies, engineering plans and fees for construction inspections, and testing and construction certifications. Additionally, the preparation of the nutrient management plan (NMP) for this type of facility would include soil sampling. It is estimated the consultant and engineering fees would be approximately $32,000 per site.

Construction in karst

Using the construction numbers from 2017, which was the busiest construction year of the last six years, approximately 74 AFO projects would be proposed in northeast Iowa. It is estimated that half of the projects would be located in *potential* karst terrain (37 projects), and it is estimated that 80 percent of those projects would be located in *actual* karst terrain (30 projects). The remaining 20 percent of the projects would have previous karst determinations, have acceptable well logs to refute the karst terrain designations, or conduct soil borings to refute the karst terrain designations. Some of the projects located in karst terrain would be able to relocate the proposed structure or raise the elevation of the structure to meet the requirements. Therefore, it is estimated that only 15 to 20 projects each year would be subject to the upgraded standards. Stated differently, only an estimated 15 to 20 sites would incur costs under the proposed rules that would not be borne under the current regulatory scheme. This estimate is likely on the high side because current construction numbers are considerably lower than those from 2017.

It is reasonable to assume that these 15 to 20 projects would install a geosynthetic clay liner (GCL) directly beneath the pit or barn floor. Doing so is likely less expensive than creating a two-foot clay liner. GCL is approximately $0.25/sf. A standard barn is 100’ x 200’; therefore, the cost of the liner would be approximately $5,000, plus an additional $5,000 for engineering and miscellaneous costs. The typical cost of a 100’ x 200’ barn with a pit is approximately $470,000. The addition of $10,000 is a 2 percent increase in building costs. This is a one-time cost borne at the time of construction.

In addition to the consulting and engineering fees noted above, all construction projects are also required to submit a construction permit application fee of $250 and an indemnity fee of $0.10 per animal

unit. These fees are submitted with construction permit applications. Facilities that require an MMP are also required to submit the one-time application fee and indemnity fee.

Annual costs:

Facilities with MMPs are required to submit annual compliance fees based on the capacity of the facility. The annual compliance fee is $0.15 per animal unit. Confinement site manure applicators are required to be certified to land-apply manure; small animal feeding operations and open feedlots are exempt from the certification requirements. The certification fee is $100 for a three-year certificate, and the annual educational training fee is $25.

Manure services and manure applicators that apply manure for a fee are required to be certified to transport, handle, and land apply manure. The annual certification fee for a manure service is $200 and the annual certification fee for an applicator is $75. There is also an annual education training fee of $25.

- Qualitative description of impact:

The proposed rules are a result of a Department-initiated review pursuant to Executive Order 10 requirements and a general review of rules under Iowa Code chapter 17A.

The revised rules are intuitive and easier to read and understand. For example, rules applicable to all AFOs have been consolidated into a single division rather than repeated multiple times throughout the chapter. Rules have been streamlined as much as possible, stating the requirements more succinctly and clearly. Antiquated rules have been removed.

The rules are also responsive, in part, to two rulemaking petitions received in 2021 and 2022. In more detail, in August 2021 and May 2022, the Environmental Protection Commission (EPC) received two rulemaking petitions from the Iowa Environmental Council and the Environmental Law and Policy Center. These two petitions collectively sought changes to AFO siting requirements for karst topography, floodplains, and groundwater and drinking water sources. The August 2021 petition regarding karst topography and water sources was denied by the EPC with the mutual understanding that the karst topic would be considered in rulemaking activities already planned for the summer of 2022. Similarly, the May 2022 petition regarding the one hundred year floodplains was not acted upon by the EPC because of future planned rulemaking activities.

The proposed rules impose more protective AFO siting standards in sensitive karst topography. The proposed rules require a newly constructed formed structure within 5 to 15 feet of karst to have either a five-foot continuous layer of low permeability soil or nonsoluble bedrock or an engineered two-foot GCL. It also includes a construction prohibition of any structure within five feet of karst. These standards are less onerous than those sought by the rulemaking petition but are more protective than the current rules. These rules will ensure that all new karst-regulated AFO facilities located in karst are sited and built in a manner that reduces the likelihood of a manure release into drinking water aquifers.

The proposed rules include two other notable changes. First, the rules formally adopt a floodplain map into the AFO Siting Atlas. This is required by Iowa Code section 459.301(5)"a." This addresses the focus of the May 2022 petition. Second, the Director's discretion rule provisions have been removed. In 2006, the Attorney General's Office advised the EPC and the Department that the rule provisions were beyond the underlying statutory authority. That same year, the Administrative Rules Review Committee objected to the rule provisions on similar grounds. As such, the rule provisions have never been used and are appropriately removed.

3. Costs to the State:

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

The Department currently permits and oversees the animal feeding operation program; therefore, there would be no additional expenses to the Department. There are currently 25 Department employees who implement the AFO program; however, the majority of all field services staff conduct some AFO work during the year. Staff include primarily field office inspectors, administrative support, and environmental engineers.

There are no costs for any other agencies associated with this proposed rule.

- Anticipated effect on state revenues:

There is no anticipated increase or decrease of state revenue from these rules.

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

Iowa Code section 459.103 requires that the Department adopt "requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures." The rules apply statewide and provide a level playing field for all producers. While there are costs in complying with the regulations, the benefit to the environment outweighs the cost. If there were no regulations for the operation and construction of animal feeding operations, greater environmental harms would occur to the natural resources of the state. There would likely be increased medical costs due to poor water quality, including possibly an increased rate in cancer and birth defects. The cost of water quality treatment by municipalities would likely also increase without proper regulations controlling the discharge of manure into waters of the state. Additionally, the lack of regulations would have an adverse impact on recreational and tourism activities in the state. Residents and nonresidents alike visit Iowa's many lakes and rivers each year, and poor water quality due to the lack of regulations would negatively impact this economically beneficial activity. According to the American Sportfishing Association, fishing in Iowa generates $386 million in retail sales, creates nearly 4,000 jobs statewide, and brings in $24 million in state and local tax revenue.

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

The rules are mandated by law and are narrowly tailored to the specific requirements set forth in Iowa Code chapters 459, 459A, and 459B.

The Department considered many methods to provide concise rules. The Department was able to place the common rules for all types of AFOs and other structures in one division, rather than repeated multiple times throughout the rules. The rules also streamline and clarify the concrete standards and, in some situations, provide producers with other construction material options, such as fiberglass rebar.

Additionally, in implementing the requirements of the Iowa Code, producers and all citizens of Iowa will be able to confirm the location of the one hundred year floodplain in major water sources in a map, rather than seeking a review and approval from the Department. All interested parties will be able to obtain a determination by viewing an online map, rather than submitting and waiting for a Department review and determination. This will provide certainty and efficiency in the location of the one hundred year floodplain in major water sources.

6. Alternative methods considered by the agency:

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

The Department initiated a comprehensive rulemaking review of this chapter in 2022 prior to the issuance of Executive Order 10. This was to satisfy the Iowa Administrative Procedure Act's five-year rule review process. Through that process, the Department met with several stakeholder groups and collected public comments. Once Executive Order 10 was issued, the Department incorporated the requirements of the executive order and once again met with several stakeholder groups, including but not limited to Iowa Sierra Club, Iowa Farm Bureau, Iowa Pork Producers, Citizens for Community Improvement, Iowa Environmental Council, Jefferson County Friends and Neighbors, Environmental Law and Policy, Iowa Turkey Federation, and Iowa Cattlemen's Association. Several stakeholder meetings were held, and the Department initiated a six-week public comment period on the rules prior to formalizing the proposed draft rules.

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

The Department considered all comments submitted and drafted proposed rules that incorporated some of the comments. Some comments were not incorporated due to the fact that the comments would have required making statutory changes or including language contrary to statute. Other comments excluded from the proposed rules were not feasible due to staff, technology, and resource constraints.

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?

A small AFO with an animal unit capacity of less than 500 animal units is exempt from many of the reporting and permitting requirements. For example, while a small AFO is required to contain all manure at its operation, the operation is not required to obtain a construction permit and not required to submit an MMP. The small AFO is not subject to costs associated with obtaining a construction permit, including engineering fees, consulting fees, and construction permit fees. The small AFO is also not subject to costs associated with maintaining an MMP, including consulting fees, plan preparation, soil sampling, and annual compliance fees. Additionally, owners of small AFOs do not have to obtain manure applicator certification to land-apply manure for their facilities.

An AFO with an animal unit capacity of between 501 and 999 animal units is exempt from permitting requirements. This size of facility is required to contain all manure at its operation and submit an MMP but is not required to obtain a construction permit. This size of facility is not subject to costs associated with obtaining a construction permit, including engineering fees, consulting fees, and construction permit fees.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65
ANIMAL FEEDING OPERATIONS

DIVISION I
GENERAL PROVISIONS

The provisions in Division I apply to all confinement feeding operations, open feedlot operations, animal truck washes, dry bedded confinement feeding operations, and associated manure and waste storage structures, unless otherwise noted in this chapter.

The following acronyms will be used throughout this chapter:

"AFO" means animal feeding operation.

"CAFO" means concentrated animal feeding operation.

"MMP" means manure management plan.

"NMP" means nutrient management plan.

"NPDES" means National Pollutant Discharge Elimination System.

567—65.1(455B,459,459A,459B) Definitions and incorporation by reference. In addition to the definitions in Iowa Code sections 455B.101, 455B.171, 459.102, 459A.102, and 459B.102 and in 567—Chapter 60, the following definitions shall apply to this chapter:

65.1(1) *Definitions.*

"Abandoned AFO structure" means the AFO structure has been razed, removed from the site of an AFO, filled in with earth, or converted to uses other than an AFO structure so that it cannot be used as an AFO structure without significant reconstruction.

"Adjacent" for open feedlot operation. Two or more open feedlot operations are defined as adjacent if both of the following occur:

1. At least one open feedlot operation structure is constructed on or after July 17, 2002; and
2. An open feedlot operation structure that is part of one open feedlot operation is separated by less than 1,250 feet from an open feedlot operation structure that is part of the other open feedlot operation.

"Adjacent—air quality" for confinement feeding operations means, for the purpose of determining separation distance requirements pursuant to rule 567—65.106(455B,459,459B), that two or more confinement feeding operations are adjacent if they have AFO structures that are separated at their closest points by less than the following:

1. 1,250 feet for a confinement feeding operation having an animal unit capacity of less than 1,250 animal units for swine maintained as part of a farrowing and gestating operation, less than 2,700 animal units for swine maintained as part of a farrow-to-finish operation, less than 4,000 animal units for cattle maintained as part of a cattle operation, or less than 3,000 animal units for any other confinement feeding operation, or for a confinement feeding operation consisting of dry bedded confinement feeding operation structures.
2. 1,500 feet for a confinement feeding operation having an animal unit capacity of 1,250 or more but less than 2,000 animal units for swine maintained as part of a swine farrowing and gestating operation, 2,700 or more but less than 5,400 animal units for swine maintained as part of a farrow-to-finish operation, 4,000 or more but less than 6,500 animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation having an animal unit capacity of 3,000 or more but less than 5,000 animal units.
3. 2,500 feet for a confinement feeding operation having an animal unit capacity of 2,000 or more animal units for swine maintained as part of a swine farrowing and gestating operation, 5,400 or more animal units for swine maintained as part of a farrow-to-finish operation, or 6,500 or more animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation with 5,000 or more animal units.

The distances in paragraphs "1" to "3" above shall only be used to determine that two or more confinement feeding operations are adjacent if at least one confinement feeding operation structure was constructed on or after March 21, 1996.

To determine if two or more confinement feeding operations are adjacent, for the purpose of determining the separation distance requirements, the animal unit capacity of each individual operation shall be used. If two or more confinement feeding operations do not have the same animal unit capacity, the greater animal unit capacity shall be used to determine the separation distance.

Dry manure that is stockpiled within a distance of 1,250 feet from another stockpile shall be considered part of the same stockpile.

"Adjacent—water quality" for confinement feeding operations means, for the purpose of determining the construction permit requirements pursuant to rule 567—65.103(455B,459,459B) and MMP requirements pursuant to rule 567—65.110(455B,459,459B), that two or more confinement feeding operations are adjacent if they have confinement feeding operation structures that are separated at their closest points by less than the following:

1. 1,250 feet for confinement feeding operations having a combined animal unit capacity of less than 1,000 animal units.
2. 2,500 feet for confinement feeding operations having a combined animal unit capacity of 1,000 or more animal units.
3. The distances in paragraphs "1" and "2" above shall only be used to determine that two or more confinement feeding operations are adjacent if at least one confinement feeding operation structure is constructed or expanded on or after May 21, 1998.

"Aerobic structure" means an AFO structure other than an egg washwater storage structure which relies on aerobic bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment to digest organic matter. Aeration equipment shall be used and shall be capable of providing oxygen at a rate sufficient to maintain an average of 2 milligrams per liter dissolved oxygen concentration in the upper 30 percent of the depth of manure in the structure at all times.

"AFO structure" means a confinement building, manure storage structure, dry bedded confinement feeding operation structure, or egg washwater storage structure.

"Agricultural drainage well" means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, coring, augering, jetting, or washing and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

"Agricultural drainage well area" means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

"Alluvial aquifer area" means an area underlaid by sand or gravel aquifers situated beneath floodplains along stream valleys and includes alluvial deposits associated with stream terraces and benches, contiguous windblown sand deposits, and glacial outwash deposits.

"Alluvial soils" means soils formed in materials deposited by moving water.

"Alternative technology settled open feedlot effluent control system" or *"AT system"* means use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent.

"Anaerobic digester system" or *"digester"* means a manure storage structure that is covered if the primary function of the manure storage structure is to process manure by employing environmental conditions including bacteria to break down organic matter in the absence of oxygen, and the structure is used for producing, collecting, and utilizing a biogas.

"Anaerobic lagoon" means an unformed manure storage structure if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include the following:

1. A runoff control basin or a settled open feedlot effluent basin that collects and stores only precipitation-induced runoff from an open feedlot operation.
2. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

"Animal" means cattle, swine, horses, sheep, chickens, turkeys, goats, fish, or ducks.

"Animal capacity" means the maximum number of animals that the owner or operator will confine in an AFO at any one time. The animal capacity shall be what is currently approved or permitted on the site and is listed in the MMP or NMP, unless a portion of the facility has been properly closed or taken out of operation through the small AFO election as provided in paragraph 65.110(1)*"f."* In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned, in accordance with the definition of "abandoned AFO structure."

"Animal feeding operation" or *"AFO"* means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the Act, an AFO does not include a livestock market. Open feedlot operations and confinement feeding operations are considered to be separate AFOs.

"Animal truck wash effluent" means a combination of manure, washwater-induced runoff, or other runoff derived from an animal truck wash facility, which may include solids.

"Animal truck wash effluent structure" means an impoundment that is part of an animal truck wash facility, if the primary function of the impoundment is to collect and store animal truck wash effluent.

"Animal truck wash facility" means an operation engaged solely in washing single-unit trucks, truck-tractors, semitrailers, or trailers used to transport animals. An animal truck wash facility is

considered to be part of an AFO if the animal truck wash facility and the AFO are under common ownership or management and the animal truck wash facility is located within 1,250 feet of the AFO.

"Animal unit" means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle	1.000
2. Immature dairy cattle	1.000
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Goats	0.100
8. Horses	2.000
9. Turkeys weighing 7 pounds or more	0.018
10. Turkeys weighing less than 7 pounds	0.0085
11. Broiler or layer chickens weighing 3 pounds or more	0.010
12. Broiler or layer chickens weighing less than 3 pounds	0.0025
13. Ducks	0.040
14. Fish weighing 25 grams or more	0.001
15. Fish weighing less than 25 grams	0.00006

"Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an AFO at any one time, including as provided in Iowa Code sections 459.201, 459.301, and 459A.103. For dry bedded confinement feeding operations, "animal unit capacity" means the maximum number of animal units that the owner or operator confines in a dry bedded confinement feeding operation at any one time, including the animal unit capacity of all dry bedded confinement feeding operation buildings that are used to house cattle or swine in the dry bedded confinement feeding operation. For purposes of determining whether an open feedlot operation must obtain an NPDES permit, the animal unit capacity of the AFO shall include the animal unit capacities of both the open feedlot operation and any adjacent confinement feeding operation if all of the following occur:

1. The animals in the open feedlot operation and any adjacent confinement feeding operation are all in the same category of animals as used in the definitions of "large CAFO" and "medium CAFO" in 40 CFR Part 122;
2. The closest open feedlot operation structure is separated by less than 1,250 feet from the closest confinement feeding operation structure; and
3. The open feedlot operation and the confinement feeding operation are under common ownership or management.

"Animal weight capacity" means the sum of the average weight of all animals in a confinement feeding operation when the operation is at full animal capacity. For confinement feeding operations with only one species, the animal weight capacity is the product of multiplying the animal capacity by the average weight during a production cycle. For operations with more than one species, the animal weight capacity of the operation is the sum of the animal weight capacities for all species. This definition applies to confinement feeding operations constructed prior to March 1, 2003.

"Applicant" means the person applying for a construction permit or an NPDES permit for an AFO.

"Bedding" means crop, vegetation, sand, or forage residue or similar materials placed in a dry bedded confinement building for the care of animals.

"Business" means a commercial enterprise.

"Cemetery" means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity or a cemetery regulated pursuant to Iowa Code chapter 523I. A cemetery does not include a pioneer cemetery as defined by Iowa Code section 331.325.

"Church" means a religious institution.

"Commercial enterprise" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

"Commercial manure service" means a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee.

"Commercial manure service representative" means a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service.

"Common management" means significant control by an individual of the management of the day-to-day operations of each of two or more AFOs. "Common management" does not include control over a contract livestock facility by a contractor as defined in Iowa Code section 202.1.

"Common ownership" for confinement feeding operations means the ownership of a confinement feeding operation as a sole proprietor, or a 10 percent or more ownership interest held by a person, in each of two or more confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. The following exceptions shall apply to this definition:

1. For a confinement feeding operation structure constructed before [the effective date of these rules] that has not been expanded, "common ownership" means the ownership of a confinement feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. This exception shall not apply to a confinement feeding structure or operation expanded after [the effective date of these rules], instead, the 10 percent or more ownership interest standard shall apply.

2. This definition shall not apply to a dry bedded confinement feeding operation that is subject to the common ownership requirements in Iowa Code section 459B.103(3)*"a"*(3) nor to an open feedlot operation as defined in this rule.

"Common ownership" for open feedlot operations means to hold an interest in each of two or more open feedlot operations as any of the following:

1. A sole proprietor;
2. A joint tenant or tenant in common; or
3. A holder of a majority equity interest in a business association as defined in Iowa Code section 202B.102, including as a shareholder, partner, member, beneficiary, or other equity interest holder.

An interest in an open feedlot operation under paragraph "2" or "3" is a common ownership interest when it is held directly or indirectly through a spouse or dependent child, or both.

"Complete application" means an application that is complete and approvable when all necessary questions on the application forms have been completed, the application is signed and all applicable portions of the application, including the application form, required attachments, and application fees, have been submitted.

"Concentrated AFO" or *"CAFO"* means an AFO that is a designated CAFO, or that is defined as a large CAFO or a medium CAFO as defined in 40 CFR 122.23(b).

"Confinement feeding operation" means an AFO in which animals are confined to areas that are totally roofed and includes an AFO that is not an open feedlot operation as defined in this chapter.

1. For purposes of water quality regulation, Iowa Code section 459.301 provides that two or more AFOs under common ownership or management are deemed to be a single AFO if they are adjacent or

utilize a common area or system for manure disposal. For purposes of the air quality-related separation distances in Iowa Code section 459.202, Iowa Code section 459.201 provides that two or more AFOs under common ownership or management are deemed to be a single AFO if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of AFOs for water quality purposes under the Act. 40 CFR 122.23 sets out the requirements for an AFO and requires that two or more AFOs under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for disposal of wastes. However, this federal regulation does not control regulation of AFOs for the purposes of the separation distances in Iowa Code section 459.202, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. To determine if two or more AFOs are deemed to be one AFO, the first test is whether the AFOs are under common ownership or management. If they are not under common ownership or management, they are not one AFO. For purposes of water quality regulation, the second test is whether the two AFOs are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one AFO. For purposes of the air quality-related separation distances in Iowa Code section 459.202, the second test is whether the two AFOs are adjacent or utilize a common system for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one AFO.

3. A common area or system for manure disposal includes but is not limited to use of the same manure storage structure, confinement feeding operation structure, egg washwater storage structure, stockpile, permanent manure transfer piping system or center pivot irrigation system. A common area or system for manure disposal does not include manure application fields included in a manure management plan or anaerobic digester system.

"Confinement feeding operation building" or *"confinement building"* means a building used in conjunction with a confinement feeding operation to house animals.

"Confinement feeding operation structure" means an AFO structure that is part of a confinement feeding operation.

"Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a SAFO.

"Confinement site manure applicator" means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.

"Construction approval letter" means a written document of the department to acknowledge that the preconstruction submittal requirements of rule 567—65.104(455B,459,459B) have been met for a confinement feeding operation that is not required to obtain a construction permit pursuant to rule 567—65.103(455B,459,459B).

"Construction design statement" means a document required to be submitted by a confinement feeding operation prior to constructing a formed manure storage structure, other than a SAFO, but that does not meet the threshold engineering requirements.

"Construction permit" means a written approval of the department to construct, modify or alter the use of an AFO structure as required by rules 567—65.103(455B,459,459B) and 567—65.203(455B,459A).

"Controlling interest" means ownership of a confinement feeding operation as a sole proprietor or a majority ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a controlling interest when it is held directly, indirectly through a spouse or dependent child, or both. The majority ownership interest must be a voting interest or otherwise control management of the confinement feeding operation.

"Covered" means organic or inorganic material, placed upon an AFO structure used to store manure, which significantly reduces the exchange of gases between the stored manure and the outside air. Organic materials include but are not limited to a layer of chopped straw, other crop residue, or a naturally occurring crust on the surface of the stored manure. Inorganic materials include but are not limited to wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of

the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.

"Critical public area" means land that is owned or managed by the federal government, by the department, or by a political subdivision and that has unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system. Critical public areas include:

1. State wildlife and waterfowl refuges listed in 571—subrules 52.1(2) and 52.1(3);
2. Recreation areas, state parks, state parks managed by another governmental agency, and state preserves as listed in 571—61.2(461A);
3. County parks and recreation areas as provided in subrule 65.1(2);
4. National wildlife refuges listed as follows: Union Slough National Wildlife Refuge, DeSoto National Wildlife Refuge, Boyer Chute National Wildlife Refuge, Upper Mississippi River National Wildlife and Fish Refuge, Driftless Area National Wildlife Refuge, Neal Smith National Wildlife Refuge, and Port Louisa National Wildlife Refuge;
5. National monuments and national historic sites listed as follows: Effigy Mounds National Monument and Herbert Hoover National Historic Site;
6. Parks in Iowa that are under the federal jurisdiction listed with the United States Army Corps of Engineers as provided in subrule 65.1(2).

"Cropland" means any land suitable for use in agricultural production including but not limited to feed, grain and seed crops, fruits, vegetables, forages, sod, trees, grassland, pasture and other similar crops.

"Deep well" means a well located and constructed in such a manner 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.

"Designated area" means a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. "Designated area" does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

"Designated CAFO" means an AFO that has been designated as a CAFO pursuant to rule 567—65.201(455B,459A).

"Designated wetland" means land designated as a protected wetland by the United States Department of the Interior or the department, including but not limited to a protected wetland as defined in Iowa Code section 456B.1, if the land is owned and managed by the federal government or the department. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district. Designated wetlands in the state are listed in the department's "Designated Wetlands in Iowa" (more information is contained in subrule 65.1(2), incorporation by reference).

"Discontinued AFO" means an AFO whose structures have been abandoned or whose use has been discontinued as evidenced by the removal of all animals and the owner or operator has no immediate plans to repopulate.

"Discontinued AFO structure" means an AFO structure that has been abandoned or whose use has been discontinued as evidenced by the removal of all animals from the structure and the owner or operator has no immediate plans to repopulate.

"Document" means any form required to be processed by the department under this chapter regulating AFOs, including but not limited to applications or related materials for permits as provided in Iowa Code section 459.303, MMPs as provided in Iowa Code section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to Iowa Code section 459.304, and notices required under those sections.

"Dry bedded confinement feeding operation" means a confinement feeding operation in which cattle or swine are confined to areas which are totally roofed and in which all manure is stored as dry bedded

manure. Unless specifically stated otherwise, all requirements in Divisions I and II of this chapter do apply to dry bedded confinement feeding operations.

"Dry bedded confinement feeding operation structure" means a dry bedded confinement feeding operation building or a dry bedded manure storage structure.

"Dry bedded manure" means manure from cattle or swine that meets all of the following requirements:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The manure contains bedding.

"Dry bedded manure confinement feeding operation building" or *"building"* means a building used in conjunction with a confinement feeding operation to house cattle or swine and in which any manure from the animals is stored as dry bedded manure.

"Dry bedded manure storage structure" means a covered or uncovered structure, other than a building, used to store dry bedded manure originating from a confinement feeding operation.

"Dry manure" means manure that meets all of the following conditions:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the manure do not flow freely among themselves but may show a tendency to separate under stress.

"Dry manure" includes manure marketed as a bulk dry animal nutrient product that is stored 1,250 feet or less from the confinement animal feeding structure from which it originated.

"Earthen manure storage basin" means an earthen cavity, either covered or uncovered, that, on a regular basis, receives manure discharges from a confinement feeding operation if accumulated manure from the basin is completely removed at least once each year.

"Earthen waste slurry storage basin" means an uncovered and exclusively earthen cavity that, on a regular basis, receives manure discharges from a confinement AFO if accumulated manure from the basin is completely removed at least twice each year and that was issued a permit, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995.

"Educational institution" means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

"Egg washwater storage structure" means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs. It does not include a structure also used as a manure storage structure.

"Enforcement action" means an action against a person with a controlling interest in a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 459 or 459B or rules adopted pursuant to either chapter. An enforcement action begins when the attorney general institutes proceedings in district court pursuant to Iowa Code section 455B.112. An enforcement action is pending until final resolution of the action by satisfaction of a court order, for which all judicial appeal rights are exhausted, expired, or waived.

"Family member" means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such related person.

"Feed storage runoff basin" means a covered or uncovered impoundment with the primary function to collect and store runoff from a feed storage area.

"Formed animal truck wash effluent structure" means a covered or uncovered impoundment used to store effluent from an animal truck wash facility, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

"Formed manure storage structure" means a covered or uncovered impoundment used to store manure from an AFO, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Subject to department approval, similar materials may include but are not limited to plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed manure storage structure shall have the structural integrity to withstand expected internal and external load pressures.

"Formed settled open feedlot effluent basin" means a settled open feedlot effluent basin which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include but are not limited to plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed settled open feedlot effluent basin shall have the structural integrity to withstand expected internal and external load pressures.

"Freeboard" means the difference in elevation between the liquid level and the confinement feeding operation structure's overflow level.

"Frozen ground" means soil that is impenetrable due to frozen soil moisture but does not include soil that is only frozen to a depth of two inches or less.

"Grassed waterway" means a natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.

"Highly erodible land" means a field that has one-third or more of its acres or 50 acres, whichever is less, with soils that have an erodibility index of eight or more, as determined by rules promulgated by the United States Department of Agriculture.

"Human sanitary waste" means wastewater derived from domestic uses including bathroom and laundry facilities generating wastewater from toilets, baths, showers, lavatories and clothes washing.

"Incidental" means a duty which is secondary or subordinate to a primary job or function.

"Incorporation" means a soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil.

"Indemnity fund" means the livestock remediation fund created in Iowa Code section 459.501.

"Injection" means the application of manure into the soil surface using equipment that discharges it beneath the surface.

"Interest" means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is an interest when it is held directly, indirectly through a spouse or dependent child, or both.

"Karst terrain" means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

"Known sinkhole" means a sinkhole that has been included in the department's sinkhole coverage and displayed in the AFO Siting Atlas or a sinkhole known to the applicant.

"Liquid manure" means manure that meets all of the following requirements:

1. The manure flows perceptibly under pressure.
2. The manure is capable of being transported through a mechanical pumping device designated to move a liquid.
3. The constituent molecules of the liquid manure flow freely among themselves and show a tendency to separate under stress.

Liquid manure that is frozen or partially frozen is included in this definition.

"Livestock market" means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

"Long-term stockpile location" means an area where a person stockpiles manure for more than a total of six months in any two-year period.

"Low-pressure irrigation system" means spray irrigation equipment that discharges manure from a maximum height of nine feet in a downward direction and that utilizes spray nozzles that discharge manure at a maximum pressure of 25 pounds per square inch.

"Major water source" means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Table 1 and Table 2 at iowadnr.gov/afo/rules (more information is contained in subrule 65.1(2), incorporation by reference).

"Manager" means a person who is actively involved in the operation of the commercial manure service and makes management decisions in the operation of the service.

"Man-made manure drainage system" means a drainage ditch, flushing system, or other drainage device which was constructed by human beings and is used for the purpose of transporting manure.

"Manure" means animal excreta or other commonly associated wastes of animals including but not limited to bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs. For the purposes of NPDES permitting, "manure" includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal. If a manure storage structure or animal truck wash effluent structure contains both manure from an AFO and animal truck wash effluent from an animal truck wash facility, the effluent shall be deemed to be manure.

"Manure storage structure" means a formed manure storage structure, an unformed manure storage structure, digester, or a dry bedded manure storage structure. A manure storage structure does not include the following: (1) egg washwater storage structure, (2) areas of a confinement building where no manure is stored, and (3) areas of a confinement building where the animals have direct contact with the manure and the manure is removed regularly during the production cycle or at the conclusion of the production cycle (referred to as the "animal production area"). An animal truck wash effluent structure may be the same as a manure storage structure that is part of the confinement feeding operation, so long as the primary function of such impoundment is to collect and store both effluent from the animal truck wash facility and manure from the confinement feeding operation.

"New AFO" means an AFO whose construction was begun after July 22, 1987, or whose operation is resumed after having been discontinued for a period of 24 months or more.

"NPDES permit" means a written permit of the department, pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO.

"NRCS" means United States Department of Agriculture Natural Resources Conservation Service.

"Nutrient management plan" or *"NMP"* means a plan that provides for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, open feedlot effluent, animal truck wash effluent, including the application of effluent, as provided in rule 567— 65.209(455B,459A).

"One hundred year floodplain" means the land adjacent to a major water source, if there is at least a 1 percent chance that the land will be inundated in any one year. In making the calculations, the department shall consider available maps or data compiled by the Federal Emergency Management Agency.

"Open feedlot" means a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation.

"Open feedlot effluent" means a combination of manure, precipitation-induced runoff, or other runoff from an open feedlot before its settleable solids have been removed. If an open feedlot operation structure or animal truck wash effluent structure contains effluent from both an open feedlot operation and an animal truck wash facility, the animal truck wash effluent shall be deemed to be open feedlot effluent.

"Open feedlot effluent basin" means an open feedlot basin that does not settle solids before the effluent goes to the basin.

"Open feedlot operation" means an unroofed or partially roofed AFO if crop, vegetation, or forage growth or residue is not maintained as part of the AFO during the period that animals are confined in the AFO. "Open feedlot operation" includes a "partially roofed AFO" as defined in this rule. Iowa Code section 459A.103 provides that two or more open feedlot operations under common ownership or management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal. To determine if two or more open feedlot operations

are deemed to be one open feedlot operation, the first test is whether the open feedlot operations are under common ownership or management. If they are not under common ownership or management, they are not one open feedlot operation. The second test is whether the two open feedlot operations are adjacent or utilize a common area or system for open feedlot effluent disposal. If the two operations are not adjacent and do not use a common area or system for open feedlot effluent disposal, they are not one open feedlot operation.

"Open feedlot operation structure" means an open feedlot, an open feedlot effluent basin, a settled open feedlot effluent basin, a solids settling facility, or an AT system. "Open feedlot operation structure" does not include a manure storage structure as defined in Iowa Code section 459.102.

"Owner" means a person who has legal or equitable title to the property where the AFO is located or a person who has legal or equitable title to the AFO structures. "Owner" does not include a person who has a lease to use the land where the AFO is located or to use the AFO structures.

"Partially roofed AFO" means an AFO in which the animals are confined under a roof and there exists unroofed areas located on the perimeter of the roofed structure, where the animals have unrestricted access at all times. The square footage of the unroofed area shall be at least 10 percent of the square footage of the attached roofed production area or manure storage structure. Openings or vents in the roofed portion shall not be included in the 10 percent unroofed calculation.

"Permanent vegetation cover" means land that is maintained in perennial vegetative cover consisting of grasses, legumes, or both, and includes but is not limited to pastures, grasslands or forages.

"Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing of pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, egg washing and egg processing facilities, and the waste containment areas. The area in which animals are confined includes but is not limited to open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, confinement houses, and stables. The manure storage area includes but is not limited to lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

"Professional engineer" or *"PE"* means a person engaged in the practice of engineering as defined in Iowa Code section 542B.2 who is issued a certificate of licensure as a PE pursuant to Iowa Code section 542B.17.

"Public thoroughfare" means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

"Public use area" means that portion of land owned by the United States, the state, or a political subdivision with facilities that attract the public to congregate and remain in the area for significant periods of time. Facilities include but are not limited to picnic grounds, campgrounds, cemeteries, lodges and cabins, shelter houses, playground equipment, swimming beaches at lakes, and fishing docks, fishing houses, fishing jetties or fishing piers at lakes. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through but does not congregate or remain in the area for significant periods of time.

"Public water supply" (also referred to as a system or a water system) means a system for the provision to the public of piped water for human consumption, if such 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. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the

supplier of water and used primarily in connection with such system, and (2) any collection (including wells) or pretreatment storage facilities not under such control that are used primarily in connection with such system. A public water supply system is either a "community water system" or a "noncommunity water system."

"Q100," as defined in rule 567—70.2(455B,481A), means a flood having a 1 percent chance of being equaled or exceeded in any one year as determined by the department.

"Qualified confinement feeding operation" means a confinement feeding operation that has an animal unit capacity of:

1. 5,333 or more for animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation.
2. 2,500 or more for a swine farrowing and gestating operation, not including replacement breeding swine if the following apply:
   - The replacement breeding swine are raised at the confinement feeding operation; and
   - The replacement breeding swine are used in the farrowing and gestation operation.
3. 5,400 or more for a swine farrow-to-finish operation.
4. 8,500 or more for a confinement feeding operation maintaining cattle.

"Qualified stockpile cover" means a barrier impermeable to precipitation that is used to protect a stockpile from precipitation.

"Qualified stockpile structure" means a building or roofed structure that is all of the following:

1. Impermeable to precipitation.
2. Constructed using wood, steel, aluminum, vinyl, plastic, or other similar materials.
3. Constructed with walls or other means to prevent precipitation-induced surface runoff from contacting the stockpile.

"Release" means an actual, imminent or probable discharge of manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids from an AFO or animal truck wash facility to surface water, groundwater, drainage tile line or intake or to a designated area resulting from storing, handling, transporting or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids.

"Religious institution" means a building in which an active congregation is devoted to worship.

"Research college" means an accredited public or private college or university, including but not limited to a university under control of the state board of regents as provided in Iowa Code chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in Iowa Code chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

"Residence" means a house or other building, including all structures attached to the building, not owned by the owner of the AFO that meets all of the following criteria at the location of the intended residence:

1. Used as a place of habitation for humans on a permanent and frequent basis.
2. Not readily mobile.
3. Connected to a permanent source of electricity, a permanent private water supply or a public water supply system and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system.
4. Assessed and taxed as real property.

If a house or other building has not been occupied by humans for more than six months in the last two years, or if a house or other building has been constructed or moved to its current location within the past six months, the owner of the intended residence has the burden of proving that the house or other building is a residence. Paragraph "3" shall not apply to a house or other building inhabited by persons who are exempt from the compulsory education standards of Iowa Code section 299.24 and whose religious principles or tenets prohibit the use of the utilities listed.

"Restricted spray irrigation equipment" means spray irrigation equipment that disperses manure through an orifice at a rate of 80 pounds per square inch or more.

"School" means an educational institution.

"Settleable solids," "scraped solids," or *"solids"* means that portion of the effluent that meets all the following requirements:

1. The solids do not flow perceptibly under pressure.
2. The solids are not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the solids do not flow freely among themselves but do show the tendency to separate under stress.

"Settled open feedlot effluent" means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot operation after its settleable solids have been removed.

"Settled open feedlot effluent basin" or *"runoff control basin"* means a covered or uncovered impoundment that is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent. An animal truck wash facility may be part of an open feedlot operation. An animal truck wash effluent structure may be the same as a settled open feedlot effluent basin that is part of the open feedlot operation, so long as the primary function of such impoundment is to collect and store effluent from both the animal truck wash facility and the open feedlot operation.

"Sinkhole" means any closed depression that was 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.

"Seasonal high-water table" means the part of the soil profile closest to the soil surface that becomes saturated (usually in the spring) as observed in a monitoring well or determined by recognition of soil redoxomorphic features.

NOTE: "Redoxomorphic features" refers to the gleying or mottling or both that occur under saturated conditions within the soil profile.

"Secondary containment barrier" means a structure used to retain accidental manure overflow from a manure storage structure.

"Shallow well" means a well located and constructed in such a manner 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.

"Small AFO" or *"SAFO"* means an AFO that has an animal unit capacity of 500 or fewer animal units.

"Small animal truck wash facility" means an animal truck wash facility, if all of the following apply:

1. The animal truck wash facility and all single-unit trucks, truck-tractors, semitrailers, or trailers that are washed at the facility are owned by the same person; and
2. The average total per-day volume of washwater used by the animal truck wash facility does not exceed 2,000 gallons as calculated on a monthly basis.

"Snow-covered ground" means soil covered by one inch or more of snow or soil covered by one-half inch or more of ice.

"Solids settling facility" means a basin, terrace, diversion, or other structure or solids removal method that is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A "solids settling facility" does not include a basin, terrace, diversion, or other structure or solids removal method that retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

"Spray irrigation equipment" means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for aerial application of water to aid the growing of general farm crops.

"Stockpile" means dry manure or dry bedded manure originating from a confinement feeding operation that is stored at a particular location outside a confinement feeding operation building or a manure storage structure. For open feedlot operations and animal truck washes, "stockpile" means any

accumulation of manure, scraped solids, settleable solids or combination of manure and solids located outside of the open feedlot or animal truck wash facility or outside of an area that drains to an open feedlot or animal truck wash facility, where the scraped manure or solids are stored for less than six months.

"Stockpile dry bedded manure" means to store dry bedded manure outside a dry bedded manure confinement feeding operation building or a dry bedded manure storage structure.

"Stockpile dry manure" means to create or add to a dry manure stockpile.

"Surface water drain tile intake" means an opening to a drain tile, including intake pipes and French drains, which allows surface water to enter the drain tile without filtration through the soil profile.

"Swine farrow-to-finish operation" means a confinement feeding operation in which porcine animals are produced and in which a primary portion of the phases of the production cycle is conducted at one confinement feeding operation. Phases of the production cycle include but are not limited to gestation, farrowing, growing and finishing. At a minimum, farrowing, growing, and finishing shall be conducted at the operation with a majority of the pigs farrowed at the site finished to market weight in order to qualify as a farrow-to-finish operation.

"Threshold requirements for an engineer" means the limits, pursuant to Iowa Code section 459.303, that require that the design of a formed manure storage structure or egg washwater storage structure be prepared and signed by a PE licensed in the state of Iowa or by an engineer working for the NRCS. A confinement feeding operation that utilizes a formed manure storage structure meets threshold requirements for an engineer if any of the following apply:

1. A confinement feeding operation with an animal unit capacity of 1,250 or more animal units for swine maintained as part of a swine farrowing and gestating operation.
2. A confinement feeding operation with an animal unit capacity of 2,750 or more animal units for swine maintained as part of a swine farrow-to-finish operation.
3. A confinement feeding operation with an animal unit capacity of 4,000 or more animal units for cattle maintained as part of a cattle operation.
4. Any other confinement feeding operation with an animal unit capacity of 3,000 or more animal units.

"Unformed animal truck wash effluent structure" means a covered or uncovered impoundment used to store animal truck wash effluent, other than a formed animal truck wash effluent structure.

"Unformed manure storage structure" means a covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

"Unformed settled open feedlot effluent basin" means a settled open feedlot effluent basin, other than a formed settled open feedlot effluent basin.

"Vegetative infiltration basin" or *"VIB"* means an open feedlot operation structure in which settled open feedlot effluent is discharged into a relatively flat basin area which is bermed to prevent entry or discharge of surface water flows and is planted to permanent vegetation. An extensive tile system installed at a depth of three to five feet is used to collect infiltrated settled open feedlot effluent from the VIB and discharge it into a VTA for further treatment. As opposed to wetlands, which are designed to maintain a permanent water level, a VIB is designed to maximize water infiltration into the soil and thus normally will have standing water for only short periods of time. Removal of settleable solids is required prior to discharge of open feedlot effluent into the VIB. Soil suitability is essential to ensure adequate filtration and treatment of pollutants. Periodic harvesting of vegetation is required.

"Vegetative treatment area" or *"VTA"* means an open feedlot operation structure in which settled open feedlot effluent is discharged into areas that are level in one dimension and have a slight slope (less than 5 percent) in the other dimension and are planted to relatively dense permanent vegetation. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain even flow throughout the length of the VTA. Management to maintain a dense vegetation cover is required, as is periodic harvesting of vegetation.

"Water of the state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, that are contained within, flow through or border upon the state or any portion thereof.

"Water source" means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

"Water well" means an excavation that is drilled, cored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. "Water well" does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

"Wetted perimeter" means the outside edge of land where the direct discharge of manure occurs from spray irrigation equipment.

65.1(2) *Incorporation by reference.* The text of the following incorporated materials is not included in this chapter. The materials are provided at iowadnr.gov/afo/rules. The materials listed below are hereby made a part of this chapter. For material subject to change, only the specific version specified in this subrule is incorporated. Any amendment or revision to a reference document is not incorporated until this subrule has been amended to specify the new version.

a. "Act" means the federal Water Pollution Control Act, also known as the Clean Water Act, as defined by 40 CFR 403.3 as amended through July 19, 2023;

b. "AFO Siting Atlas" means an online mapping tool to assist in determining compliance of potential building sites to meet regulatory requirements. The AFO Siting Atlas is located on the department's website, and the regulatory layers are effective as of [the effective date of these rules]. Any changes to the regulatory layers of the AFO Siting Atlas shall be done through rulemaking. Regulatory layers include: karst, one hundred year floodplains in major water sources, and sinkholes;

c. "CFR" or "Code of Federal Regulations" means the federal administrative rules adopted by the United States as amended through July 19, 2023;

d. County Parks and Recreation Areas listed in Iowa's County Conservation System Guide to Outdoor Adventure as shown on [the effective date of these rules];

e. Parks in Iowa under the federal jurisdiction of the United States Army Corps of Engineers listed on the United States Army Corps of Engineers' website as shown on [the effective date of these rules];

f. Designated Wetlands in Iowa – effective date August 23, 2006;

g. Emergency spill line telephone number is 515.725.8694;

h. Appendix A: Open feedlot effluent control alternatives for open feedlot operations. Effective as of [the effective date of these rules];

i. Appendix B: Master matrix. Effective as of [the effective date of these rules];

j. Appendix C: Design specifications—formed manure storage structures. Effective as of [the effective date of these rules];

k. Table 1: Major water sources—Rivers and Streams. Effective as of [the effective date of these rules];

l. Table 2: Major water sources—Lakes. Effective as of [the effective date of these rules];

m. Table 3: Annual pounds of nitrogen per space of capacity. Effective as of [the effective date of these rules];

n. Table 4: Crop nitrogen usage rate factors. Effective as of [the effective date of these rules];

o. Table 5: Manure production per space of capacity. Effective as of [the effective date of these rules];

p. Table 6: Required separation distances for confinement feeding operations construction on or after March 1, 2003—swine, sheep, horses, poultry, and beef and dairy cattle. Effective as of [the effective date of these rules];

q. Table 6a: Required separation distances for confinement feeding operations constructed on or after January 1, 1999, but prior to March 1, 2003—swine, sheep, horses and poultry. Effective as of [the effective date of these rules];

r. Table 6b: Required separation distances for confinement feeding operations constructed on or after January 1, 1999, but prior to March 1, 2003—beef and dairy cattle. Effective as of [the effective date of these rules];

s. Table 6c: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—swine, sheep, horses and poultry. Effective as of [the effective date of these rules];

t. Table 6d: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—beef and dairy cattle. Effective as of [the effective date of these rules];

u. Table 7: Required separation distances for open feedlot operations, stockpiles from open feedlot operations, stockpiles from dry manure confinement operations and stockpiles from dry bedded confinement operations. Effective as of [the effective date of these rules];

v. Table 8: Summary of credit for mechanical aeration. Effective as of [the effective date of these rules]; and

w. List of High-Quality Water Resources in 567—Chapter 61 – effective on January 1, 2001.

567—65.2(455B,459,459A,459B) Reporting of releases. A release, as defined in rule 567—65.1(455B,459,459A,459B), shall be reported to the department as provided in this subrule. This rule does not apply to land application of manure in compliance with these rules.

65.2(1) *Notification.* A person storing, handling, transporting, or land-applying manure from an AFO or animal truck wash facility who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department's spill line. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period if the spill involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in paragraph 65.2(1)*"c."*

65.2(2) *Verbal report.* The verbal report of such a release should provide information on as many items listed in paragraph 65.2(1)*"c"* as available information will allow.

65.2(3) *Written report.* The written report of a release shall be submitted at the request of the department within 30 days after the verbal report of the release and contain at a minimum the following information:

a. The approximate location of the alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or was discovered).

b. The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

c. The time and date of the verbal report to the department of the alleged release.

d. The name, mailing address and telephone number of the person reporting the alleged release.

e. The name, mailing address and telephone number of any other person with knowledge of the event who can be contacted for further information.

f. The source of the manure allegedly released (e.g., formed storage, earthen storage) and the form of the manure or process water released.

g. The estimated or known volume of manure allegedly released.

h. The weather conditions at the time of the onset or discovery of the alleged release.

i. If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

j. The approximate location of the nearest stream or other water body that is or could be impacted by the alleged release and the approximate location to the alleged release of any known tile intakes or tile lines that could be a direct conveyance to a surface water or groundwater.

k. A description of any containment or remedial measures taken to minimize the impact of the alleged release.

l. Any information that may assist the department in evaluating the alleged release.

65.2(4) *Reporting of subsequent findings.* All subsequent findings and laboratory results should be reported and submitted in writing to the department as soon as they become available.

567—65.3(455B,459,459A,459B) CAFOs and NPDES permits. Iowa Code sections 459B.306 and 459.311(2) require a confinement feeding operation and Iowa Code section 459A.401(2) requires an open feedlot operation that is a CAFO as defined in 40 CFR 122.23(b) to comply with applicable NPDES permit requirements pursuant to rules adopted by the commission. The following regulations are adopted by reference:

1. 40 CFR 122.21, application for a permit.
2. 40 CFR 122.23, CAFOs.
3. 40 CFR 122.42(e), additional conditions applicable to specified categories of NPDES permits.
4. 40 CFR 122.63(h), minor modification of permits.
5. 40 CFR Part 412, CAFO point source category.

567—65.4(455B,459,459A,459B) Complaint investigations. Complaints of violations of Iowa Code chapters 455B, 459, 459A and 459B and this rule, which are received by the department or are forwarded to the department by a county, following a county board of supervisors' determination that a complainant's allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

65.4(1) If after evaluating a complaint to determine whether the allegation may constitute a violation, without investigating whether the facts supporting the allegation related to violations of the Iowa Code or this chapter are true or untrue, the county board of supervisors shall forward its finding to the department director.

65.4(2) A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue, of rules adopted by the department; Iowa Code chapters 455B, 459, 459A and 459B or environmental standards in regulations subject to federal law and enforced by the department.

65.4(3) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of the threat to the quality of surface water or groundwater.

65.4(4) The department shall notify the complainant and the alleged violator if an investigation is not conducted specifying the reason for the decision not to investigate.

65.4(5) The department will notify the county board of supervisors where the violation is alleged to have occurred before doing a site investigation unless the department determines that a clear, present and impending danger to the public health or environment requires immediate action.

65.4(6) The county board of supervisors may designate a county employee to accompany the department on the investigation of any site as a result of a complaint.

65.4(7) A county employee accompanying the department on a site investigation has the same right of access to the site as the department official conducting the investigation during the period that the county designee accompanies the department official. The county shall not have access to records required in subrule 65.111(9).

65.4(8) Upon completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending or complete enforcement action arising from the investigation. The department shall deliver a copy of the notice to the AFO or animal truck wash facility that is the subject of the complaint, any alleged violators if different from the AFO or animal truck wash facility and the county board of supervisors of the county where the violation is alleged to have occurred.

65.4(9) When a person who is a department official, an agent of the department, or a person accompanying the department official or agent enters the premises of an AFO or animal truck wash facility, both of the following shall apply:

a. The person may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter or the rules or standards adopted under this chapter. However, the owner or person in charge shall be notified.

(1) If the owner or occupant of any property refuses admittance to the operation, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

(2) In the application, the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched; give the date of the last inspection if known; give the date and time of the proposed inspection; declare the need for such inspection; recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact; and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director, it shall be identified in the application.

(3) If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

(4) In making inspections and searches pursuant to the authority of this rule, the director must execute the warrant:

1. Within ten days after its date.

2. In a reasonable manner, and any property seized shall be treated in accordance with the provisions of Iowa Code chapters 808, 809, and 809A.

3. Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

b. The person shall comply with standard biosecurity requirements customarily required by the AFO or animal truck wash facility which are necessary in order to control the spread of disease among an animal population.

567—65.5(455B,459,459A,459B) Transfer of legal responsibilities or title. If title or legal responsibility for a permitted AFO or an animal truck wash facility is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the construction permit and these rules. The person to whom the construction permit was issued and the person to whom title or legal responsibility is transferred shall notify the department, in writing, of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the construction permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section 459.604 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator.

567—65.6(455B,459,459A,459B) Construction. For purposes of these rules:

65.6(1) Construction of an AFO structure, open feedlot operation structure, or animal truck effluent structure begins or an AFO structure, open feedlot operation structure, or animal truck wash effluent structure is constructed when any of the following occurs:

a. Excavation for a proposed AFO structure, open feedlot operation structure, or animal truck wash effluent structure; excavation for footings; or filling or compacting of the soil or soil amendments for a proposed AFO structure, open feedlot operation structure, or animal truck wash effluent structure.

b. Installation of forms for concrete for an AFO structure, open feedlot operation structure, or animal truck wash effluent structure.

c. Installation of piping for movement of manure within, from or between AFO structures, open feedlot operation structures, or animal truck wash effluent structures.

65.6(2) Construction does not begin upon occurrence of any of the following:

a. Removal of trees, brush, or other vegetative growth.

b. Construction of driveways or roads.

c. General earth moving for leveling at the site.

d. Installation of temporary utility services.

e. Installation of temporary or permanent groundwater lowering tiles.

65.6(3) Prohibition on construction for confinement feeding operations.

a. A person shall not construct or expand an AFO structure that is part of a confinement feeding operation, if the person is either of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand a confinement feeding operation structure for five years after the date of the last violation committed by a person or a confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code sections 459.317 and 459.604.

c. Paragraphs 65.6(3)*"a"* and *"b"* shall not prohibit a person from completing the construction or expansion of an AFO structure, if either of the following applies:

(1) The person has an unexpired permit for the construction or expansion of the AFO structure.

(2) The person is not required to obtain a permit for the construction or expansion of the AFO structure.

d. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as specified in Iowa Code sections 459.310 and 460.205.

567—65.7(455B,459,459A,459B) Karst terrain. Except as provided for in subrules 65.7(4) and 65.7(5), the provisions of this rule shall apply to the following structures: (1) confinement feeding operation structures at confinement feeding operations with over 500 animal units, (2) settled open feedlot effluent basins at open feedlot operations requiring a construction permit, (3) egg washwater structures, (4) AT systems, and (5) animal truck wash effluent structures.

65.7(1) *Karst terrain submittal requirements.* Prior to beginning construction of a structure identified in the introductory paragraph of this rule, the person planning the construction shall determine whether the proposed structure will be located in potential "karst terrain," as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed structure is in potential karst terrain. The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed structure is not in potential karst terrain, the person planning the construction shall submit a printed map from the AFO Siting Atlas indicating the location of the structure, with the potential karst layer turned on, with the construction permit application documents or with the construction design statement if a construction permit is not required.

b. If the proposed formed structure is located in potential karst terrain, a PE licensed in Iowa, an NRCS-qualified staff person or a qualified organization shall submit a soil report, based on the results from soil corings, test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the bottom of the proposed structure to the underlying limestone, dolomite or soluble rock. A minimum of two soil corings spaced equally within the structure or two test pits located within five feet of the outside of the structure are required if acceptable well log data is not available. The soil corings shall be taken to a minimum depth of 15 feet below the bottom elevation of the proposed structure or into bedrock, whichever is shallower. Any limestone, dolomite, or soluble bedrock in the corings or test pits shall be considered the bedrock surface rather than augur refusal. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout,

bentonite or similar materials, and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed formed structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

65.7(2) *Construction standards for formed manure storage structures.* A formed manure storage structure shall be constructed in accordance with the minimum concrete standards set forth in subrule 65.108(10) or Iowa Code section 459.307 if the structure is not constructed of concrete. No intact or weathered bedrock, including sandstone, shale, limestone, dolomite, or soluble rock, shall be removed or excavated during the construction of a storage structure.

65.7(3) *Vertical separation distance requirements for formed manure storage structures.* Except as provided for in subrule 65.7(5) related to the construction of a dry bedded confinement feeding operation structure, in addition to the concrete standards set forth in subrule 65.108(10) or Iowa Code section 459.307 if not constructed of concrete, a person constructing a formed manure storage structure on karst terrain shall comply with the following:

a. No construction of any type of structure shall be permitted within five feet vertical separation distance between the bottom of the formed structure and underlying limestone, dolomite, or other soluble rock.

b. Between 5.01 feet and 15 feet vertical separation distance between the bottom of the formed manure storage structure and underlying limestone, dolomite, or other soluble rock, one of the following is required: (1) a minimum five-foot continuous layer of low permeability soil (1 × 10-6 cm/sec) or nonsoluble bedrock or (2) a two-foot thick compacted clay liner or geosynthetic clay liner must be constructed directly beneath the floor of the formed manure storage structure. The geosynthetic clay liner must be constructed in accorded with NRCS Standard 521. The design of the formed manure storage structure must be prepared and sealed by a PE or an NRCS engineer.

c. Paragraphs 65.7(3)*"a"* and *"b"* do not apply to expansions or modifications made to facilities constructed before January 1, 2024.

65.7(4) *Unformed manure storage structures.* The construction of unformed manure storage structures, including unformed manure storage structures at SAFOs, is prohibited in karst terrain or an area that drains into a known sinkhole. In potential karst, at least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the proposed unformed manure storage structure or into bedrock, whichever is shallower. If a 25-foot vertical separation distance can be maintained between the bottom of the unformed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain. No intact or weathered bedrock, including sandstone, shale, limestone, dolomite, or soluble rock, shall be removed or excavated during the construction of a manure storage structure.

65.7(5) *Dry bedded confinement feeding operation structure.* A person constructing any dry bedded confinement feeding operation structure, including structures at SAFOs, on karst terrain shall comply with all of the following:

a. The person must construct the structure at a location where there is a vertical separation distance of at least five feet between the bottom of the floor of the structure and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

b. The person must construct the structure with a floor consisting of reinforced concrete at least five inches thick.

65.7(6) *Animal production areas.* The floors of any confinement feeding operation structure in potential karst operating as an animal production area, excluding SAFOs, must have a compacted clay liner a minimum of 12 inches thick or meet the concrete standards specified in subrule 65.108(10) even if the floor does not meet the definition of a manure storage structure.

567—65.8(455B,459,459A,459B) Karst terrain—stockpile requirements. The provisions of this rule shall apply to locations at confinement feeding operations where dry manure or dry bedded manure is stockpiled.

65.8(1) *Karst terrain submittal requirements.* Prior to stockpiling dry manure or dry bedded manure, the person planning to stockpile shall determine whether the proposed stockpile location will be located in potential "karst terrain," as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed stockpile location is in potential karst terrain. The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed stockpile location is not in potential karst terrain, the person planning the stockpiling shall submit a printed map from the AFO Siting Atlas indicating the location of the stockpile location, with the potential karst layer turned on, to the department.

b. If the proposed stockpile is located in potential karst terrain, a PE licensed in Iowa, NRCS-qualified staff person or a qualified organization shall submit a soil report to the department, based on the results from soil corings, test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the proposed bottom of the stockpile to the underlying limestone, dolomite or soluble rock. A minimum of two soil corings spaced equally within the stockpile location or two test pits located within five feet of the outside of the stockpile location are required if acceptable well log data is not available. The soil corings shall be taken to a minimum depth of 25 feet below the bottom elevation of the proposed stockpile or into bedrock, whichever is shallower. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed stockpile and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

65.8(2) *Dry manure stockpiling.* A person shall comply with all of the following when stockpiling dry manure on karst terrain:

a. Maintain a minimum five-foot vertical separation distance between the bottom of the stockpile and the underlying limestone, dolomite, or other soluble rock.

b. A person who stockpiles dry manure for more than 15 days shall use any of the following:

(1) A qualified stockpile structure; or

(2) A qualified stockpile cover. However, a person shall not stockpile dry manure using a qualified stockpile cover at a long-term stockpile location unless the stockpile is located on a reinforced concrete slab at least five inches thick.

65.8(3) *Dry bedded manure stockpiling.* A person shall comply with all of the following when stockpiling dry bedded manure on karst terrain or above an alluvial aquifer:

a. Maintain a minimum five-foot vertical separation distance between the bottom of the stockpile and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

b. Stockpiles shall be placed on a reinforced concrete slab that is a minimum of five inches thick.

567—65.9(455B,459,459A,459B) Floodplains. The provisions of this rule shall apply to the following structures: (1) confinement feeding operation structures, (2) settled open feedlot effluent basins at open feedlot operations requiring a construction permit, (3) egg washwater structures, (4) AT systems, and (5) animal truck wash effluent structures.

65.9(1) *Floodplains.* A person shall not construct a manure storage structure in the one hundred year floodplain of a major water source. The one hundred year floodplain of major water source designations are included on the AFO Siting Atlas. Placing fill material on floodplain land to elevate the land above the one hundred year flood elevation will not be considered as removing the land from the one hundred year floodplain for the purpose of this subrule. Even if the proposed location of the manure storage structure is not on the one hundred year floodplain of a major water source, the site may be on the floodplain of a nonmajor water source and the department may require a floodplain development permit pursuant to 567—Chapters 70 through 76 if the drainage area of the nonmajor water source adjacent to the proposed structure is greater than ten square miles in a rural location or two square miles in an urban location. The proposed construction can be screened through the department's online floodplain database siting tool.

65.9(2) *Flooding protection.* A confinement feeding operation structure proposed to be constructed on land that would be inundated by Q100 shall meet requirements as specified in 567—Chapters 70 through 76, unless otherwise prohibited according to subrule 65.9(1).

65.9(3) *Submittal requirements.* The person planning the construction shall submit a printed map from the AFO Siting Atlas indicating the location of the structure, with the one hundred year floodplain layer turned on, with the construction permit application documents or with the construction design statement if a construction permit is not required.

65.9(4) *Exemptions to prohibition on one hundred year floodplain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands confinement structures.* As specified in Iowa Code section 459.310(4), a separation distance required in subrules 65.106(3) and 65.106(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subrule 65.9(1) shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the replacement formed manure storage structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subrules 65.106(3) and 65.106(4) than any other confinement feeding operation structure which is part of the operation.

(5) The replacement formed manure storage structure meets or exceeds the requirements of Iowa Code section 459.307 and subrule 65.108(10).

b. A replacement formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, if it complies with the following provisions:

(1) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure complies with standards adopted pursuant to Iowa Code section 459.307 and subrule 65.108(10).

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities. If the formed manure storage structure will replace any existing manure storage structure, the department shall require that the replaced manure storage structure be properly closed.

567—65.10 to **65.99** Reserved.

DIVISION II
CONFINEMENT FEEDING OPERATIONS AND DRY BEDDED CONFINEMENT FEEDING OPERATIONS

567—65.100(455B,459,459B) Minimum manure control requirements. Confinement feeding operations shall be constructed, managed and maintained to meet the minimum manure control requirements stated in subrules 65.100(1) to 65.100(6). A release shall be reported to the department as provided in subrule 65.2(1). Dry manure stockpiling requirements are stated in subrule 65.100(7). Dry bedded manure stockpiling requirements are stated in subrule 65.100(8).

65.100(1) The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application and as specified in this rule. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state.

a. Control of manure from confinement feeding operations may be accomplished through use of manure storage structures or other manure control methods. Sufficient capacity shall be provided in the manure storage structure to store all manure between periods of manure application. A confinement feeding operation, other than a SAFO, that is constructed or expanded on or after July 1, 2009, shall not surface-apply liquid manure on frozen or snow-covered ground when there is an emergency, as described in subrule 65.101(4), unless the operation has a minimum of 180 days of manure storage capacity. Additional capacity shall be provided if precipitation, manure or wastes from other sources can enter the manure storage structure.

b. Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in unformed manure storage structures or unformed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures or formed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow.

c. To ensure that adequate capacity exists in the manure storage structure to retain all manure produced during periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors), the manure shall be removed from the manure storage structure as needed prior to these periods.

d. Dry manure or dry bedded manure originating at a confinement feeding operation may be retained as a stockpile so long as the stockpiled dry manure or dry bedded manure meets the following:

(1) Dry manure stockpiling requirements provided in subrule 65.100(7) or dry bedded manure stockpiling requirements provided in subrule 65.100(8).

(2) Applicable NPDES requirements pursuant to the Act.

(3) The dry manure or dry bedded manure is removed from the stockpile and applied in accordance with rule 567—56.101(459,459B) within six months after the dry manure or dry bedded manure is first stockpiled.

(4) Dry manure stockpiles are not required to meet the requirements in subparagraphs 65.100(1)*"d"*(1) to 65.100(1)*"d"*(3) above if the dry manure originates from a confinement feeding operation that was constructed prior to January 1, 2006, unless any of the following apply:

1. The confinement feeding operation is expanded after January 1, 2006.
2. Dry manure is stockpiled in violation of subrule 65.100(1).
3. Precipitation-induced runoff from the stockpile has drained off the property.

65.100(2) If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of manure control than that specified in subrule 65.100(1) is required to provide an adequate level of water pollution control for a specific AFO, the department may establish different minimum manure control requirements for that operation.

65.100(3) In lieu of using the manure control methods specified in subrule 65.100(1), the department may allow the use of manure treatment or other methods of manure control if it determines that an adequate level of manure control will result.

65.100(4) No direct discharge shall be allowed from an AFO into a publicly owned lake, a sinkhole, or an agricultural drainage well.

65.100(5) All manure removed from an AFO or its manure control facilities shall be land-applied in a manner that will not cause surface or groundwater pollution. Application in accordance with the provisions of state law and this chapter shall be deemed as compliance with this requirement.

65.100(6) As soon as practical but not later than six months after the use of an AFO is discontinued, all manure shall be removed from the discontinued AFO and its manure control facilities and be land applied.

65.100(7) Dry manure stockpiling requirements for a confinement feeding operation.

a. Requirements for terrain, other than karst terrain. Dry manure stockpiled on terrain, other than karst terrain, for more than 15 consecutive days shall comply with either of the following:

(1) Dry manure shall be stockpiled using any of the following:

1. A qualified stockpile structure; or

2. A qualified stockpile cover. Long-term stockpiles utilizing a qualified stockpile cover shall be placed on a constructed impervious base that can support the load of the equipment used under all weather conditions. The coefficient of permeability of the impervious base shall be less than $1 \times 10\text{-}7$ cm/sec (0.00028 feet/day). Permeability results shall be submitted to the department prior to use of the stockpile site.

(2) A stockpile inspection statement shall be delivered to the department as follows:

1. The department must receive the statement by the fifteenth day of each month.

2. The stockpile inspection statement shall provide the location of the stockpile and document the results of an inspection conducted during the previous month. The inspection must evaluate whether precipitation-induced runoff is draining away from the stockpile and, if so, describe actions taken to prevent the runoff. If an inspection by the department documents that precipitation-induced runoff is draining away from a stockpile, the dry manure must be immediately removed from the stockpile or comply with all directives of the department to prevent the runoff.

3. The stockpile inspection statement must be in writing and may be on a form prescribed by the department.

b. Dry manure stockpile siting prohibitions.

(1) Grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway.

(2) Sloping land. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to silt fences, temporary earthen berms, or other effective measures, and that prevent or diminish precipitation-induced runoff from the stockpile.

65.100(8) Prohibitions and siting restrictions for dry bedded manure stockpiling requirements for a dry bedded confinement feeding operation.

a. Prohibition in a grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway, where water pools on the soil surface, or in any location where surface water will enter the stockpile.

b. Siting restrictions. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure or dry bedded manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures that prevent or diminish precipitation-induced runoff from the stockpile. A stockpile or stockpile structure located in karst terrain must comply with the karst requirements in subrule 65.8(3).

567—65.101(455B,459,459B) Requirements for land application of manure from a confinement feeding operation.

65.101(1) *General requirements for application rates and practices for confinement feeding operations.*

a. For manure originating from an anaerobic lagoon or aerobic structure, application rates and practices shall be used to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. In determining appropriate application rates and practices, the person land-applying the manure shall consider the site conditions at the time of application including anticipated precipitation and other weather factors, field residue and tillage, site topography, the existence and depth of known or suspected tile lines in the application field, and crop and soil conditions, including a good-faith estimate of

the available water-holding capacity given precipitation events, the predominant soil types in the application field and planned manure application rate.

b. Spray irrigation equipment shall be operated in a manner and with an application rate and timing that does not cause runoff of the manure onto the property adjoining the property where the spray irrigation equipment is being operated.

c. For manure from an earthen waste slurry storage basin, earthen manure storage basin, or formed manure storage structure, restricted spray irrigation equipment shall not be used unless the manure has been diluted with surface water or groundwater to a ratio of at least 15 parts water to 1 part manure. Emergency use of spray irrigation equipment without dilution shall be allowed to minimize the impact of a release as approved by the department.

65.101(2) *Separation distance requirements for land application of manure.* Land application of manure shall be separated from objects and locations as specified in this subrule.

a. For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet, as specified in Iowa Code section 459.204. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

b. The separation distance specified in paragraph 65.101(2)*"a"* shall not apply if any of the following apply:

(1) The liquid manure is injected into the soil or incorporated within the soil not later than 24 hours after the original application.

(2) The titleholder of the land benefitting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

(3) The liquid manure originates from a SAFO.

(4) The liquid manure is applied by low-pressure spray irrigation equipment pursuant to paragraph 65.101(2)*"a."*

c. Separation distance for spray irrigation from property boundary line. Spray irrigation equipment shall be set up to provide for a minimum distance of 100 feet between the wetted perimeter as specified in the spray irrigation equipment manufacturer's specifications and the boundary line of the property where the equipment is being operated. The actual wetted perimeter, as determined by wind speed and direction and other operating conditions, shall not exceed the boundary line of the property where the equipment is being operated. For property that includes a road right-of-way, railroad right-of-way or an access easement, the property boundary line shall be the boundary line of the right-of-way or easement.

d. Distance from structures for low-pressure irrigation systems. Low-pressure irrigation systems shall have a minimum separation distance of 250 feet between the actual wetted perimeter and the closest point of a residence, a business, church, school or public use area.

e. Waivers. Waivers to paragraph 65.101(2)*"c"* may be granted by the department if sufficient and proposed alternative information is provided to substantiate the need and propriety for such action. Waivers may be granted on a temporary or permanent basis. The request for a waiver shall be in writing and include information regarding:

(1) The type of manure storage structure from which the manure will be applied by spray irrigation equipment.

(2) The spray irrigation equipment to be used in the application of manure.

(3) Other information as the department may request.

f. Agricultural drainage wells. Manure shall not be applied by spray irrigation equipment on land located within an agricultural drainage well area.

g. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

h. Setback requirements for confinement feeding operations with NPDES permits. For confinement feeding operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5).

65.101(3) *Surface application of liquid manure on frozen or snow-covered ground.* A person who applies liquid manure on frozen or snow-covered ground shall comply with applicable NPDES permit requirements pursuant to the Act and also shall comply with the following requirements:

a. Snow-covered ground. During the period beginning December 21 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on snow-covered ground only when there is an emergency.

b. Frozen ground. During the period beginning February 1 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on frozen ground only when there is an emergency.

c. What constitutes an emergency. For the purposes of this subrule, an emergency application is only allowed when there is an immediate need to apply manure to comply with the manure retention requirement of subrule 65.100(1) due to unforeseen circumstances affecting the storage of the liquid manure. The unforeseen circumstances must be beyond the control of the owner of the confinement feeding operation, including but not limited to natural disaster, unusual weather conditions, or equipment or structural failure. The authorization to apply liquid manure pursuant to this subrule does not apply to either of the following:

(1) An immediate need to apply manure in order to comply with the manure retention requirement of subrule 65.100(1) caused by the improper design or management of the manure storage structure, including but not limited to a failure to properly account for the volume of the manure to be stored. Based on the restrictions described in paragraphs 65.101(3)*"a"* and *"b"* and the possibility that the ground could be snow-covered and frozen for the entire period of December 21 to April 1, an operation should not plan to apply liquid manure during that time period. Confinement feeding operations with manure storage structures constructed after May 26, 2009, and without alternatives to manure application must have sufficient storage capacity to retain manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored. For confinement feeding operations that have no manure storage structures constructed after May 26, 2009, the department will accept insufficient manure storage capacity as a reason for emergency application in the notification required in subrule 65.101(3).

(2) Liquid manure originating from a confinement feeding operation constructed or expanded on or after July 1, 2009, if the confinement feeding operation has a capacity to store manure for less than 180 days.

d. Procedure for emergency application. A person who is authorized to apply liquid manure on snow-covered ground or frozen ground when there is an emergency shall comply with all of the following:

(1) The person must notify the appropriate department field office by telephone prior to the application. The department will not consider the notification complete unless the owner's name, facility name, facility ID number, reason for emergency application, application date, estimated number of gallons of manure to be applied, and application fields as listed in the MMP are given. In cases where the emergency is not easily confirmed by weather reports, the owner must make documentation of the emergency available to the field office upon request.

(2) The liquid manure must be applied on land identified for such application in the current MMP maintained by the owner of the confinement feeding operation as required in subrule 65.111(7). The land must be identified in the current MMP prior to the application, and that change must also be reflected in the next annual update or complete MMP submitted to the department and county boards of supervisors following the application as required in paragraph 65.110(3)*"b."*

(3) The liquid manure must be applied on a field with a phosphorus index rating of 2 or less.

(4) Any surface water drain tile intake that is on land in the owner's MMP and located downgradient of the application must be temporarily blocked beginning not later than the time that the liquid manure is first applied and ending not earlier than two weeks after the completion of the application.

(5) Additional measures to contain runoff may be necessary in order to prevent violation of federal effluent standards in subrule 62.4(12).

e. Exceptions. Paragraphs 65.101(3)*"a"* through *"d"* do not apply to any of the following:

(1) The application of liquid manure originating from a SAFO.

(2) The application of liquid manure injected or incorporated into the soil on the same date.

567—65.102(455B,459,459B) Departmental evaluation.

65.102(1) The department may evaluate any AFO to determine if any of the following conditions exist:

a. Manure from the operation is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in subrule 65.100(1);

b. Manure from the operation is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Manure from the operation is causing or may reasonably be expected to cause a violation of state water quality standards.

65.102(2) If departmental evaluation determines that any of the conditions listed in subrule 65.102(1) exist, the operation shall institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This subrule shall apply to all permitted and unpermitted AFOs, regardless of animal capacity.

567—65.103(455B,459,459B) Construction permits—required approvals and permits. A person required to obtain a construction permit pursuant to subrule 65.103(1) or a construction approval letter pursuant to subrule 65.103(7) shall not begin construction, expansion or modification of a confinement feeding operation structure until the department issues a construction permit or a construction approval letter for a proposed or existing confinement feeding operation. In addition, the owner of a SAFO with formed manure storage structures who is not required to obtain a construction permit pursuant to subrule 65.103(1) or a construction approval letter pursuant to subrule 65.103(7) shall comply with the applicable construction approval requirements pursuant to subrule 65.103(8).

65.103(1) *Confinement feeding operations required to obtain a construction permit prior to any of the following.* Except as provided in subrule 65.103(2), a confinement feeding operation shall obtain a construction permit prior to any of the following:

a. Constructing or installing a confinement building that uses an unformed manure storage structure or constructing, installing or modifying an unformed manure storage structure.

b. Constructing or installing a confinement building that uses a formed manure storage structure or constructing, installing or modifying a formed manure storage structure if, after construction, installation or modification, the animal unit capacity of the operation is 1,000 animal units or more. This paragraph also applies to confinement feeding operations that store manure exclusively in a dry form.

c. Initiating a change, even if no construction of, or physical alteration to, an unformed manure storage structure is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in any unformed manure storage structure. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

d. Initiating a change, even if no construction of or physical alteration to, a formed manure storage structure is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in a formed manure storage structure if, after the change, the animal unit capacity of the operation is 1,000 animal units or more. Increases in the volume of manure due to

an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

e. Purchasing or acquiring an adjacent animal feeding confinement operation if after acquisition the animal unit capacity of the combined operation is 1,000 animal units or more. The construction permit application must be submitted within 60 days of the acquisition or purchase.

f. Constructing or modifying an egg washwater storage structure or a confinement building at a confinement feeding operation that includes an egg washwater storage structure.

g. Initiating a change, even if no construction of, or physical alteration to, an egg washwater storage structure is necessary, that would result in an increase in the volume of egg washwater or a modification in the manner in which egg washwater is stored. Increases in the volume of egg washwater due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

h. Repopulating a confinement feeding operation that had been a discontinued AFO for 24 months or more and if any of the following apply:

(1) The confinement feeding operation uses an unformed manure storage structure or egg washwater storage structure;

(2) The confinement feeding operation includes only confinement buildings and formed manure storage structures and has an animal unit capacity of 1,000 animal units or more.

i. Installing a permanent manure transfer piping system, unless the department determines that a construction permit is not required.

j. Initiating a remedial change, upgrade, replacement or construction when directed by the department as a result of departmental evaluation pursuant to rule 567—65.102(455B,459,459B) or as required by an administrative order or court order pursuant to Iowa Code section 455B.112 or 455B.175. Repairs to a confinement building or additions such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required to increase the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored if the increase or modification is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

65.103(2) *Confinement feeding operations not required to obtain a construction permit.*

a. A construction permit shall not be required for a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a SAFO. However, this paragraph shall not apply to a SAFO that uses an unformed manure storage structure.

b. A construction permit shall not be required for a confinement feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.

c. A construction permit is not required to construct a formed manure storage structure at a confinement feeding operation having an animal unit capacity of more than 500 but less than 1,000 animal units; however, a construction approval letter is required from the department pursuant to subrule 65.103(8) and rule 567—65.104(455B,459,459B).

d. A construction permit is not required for a confinement feeding operation that exclusively confines fish and elects to comply with the permitting requirements of Iowa Code section 455B.183.

65.103(3) *Operations that shall not be issued construction permits.*

a. The department shall not issue a construction permit to a person if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending.

b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code sections 459.317 and 459.604.

c. The department shall not issue a construction permit to expand or modify a confinement feeding operation for 120 days after completion of the last construction or modification at the operation, if a permit was not required for the last construction or modification.

65.103(4) *Construction permit application plan review criteria.* Review of plans and specifications submitted with a construction permit application shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the confinement feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications unless inconsistent with federal or state law or these rules, and U.S. Department of Commerce precipitation data shall be used. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

65.103(5) *Expiration of construction permits.* A construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within four years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action or a person who has a controlling interest in the proposed operation has been classified as a habitual violator. If a permitted site has not completed all proposed permitted structures within the four-year limit, then the approved animal unit capacity in the construction permit shall be lowered to be equal to what was constructed and the department shall issue a construction permit amendment for what was constructed. Once all permitted construction has been completed, no amendments for new construction may be issued even though the four-year period has not expired. A new construction permit must be issued for the new proposed construction.

65.103(6) *Revocation of construction permits.* The department may revoke a construction permit or refuse to renew a permit expiring according to subrule 65.103(5) if it determines that the operation of the confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.

65.103(7) *Confinement feeding operations required to obtain a construction approval letter.* A person planning to construct a confinement feeding operation, other than a SAFO as defined in rule 567—65.1(455B,459,459A,459B) or other than an operation required to obtain a construction permit pursuant to subrule 65.103(1), shall obtain from the department a construction approval letter as provided in subrule 65.104(2) prior to beginning construction of a formed manure storage structure or a confinement building. The construction approval letter shall expire if construction, as defined in subrule 65.6(1), is not begun within one year and completed within four years of the date of the construction approval letter.

65.103(8) *SAFOs.* The following requirements apply to SAFOs:

a. A construction permit shall not be required for a SAFO utilizing a formed manure storage structure; however, a construction permit is required for any unformed manure storage structures utilized at a SAFO.

b. If a SAFO cannot meet the required separation distance provided in Iowa Code section 459.310(1), a SAFO must comply with secondary containment barrier design in accordance with subrule 65.104(5).

c. A SAFO must comply with drain tile removal requirements if the SAFO utilizes an unformed manure storage structure in accordance with subrule 65.108(1).

d. SAFO confinement structures must comply with applicable separation distance requirements in rule 567—65.106(455B,459,459B).

65.103(9) *Compliance with permit conditions.* A person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit.

567—65.104(455B,459,459B) Preconstruction submittal requirements. Prior to beginning construction, expansion or modification of a confinement feeding operation structure, a person shall

obtain from the department a construction permit pursuant to subrule 65.103(1), a construction approval letter pursuant to subrule 65.103(7) or approval of a secondary containment barrier design pursuant to subrule 65.104(5), according to procedures established in this rule.

65.104(1) *Construction permit application.* Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required in the form. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit in accordance with subrule 65.105(5). A construction permit application for a confinement feeding operation shall be filed as instructed on the form and shall include the following:

a. The name of the applicant and the name of the confinement feeding operation, including mailing address and telephone number.

b. The name of the current landowner or the proposed landowner of the land where the confinement feeding operation will be located.

c. The contact person for the confinement feeding operation, including mailing address and telephone number.

d. The location of the confinement feeding operation.

e. Whether the application is for the expansion of an existing operation or the construction of a proposed confinement feeding operation, and the date when it was first constructed if an existing operation.

f. The animal unit capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation. If the confinement feeding operation includes a confinement feeding operation structure that was constructed prior to March 1, 2003, the animal weight capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation shall also be included.

g. Engineering documents. A confinement feeding operation that utilizes an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure at an operation that meets the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall include an engineering report, construction plans and specifications. The engineering report, construction plans and specifications must be prepared and signed by a licensed PE or by an NRCS-qualified staff person, must detail the proposed structures, and must include a statement certifying that the manure storage structure complies with the requirements of Iowa Code chapter 459. In addition, a qualified soils or groundwater professional, licensed PE or NRCS-qualified staff person shall submit a hydrogeologic report on soil corings in the area of the unformed manure storage structure or egg washwater storage structure as described in subrules 65.108(5) and 65.108(9).

h. Construction design statement or PE design certification. A confinement feeding operation that uses a formed manure storage structure and that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall submit a construction design statement pursuant to subrule 65.104(3) or a PE design certification pursuant to subrule 65.104(4). All elevations shall be in NAV 88 datum for sites with alluvial soils or floodplain requirements.

i. Payment to the department of the indemnity fund fee as required in Iowa Code section 459.502.

j. If the construction permit application is for three or more confinement feeding operation structures, a drainage tile certification shall be submitted as follows:

(1) If the application is for an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure that meets the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B), a licensed PE shall certify that either the construction of the structure will not impede the drainage through established drainage tile lines which cross property boundary lines or that if the drainage is impeded during construction, the drainage tile will be rerouted to reestablish the drainage prior to operation of the structure.

(2) If the application is for a formed manure storage structure that does not meet the threshold engineering requirements, a drainage tile certification shall be submitted as part of the construction

design statement pursuant to subrule 65.104(3) or as part of the PE design certification pursuant to subrule 65.104(4).

k. Information (e.g., maps, drawings, aerial photos) that clearly shows the proposed location of the confinement feeding operation structures; any existing confinement feeding operation structures; any locations or objects from which a separation distance is required by Iowa Code sections 459.202, 459.203 and 459.310; and that the structures will meet all applicable separation distances. If applicable, a copy of a recorded separation distance waiver, pursuant to paragraph 65.107(1)*"b,"* must be included with the application. Also, if applicable, a secondary containment barrier design, pursuant to subrules 65.104(5) and 65.107(7), shall be included.

l. The names of all parties with an interest or controlling interest in the confinement feeding operation who also have an interest or controlling interest in at least one other confinement feeding operation in Iowa, and the names and locations of such other operations; for a partnership or corporation owning the confinement feeding operation, a list of all members and their percentage of ownership in the partnership or corporation.

m. Copies of the MMP pursuant to rule 567—65.110(455B,459,459B).

n. A construction permit application fee of $250 and the MMP filing fee of $250 as required in subrule 65.110(7).

o. A copy of the AFO Siting Atlas indicating the location of the proposed structure, with the one hundred year floodplain and karst layers included.

p. A copy of any master matrix evaluation provided to the county.

q. A livestock odor mitigation evaluation certificate issued by Iowa State University as provided in Iowa Code section 266.49. The applicant is not required to submit the certificate if any of the following apply:

(1) The confinement feeding operation is twice the minimum separation distance required from the nearest object or location from which a separation distance is required pursuant to Iowa Code section 459.202 on the date of the application, not including a public thoroughfare.

(2) The owner of each object or location that is less than twice the minimum separation distance required pursuant to Iowa Code section 459.202 from the confinement feeding operation on the date of the application, other than a public thoroughfare, executes a document consenting to the construction.

(3) The applicant submits a document swearing that Iowa State University has failed to furnish a certificate to the applicant within 45 days after the applicant requested Iowa State University to conduct a livestock odor mitigation evaluation as provided in Iowa Code section 266.49.

(4) The application is for a permit to expand a confinement feeding operation, if the confinement feeding operation was first constructed before January 1, 2009.

(5) Iowa State University does not provide for a livestock odor mitigation evaluation effort as provided in Iowa Code section 266.49, for any reason, including because funding is not available.

r. Documentation that copies of all the construction permit application documents have been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county.

65.104(2) *Construction approval letter.*

a. A confinement feeding operation that, pursuant to subrule 65.103(7), is required to obtain a construction approval letter as defined in rule 567—65.1(455B,459,459A,459B), but that is not required to obtain a construction permit pursuant to subrule 65.103(1), shall file with the department, at least 30 days prior to the date the proposed construction is scheduled to begin, all of the following:

(1) A construction design statement pursuant to subrule 65.104(3). In lieu of a construction design statement, a PE design certification pursuant to subrule 65.104(4) may be submitted.

(2) A copy of the MMP pursuant to rule 567—65.110(455B,459,459B).

(3) Information (e.g., maps, drawings, aerial photos) that clearly shows the intended location of the confinement feeding operation structures and animal weight capacities of any other confinement feeding operations within a distance of 2,500 feet in which the owner has an ownership interest or which the owner manages.

(4) A fee of $250 for filing an MMP pursuant to subrule 65.110(7) and a manure storage indemnity fee pursuant to subrule 65.110(6).

(5) Documentation that the board of supervisors or auditor of the county where the confinement feeding operation structure is proposed to be located received a copy of the MMP.

b. After submission of items in subparagraphs 65.104(2)*"a"*(1) through 65.104(2)*"a"*(5) and prior to issuance of the construction approval letter, the confinement feeding operation may make nonsubstantial revisions to the items and maintain the date construction is scheduled to begin.

65.104(3) *Construction design statement.* Prior to beginning construction of a formed manure storage structure, a person planning construction at a confinement feeding operation, other than a SAFO, that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall file with the department a construction design statement, as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is required to obtain a construction approval letter from the department pursuant to subrule 65.103(7) but that is not required to obtain a construction permit pursuant to subrule 65.103(1) shall file with the department a construction design statement, as required in subrule 65.104(2). Within 30 days after the filing of a construction design statement, the department may issue a construction approval letter as defined in rule 567—65.1(455B,459,459A,459B) if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation that has an animal unit capacity of 1,000 animal units or more but that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall file a construction design statement as part of the construction permit application and as required in subrule 65.104(1).

c. The construction design statement shall be filed on a form provided by the department and shall include all of the following:

(1) The name of the person planning construction at the confinement feeding operation, the name of the confinement feeding operation, the location of the proposed formed manure storage structure, a detailed description of the type of confinement feeding operation structure being proposed, the dimensions of the structure, and whether the structure will be constructed of reinforced concrete or steel.

(2) An MMP pursuant to rule 567—65.110(455B,459,459B).

(3) A certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the minimum concrete standards set forth in subrule 65.108(10). Otherwise, if the formed manure storage structure is to be constructed of steel, including a Slurrystore® tank, a certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the requirements of Iowa Code chapter 459 and this chapter.

(4) If the confinement feeding operation is also required to obtain a construction permit at a confinement feeding operation proposing three or more confinement feeding operation structures, the construction design statement shall include a drainage tile certification signed by the person responsible for constructing or excavating the formed manure storage structure, shall certify that construction will not impede established existing drainage, and shall verify that if existing drainage tiles are found, corrective actions will be implemented to immediately reestablish existing drainage.

d. The following operations are not required to file a construction design statement with the department:

(1) A SAFO that constructs a formed manure storage structure.

(2) A confinement feeding operation that submits a PE design certification pursuant to this subrule.

(3) A confinement feeding operation that meets or exceeds threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B).

(4) A confinement feeding operation that utilizes an unformed manure storage structure or an egg washwater storage structure.

65.104(4) *PE design certification.* In lieu of a construction design statement prior to beginning construction of a formed manure storage structure, a confinement feeding operation, other than a SAFO, that is below the threshold requirements for an engineer pursuant to rule 567—65.1(455B,459,459A,459B) may file with the department a PE design certification and design plans signed by a PE licensed in the state of Iowa or an NRCS-qualified staff person. The PE design certification shall be site-specific and shall be filed on a form provided by the department as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is not required to obtain a construction permit pursuant to subrule 65.103(1) shall file with the department, at least 30 days before beginning construction of a formed manure storage structure, the PE design certification as required in subrule 65.104(2). Within 30 days after the filing of a PE design certification, the department may issue a construction approval letter if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation with an animal unit capacity of 1,000 animal units or more that is required to obtain a construction permit pursuant to subrule 65.103(1) but that is below the threshold requirements for an engineer pursuant to rule 567—65.1(455B,459,459A,459B) shall file with the department the PE design certification as part of the construction permit application and as required in subrule 65.104(1).

65.104(5) *Secondary containment barrier design submittal requirements.* The design for a secondary containment barrier to qualify any confinement feeding operation for the separation distance exemption provision in subrule 65.107(7) shall be filed with the department for approval prior to beginning construction of a formed manure storage structure that is part of a SAFO, shall accompany the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required, or shall be filed as part of the construction permit application pursuant to subrule 65.104(1). The secondary containment barrier shall meet the design standards of subrule 65.108(11) and shall be prepared according to the following:

a. If a manure storage structure stores liquid or semiliquid manure, the secondary containment barrier design shall include engineering drawings prepared and signed by a PE licensed in the state of Iowa or an NRCS-qualified staff person. For purposes of this subrule only, "semiliquid manure" means manure that contains a percentage of dry matter that results in manure too solid for pumping but too liquid for stacking.

b. If the manure storage structure will store only dry manure or dry bedded manure, the owner or a representative of a confinement feeding operation shall submit to the department detailed drawings of the design for a secondary containment barrier.

567—65.105(455B,459,459B) Construction permit application review process, site inspections and complaint investigations.

65.105(1) *Delivery of application to county.* The applicant for a construction permit for a confinement feeding operation or related AFO structure shall deliver in person or by certified mail a copy of the permit application and MMP to the county board of supervisors of the county where the confinement feeding operation or related AFO structure is proposed to be constructed. Receipt of the application and MMP by the county auditor or other county official or employee designated by the county board of supervisors is deemed receipt of the application and MMP by the county board of supervisors. Documentation of the delivery or mailing of the permit application and MMP shall be forwarded to the department.

65.105(2) *Public notice and county comment.*

a. Public notice. The county board of supervisors shall publish a notice that the board has received the construction permit application in a newspaper having general circulation in the county. The county board shall publish the notice as soon as possible but no later than 14 days after receiving instructions from the department that a complete application has been received. The notice shall include all of the following:

(1) The name of the person applying to receive the construction permit;

(2) The name of the township where the confinement feeding operation structure is to be constructed;

(3) Each type of confinement feeding operation structure proposed to be constructed;

(4) The animal unit capacity of the confinement feeding operation if the construction permit were to be approved;

(5) The time when and the place where the application may be examined as provided in Iowa Code section 22.2;

(6) Procedures for providing public comments to the board as provided by the board.

The county shall submit to the department, within 30 days of receipt of the construction permit application, proof of publication to verify that the county provided public notice as required in this paragraph.

b. County comment. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the board may submit to the department comments by the board and the public regarding compliance of the construction permit application and MMP with the requirements in this chapter and Iowa Code chapter 459 for obtaining a construction permit. Comments may include but are not limited to the following:

(1) The existence of an object or location not included in the construction permit application that benefits from a separation distance requirement as provided in Iowa Code section 459.202 or 459.310.

(2) The suitability of soils and the hydrology of the site where construction or expansion of a confinement feeding operation or related AFO structure is proposed.

(3) The availability of land for the application of manure originating from the confinement feeding operation.

(4) Whether the construction or expansion of a proposed AFO structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

65.105(3) *Master matrix.* A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the director of the department for filing. Adoption and filing of a construction evaluation resolution authorizes a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix as follows:

a. Enrollment periods.

(1) Filed construction evaluation resolutions shall remain in effect until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution. The enrollment period for original construction evaluations shall be January 1 – January 31.

(2) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements in paragraph 65.105(3)*"b,"* the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.

(3) For a county board of supervisors that had not previously submitted a construction evaluation or failed to comply with the requirements in paragraph 65.105(3)*"b,"* the enrollment period for original construction evaluations shall be January 1 – January 31.

b. Use of the master matrix. If a county board of supervisors has adopted and filed with the department a construction evaluation resolution, as provided in paragraph 65.105(3)*"a,"* the board shall evaluate all construction permit applications filed during the applicable period using the master matrix as follows:

(1) In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria that are part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into an MMP as provided in Iowa Code section 459.312.

(2) The board shall include with the adopted recommendation a copy of the master matrix analysis, calculations, and scoring for the application. The board's adopted recommendation submitted to the

department may be based on the master matrix or on comments received by the board. The adopted recommendation shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

(3) The board shall not use the master matrix to evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if the construction or expansion is for expansion of a confinement feeding operation that includes a confinement feeding operation structure constructed prior to April 1, 2002, and, after the expansion of the confinement feeding operation, its animal unit capacity is 1,666 animal units or less. The board may still submit comments regarding the application.

65.105(4) *Inspection of proposed construction site.* The department may conduct an inspection of the site on which construction of the confinement feeding operation is proposed after providing a minimum of 24 hours' notice to the construction permit applicant or sooner with the consent of the applicant. If the county in which the proposed facility is located has adopted and submitted a construction evaluation resolution pursuant to subrule 65.105(3) and has not failed subsequently to submit an adopted recommendation, the county may designate a county employee to accompany a department official during the site inspection. In such cases, the department shall notify the county board of supervisors or county designee at least three days prior to conducting an inspection of the site where construction of the confinement feeding operation is proposed. The county designee shall have the same right to access to the site's real estate on which construction of the confinement feeding operation is proposed as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official. The departmental official and the county designee shall comply with standard biosecurity requirements customarily required by the owner of the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

65.105(5) *Determination by the department.* The department must receive the county board of supervisors' comments or evaluation for approval or disapproval of an application for a construction permit not later than 30 days following the applicant's delivery of a complete application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must render a determination or a preliminary determination to approve or disapprove an application for a construction permit within 60 days following the applicant's delivery of a complete application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may terminate an application if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department will approve or disapprove an application as follows:

a. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department will disapprove the application if it does not meet such requirements.

b. If the board of supervisors for the county in which the confinement feeding operation is proposed to be constructed has filed a county construction evaluation resolution and submits an adopted recommendation to approve the construction permit application, which may be based on a satisfactory

rating produced by the master matrix, to the department, the department shall preliminarily approve an application for a construction permit if the department determines that the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B regardless of the adopted recommendation of the board of supervisors. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B.

c. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B, regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B, the department shall conduct an independent evaluation of the application using the master matrix. The department shall preliminarily approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall preliminarily disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B.

65.105(6) *Departmental notification of permit application decision.* Within three days following the department's determination or preliminary determination to approve or disapprove the application for a construction permit, the department shall deliver a notice of the decision to the applicant.

a. If the county board of supervisors has submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department shall notify the board of the department's preliminary decision to approve or disapprove the application at the same time. For a preliminary decision to approve an application, the notice shall consist of a copy of the draft construction permit. For a preliminary decision to disapprove an application, the notice shall consist of a copy of the department's letter of preliminary denial. The preliminary decision to approve or disapprove an application becomes final without further proceedings if neither the county board of supervisors nor the applicant demands a hearing before the commission or appeals pursuant to subrules 65.105(7) and 65.105(8).

b. If the county board of supervisors has not submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department notice shall include the construction permit or letter of denial. The applicant may appeal the permit or denial as provided in subrule 65.105(8).

65.105(7) *County board of supervisors' demand for hearing.*

a. A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written intent to demand a hearing and a demand for a hearing before the commission. The intent to demand a hearing shall be sent to the director of the department and must be postmarked no later than 14 days following the board's receipt of the department's notice of preliminary decision. The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the board's receipt of the department's notice of preliminary decision. A county board of supervisors that has submitted an adopted recommendation to the department may waive the right to file a demand for hearing following the receipt of the department's notice of preliminary decision by filing a written notice of waiver with the department.

b. The demand for hearing shall include a statement setting forth all of the county board of supervisors' reasons why the application for a permit should be approved or disapproved, including

legal briefs and all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

65.105(8) *Applicant's demand for hearing.* The applicant may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written intent to demand a hearing and a demand for a hearing. The applicant may elect, as part of the written demand for hearing, to have the hearing conducted before the commission pursuant to paragraph 65.105(8)*"a"* or before an administrative law judge pursuant to paragraph 65.105(8)*"b."* If no such election is made, the demand for hearing shall be considered to be a request for hearing before the commission. If both the applicant and the county board of supervisors are contesting the department's preliminary decision, the applicant may request that the commission conduct the hearing on a consolidated basis.

a. Applicant demand for hearing before the commission. The intent to demand a hearing shall be sent to the director of the department and must be postmarked no later than 14 days following the board's receipt of the department's notice of preliminary decision. The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the applicant's receipt of the department's notice of preliminary decision. If the county board of supervisors has filed a demand for hearing, the times for facsimile notification and filing a demand for hearing are extended an additional three business days. It is the responsibility of the applicant to communicate with the department to determine if a county demand for hearing has been filed. The demand for hearing shall include a statement setting forth all of the applicant's reasons why the application for permit should be approved or disapproved, including legal briefs and all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

b. Applicant contested case appeal before an administrative law judge. The applicant may contest the department's preliminary decision to approve or disapprove an application according to the contested case procedures set forth in 561—Chapter 7; however, if the county board of supervisors has demanded a hearing pursuant to subrule 65.105(7), the applicant shall provide facsimile notification to the department within the time frame set forth in paragraph 65.105(7)*"a"* that the applicant intends to contest the department's preliminary decision according to contested case procedures. In that event, the applicant may request that the hearings be consolidated and conducted as a contested case.

65.105(9) *Hearing and decision by the commission.*

a. Hearing before the commission.

(1) All hearings before the commission requested pursuant to subrules 65.105(7) and 65.105(8) shall be handled as other agency action and not as a contested case.

(2) Upon receipt of a timely demand for a hearing before the commission pursuant to subrules 65.105(7) or 65.105(8), the director shall set a hearing during a regular meeting of the commission scheduled no more than 35 days from the date the director receives the first such request. However, if the next regular meeting of the commission will take place more than 35 days after receipt of the demand for hearing, the director shall schedule a special in-person meeting or an electronic meeting of the commission pursuant to Iowa Code section 21.8.

(3) No later than five days from the date the director receives a demand for hearing, the director shall post on the department's website the demand for hearing and associated documents, letters notifying the parties of the hearing date, and the department's complete file on the application under review. The director shall provide hard copies of these documents to members of the commission as requested by each member. The director shall contact the applicant and the county board of supervisors and provide copies of documents they request.

(4) No later than 15 days from the date set for hearing, the applicant, the county board of supervisors and the department shall, if any chooses to do so, send one copy of a reply brief to respond to issues raised in the demand for hearing and any supporting documentation to the department. The director shall post the briefs and associated written documents on the department's website and provide hard copies to members of the commission as requested by each member. No further briefs or documents shall be permitted except upon request and permission of the commission.

(5) No later than 15 days from the date set for hearing, any person may submit written material for the commission to review. Whether such material is accepted into the record will be the decision of the chairperson of the commission depending on whether the chairperson deems it relevant to the appeal.

(6) The commission shall use the following hearing procedures:

1. All written material accepted by the chairperson of the commission for inclusion in the record at the hearing shall be marked as coming from the person or entity presenting the document.

2. Objections to submitted written material shall be noted for the record.

3. Oral participation before the commission shall be limited to time periods specified by the chairperson of the commission and, unless otherwise determined by the commission, to presentations by representatives for the applicant, the county board of supervisors and the department and by technical consultants or experts designated by the commission. Representatives of the department shall not advocate for either the county board of supervisors or the applicant but may summarize the basis for the department's preliminary decision and respond to questions by members of the commission.

4. Members of the commission, and the commission's legal counsel, may ask questions of the representatives for the applicant, the county board of supervisors and the department and of technical consultants or experts designated by the commission. The members and counsel may also ask questions of any other person or entity appearing or in attendance at the hearing. Representatives for the applicant and the county board of supervisors may ask questions of technical consultants or experts designated by the commission. No other persons or entities may ask questions of anyone making a presentation or comment at the hearing except upon request and permission by the chairperson of the commission.

(7) The commission shall use the following hearing format:

1. Announcement by the chairperson of the commission of the permit application under review.

2. Receipt into the hearing record of the demand or demands for hearing, a copy of the department's complete file on the application under review and the briefs and written documents previously provided by the applicant and county board of supervisors pursuant to subparagraph 65.105(9)*"a"*(4).

3. Oral presentation, if any, by the applicant if that party timely requested the hearing. If the applicant did not timely request the hearing, then the county board of supervisors shall make the first presentation.

4. Oral presentation, if any, by the applicant or county board of supervisors, whichever party did not have the opportunity to make the first presentation.

5. Oral presentation, if any, by the department.

6. Oral presentation, if any, by technical consultants or experts designated by the commission to assist in its establishment of a record at the hearing. No later than seven days prior to the hearing, the commission shall notify the applicant and the board of the names, addresses and professional capacity of any such technical experts or consultants.

7. Discussion by the commission, motion and final decision on whether the application for permit is approved or disapproved.

(8) Only the issues submitted by the parties in the demand for hearing and responses shall be considered by the commission as a basis for its decision.

b. Decision by the commission. The decision by the commission shall be stated on the record and shall be final agency action pursuant to Iowa Code chapter 17A. If the commission reverses or modifies the department's decision, the department shall issue the appropriate permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

567—65.106(455B,459,459B) Confinement feeding operation and stockpile separation distance requirements. All confinement feeding operation structures, stockpiles and qualified stockpile structures shall be separated from locations and objects as specified in this rule regardless of whether a construction permit is required. The separation distance requirements of this rule shall apply to all confinement feeding operation structures, unless specifically stated otherwise. If two or more confinement feeding operations are considered one operation as provided in rule 567—65.1(455B,459,459A,459B), definitions of "adjacent—air quality" and "adjacent—water

quality," the combined animal unit capacities of the individual operations shall be used for the purpose of determining the required separation. Exemptions to the following requirements are allowed to the extent provided in rule 567—65.107(455B,459,459B).

65.106(1) *Separation distance from residences, businesses, churches, schools and public use areas for new confinement feeding operations.* Separation from residences, businesses, churches, schools and public use areas shall be as specified in Iowa Code section 459.202 and summarized in Table 6 located at iowadnr.gov/afo/rules. The residence, business, church, school or public use area must exist at the time an applicant submits an application for a construction permit to the department, at the time an MMP or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the confinement feeding operation structure begins if a construction permit or construction approval letter is not required.

65.106(2) *Separation distance from residences, businesses, churches, schools and public use areas for the expansion of prior constructed operations.* Except as provided in rule 567—65.107(455B,459,459B) or as specified in Iowa Code section 459.203, an existing confinement feeding operation may be expanded if any of the following applies:

a. For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(1) and 459.202(3) and summarized in Tables 6c (for swine, sheep, horses and poultry) and 6d (for beef and dairy cattle) located at iowadnr.gov/afo/rules.

b. For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(2) and 459.202(3) and summarized in Tables 6a (for swine, sheep, horses and poultry) and 6b (for beef and dairy cattle) located at iowadnr.gov/afo/rules.

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(4) and 459.202(5) and summarized in Table 6 located at iowadnr.gov/afo/rules.

65.106(3) *Separation distance from water sources, major water sources, known sinkholes and agricultural drainage wells.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a SAFO. Separation distances from any confinement feeding operation structure to surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources and major water sources shall be as specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules. For the required separation distance to a major water source to apply, the major water source must be included in Table 1 located at iowadnr.gov/afo/rules at the time an applicant submits an application for a construction permit to the department, at the time an MMP or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the AFO structure if a construction permit, MMP or construction design statement is not required.

65.106(4) *Separation distance from designated wetlands.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a SAFO. A confinement feeding operation structure shall not be constructed closer than 2,500 feet away from a "designated wetland" as defined and referenced in rule 567—65.1(455B,459,459A,459B). This requirement shall not apply to a confinement feeding operation structure if any of the following occur before the wetland is included in "Designated Wetlands in Iowa":

a. The confinement feeding operation structure already exists. This exemption also applies to additional confinement feeding operation structures constructed at the site of such an existing confinement feeding operation structure after a wetland is included in "Designated Wetlands in Iowa."

b. Construction of a confinement feeding operation structure has begun as provided in subrule 65.6(1).

c. An application for a permit to construct a confinement feeding operation structure has been submitted to the department.

d. An MMP concerning a proposed confinement feeding operation structure for which a construction permit is not required has been submitted to the department.

65.106(5) *Separation distance from water wells.* For a confinement feeding operation structure constructed after March 20, 1996, the separation distance to water wells shall be as specified in Tables 6 to 6d located at iowadnr.gov/afo/rules.

65.106(6) *Separation distance from public thoroughfares.* A confinement feeding operation structure shall not be constructed or expanded within 100 feet from the right-of-way or a public easement of a public thoroughfare.

65.106(7) *Stockpile and qualified stockpile structures—separation distance from residences.* A stockpile or qualified stockpile structure shall not be placed closer than 1,250 feet from a residence not owned by the titleholder of the land where the stockpile is located, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

65.106(8) *Stockpile and qualified stockpile structures—separation distance from tile inlets, designated areas, high-quality water resources, agricultural drainage wells and known sinkholes.* A stockpile or qualified stockpile structure shall not be placed within the following distances from any of the following:

a. A terrace tile inlet or surface tile inlet, 200 feet, unless the dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the terrace tile inlet or surface tile inlet. A terrace tile inlet or surface tile inlet does not include a tile inlet that is not directly connected to a tile line that discharges directly into a water of the state.

b. Designated area, 400 feet. However, an increased separation distance of 800 feet shall apply to all of the following:

(1) A high-quality water resource.

(2) An agricultural drainage well (400 feet for dry bedded manure).

(3) A known sinkhole (400 feet for dry bedded manure).

c. Paragraph 65.106(8)*"b"* does not apply if dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the designated area.

65.106(9) *Measurement of separation distances.* Except as provided in paragraph 65.106(9)*"f,"* the distance between confinement feeding operation structures and locations or objects from which separation is required shall be measured horizontally by standard survey methods between the closest point of the location or object (not a property line) and the closest point of the confinement feeding operation structure. The department may require that a separation distance be measured and certified by a licensed land surveyor, a PE licensed in the state of Iowa, or an NRCS-qualified staff person in cases where the department cannot confirm a separation distance. For purposes of this subrule, structure shall not include areas that do not house animals or store manure or litter.

a. Measurement to an unformed manure storage structure shall be to the point of maximum allowable level of manure pursuant to paragraph 65.100(1)*"b."*

b. Measurement to a public use area shall be to the facilities that attract the public to congregate and remain in the area for significant periods of time, not to the property line.

c. Measurement to a major water source or water source shall be to the top of the bank of the stream channel of a river or stream or the ordinary high-water mark of a lake, reservoir or designated wetland.

d. Measurement to a public thoroughfare shall be to the closest point of the right-of-way.

e. The separation distance for a confinement feeding operation structure qualifying for the exemption to separation distances under paragraphs 65.107(4)*"b"* and *"c"* shall be measured from the closest point of the confinement feeding operation structure.

f. Measurement to a cemetery shall be to the closest point of its property line.

g. Measurement to a stockpile shall be to the closest point of the stockpile.

567—65.107(455B,459,459B) Exemptions to confinement feeding operation and stockpile separation distance requirements and prohibition of construction on the one hundred year floodplain.

65.107(1) *Exemptions to separation distance requirements from a residence, business, church, school and public use area.* As specified in Iowa Code section 459.205, the separation distances required from residences, businesses, churches, schools and public use areas specified in Iowa Code sections 459.202 and 459.204B and required in subrules 65.106(1), 65.106(2), and 65.106(7), including Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to the following:

a. A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a SAFO or if the stockpile consists of dry manure originating from a SAFO.

b. A confinement feeding operation structure that is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure, stockpile or qualified stockpile structure is located, under such terms and conditions that the parties negotiate. The waiver shall be specific to the construction or expansion project for which it is submitted. The waiver may include specific language to include future projects or expansions. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from which separation is required. The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section 459.202. A copy of the recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required or as part of the construction permit application documents pursuant to subrule 65.104(1).

c. A confinement feeding operation structure that is constructed or expanded closer than the separation distances required in subrules 65.106(1) and 65.106(2), including Tables 6 to 6d located at iowadnr.gov/afo/rules, if the residence, business, church or school was constructed or expanded after the date that the confinement feeding operation commenced operating or if the boundaries of the public use area or the city expanded after the date that the confinement feeding operation commenced operating. A confinement feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the confinement feeding operation does not change the date the operation commenced operating.

d. The stockpile consists of dry manure originating exclusively from a confinement feeding operation that was constructed before January 1, 2006, unless the confinement feeding operation is expanded after that date.

65.107(2) *Exemptions to separation distance requirements from public thoroughfares.* As specified in Iowa Code section 459.205, the separation required from public thoroughfares specified in Iowa Code section 459.202 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules shall not apply to any of the following:

a. A confinement building or a formed manure storage structure that is part of a SAFO. However, the exemptions of this subrule shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

b. If the state or a political subdivision constructing or maintaining the public thoroughfare executes a written waiver with the titleholder of the land where the confinement feeding operation structure is located. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required, or as part of the construction permit application documents pursuant to subrule 65.104(1).

65.107(3) *Exemptions to separation distance requirements for prior constructed operations and for operations that expand based on prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and that does not comply with the

statute's distance requirement may continue to operate regardless of the distance requirement and may expand as provided in subrule 65.106(2).

65.107(4) *Exemptions to separation distance requirements for prior constructed operations that expand and cannot comply with prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and that does not comply with the distance requirements established in rule 567—65.106(455B,459,459B) and the exemption in subrule 65.107(3) may be expanded if all of the following apply to the expansion:

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required in Iowa Code section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

1. May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

2. January 1, 1999, for a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

1. An animal weight capacity of 625,000 pounds for animals other than cattle.

2. An animal weight capacity of 1,600,000 pounds for cattle.

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) 1,000 animal units.

65.107(5) *Exemptions to separation distance requirements for prior constructed operations that replace an unformed manure storage structure.* As specified in Iowa Code section 459.203, a confinement feeding operation that includes a confinement feeding operation structure that is constructed prior to March 1, 2003, may be expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures if all of the following apply:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any 14-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under Iowa Code section 459.202 than any other confinement feeding operation structure that is part of the operation.

65.107(6) *Exemption to separation distance requirements from cemeteries.* As specified in Iowa Code section 459.205, the separation distance required between a confinement feeding operation structure and a cemetery shall not apply if the confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

65.107(7) *Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment.* As specified in Iowa Code section 459.310(3), the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources, major water sources and designated wetlands, specified in Iowa Code section 459.310 and summarized

in Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to a farm pond or privately owned lake as defined in Iowa Code section 462A.2, or to a confinement building, a manure storage structure or an egg washwater storage structure constructed with a secondary containment barrier according to subrule 65.108(11). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.104(5) prior to beginning construction of the confinement feeding operation structure.

65.107(8) *Exemptions to prohibition on one hundred year floodplain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands—replacement formed manure storage structures.* As specified in Iowa Code section 459.310(4), a separation distance required in subrules 65.106(3) and 65.106(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subrule 65.9(1) shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the replacement formed manure storage structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subrules 65.106(3) and 65.106(4) than any other confinement feeding operation structure that is part of the operation.

(5) The replacement formed manure storage structure meets or exceeds the requirements of Iowa Code section 459.307 and subrule 65.108(10).

b. A replacement formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a waiver granted by the department. In granting the waiver, the department shall make a finding of all of the following:

(1) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure complies with standards adopted pursuant to Iowa Code section 459.307 and subrule 65.108(10).

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities. If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the waiver, require that the replaced manure storage structure be properly closed.

567—65.108(455B,459,459B) Manure storage structure design requirements. The requirements in this rule apply to all confinement feeding operation structures unless specifically stated otherwise.

65.108(1) *Drainage tile removal for new construction of a manure storage structure.* Prior to constructing a manure storage structure, other than storage of manure in an exclusively dry form, the site for the AFO structure shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. An inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm prior to excavation for an unformed manure storage structure.

b. Drainage tile lines discovered during the tile inspection of an unformed manure storage structure shall be removed and rerouted in or in an area outside the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of berm.

c. The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgrade from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, or plugged with concrete, Portland cement concrete grout or similar materials. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located even if located under the floor; however, the tile lines must be tied into the perimeter drain tile.

d. Other proven methods approved by the department may be utilized to discover drainage tile lines.

e. The requirements of this subrule do not apply if sufficient information is provided that allows the department to conclude that the location does not have a history of drainage tile.

65.108(2) *Drainage tile removal around an existing manure storage structure.* The owner of an aerobic structure, anaerobic lagoon or earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before March 20, 1996, but after December 31, 1992, shall inspect for drainage tile lines as provided in this subrule, and all applicable records of known drainage tiles shall be examined. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before January 1, 1993, but after May 31, 1985, shall inspect for drainage tiles as provided in this subrule, and all applicable records of known drainage tiles shall be examined. Drainage tile lines shall not be installed within the separation distance provided in paragraph 65.108(1)*"b"* once the basin has been constructed.

a. Inspection shall be by digging an inspection trench of at least ten inches wide around the structure to a depth of at least 6 feet from the original grade and within 25 feet from the outside edge of the berm. The owner first shall inspect the area where trenching is to occur and manure management records to determine if there is any evidence of leakage and, if so, shall contact the department for further instructions as to proper inspection procedures. The owner of a confinement feeding operation shall either obtain permission from an adjoining property owner or trench up to the boundary line of the property if the distance of 25 feet would require the inspection trench to go onto the adjoining property.

b. The owner of the confinement feeding operation may utilize other proven methods approved by the department to discover drainage tile lines.

c. The drainage tile lines discovered near an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, shall be removed within 25 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the aerobic structure, anaerobic lagoon or earthen manure storage basin shall be rerouted within 25 feet from the berm to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, or Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines. Drainage tile lines that were installed at the time of construction to lower a groundwater table may either be avoided if the location is known or may remain at the location if discovered.

d. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage structure or an earthen waste slurry storage basin with a tile drainage system to artificially lower the groundwater table shall have a device to allow monitoring of the water in the drainage tile lines that lower the groundwater table and to allow shutoff of the drainage tile lines if the drainage tile lines do not have a surface outlet accessible on the property where the aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin is located.

e. If the owner of the confinement feeding operation discovers drainage tile that projects underneath the berm, the owner shall follow one of the following options:

(1) Contact the department to obtain permission to remove the drainage tile under the berm. The manure in the structure must be lowered to a point below the depth of the tile prior to removing the drainage tile from under the berm. Prior to using the structure, a new percolation test must be submitted to the department and approval received from the department.

(2) Grout the length of the tile under the berm to the extent possible. The material used to grout shall include concrete, Portland cement concrete grout or similar materials.

f. A waiver to this subrule may be granted by the director if sufficient information is provided that the location does not have a history of drainage tile.

g. A written record describing the actions taken to determine the existence of tile lines, the findings, and actions taken to comply with this subrule shall be prepared and maintained as part of the MMP records.

65.108(3) *Earthen waste slurry storage basins.* An earthen waste slurry storage basin shall have accumulated manure removed at least twice each year unless there is sufficient basin capacity to allow removal of manure once each year and maintain freeboard as determined pursuant to paragraph 65.100(1)*"b."*

65.108(4) *Earthen manure storage basins.* An earthen manure storage basin shall have accumulated manure removed at least once each year. An earthen manure storage basin constructed after [the effective date of these rules] must have enough manure storage capacity for 8 months. An earthen manure storage basin may have enough manure storage capacity to contain the manure from the confinement feeding operation for up to 14 months and maintain freeboard as determined pursuant to paragraph 65.100(1)*"b."*

65.108(5) *Soil testing for earthen structures.* Applicants for construction permits for earthen manure storage structures shall submit soils information according to this subrule for the site of the proposed structure. All subsurface soil classification shall be based on American Society for Testing and Materials Designations D 2487-92 or D 2488-90. Soil corings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Soil corings shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil corings shall be submitted with a construction permit application and shall include a description of the geologic units encountered; a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin and a discussion that addresses the suitability of the proposed structure at the site. All soil corings shall be taken by a method that identifies the continuous soil profile and does not result in the mixing of soil layers. The number and location of the soil corings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

a. A minimum of four soil corings reflecting the continuous soil profile is required for each anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Corings which are intended to represent soil conditions at the corner of the structure must be located within 50 feet of the bottom edge of the structure and spaced so that one coring is as close as possible to each corner. Should there be no bottom corners, corings shall be equally spaced around the structure to obtain representative soil information for the site. An additional coring will be required if necessary to ensure that one coring is at the deepest point of excavation. For an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin larger than four acres water surface area, one additional coring per acre is required for each acre above four acres surface area.

b. All corings shall be taken to a minimum depth of ten feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin.

c. At least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin or into bedrock, whichever is shallower.

d. Upon abandonment of the soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

65.108(6) *Hydrology.*

a. Groundwater table. A minimum separation of four feet between the top of the liner for any unformed manure storage structure or earthen egg washwater storage structure and the groundwater table is recommended; however, in no case shall the top of the liner for an unformed manure storage structure or earthen egg washwater storage structure be below the groundwater table. If the groundwater table is less than two feet below the top of the liner for an unformed manure storage structure or earthen egg washwater storage structure, the unformed manure storage structure or earthen egg washwater storage structure shall be provided with a synthetic liner as described in paragraph 65.108(8)*"f."*

b. Permanent artificial lowering of groundwater table.

(1) Unformed structures. The groundwater table around an unformed manure storage structure or earthen egg washwater storage structure may be artificially lowered to levels required in paragraph 65.108(6)*"a"* by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. Detailed engineering and soil drainage information shall be provided with a construction permit application for an unformed manure storage structure or earthen egg washwater storage structure if a drainage system for artificially lowering the groundwater table will be installed. The level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table. If a drainage tile around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. Drainage tile lines shall be installed between the outside of the proposed toe of the berm and within 25 feet of the outside of the toe of the berm. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located.

(2) Formed structures. For a formed manure storage structure or a formed egg washwater storage structure, partially or completely constructed below the normal soil surface, a perimeter tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure. The perimeter tile shall include a sample port to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the drainage tile lines if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.

c. Determination of groundwater table. For purposes of this rule, groundwater table is the seasonal high-water table determined by a licensed PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either formed or unformed structures:

1. Temporary monitoring wells. A minimum of three temporary monitoring wells shall be installed. The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the bottom of the liner of an unformed manure storage structure or to at least two feet below the footings of a formed manure storage structure.

- Unformed structures. For an unformed manure storage structure, each monitoring well may be installed in the existing core holes resulting from the corings required in subrule 65.108(5).

- Formed structures. For a formed manure storage structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed structure is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

2. Test pits. The department may allow use of test pits in lieu of temporary monitoring wells if seasonal variation in climatic patterns, soil and geologic conditions prevent accurate determination of the seasonal high-water table or prior to the construction of an unformed manure storage structure liner to ensure that the required separation distance to the groundwater table is being met. The bottom of each test pit shall be at least two feet below the floor of the manure storage structure or egg washwater storage structure. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS-qualified staff person for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. One test pit shall be located in each corner and one in the center of the proposed manure control structure, unless otherwise specified by the department. Test pits shall be backfilled and compacted to achieve the seepage loss as outlined in subrule 65.108(7). A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Construction specifications; and
- Weather conditions both prior to and during the period in which test pits are open.

(2) The seasonal high-water table shall be determined by measuring the groundwater level in the temporary monitoring wells not earlier than seven days following installation and shall include consideration of NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.108(6)*"b,"* the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

65.108(7) *Seals for unformed manure storage structures and unformed egg washwater storage structures.* An unformed manure storage structure or egg washwater storage structure shall be sealed such that seepage loss through the seal shall not exceed 1/16 inch per day at the design depth of the structure. Following construction of the structure, the results of a testing program that indicates the adequacy of the seal shall be provided to that department in writing prior to start-up of a permitted operation.

65.108(8) *Unformed manure storage structure and unformed egg washwater storage structure liner design and construction standards.* An unformed manure storage structure or unformed egg washwater storage structure that receives a construction permit after January 21, 1998, shall comply with the following minimum standards in addition to subrule 65.108(7).

a. If the location of the proposed unformed manure storage structure or unformed egg washwater storage structure contains suitable materials as determined by the soil corings taken pursuant to subrule 65.108(5), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of six inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of six inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed unformed manure storage structure or unformed egg washwater storage structure does not contain suitable materials as determined by the soil corings taken pursuant to subrule 65.108(5), suitable materials shall be obtained from another location approved by the department and shall be compacted to establish a minimum of a 24-inch liner.

c. Where sand seams, gravel seams, organic soils or other materials that are not suitable are encountered during excavation, the area where they are discovered shall be overexcavated a minimum of 24 inches and replaced with suitable materials and compacted.

d. All loose lift material must be placed in lifts of nine inches or less and compacted. The material shall be compacted at or above optimum moisture content and meet a minimum of 95 percent of the maximum density as determined by the Standard Proctor test after compaction.

e. For purposes of this rule, suitable materials means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for unformed manure storage structure or unformed egg washwater storage structure construction are not considered suitable liner materials.

f. As an alternative to the above standards, a synthetic liner may be used. If the use of a synthetic liner is planned for an unformed manure storage structure or unformed egg washwater storage structure, the permit application shall outline how the site will be prepared for placement of the liner, the physical, chemical, and other pertinent properties of the proposed liner, and information on the procedures to be used in liner installation and maintenance. In reviewing permit applications that involve use of synthetic liners, the department will consider relevant synthetic liner standards adopted by industry, governmental agencies, and professional organizations as well as technical information provided by liner manufacturers and others.

g. For berm erosion control, the following requirements apply to unformed manure storage structures and unformed egg washwater storage structures constructed after May 12, 1999:

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the structure.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the structure where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the structure.

(4) To control erosion, perennial (grass) vegetation must be maintained on the outer, top and inner dikes up to the two-foot freeboard level of the unformed storage structure or earthen egg washwater storage structure, unless covered by concrete, riprap, synthetic liners or similar erosion control materials or measures.

(5) The owner of a confinement feeding operation with an unformed manure storage structure or an unformed egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found that may impact either structural stability or liner integrity shall be corrected in a timely manner.

h. After May 29, 1997, a person shall not construct a new or expand an existing unformed manure storage structure or an unformed egg washwater storage structure within an agricultural drainage well area.

i. The top width of any dike shall be a minimum of ten feet wide. The interior and exterior dike slopes shall not be steeper than three feet horizontal to one foot vertical.

65.108(9) *Anaerobic lagoon design standards.* An anaerobic lagoon shall meet the requirements of this subrule.

a. General.

(1) Depth. Liquid depth shall be at least 8 feet, but 15 to 20 feet is preferred if soil and other site conditions allow.

(2) Inlet. One subsurface inlet at the center of the lagoon or dual (subsurface and surface) inlets are preferred to increase dispersion. If a center inlet is not provided, the inlet structure shall be located at the center of the longest side of the anaerobic lagoon.

(3) Shape. Long, narrow anaerobic lagoon shapes decrease manure dispersion and should be avoided. Anaerobic lagoons with a length-to-width ratio of greater than 3:1 shall not be allowed.

(4) Aeration. Aeration shall be treatment as an “add-on process” and shall not eliminate the need for compliance with all anaerobic lagoon criteria contained in these rules.

(5) Manure loading frequency. The anaerobic lagoon shall be loaded with manure and dilution water at least once per week.

(6) Design procedure. Total anaerobic lagoon volume shall be determined by summation of minimum stabilization volume; minimum dilution volume (not less than 50 percent of minimum stabilization volume); manure storage between periods of disposal; and storage for eight inches of precipitation.

(7) Manure storage period. Annual or more frequent manure removal from the anaerobic lagoon, preferably prior to May 1 or after September 15 of the given year, shall be practiced to minimize odor production. Design manure storage volume between disposal periods shall not exceed the volume required to store 14 months' manure production. Manure storage volume shall be calculated based on the manure production values found in Table 5 located at iowadnr.gov/afo/rules.

b. Minimum stabilization volume and loading rate.

(1) For all animal species other than beef cattle, there shall be 1,000 cubic feet minimum design volume for each 5 pounds of volatile solids produced per day if the volatile solids produced per day are 6,000 pounds or fewer and for each 4 pounds if the volatile solids produced per day are more than 6,000 pounds. For beef cattle, there shall be 1,000 cubic feet minimum design volume for each 10 pounds of volatile solids produced per day.

(2) In Lyon, Sioux, Plymouth, Woodbury, Osceola, Dickinson, Emmet, Kossuth, O'Brien, Clay, Palo Alto, Cherokee, Buena Vista, Pocahontas, Humboldt, Ida, Sac, Calhoun, and Webster Counties for all animal species other than beef there shall be 1,000 cubic feet minimum design volume for each 4.5 pounds of volatile solids per day if the volatile solids produced per day are 6,000 pounds or fewer. However, if a water analysis as required in subparagraph 65.108(9)*"c"*(2) below indicates that the sulfate level is below 500 milligrams per liter, then the rate is 1,000 cubic feet for each 5.0 pounds of volatile solids per day.

(3) Credit shall be given for removal of volatile solids from the manure stream prior to discharge to the lagoon. The credit shall be in the form of an adjustment to the volatile solids produced per day. The adjustments shall be at the rate of 0.5 pound for each pound of volatile solids removed. For example, if a swine facility produces 7,000 pounds of volatile solids per day, and if 2,000 pounds of volatile solids per day are removed, the volatile solids produced per day would be reduced by 1,000 pounds, leaving an adjusted pounds of volatile solids produced per day of 6,000 pounds (for which the loading rate would be 5 pounds according to subparagraph 65.108(9)*"b"*(1) above).

(4) Credit shall be given for mechanical aeration if the upper one-third of the lagoon volume is mixed by the aeration equipment and if at least 50 percent of the oxygen requirement of the manure is supplied by the aeration equipment. The credit shall be in the form of an increase in the maximum loading rate (which is the equivalent of a decrease in the minimum design volume) in accordance with Table 8 located at iowadnr.gov/afo/rules.

(5) If a credit for solids removal is given in accordance with subparagraph 65.108(9)*"b"*(3) above, the credit for qualified aeration shall still be given. The applicant shall submit evidence of the five-day biochemical oxygen demand (BOD5) of the manure after the solids removal so that the aeration credit can be calculated based on an adjustment rate of 0.5 pound for each pound of solids removed.

(6) American Society of Agricultural and Biological Engineers standards, "Manure Production and Characteristics," D384.1, or Midwest Plan Service-18, Table 2-1, shall be used in determining the BOD5 production and volatile solid production of various animal species.

c. Water supply.

(1) The source of the dilution water discharged to the anaerobic lagoon shall be identified.

(2) The sulfate concentration of the dilution water to be discharged to the anaerobic lagoon shall be identified. The sulfate concentration shall be determined by standard methods as defined in rule 567—60.2(455B).

(3) A description of available water supplies shall be provided to prove that adequate water is available for dilution. It is recommended that, if the sulfate concentration exceeds 250 mg/l, then an alternate supply of water for dilution should be sought.

d. Initial lagoon loading. Prior to the discharge of any manure to the anaerobic lagoon, the lagoon shall be filled to a minimum of 50 percent of its minimum stabilization volume with fresh water.

e. Lagoon manure and water management during operation. Following initial loading, the manure and water content of the anaerobic lagoon shall be managed according to either of the following:

(1) For single-cell lagoons or multicell lagoons without a site-specific lagoon operation plan. The total volume of fresh water for dilution added to the lagoon annually shall equal one-half the minimum stabilization volume. At all times, the amount of fresh water added to the lagoon shall equal or exceed the amount of manure discharged to the lagoon.

(2) For a two- or three-cell anaerobic lagoon. The manure and water content of the anaerobic lagoon may be managed in accordance with a site-specific lagoon operation plan approved by the department. The lagoon operation plan must describe in detail the operational procedures and monitoring program to be followed to ensure proper operation of the lagoon. Operational procedures shall include identifying the amounts and frequencies of planned additions of manure, fresh water and recycle water, and amount and frequencies of planned removal of solids and liquids. Monitoring information shall include locations and intervals of sampling, specific tests to be performed, and test parameter values used to indicate proper lagoon operation. As a minimum, annual sampling and testing of the first lagoon cell for electrical conductivity and either chemical oxygen demand (COD) or total ammonia (NH3 + NH4) shall be required.

f. Manure removal. If the anaerobic lagoon is to be dewatered once a year, manure should be removed to approximate the annual manure volume generated plus the dilution water used. If the anaerobic lagoon is to be dewatered more frequently, the anaerobic lagoon liquid level should be managed to maintain adequate freeboard.

65.108(10) *Concrete standards.*

a. A formed manure storage structure that is constructed of concrete on or after March 24, 2004, and that is part of a confinement feeding operation other than a SAFO shall meet the following minimum design and concrete standards and be designed by either of the two methods listed below:

(1) Design of a formed manure storage structure prepared and sealed by a PE or an NRCS engineer shall be in accordance with the American Concrete Institute (ACI) Building Code ACI 318, ACI 360 or ACI 350; Portland Cement Association publication EB075, EB001 or IS072; or Midwest Plan Service (MWPS) publication MWPS-36 or MWPS TR-9 and shall also meet the minimum design and concrete standards.

(2) If a formed manure storage structure is not designed by a PE or NRCS engineer, the design and specifications shall be in conformance with MWPS-36 (for a belowground rectangular tank), with MWPS TR-9 (for a circular tank) or in accordance with Appendix C located at iowadnr.gov/afo/rules (for a belowground, laterally braced rectangular tank). A formed manure storage structure with a depth greater than 12 feet shall be designed by a PE or NRCS engineer.

b. Formed manure storage structures used to store liquid manure, dry manure or dry bedded manure shall meet all of the following minimum requirements:

(1) All concrete shall have the following minimum as-placed compressive strengths and shall meet American Society for Testing and Materials (ASTM) standard ASTM C 94:

1. 4,000 pounds per square inch (psi) for walls, floors, beams, columns and pumpouts;
2. 3,000 psi for the footings.

The average concrete strength by testing shall not be below design strength. No single test result shall be more than 500 psi less than the minimum compressive strength.

(2) Cementitious materials shall consist of Portland cement conforming to ASTM C 150. Aggregates shall conform to ASTM C 33. Blended cements in conformance with ASTM C 595 are allowed only for concrete placed between March 15 and October 15. Portland-pozzolan cement or Portland blast furnace slag blended cements shall contain at least 75 percent, by mass, of Portland cement.

(3) All concrete placed for walls shall be consolidated or vibrated, by manual or mechanical means, or a combination, in a manner that meets ACI 309.

(4) All steel rebar used shall be a minimum of grade 40 steel. All rebar, with the exception of rebar dowels connecting the walls to the floor or footings, shall be secured and tied in place prior to the placing of concrete.

(5) Waterstops shall be installed in all areas where fresh concrete meets hardened concrete. Waterstops shall be made of plastic, rolled bentonite or similar materials approved by the department. Only embedded waterstops are allowed in vertical joints. Adhesive or self-sticking waterstops shall not be used on vertical joints.

(6) The finished subgrade of a formed manure storage structure shall be graded and compacted to provide a uniform and level base and shall be free of vegetation, manure and debris. For the purpose of this subrule, "uniform" means a finished subgrade with similar soils.

(7) When the groundwater table, as determined in paragraph 65.108(6)*"c"* is above the bottom of the formed structure, a drain tile shall be installed along the footings to artificially lower the groundwater table pursuant to paragraph 65.108(6)*"b."* The drain tile shall be placed within three feet of the footings as indicated in Appendix C, Figure C-1, located at iowadnr.gov/afo/rules and shall be covered with a minimum of two inches of gravel, granular material, fabric or a combination of these materials to prevent plugging the drain tile.

(8) All floor slabs shall be a minimum of five inches thick and have minimum primary reinforcement using one of the following methods:

1. Grade 40 #4 steel rebar, placed at a maximum of 18 inches on center each way in a single mat. Floor slab reinforcement shall be located in the middle of the thickness of the floor slab.

2. Glass fiber-reinforced polymer (GFRP) rebar, fiber-reinforced polymer (FRP) rebar or composite rebar may be used in floor slabs only and shall conform to ACI 440 and Table 3 of ASTM 7957. Supporting documentation shall be submitted for nonsteel rebar demonstrating the equivalency to #4 steel rebar at 18 inches on center each way. GFRP rebar shall not be manufactured using a polyester-based resin system per ASTM D7957 and shall meet the additional following ASTM D7957 parameters:

- Mean Tensile Modulus of Elasticity.....>6,500,000 psi (44,800 MPa)
- Guaranteed Bond Strength.....>1,100 psi (7.6 MPa)

3. Fiber-reinforced concrete (FRC) may be used in floor slabs only and shall conform to the requirements of ASTM C1116/C1116M Type I (steel FRC) and Type III (synthetic FRC). FRC shall provide a minimum average equivalent strength ratio (Re3) of 30 percent when tested in accordance with ASTM C1812/1812M.

4. Fiber mesh shall not be substituted for primary reinforcement.

5. Nondestructive methods to verify the floor slab thickness may be required by the department. The results shall indicate that at least 95 percent of the floor slab area meets the minimum required thickness. In no case shall the floor slab thickness be less than four and one-half inches.

(9) The footing or the area where the floor comes in contact with the walls and columns shall have a thickness equal to the wall thickness, but in no case be less than eight inches, and the width shall be at least twice the thickness of the footing. All exterior walls shall have footings below the frostline. Tolerances shall not exceed negative one-half inch of the minimum footing dimensions.

(10) The vertical steel of all walls shall be extended into the footing and be bent at 90° or a separate dowel shall be installed as a #4 rebar that is bent at 90° with at least 20 inches of rebar in the wall and extended into the footing within 3 inches of the bottom of the footing and extended at least 3 inches horizontally, as indicated in Appendix C, Figure C-1, located at iowadnr.gov/afo/rules. As an alternative to the 90° bend, the dowel may be extended at least 12 inches into the footing, with a minimum concrete cover of 3 inches at the bottom. Dowel spacing (bend or extended) shall be the same as the spacing for the vertical rebar. In lieu of dowels, mechanical means or alternate methods may be used as anchorage of interior walls to footings.

(11) All footings, slabs, and walls shall be formed with rigid forming systems and shall not be earth-formed. Form ties shall be nonremovable to provide a liquid-tight structure. No conduits or pipes shall be installed through an outside wall below the maximum liquid level of the structure.

(12) All wall reinforcement shall be placed so as to have a rebar cover of two inches from the inside face of the wall for a belowground manure storage structure. Vertical wall reinforcement should be placed closest to the inside face. Rebar placement shall not exceed tolerances specified in ACI 318.

(13) All construction joints in exterior walls shall be constructed to prevent discontinuity of steel and have properly spliced rebar placed through the joint.

(14) All concrete shall be cured for at least seven days after placing, in a manner which meets ACI 308, by maintaining adequate moisture or preventing evaporation. Proper curing shall be done by ponding, spraying or fogging water; by using a curing compound that meets ASTM C 309; or by using wet burlap, plastic sheets or similar materials.

(15) Backfilling of the walls shall not start until the floor slats or permanent bracing has been installed and grouted. Backfilling shall be performed with material free of vegetation, large rocks or debris.

(16) If air temperature is below 40 degrees Fahrenheit, the ACI Standard 306, "Recommended Practice for Cold Weather Concreting," should be followed. If ready-mix concrete temperature is above 90 degrees Fahrenheit, the ACI Standard 305, "Recommended Practice for Hot Weather Concreting," should be followed.

c. Formed manure storage structures constructed of steel or pre-cast concrete shall be designed by a PE and certified by the PE and the manufacturer's representative that the structure was built in accordance with the manufacturer's requirements.

65.108(11) *Secondary containment barriers for manure storage structures.* Secondary containment barriers used to qualify any confinement feeding operation for the exemption provision in subrule 65.107(7) shall be filed with the department according to subrule 65.104(5) and shall meet the following design standards:

a. A secondary containment barrier shall consist of a structure surrounding or downslope of a manure storage structure and shall be designed according to either of the following:

(1) If the manure storage structure is used to store liquid or semiliquid manure, the secondary containment barrier shall be designed to contain 120 percent of the volume of manure stored above the manure storage structure's final grade or 50 percent of the volume of manure stored belowground or partially belowground, whichever is greater. Engineering drawings prepared by a PE licensed in Iowa or an NRCS-qualified staff person must be submitted according to procedures set forth in subrule 65.104(5) and must show compliance with subrule 65.108(11). If the containment barrier does not surround the manure storage structure, upland drainage must be diverted. For purposes of this subrule only, semiliquid manure means manure that contains a percentage of dry matter that results in manure too solid for pumping but too liquid for stacking.

(2) If the manure storage structure is used for the storage of only dry manure or dry bedded manure, the secondary containment barrier shall be designed to contain at least 10 percent of the volume of manure stored. Detailed drawings prepared by the owner or a representative must be submitted according to procedures set forth in subrule 65.104(5) and must show compliance with subrule 65.108(1). If the containment barrier does not surround the manure storage structure, upland drainage must be diverted. Any dry manure retained by the secondary containment barrier shall be removed and properly disposed of within 14 days.

b. The barrier may be constructed of earth, concrete, or a combination of both. If a relief outlet or valve is installed, the relief outlet or valve shall remain closed. Any accumulated liquid due to an overflow shall be land-applied as stated in the operation's MMP.

c. The base shall slope to a collecting area where storm water can be pumped out. If storm water is contaminated with manure, it shall be land-applied at normal fertilizer application rates in compliance with rule 567—65.101(455B,459,459B).

d. Secondary containment barriers constructed entirely or partially of earth shall comply with the following requirements:

(1) The soil surface, including dike, shall be constructed to prevent downward water movement at rates greater than $1 \times 10\text{-}6$ cm/sec and shall be maintained to prevent downward water movement at rates greater than $1 \times 10\text{-}5$ cm/sec.

(2) Dikes shall not be steeper than 45 degrees and shall be protected against erosion. If the slope is 19 degrees or less, grass can be sufficient protection, provided it does not interfere with the required soil seal.

(3) The top width of the dike shall be no less than three feet.

e. Secondary containment barriers constructed of concrete shall be watertight and comply with the following requirements:

(1) The base of the containment structure shall be designed to support the manure storage structure and its contents.

(2) The concrete shall be routinely inspected for cracks, which shall be repaired with a suitable sealant.

f. Nothing shall be stored within a secondary containment barrier, including but not limited to machinery or feedstock.

65.108(12) *Human sanitary waste.* Human sanitary waste shall not be discharged to a manure storage structure or egg washwater storage structure.

65.108(13) *Requirements for qualified operations.* A confinement feeding operation that meets the definition of a qualified operation shall only use an aerobic structure for manure storage and treatment. This requirement does not apply to the following types of confinement feeding operations: (1) one that only handles dry manure; (2) an egg washwater storage structure; (3) a confinement feeding operation that was constructed before May 31, 1995, and does not expand; or (4) a confinement feeding operation that processes manure using an anaerobic digester system.

65.108(14) *Aboveground formed manure storage structures with external outlet or inlet below the liquid level.* A formed manure storage structure that is constructed to allow the storage of manure wholly or partially above ground and that has an external outlet or inlet below the liquid level shall have all of the following:

a. Two or more shutoff valves on any external outlet or inlet below the liquid level. At least one shutoff valve shall be located inside the structure and be operable if the external valve becomes inoperable or broken off. Alternative options may be considered by the department.

b. All external outlets or inlets below the liquid level shall be barricaded, encased in concrete, or otherwise protected to minimize accidental destruction.

c. Construction shall comply with the manufacturer's requirements.

d. An emergency response plan for retaining manure at the site and cleanup if the manure storage structure fails or there is any other type of accidental discharge. The plan shall consist of telephone numbers to comply with subrule 65.2(1) and a list of contractors, equipment, equipment technical support, and alternative manure storage or land application sites that can be used during inclement weather.

567—65.109(455B,459,459B) Construction certification. A confinement feeding operation that obtains a construction permit after March 20, 1996, shall submit to the department a construction certification according to the following:

65.109(1) For a confinement feeding operation that is below the threshold requirements for an engineer prior to using a permitted confinement feeding operation structure, the person responsible for constructing a formed manure storage structure or the permittee shall submit to the department a construction certification, as specified in the construction permit.

65.109(2) For a confinement feeding operation that uses an unformed manure storage structure or an egg washwater storage structure, or an operation that meets or exceeds the threshold requirements for an engineer, a certification from a licensed PE that the confinement feeding operation structure was:

a. Constructed in accordance with the design plan. Any changes to the approved plans must first be authorized by the department and must include a certification that the proposed changes are consistent with the standards of these rules or statute;

b. Supervised by the licensed PE or a designee of the PE during critical points of the construction. A designee shall not be the permittee, the owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;

c. Inspected by the licensed PE after completion of construction and before commencement of operation; and

d. Constructed in accordance with the drainage tile removal standards of subrule 65.108(1) and including a report of the findings and actions taken to comply with subrule 65.108(1).

567—65.110(455B,459,459B) Manure management plan (MMP) requirements.

65.110(1) In accordance with Iowa Code section 459.312, the following persons are required to submit MMPs to the department, including an original MMP and an updated MMP, as required by this rule:

a. An applicant for a construction permit for a confinement feeding operation. However, an MMP shall not be required of an applicant for an egg washwater storage structure or for a SAFO.

b. The owner of a confinement feeding operation, other than a SAFO, if one of the following applies:

(1) The confinement feeding operation was constructed or expanded after May 31, 1985, regardless of whether the confinement feeding operation structure was required to have a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to Iowa Code section 459.303 or whether the person has submitted a prior MMP. If the new manure storage structure does not result in an increase in manure volume for the confinement feeding operation and there is no change in animal category for determining animal units, then a new MMP is not required to be submitted.

c. A person who applies manure in Iowa that was produced in a confinement feeding operation, other than a small operation, located outside of Iowa.

d. A new owner of a confinement feeding operation may apply manure under the most recent owner's MMP until the new owner develops and submits an original MMP. The new owner must develop and submit an original MMP within 60 days after acquiring the operation.

e. Exceptions.

(1) A research college is exempt from this subrule and the MMP requirements of rule 567—65.111(455B,459,459B) for research activities and experiments performed under the authority of the research college and related to confinement feeding operations.

(2) An AFO otherwise required to submit an updated MMP and pay an annual compliance fee may make an election to be considered a SAFO for purposes of filing updated MMPs and annual compliance fees if the confinement feeding operation maintains an animal unit capacity of 500 or fewer animal units. The election shall automatically terminate when more than 500 animal units are housed at the confinement feeding operation at any one time. If the confinement feeding operation exceeds more than 500 animal units, an MMP shall be submitted.

65.110(2) The owner of a proposed confinement feeding operation who is not required to obtain a construction permit pursuant to subrule 65.103(1) but who is required to file an MMP pursuant to paragraph 65.110(1)*"b"* shall file a construction design statement and provide the information required in subrule 65.104(2), including the confinement feeding operation's MMP, to the department at least 30 days before the construction of an AFO structure begins, as defined in subrules 65.6(1) and 65.6(2).

65.110(3) Scope of MMP; updated plans; annual compliance fee.

a. Each confinement feeding operation required to submit an MMP shall be covered by a separate MMP.

b. The owner of a confinement feeding operation who is required to submit an MMP under this rule shall submit an updated MMP on an annual basis to the department. The updated MMP may be submitted by hard copy or by electronic submittal. The updated plan must reflect all amendments made during the period of time since the previous MMP submission.

(1) If the plan is submitted by hard copy, the submittal process shall be as follows: The owner of the AFO shall also submit the updated MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. If the owner of the AFO has not previously submitted an MMP to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied, the owner must submit a complete MMP to each required county. The county auditor or other county official or employee designated by the county board of supervisors may accept the updated plan on behalf of the board. The updated plan shall include documentation that the county board of supervisors or other designated county official or employee received the MMP update.

(2) If the plan is submitted electronically, the submittal process shall be as follows: The owner of the AFO shall submit the updated MMP to the department through the department's electronic web application. Once the submittal has been completed, the department shall provide electronic access of the updated MMP to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied.

(3) The department will stagger the dates by which the updated MMPs are due and will notify each confinement feeding operation owner of the date on which the updated MMP is due. To satisfy the requirements of an updated MMP, an owner of a confinement feeding operation must submit one of the following:

1. A complete MMP;
2. A department-approved document stating that the MMP submitted in the prior year has not changed; or
3. A department-approved document listing all the changes made since the previous MMP was submitted and approved.

c. An annual compliance fee of $0.15 per animal unit at the AFO shall accompany an annual MMP update submitted to the department for approval. The annual compliance fee is based on the animal unit capacity of the confinement feeding operation stated in the updated annual MMP submission. If the person submitting the MMP is a contract producer, as provided in Iowa Code chapter 202, the active contractor shall pay the annual compliance fee.

65.110(4) The department shall review and approve or disapprove all complete MMPs within 60 days of the date they are received.

65.110(5) Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation required to submit an MMP until the department has approved the plan. Manure shall be applied in compliance with rule 567—65.100(455B,459,459B).

65.110(6) Manure storage indemnity fee. All persons required to submit an MMP to the department shall also pay to the department an indemnity fee as required in Iowa Code section 459.503 except those operations constructed prior to May 31, 1995, which were not required to obtain a construction permit.

65.110(7) Filing fee. Any person submitting an original MMP must also pay to the department an MMP filing fee of $250. This fee shall be included with each original MMP being submitted. If the confinement feeding operation is required to obtain a construction permit and to submit an original MMP as part of the construction permit requirements, the applicant must pay the MMP filing fee together with the construction permit application fee, which total $500.

567—65.111(455B,459,459B) MMP content requirements. All MMPs are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 459.312 and as described below.

65.111(1) *General.*

a. A confinement feeding operation that is required to submit an MMP to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources reviewed and approved by the department including but not limited to Iowa State University, the United States Department of Agriculture (USDA), a licensed PE, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils program, the Certified Crop Advisors program, or the Registry of Environmental and Agricultural Professionals program.

b. MMPs shall include all of the following:

(1) The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

(2) The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

(3) The location of the confinement feeding operation identified by county, township, section, ¼ section and, if available, the 911 address.

(4) The animal unit capacity of the confinement feeding operation and, if applicable, the animal weight capacity.

c. A person who submits an MMP shall include a phosphorus index as part of the MMP as required in subrule 65.111(12).

d. A new owner of a confinement feeding operation may apply manure under the most recent owner's MMP until the new owner develops and submits an original MMP. The new owner must develop and submit an original MMP within 60 days after acquiring the confinement feeding operation.

e. A research college is exempt from this subrule for research activities and experiments performed under the authority of the research college and related to confinement feeding operations.

65.111(2) *MMP contents.* Confinement feeding operations that do not sell manure shall submit the following for that portion of the manure which will not be sold:

a. The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

b. The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

c. The location of the confinement feeding operation identified by county, township, section, ¼ section and, if available, the 911 address.

d. An estimate of the nitrogen and phosphorus concentration of the manure and estimate of annual manure production.

e. Application rate calculations based on regulations in subrule 65.111(12).

f. The location of manure application.

g. Soil loss calculations using methods specified for Iowa phosphorus index.

h. A phosphorus index of each field in the MMP, as defined in paragraph 65.111(12)*"a,"* including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

65.111(3) *Estimate of manure concentration and production.* An MMP must include an estimate of nitrogen and phosphorus concentration and an estimate of annual manure production by one of the following methods.

a. Table values in Table 4 located at iowadnr.gov/afo/rules or other credible sources.

b. Actual concentration and production values from the operation or a similar operation. If an actual sample is used to represent the nutrient content of manure, the sample shall be taken in accordance with Iowa State University Extension and Outreach publication SE 3550, "How to Sample Manure for Nutrient Analysis." The department may require documentation of the manure sampling protocol or take a split sample to verify the nutrient content of the operation's manure. If actual nitrogen and phosphorus are used for concentration in the MMP, actual manure production must also be used. Any sample used to estimate the concentration of manure must be less than four years old.

65.111(4) *Optimum crop yield and crop schedule.*

a. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields. The optimum crop yield shall be determined using any of the following methods for the cropland where the manure is to be applied:

(1) Soil survey interpretation record. The plan shall include a map showing soil map units for the fields where manure will be applied. The optimum crop yield for each field shall be determined by using the weighted average of the soil interpretation record yields for the soils on the cropland where the manure is to be applied. Soil interpretation records from NRCS shall be used to determine yields based on soil map units.

(2) USDA county crop yields. The plan shall use the county yield data from the USDA Iowa Agricultural Statistics Service.

(3) Proven yield methods. Proven yield methods may only be used if a minimum of the most recent three years of yield data for the crop is used. These yields can be proven on a field-by-field or farm-by-farm basis. To be considered a farm-by-farm basis, the fields must be owned, rented or leased for crop production by the person required to keep records pursuant to subrule 65.111(8) or included in a manure application agreement in that person's MMP. Crop disaster years may be excluded when there is a 30 percent or more reduction in yield for a particular field or farm from the average yield over the most recent five years. Excluded years shall be replaced by the most recent nondisaster years. Proven yield data used to determine application rates shall be maintained with the current MMP. Any of the following proven yield methods may be used:

1. Proven yields for USDA Farm Service Agency. The plan shall use proven yield data or verified yield data for Farm Service Agency programs.

2. Proven yields for multiperil crop insurance. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data.

3. Proven yields from other methods. The plan shall use the proven yield data and indicate the method used in determining the proven yield.

b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map may be used to indicate crop schedules by field or farm. The planned crop schedule shall name the crop(s) planned to be grown for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted or the first year manure will be applied. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances. However, the penalty preclusion in the previous sentence does not apply to a confinement feeding operation owner subject to the NPDES permit program.

65.111(5) *Location of manure application.*

a. The MMP shall identify each field where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

b. A copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current MMP. The written agreement shall indicate the number of acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation. Owners of dry bedded confinement feeding operations required to have an MMP may execute a written agreement with the landowner or the person renting the land for crop production where the dry bedded manure will be applied.

65.111(6) *Soil loss calculations for phosphorus index.* The MMP shall indicate for each field in the plan the crop rotation, tillage practices and supporting practices used to calculate sheet and rill erosion for the phosphorus index. A copy of an NRCS RUSLE2 erosion calculation record shall satisfy this requirement. The plan shall also identify the highly erodible cropland where manure will be applied.

65.111(7) *Current MMP.* The owner of a confinement feeding operation who is required to submit an MMP shall maintain a current MMP at the site of the confinement feeding operation or at a residence or office of the owner or operator of the operation within 30 miles of the site. The MMP may be an electronic or hard copy. The MMP should include completed manure sales forms if the manure is sold. If manure management practices change, a person required to submit an MMP shall make appropriate changes consistent with this chapter. If values other than the standard table values are used for MMP calculations, the source of the values used shall be identified.

65.111(8) *Recordkeeping.* Records shall be maintained by the owner of a confinement feeding operation who is required to submit an MMP. Records shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the confinement feeding operation or at a residence or office of the owner or operator of the facility within 30 miles of the site. Electronic records are acceptable in lieu of paper

records at the facility or the office. Records to demonstrate compliance with the MMP shall include the following:

a. Factors used to calculate the manure application rate:

(1) Optimum yield for the planned crop.

(2) Types of nitrogen credits and amounts.

(3) Remaining crop nitrogen needed.

(4) Nitrogen and phosphorus concentration and first-year nitrogen availability of the manure. If an actual sample is used, documentation shall be provided.

b. If phosphorus-based application rates are used, the following shall be included:

(1) Crop rotation.

(2) Phosphorus removed by crop harvest of that crop rotation.

c. Maximum allowable manure application rate.

d. Actual manure application information:

(1) Methods of application when manure from the confinement feeding operation was applied.

(2) Date(s) when the manure from the confinement feeding operation was applied.

(3) Location of the field where the manure from the confinement feeding operation was applied, including the number of acres.

(4) The manure application rate.

e. The date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure. However, if the date and application rate information is for fields that are not owned for crop production or that are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with an MMP or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.111(1)*"a."* If manure is applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure.

f. A copy of the current soil test lab results for each field in the MMP.

g. For sales of manure under paragraph 65.111(15)*"b,"* recordkeeping requirements of subparagraph 65.111(15)*"b"*(7) shall be followed.

h. The name and certification number of the certified manure applicator.

65.111(9) *Record inspection.* The department may inspect a confinement feeding operation at any time during normal working hours and may inspect the MMP and any records required to be maintained. As required in Iowa Code section 459.312(12), Iowa Code chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the owner of the confinement feeding operation.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

65.111(10) *Enforcement action.* An owner required to provide the department an MMP pursuant to this rule who fails to provide the department an MMP or who is found in violation of the terms and conditions of the MMP shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to Iowa Code section 455B.191.

65.111(11) *Soil sampling requirements for fields where the phosphorus index must be used.* Soil samples shall be obtained from each field in the MMP, and the soil samples shall be four years old or less. Each soil sample shall be analyzed for phosphorus and pH. The soil sampling protocol shall meet all of the following requirements:

a. Acceptable soil sampling strategies include but are not limited to grid sampling, management zone sampling, and soil type sampling. Procedural details can be taken from Iowa State University Extension and Outreach publication CROP 31-8, "Take a Good Soil Sample to Help Make Good Fertilization Decisions," NCR-13 Report 348, "Soil Sampling for Variable-Rate Fertilizer and Lime Application," or other credible soil sampling publications.

b. Each soil sample must be a composite of at least ten soil cores from the sampling area, with each core containing soil from the top six inches of the soil profile.

c. Each soil sample shall represent no more than ten acres. For fields less than or equal to 15 acres, only one soil sample is necessary.

d. Soil analysis must be performed by a lab enrolled in the Iowa department of agriculture and land stewardship (IDALS) soil testing certification program.

e. The soil phosphorus test method must be an appropriate method for use with the phosphorus index. If soil pH is greater than or equal to 7.4, soil phosphorus data from the Bray-1 extraction method is not acceptable for use with the phosphorus index.

f. If manure is applied as phosphorus-based rates within soil sampling periods, each soil sample may represent up to 20 acres for the next required soil sampling.

65.111(12) *Use of the phosphorus index.* Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by NRCS Iowa Technical Note No. 25.

a. The phosphorus index shall be used on each individual field in the MMP. The fields must be contiguous and shall not be divided by a public thoroughfare or a water source as each is defined in this chapter. Factors to be considered when a field is defined may include but are not limited to cropping system, erosion rate, soil phosphorus concentration, nutrient application history, and the presence of site-specific soil conservation practices.

b. When sheet and rill erosion is calculated for the phosphorus index, the soil map unit used for the calculation shall be the predominant highly erodible soil map unit when planning for a highly erodible field and the predominant non-highly erodible soil map unit when planning for a non-highly erodible field. For the calculations of ephemeral gullies, the provisions of NRCS Iowa Technical Note No. 25 shall be used with: (1) supporting documents and spreadsheets or (2) aerial photographs from at least four separate years, with at least one of the photographs being from the most vulnerable time of the year.

c. The average (arithmetic mean) soil phosphorus concentration of a field shall be used in the phosphorus index.

d. Soil phosphorus concentration data is considered valid for use in the phosphorus index if the data is four years old or less and meets the requirements of subrule 65.111(11).

e. For an original MMP, previous soil sampling data that does not meet the requirements of subrule 65.111(11) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of subrule 65.111(11), the fields must be soil-sampled according to the requirements of subrule 65.111(11) no more than one year after the original MMP is approved and an updated original MMP shall be submitted with the results of the new samples at the time of the next MMP update.

f. The following are the manure application rate requirements for fields that are assigned the phosphorus index site vulnerability ratings below as determined by the NRCS Iowa Technical Note No. 25 to the NRCS 590 standard rounded to the nearest one-hundredth:

(1) Very Low or Low (0-2). Manure shall not be applied in excess of a nitrogen-based rate in accordance with subrule 65.111(13).

(2) Medium (>2-5). Manure shall not be applied (1) in excess of two times the phosphorus removed with crop harvest over the period of the crop rotation or (2) to exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(3) High or Very High (>5). Manure shall not be applied on a field with a rating greater than 5.

g. Additional commercial fertilizer may be applied as follows on fields receiving manure:

(1) Phosphorus fertilizer may be applied in addition to phosphorus provided by the manure up to amounts recommended by soil tests and Iowa State University Extension and Outreach publication PM 1688, "A General Guide for Crop Nutrient and Limestone Recommendations in Iowa."

(2) Nitrogen fertilizer may be applied in addition to nitrogen provided by the manure to meet the remaining nitrogen need of the crop as calculated in the current MMP. Additional nitrogen fertilizer may be applied up to the amounts indicated by soil test nitrogen results or crop nitrogen test results as necessary to obtain the optimum crop yield.

h. Updating the phosphorus index.

(1) When any inputs to the phosphorus index change, an operation shall recalculate the phosphorus index and adjust the application rates if necessary.

(2) If additional land becomes available for manure application, the phosphorus index shall be calculated to determine the manure application rate before manure is applied.

(3) An operation must submit a complete MMP using a new phosphorus index, including soil sampling as required in subrule 65.111(11), for each field in the MMP a minimum of once every four years.

65.111(13) *Requirements for application of a nitrogen-based manure rate to a field.*

a. Nitrogen-based application rates shall be based on the total nitrogen content of the manure unless the calculations are submitted to show that nitrogen crop usage rates based on plant-available nitrogen have not been exceeded for the crop schedule submitted.

b. The correction factor for nitrogen losses shall be determined for the method of application by the following or from other credible sources for nitrogen volatilization correction factors.

Knifed in or soil injection of liquids	0.98
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Surface-apply liquids with no incorporation	0.75
Surface-apply dry with no incorporation	0.70
Irrigated liquids with no incorporation	0.60

c. Nitrogen-based applications rates shall be based on the optimum crop yields as determined in subrule 65.111(4) and crop nitrogen usage rate factor values in Table 4 located at iowadnr.gov/afo/rules or other credible sources. The calculations of manure applied from the facility must account for fertilizer from all other manure and nonmanure sources. Liquid manure applied to land that is currently planted to soybeans or to land where the current crop has been harvested and that will be planted to soybeans the next crop season shall not exceed 100 pounds of available nitrogen per acre. Further, the 100-pounds-per-acre application limitation in the previous sentence does not apply on or after June 1 of each year; in that event, subrule 65.111(4) and Table 4 would apply as provided in the first sentence of this paragraph.

d. A nitrogen-based manure rate shall account for legume production in the year prior to growing corn or other grass crops and shall account for any planned commercial fertilizer application.

65.111(14) *Requirements for application of a phosphorus-based manure rate to a field.*

a. Phosphorus removal by harvest for each crop in the crop schedule shall be determined using the optimum crop yield as determined in subrule 65.111(4) and phosphorus removal rates of the harvested crop from Table 4a located at iowadnr.gov/afo/rules or other credible sources. Phosphorus crop removal shall be determined by multiplying optimum crop yield by the phosphorus removal rate of the harvested crop.

b. Phosphorus removal by the crop schedule shall be determined by summing the phosphorus crop removal values determined in paragraph 65.111(14)*"a"* for each crop in the crop schedule.

c. The phosphorus applied over the duration of the crop schedule shall be less than or equal to the phosphorus removed with harvest during that crop schedule as calculated in paragraph 65.111(14)*"b"* unless additional phosphorus is recommended by soil tests and Iowa State University Extension and

Outreach publication PM 1688, "A General Guide for Crop Nutrient and Limestone Recommendations in Iowa."

d. Additional requirements for phosphorus-based rates.

(1) No single manure application shall exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(2) No single manure application shall exceed the rate that applies to the expected amount of phosphorus removed with harvest by the next four anticipated crops in the crop schedule.

e. If the actual crop schedule differs from the planned crop schedule, then any surplus or deficit of phosphorus shall be accounted for in the subsequent manure application.

f. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University Extension and Outreach publication PMR 1003, "Using Manure Nutrients for Crop Production" or other credible sources shall be used.

65.111(15) *MMPs for sales of manure.* Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. Confinement feeding operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved MMP form for sales of dry manure. Operations completely covered by this paragraph are not required to meet other MMP requirements in this rule.

b. A confinement feeding operation not fully covered by paragraph 65.111(15)*"a"* that has an established practice of selling manure, or a confinement feeding operation that contains an animal species for which selling manure is a common practice, shall submit an MMP that includes the following:

(1) An estimate of the number of acres required for manure application calculated by one of the following methods:

1. Dividing the total phosphorus (as P2O5) available to be applied from the confinement feeding operation by the corn crop removal of phosphorus. The corn crop removal of phosphorus may be estimated by using the phosphorus removal rate in Table 4a located at iowadnr.gov/afo/rules and an estimate of the optimum crop yield for the property in the vicinity of the operation.

2. Totaling the quantity of manure that can be applied to each available field based on application rates determined in conjunction with the phosphorus index in accordance with subrule 65.111(12), and ensuring that the total quantity that can be applied is equal to or exceeds the manure annually generated at the operation.

(2) The total nitrogen available to be applied from the confinement feeding operation.

(3) The total phosphorus (as P2O5) available to be applied from the confinement feeding operation if the phosphorus index is required in accordance with paragraph 65.111(1)*"c."*

(4) An estimate of the annual animal production and manure volume or weight produced.

(5) A manure sales form. If manure will be sold, the manure sales form shall include the following information:

1. A place for the name and address of the buyer of the manure.
2. A place for the quantity of manure purchased.
3. The planned crop schedule and optimum crop yields.
4. A place for the manure application methods and the timing of manure application.
5. A place for the location of the field including the number of acres where the manure will be applied.
6. A place for the manure application rate.
7. A place for a phosphorus index of each field receiving manure, as defined in paragraph 65.111(12)*"a,"* including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

(6) Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the MMP to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:

1. The name and address of the person signing the statement.
2. A statement indicating the intent of the person to purchase the confinement feeding operation's manure.
3. The location of the farm where the manure can be applied including the total number of acres available for manure application.
4. The signature of the person who may purchase the confinement feeding operation's manure.

(7) The owner shall maintain in the owner's records a current MMP and copies of all of the manure sales forms; the sales forms must be completed and signed by each buyer of the manure and the applicant, and the copies must be maintained in the owner's records for three years after each sale. The owner shall maintain in the owner's records copies of all of the manure sales forms for five years after each sale. An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the MMP.

567—65.112(455B,459,459B) Manure applicators certification.

65.112(1) *Certification.* A commercial manure service or a commercial manure service representative shall not transport, handle, store or apply dry or liquid manure to land unless the person is certified. A confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. A person is not required to be certified as a confinement site manure applicator if the person applies manure that originates from a manure storage structure that is part of a SAFO. Certification of a commercial manure service representative under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applicating vehicle or equipment must be certified individually except as allowed in subrule 65.112(7).

65.112(2) *Fees.*

a. Commercial manure service. The fee for a new or renewed certification of a service is $200. The commercial manure service shall designate one manager for the service and shall provide the department with documentation of the designation.

b. Commercial manure service representative. The fee for a new or renewed representative certification is $75. The manager of a commercial manure service must be certified as a commercial manure service representative but is exempt from paying the $75 certification fee.

c. Confinement site manure applicator. The fee for a new or renewed certification is $100. However, the fee is not required if all of the following apply:

(1) The person indicates that the person is a family member as defined in this chapter by submitting a completed form provided by the department;

(2) The person is certified as a confinement site manure applicator within one year of the date another family member was certified or whose certification as a confinement site manure applicator was renewed;

(3) The other family member certified as a confinement site manure applicator has paid the certification fee.

d. Educational fee. Commercial manure service representatives, managers and confinement site manure applicators shall pay an educational fee to be determined annually by the department.

e. Late fee. Renewal applications received after March 1 require that an additional $12.50 fee be paid before the certification is renewed. An application is considered to be received on the date it is postmarked.

f. Duplicate certificate. The fee for a duplicate certificate is $15.

65.112(3) *Certification requirements.* To be certified by the department as a commercial manure service, a commercial manure service representative or a confinement site manure applicator, a person must do all of the following:

a. Apply for certification on a form provided by the department.

b. Pay the required fees set forth in subrule 65.112(2).

c. Pass the examination given by the department or, in lieu of the examination, attend continuing instruction courses as described in subrule 65.112(6).

65.112(4) *Certification term, renewal and grace period.*

a. Certification term. Certification for a commercial manure service and commercial manure service representative shall be for a period of one year and shall expire on March 1 of each year. Certification for a confinement site manure applicator shall be for a period of three years and shall expire on December 31 of the third year.

b. Renewal. Application for renewal of a commercial manure service certification or a commercial manure service representative certification must be received by the department no later than March 1 of the year the certification expires. Application for renewal of a confinement site manure applicator certification must be received by the department or postmarked no later than March 1 after the year the certification expires. Application shall be on forms provided by the department and shall include:

(1) Certification renewal and educational fees.

(2) A passing grade on the certification examination or proof of attending the required hours of continuing instructional courses.

c. Substitution of employees. If a commercial manure service pays the certification fee for a representative, the service may substitute representatives. The substituted representative must be certified pursuant to subrule 65.112(3). The service shall provide documentation to the department, on forms provided by the department, that the substitution is valid.

d. Grace period. Except as provided in this paragraph, a commercial manure service, a commercial manure service representative or a confinement site manure applicator may not continue to apply manure after expiration of a certificate. A confinement site manure applicator may continue to apply manure until March 1 following the year the certification expires, provided a complete renewal application, as provided in paragraph 65.112(4)*"b,"* is postmarked or received by the department prior to March 1. Commercial manure services and representatives must submit an application for certification renewal by March 1 of each year.

65.112(5) *Examinations.*

a. A person wishing to take the examination required to become a certified commercial manure service representative or certified confinement site manure applicator may request an appointment. The applicant must have a photo identification card at the time of taking the examination.

b. If a person fails the examination, the person may retake the examination but not on the same business day.

c. Upon written request by an applicant, the director will consider the presentation of an oral examination on an individual basis when the applicant has failed the written examination at least twice and the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning.

65.112(6) *Continuing instruction courses in lieu of examination.*

a. To establish or maintain certification, between March 1 and March 1 of the next year, a commercial manure service representative must each year either pass an examination or attend three hours of continuing instructional courses.

b. To establish or maintain certification, a confinement site manure applicator must either pass an examination every three years or attend two hours of continuing instructional courses each year. A confinement site manure applicator who chooses to attend instructional courses but fails to attend instructional courses each year must pass an examination as provided in subrule 65.112(5) to maintain certification.

65.112(7) *Exemption from certification.*

a. Certification as a commercial manure service representative is not required of a person who is any of the following:

(1) Actively engaged in farming and who trades work with another such person.

(2) Employed by a person actively engaged in farming not solely as a manure applicator but who applies manure as an incidental part of the person's general duties.

(3) Engaged in applying manure as an incidental part of a custom farming operation.

(4) Engaged in applying manure as an incidental part of the person's duties.

(5) Applying, transporting, handling or storing manure within a period of 30 days from the date of initial employment as a commercial manure service representative if the person applying the manure is acting under direct instructions and control of a certified commercial manure service representative who is physically present at the manure application site by being in sight or immediate communication distance of the supervised person where the certified commercial service representative can communicate with the supervised person at all times. If the prospective employee was previously certified for a commercial manure service, the 30-day exemption does not apply.

(6) Employed by a research college to apply manure from AFOs that are part of the research activities or experiments of the research college.

b. Certification as a confinement site manure applicator is not required of a person who is either of the following:

(1) A part-time employee or family member of a confinement site manure applicator and is acting under direct instruction and control of a certified confinement site manure applicator who is physically present at the manure application site by being in sight or hearing distance of the supervised person where the certified confinement site manure applicator can physically observe and communicate with the supervised person at all times.

(2) Employed by a research college to apply manure from an AFO that is part of the research activities or experiments of the research college.

65.112(8) *Obligations.* Certified commercial manure services have the following obligations:

a. Maintain the following records of manure disposal operations for a period of three years:

(1) A copy of instructions for manure application provided by the owner of the AFO.

(2) Dates that manure was applied or sold.

(3) The manure application rate.

(4) Location of fields where manure was applied.

b. Comply with the provisions of the MMP prepared for the confinement feeding operation and the requirements of rules 567—65.100(455B,459,459B) and 567—65.101(455B,459,459B). If an MMP does not exist, the requirements of rules 567—65.100(455B,459,459B) and 567—65.101(455B,459,459B) must still be met.

c. Any tanks or equipment used for hauling manure shall not be used for hauling hazardous or toxic wastes, as defined in 567—Chapter 131, or other wastes detrimental to land application and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

d. Pumps and associated piping on manure handling equipment shall be installed with watertight connections to prevent leakage.

e. Any vehicle used by a certified commercial manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle.

f. Direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

65.112(9) *Discipline of certified applicators.*

a. Disciplinary action may be taken against a certified commercial manure service, a commercial manure service representative or a confinement site manure applicator on any of the following grounds:

(1) Violation of state law or rules applicable to a certified commercial manure service, a commercial manure service representative, or a confinement site manure applicator or the handling or application of manure.

(2) Failure to maintain required records of manure application or other reports required by this rule.

(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 rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The director shall initiate disciplinary action.

(2) Written notice shall be given to an applicator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The applicator shall be given 20 days to present any relevant facts and indicate the person's position in the matter and to indicate whether informal resolution of the matter may be reached.

(3) An applicator who receives notice shall communicate verbally or in writing or in person with the director, and efforts shall be made to clarify the respective positions of the applicator and director.

(4) Failure to communicate facts and position relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

(5) If agreement as to appropriate disciplinary sanction, if any, can be reached with the applicator and the director, a written stipulation and settlement between the department and the applicator shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the applicator, and the reasons for the particular sanctions imposed.

(6) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to license discipline.

65.112(10) *Revocation of certificates.*

a. Upon revocation of a certificate, application for commercial manure service representative or confinement site applicator certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

b. Upon revocation of a certificate, application for a commercial manure service certification may be allowed after three years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

65.112(11) *Record inspection.* The department may inspect, with reasonable notice, the records maintained by a commercial manure service. If the records are for an operation required to maintain records to demonstrate compliance with an MMP, the confidentiality provisions of subrule 65.111(9) and Iowa Code section 459.312 shall extend to the records maintained by the commercial manure service.

567—65.113(455B,459,459B) Livestock remediation fund. The livestock remediation fund created in Iowa Code section 459.501 will be administered by the department. Moneys in the fund shall be used for the exclusive purpose of administration of the fund and the cleanup of eligible facilities at confinement feeding operation sites.

65.113(1) *Eligible facility site.* The site of a confinement feeding operation that contains one or more AFO structures is an eligible site for reimbursement of cleanup costs if one of the following conditions exists:

a. A county has acquired title to real estate containing the confinement feeding operation following nonpayment of taxes and the site includes a manure storage structure that contains stored manure or site contamination originating from the confinement feeding operation.

b. A county or the department determines that the confinement feeding operation has caused a clear, present and impending danger to the public health or environment.

65.113(2) *Site cleanup.* Site cleanup includes the removal and land application or disposal of manure from an eligible facility site according to manure management procedures approved by the department. Cleanup may include remediation of documented contamination that originates from the confinement feeding operation. Cleanup may also include demolishing and disposing of AFO structures if their existence or further use would contribute to further environmental contamination and their removal is included in a cleanup plan approved by the department. Buildings and equipment must be demolished or disposed of according to rules adopted by the department in 567—Chapter 101 that apply to the disposal of farm buildings or equipment by an individual or business organization.

65.113(3) *Claims against the fund.* Claims for cleanup costs may be made by a county that has acquired real estate containing an eligible facility site pursuant to a tax deed. A county claim shall be signed by the chairperson of the county board of supervisors. Cleanup may be initiated by the department or may be authorized by the department based on a claim by a county.

a. Advance notice of claim. Prior to or after acquiring a tax deed to an eligible facility site, a county shall notify the department in writing of the existence of the facility and the title acquisition. The county shall request in this notice that the department evaluate the site to determine whether the department will order or initiate cleanup pursuant to its authority under Iowa Code chapter 455B.

b. Emergency cleanup condition. If a county determines that there exists at a confinement feeding operation site a clear, present and impending danger to the public health or environment, the county shall notify the department of the condition. The danger should be documented as to its presence and the necessity to avoid delay due to its increasing threat. If no cleanup action is initiated by the department within 24 hours after being notified of an emergency condition requiring cleanup, the county may provide cleanup and submit a claim against the fund.

65.113(4) *Contents of a claim against the fund.*

a. A county claim against the fund for an eligible site acquired by a county following nonpayment of taxes shall be submitted to the department for approval prior to the cleanup action and shall contain the following information:

(1) A copy of the advance notice of claim as described in paragraph 65.113(3)*"a."*

(2) A copy of a bid by a qualified person, other than a governmental entity, to perform a site cleanup. The bid shall include a summary of the qualifications of the bidder including but not limited to prior experience in removal of hazardous substances or manure, experience in construction of confinement feeding operation facilities or manure storage structures, equipment available for conducting the cleanup, or any other qualifications bearing on the ability of the bidder to remove manure from a site. The bid must reference complying with a cleanup plan. The bid shall include a certification that the bidder has liability insurance in an amount not less than $1 million.

(3) A copy of the tax deed to the real estate containing the eligible facility site.

(4) Name and address, if known, of the former owner(s) of the site. The claim shall also include a description of any efforts to contact the former owner regarding the removal of manure and any other necessary cleanup at the site.

(5) A response to the request in the advance notice described in paragraph 65.113(3)*"a"* that the department will not initiate cleanup action at the site, or that 60 days have passed from the advance notice and request.

(6) A proposed cleanup plan describing all necessary activity including manure to be removed, application rates and sites, any planned remediation of site contamination, and any structure demolition and justification.

b. A county claim against the fund for an emergency cleanup condition may be submitted following the cleanup and shall contain the following information:

(1) A copy of a bid as described in subparagraph 65.113(4)*"a"*(2).

(2) Name and address of the owner(s), or former owner(s), of the site or any other person who may be liable for causing the condition.

(3) Information on the response from the department to the notice given as described in paragraph 65.113(3)*"b,"* or, if none was received, documentation of the time notice was given to the department.

(4) A cleanup plan or description of the cleanup activities performed.

65.113(5) *Department processing of claims against the fund.*

a. Processing of claims. The department will process claims in the order they are received.

b. The cleanup plan will be reviewed for acceptability to accomplish necessary actions according to subrule 65.113(2).

c. Review of bid. Upon receipt of a claim, the department will review the bid accompanying the claim. The department may consult with any person in reviewing the bid. Consideration will be given to the experience of the bidder, the bid amount, and the work required to perform the cleanup plan. If the department is satisfied that the bidder is qualified to perform the cleanup and costs are reasonable, the department will provide written approval to the county within 60 days from the date of receipt of the claim.

d. Obtaining a lower bid. If the department determines that it should seek a lower bid to perform the cleanup, it may obtain the names of qualified persons who may be eligible to perform the cleanup. One or more of those persons will be contacted and invited to view the site and submit a bid for the cleanup. If a lower bid is not received, the original bid may be accepted. If a bid is lower than the original bid submitted by the county, the department will notify the county that it should proceed to contract with that bidder to perform the cleanup.

65.113(6) *Certificate of completion.* Upon completion of the cleanup, the county shall submit a certificate of completion to the department. The certificate of completion shall indicate that the manure has been properly land-applied according to the cleanup plan and that any site contamination identified in the approved cleanup plan has been remediated and any approved structure demolition has been performed.

65.113(7) *Payment of claims.* Upon receipt of the certificate of completion, the department shall promptly authorize payment of the claim as previously approved. Payments will be made for claims in the order of receipt of certificates of completion.

65.113(8) *Subrogation.* The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section 459.505.

567—65.114(455B,459,459B) Validity of rules. If any part of these rules is 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, and to that end, these rules are declared to be severable.

567—65.115 to **65.199** Reserved.

DIVISION III
OPEN FEEDLOT OPERATIONS

567—65.200(455B,459A) Minimum open feedlot effluent control requirements. An open feedlot operation shall provide for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, scraped solids, and open feedlot effluent by using an open feedlot control method as provided in subrules 65.200(1) through 65.200(8). A release shall be reported to the department as provided in subrule 65.2(1).

65.200(1) All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

a. The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

b. The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than one-half foot per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow

volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility that receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

65.200(2) This subrule shall apply to an open feedlot operation which has obtained an NPDES permit pursuant to rule 567—65.3(455B,459,459A,459B) or 567—65.201(455B,459A).

a. An open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States due to a precipitation event, if the open feedlot operation is designed, constructed, operated, and maintained to comply with the requirements of subrule 62.4(12) and 40 CFR Part 412.

b. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of subrule 62.4(12) and in accordance with any of the manure control alternatives listed in Appendix A located at iowadnr.gov/afo/rules or the AT system requirements in rule 567—65.207(455B,459A), the operation shall be considered to be in compliance with this rule, unless a discharge from the operation causes a violation of state water quality standards. If water quality standards violations occur, the department may impose additional open feedlot effluent control requirements upon the operation, as specified in subrule 65.200(3).

65.200(3) An open feedlot operation that has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation that is a large CAFO, a medium CAFO, or a designated CAFO, shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The control of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, AT system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Settleable solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or AT system.

65.200(4) Alternative control practices. If, because of topography or other factors related to the site of an open feedlot operation, it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in subrule 65.200(4), the department shall allow an open feedlot operation covered by the NPDES permit application requirements of rule 567—65.3(455B,459,459A,459B) or 567—65.201(455B,459A) to use other open feedlot effluent control practices, provided the open feedlot operation satisfactorily demonstrates by appropriate methods that those practices will provide an equivalent level of open feedlot effluent control. Demonstration of equivalent performance must include the submission of computer modeling results that compares the predicted performance of the proposed system with that of a conventional runoff containment system over the same period. The specific requirements that must be met for an open feedlot operation to qualify for use of an AT system and the information that must be submitted to the department are outlined in rule 567—65.207(455B,459A). Design requirements have been established for a stand-alone VTA. If other AT systems are developed that meet the equivalent performance standard established under EPA's CAFO rules, the department will consider their acceptance on a case-by-case basis.

65.200(5) No direct discharge of open feedlot effluent shall be allowed from an open feedlot operation into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

65.200(6) Land application.

a. General requirements. Open feedlot effluent shall be land-applied in a manner that will not cause pollution of surface water or groundwater. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or, in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. CAFOs.

(1) Land application discharges from a CAFO are subject to NPDES permit requirements. The discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent to waters of the United States from a CAFO as a result of the application of that manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where the discharge is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For the purpose of this paragraph, where the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent as specified in subrule 65.209(8), a precipitation-related discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent from land areas under the control of a CAFO is an agricultural storm water discharge.

(2) Setback requirements for open feedlot operations with NPDES permits. For open feedlot operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5).

65.200(7) The owner of an open feedlot operation who discontinues the use of the operation shall remove and land-apply in accordance with state law all manure, process wastewater and open feedlot effluent from the open feedlot operation structures as soon as practical but not later than six months following the date the open feedlot operation is discontinued. The owner of a CAFO shall maintain compliance with all requirements in the CAFO's NPDES permit until all manure, process wastewater and open feedlot effluent has been removed and land applied pursuant to the CAFO's NMP, and the NPDES permit has been terminated in accordance with subrule 65.202(9).

65.200(8) Stockpiling of scraped solids and settleable solids. Stockpiles of solids scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements:

a. Stockpiles must be land-applied in accordance with subrule 65.200(6) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within 400 feet from a designated area or, in the case of a high-quality water resource, within 800 feet.

c. Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the inlet or sinkhole.

e. Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

567—65.201(455B,459A) Departmental evaluation; CAFO designation; remedial actions.

65.201(1) The department may evaluate any AFO that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:

a. The size of the operation and the amount of manure or process wastewater reaching waters of the United States;

b. The location of the operation relative to waters of the United States;

c. The means of conveyance of manure or process wastewater to waters of the United States;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and

e. Other relevant factors.

65.201(2) No AFO with an animal capacity less than that specified for a medium CAFO shall be designated as a CAFO unless manure or process wastewater from the operation is discharged into a water of the United States:

a. Through a manmade ditch, flushing system, or other similar manmade device; or

b. That originates outside of and passes over, across or through the facility or otherwise comes into direct contact with animals confined in the operation.

65.201(3) The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation.

65.201(4) If departmental evaluation determines that any of the conditions listed in paragraph 65.201(4)*"a," "b,"* or *"c"* exist, the open feedlot operation shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions.

a. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in rule 567—65.200(455B,459A);

b. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause a violation of state water quality standards.

567—65.202(455B,459A) NPDES permits.

65.202(1) *Existing AFOs not holding an NPDES permit.* AFOs in existence prior to April 14, 2003, that were defined as CAFOs under rules that were in effect prior to April 14, 2003, but that have not obtained a permit, should have applied for an NPDES permit by April 14, 2003. AFOs in existence on April 14, 2003, that were not defined as CAFOs under rules that were in effect prior to April 14, 2003, shall apply for an NPDES permit no later than July 31, 2007.

65.202(2) *Expansion or modification of existing AFOs.* A person intending to expand or modify an existing AFO that, upon completion of the expansion or modification, will be defined as a CAFO and if the operation discharges pollutants to waters of the United States shall apply for an NPDES permit at least 90 days prior to the scheduled expansion or modification. Operation of the expanded portion of the facility shall not begin until an NPDES permit has been issued.

65.202(3) *New AFOs.* A person intending to construct a new AFO that, upon completion, will be defined as a CAFO and if the operation discharges pollutants to waters of the United States shall apply for an NPDES permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an NPDES permit has been issued.

65.202(4) *Permits required as a result of departmental designation.* An AFO that is required to apply for an NPDES permit as a result of departmental designation (in accordance with the provisions of rule 567—65.201(455B,459A)) shall apply for an NPDES permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the AFO is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.

65.202(5) *Application forms and requirements.* An application for an NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain information required by the department. Applications shall include an NMP as required in rule 567—65.209(455B,459A). Applications involving AT systems shall include results of predictive computer modeling as required by subrule 65.207(6). The application shall be signed and certified by the person who is legally responsible for the AFO and its associated manure or process wastewater control system.

65.202(6) *Compliance schedule.* When necessary to comply with a standard that must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to rule 567—65.203(455B,459A).

65.202(7) *Permit conditions.* NPDES permits shall contain conditions required by 40 CFR 122.41, monitoring conditions required by 40 CFR 122.48, and conditions considered necessary by the department to ensure compliance with all applicable rules of the department; to ensure that the production area and land application areas are operated and maintained as required by Iowa law; to protect the public health and beneficial uses of waters of the United States; and to prevent water pollution from manure storage or application operations. Any more stringent conditions of Iowa Code chapter 459A, subrule 62.4(12), and this chapter that apply to AFOs shall govern. For CAFOs that maintain cattle, swine, or poultry, the following applicable conditions shall be included:

a. NMP. Open feedlot CAFOs shall comply with the requirements of rule 567—65.209(455B,459A) and any additional NMP requirements for CAFOs in these rules. CAFOs that seek to obtain coverage under an NPDES permit shall have an NMP developed and implemented upon the date of permit coverage.

b. Inspections and recordkeeping.

(1) Visual inspections. Routine visual inspections of the CAFO production area must be conducted, and at a minimum, the following must be included:

1. Weekly inspections of all storm water diversion, runoff diversion structures, and devices channeling contaminated storm water to the open feedlot operation structure.

2. Daily inspection of water lines, including drinking water or cooling water lines.

(2) Corrective actions. Any deficiencies found as a result of the inspections required in subparagraph 65.202(7)*"b"*(1) or as a result of the liquid level reporting required in paragraph 65.202(7)*"e"* must be corrected as soon as possible.

(3) The following records must be maintained on site for a period of five years from the date they are created and must be made available to the department upon request:

1. Records documenting the inspections required in subparagraph 65.202(7)*"b"*(1).

2. Records of weekly liquid level observations as required in paragraph 65.202(7)*"e."*

3. Records documenting any actions taken to correct deficiencies as required in subparagraph 65.202(7)*"b"*(2).

c. Transfer of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent. Prior to transferring manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent to other persons, a CAFO must provide the recipient of the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent with the most current nutrient analysis. A CAFO must retain for five years records of the date, recipient name and address, nutrient analysis and approximate amount of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent transferred to another person.

d. Minimum monitoring requirements for AT systems. Monitoring is required for the entire operational life of the AT system. The department may reduce or revise monitoring requirements after the first five years of system operation. During the first five years of operation of an AT system, the following minimum monitoring will be required:

(1) Discharge monitoring. An effluent collection point must be established at the outlet of the AT system, and the flow volume recorded and an effluent sample collected on each day a discharge from the AT system occurs. Discharge samples must be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH4 N, total P, COD, total suspended solids, and chloride.

(2) Discharge monitoring—tile lines. If the AT system includes a perforated tile system installed under any VTA berms to enhance infiltration within the VTA, water samples shall be collected from a sampling point located downgradient of the VTA on each individual tile line or combination of tile lines on the following schedule: one sample shall be taken from each sampling point in March or April of each year when the tile system is flowing and the level of flow in the tile system recorded at the time of sampling. If there is no discharge from the tile line at a time that meets these requirements, documentation

on appropriate department forms can be substituted for the sample and analysis. Collected samples shall be submitted to a certified laboratory and analyzed for Ortho-phosphate as P.

(3) Groundwater monitoring. A minimum of two groundwater monitoring wells or piezometers (one upgradient and one downgradient) must be established at each AT system. Additional wells or piezometers may be required if the department determines they are necessary to adequately assess the impacts the AT system is having on groundwater. Samples must be collected from these wells in March or April of each year and analyzed for NH4 N, NO3 N, Ortho phosphate as P, and chloride.

(4) Soil sampling. Both shallow and deep soil sampling is required in the VTAs of an AT system.

1. Shallow soil sampling shall be conducted prior to initial discharge of open feedlot effluent into the AT system and repeated annually. Within the VTA, a minimum of three sampling locations shall be established at the entrance to each VTA to be sampled. The three sampling locations shall be spread evenly across the entrances to adequately monitor the effluent application onto the VTAs. Samples shall be collected in the spring. Each sample shall be taken to a depth of six inches and analyzed for pH and P using the Mehlich-3 method.

2. Deep soil sampling shall be conducted prior to initial discharge of open feedlot effluent into the AT system and repeated every five years prior to the submission of an application for an NPDES permit renewal. A minimum of two sampling sites shall be established within each VTA to be sampled, one located where runoff enters the VTA, generally the same location as the shallow soil sampling location, and one where runoff is discharged from the VTA. Soil samples shall be taken from these sites to a depth of four feet, with separate samples taken to represent the 0 to 6-inch depth, the 6- to 12-inch depth, and in one-foot increments thereafter. All samples shall be analyzed for NO3 N, NH4 N, pH, and P by the Mehlich-3 method.

If the length of effluent flow through the VTA exceeds 400 feet, an additional soil sample representing the zero to six-inch depth should be taken for each additional 200 feet of VTA length. Samples shall be analyzed for NO3 N, NH4 N, pH, and P by the Mehlich-3 method.

e. Quarterly reporting requirements for large CAFOs with outside liquid impoundments. A permittee with outside liquid impoundments must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters; documenting daily precipitation; weekly impoundment liquid levels; volume of liquid removed from the impoundments; and the date, time, duration, and estimated volume of any overflow. Liquid levels must be obtained by observing a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour precipitation event.

f. Annual reporting requirements for all CAFOs with systems other than AT systems. Permittees with systems other than an AT system must submit an annual report to the department by January 10 of the following year. The annual report must include:

(1) The number and type of animals in the open feedlot operation;

(2) Estimated amount of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons);

(3) Estimated amount of total manure transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

(4) Total number of acres for land application covered by the NMP and the total number of acres under control of the CAFO that were used for land application of manure in the previous 12 months;

(5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;

(6) A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner;

(7) Actual crops planted and actual yield for the preceding 12 months; and

(8) Results of all samples of manure, litter and process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land-applied.

g. Quarterly reporting requirements for CAFOs with AT systems. A permittee with an AT system must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. The quarterly reports shall provide all of the following information:

(1) Daily precipitation.

(2) Dates on which manure, process wastewater, settled open feedlot effluent, open feedlot effluent, or settleable solids were removed from the production area and estimated amounts of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent removed (tons/gallons).

(3) Dates on which discharges from the production area or the AT system occurred and the estimated duration and volume of discharge on each discharge date.

(4) Results of laboratory analyses of discharge samples for each date a discharge from the production area or the AT system occurred. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.

h. Annual reporting requirements for CAFOs with AT systems. A permittee shall submit an annual report by January 10 of the following year. The annual report must include all of the following:

(1) The number and type of animals in the open feedlot operation.

(2) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons).

(3) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent transferred to other persons by the CAFO in the previous 12 months (tons/gallons).

(4) Total number of acres for land application covered by the NMP and the total number of acres under control of the CAFO that were used for land application of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent in the previous 12 months.

(5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area or AT system that have occurred in the previous 12 months, including date, time, and approximate volume.

(6) Harvest dates and estimated amounts of forage removed from the AT system during the previous 12 months.

(7) Results of soil and groundwater monitoring well sampling within the AT system during the previous 12 months.

(8) A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.

65.202(8) *NPDES permit renewal.*

a. General requirements. An NPDES permit may be granted for any period of time not to exceed five years. An application for renewal of an NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the rules of the department in effect at the time of renewal. A permitted AFO that ceases to be a CAFO will be exempted from the need to retain an NPDES permit if the permittee can demonstrate to the satisfaction of the department that there is no remaining potential for a discharge of manure that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

b. Permits involving use of AT systems.

(1) Renewal of a permit involving use of an AT system is contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system that is designed and operated as required by statute, subrule 62.4(12) and this division of this chapter.

(2) If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system.

Open feedlot operations found to be in compliance with the equivalent performance standard will be issued a five-year NPDES permit that allows continued use of the AT system.

65.202(9) *Permit amendment, revocation, and reissuance or termination.* The department may amend, revoke and reissue or terminate in whole or part any NPDES permit for cause, either at the request of any interested person, including the permittee, or upon the director's initiative. Any more stringent requirement pursuant to 40 CFR 122.62, 122.63 or 122.64 shall control. All requests shall be in writing and shall contain reasons for the request. Cause for permit amendment, revocation and reissuance, or termination may include but is not limited to the following:

a. Violation of any term or condition of the permit.

b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

d. Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.

e. Failure to provide all required application material or appropriate fees.

f. A determination by the department that the continued operation of a CAFO constitutes a clear, present and impending danger to public health or the environment.

567—65.203(455B,459A) Construction permits.

65.203(1) *Open feedlot operations required to obtain a construction permit.* An open feedlot operation must obtain a construction permit prior to any of the following:

a. Constructing or expanding a settled open feedlot effluent basin or AT system or installing a settled open feedlot effluent transfer piping system if the open feedlot operation is required to be issued an NPDES permit.

b. Increasing the animal unit capacity of the open feedlot operation to more than the animal unit capacity approved by the department in a previous construction permit.

c. Increasing the volume of settled open feedlot effluent, settleable solids or open feedlot effluent stored at the open feedlot operation to more than the volume approved by the department in a previous construction permit.

d. Repopulating the open feedlot operation if it was discontinued for 24 months or more and the animal unit capacity will be 1,000 animal units or more.

65.203(2) *When a construction permit is not required.*

a. Research colleges. A construction permit is not required for construction of a settled open feedlot effluent basin or AT system if the basin or system is part of an open feedlot operation that is owned by a research college conducting research activities as provided in Iowa Code section 459A.105.

b. Solids settling facilities. If only solids settling facilities are being constructed, a construction permit is not required. If solids settling facilities are proposed as part of a project that includes facilities that require a construction permit, then the proposed solids settling facilities are subject to a construction permit.

65.203(3) *Applications that cannot be approved.* The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An NMP as provided in rule 567—65.209(455B,459A).

b. An engineering report, construction plans, and specifications prepared by a PE or an NRCS-qualified staff person certifying that the design of the settled open feedlot effluent basin or AT system complies with the construction design standards required in this division.

65.203(4) *Plan review criteria; time for approval or disapproval.*

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the settled open feedlot effluent basin or AT system to achieve the level of control being required of the open feedlot operation. Applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications, unless inconsistent with federal or state law or these rules, and United States Department of Commerce precipitation data will be used in the review of large CAFOs. If the proposed facility plans are not adequately covered by these criteria, applicable

criteria contained in current technical literature shall be used. Medium CAFOs and designated CAFOs shall be evaluated using the department's professional judgment.

b. Time for approval or disapproval. The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance.

65.203(5) *Expiration of construction permits.* The construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within three years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

65.203(6) *Revocation of construction permits.* The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or refuse to renew a permit expiring according to subrule 65.203(5) if it determines that the operation of the open feedlot operation constitutes a clear, present and impending danger to public health or the environment.

65.203(7) *Permit prior to construction.* An applicant for a construction permit shall notify the department prior to the start of construction for any open feedlot operation structure not required to be covered by a construction permit. The applicant shall not begin construction of a settled open feedlot effluent basin or AT system, or begin installation of a settled open feedlot effluent transfer piping system, until the person has been granted a permit for the construction by the department.

567—65.204(455B,459A) Construction permit application. An open feedlot operation required to obtain a construction permit in accordance with the provisions of subrule 65.203(1) shall apply for a construction permit at least 90 days before the date that construction, installation, or modification is scheduled to start.

65.204(1) Conceptual design. Prior to submitting an application for a construction permit, the applicant may submit a conceptual design and site investigation report to the department for review and comment.

65.204(2) Application for a construction permit for an open feedlot operation shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed settled open feedlot effluent basin or AT system to achieve the level of control required of the open feedlot operation. A construction permit application shall include the following:

a. The name of the owner of the open feedlot operation and the name of the open feedlot operation, including the owner's mailing address and telephone number.

b. The name of the contact person for the open feedlot operation, including the person's mailing address and telephone number.

c. The location of the open feedlot operation.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation that is not expanding;

(2) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation that is expanding;

(3) The construction of a settled open feedlot effluent basin or AT system for a proposed new open feedlot operation.

e. The animal unit capacity for each animal species in the open feedlot operation before and after the proposed construction.

f. An engineering report, construction plans and specifications prepared by a PE or by an NRCS-qualified staff person for the settled open feedlot effluent basin or AT system.

g. A report on the soil and hydrogeologic information for the site, as described in subrules 65.206(2) and 65.207(4).

h. Information including but not limited to maps, drawings and aerial photos that clearly show the location of all the following:

(1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or AT systems, clean water diversions, and other pertinent features or structures.

(2) Any other open feedlot operation under common ownership or common management and located within 1,250 feet of the open feedlot operation.

(3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well that is located less than the distance from the open feedlot operation required by rule 567—65.205(455B,459A). Information shall also be provided as to whether the proposed settled open feedlot effluent basin or AT system will meet all applicable separation distances.

567—65.205(455B,459A) Water well separation distances for open feedlot operations.

65.205(1) *Unformed settled open feedlot effluent basins.* Unformed settled open feedlot effluent basins shall be separated from water wells as follows:

a. Public wells. 1,000 feet from shallow wells and 400 feet from deep wells;

b. Private wells. 400 feet from both shallow wells and deep wells.

65.205(2) *Open feedlots, solids settling facilities, formed settled open feedlot effluent basins, feed storage runoff control structures and AT systems.* Open feedlots, solids settling facilities, formed settled open feedlot effluent basins, feed storage runoff control structures and AT systems shall be separated from water wells as follows: for both public wells and private wells, 200 feet from shallow wells and 100 feet from deep wells.

567—65.206(455B,459A) Settled open feedlot effluent basins—investigation, design and construction requirements. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to Iowa Code section 459A.205 shall meet the design and construction requirements set forth in this rule.

65.206(1) *Drainage tile investigation and removal.* Prior to constructing a settled open feedlot effluent basin, the site for the basin shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines. Prior to the excavation for an unformed manure storage structure, an inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm. Drainage tile lines discovered during the tile inspection of a settled open feedlot effluent basin shall be removed and rerouted in the inspection trench or in an area outside of the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of the berm.

65.206(2) *Soils and hydrogeologic report.* A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to rule 567—65.203(455B,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.204(455B,459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-92 or D 2488-90.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the basin reflecting the continuous soil profile existing within the area of the basin. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the basin.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow stem augers and other suitable methods that do not result in soil layer mixing may be used.

(4) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in subparagraph 65.206(3)*"a"*(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in subparagraph 65.206(3)*"a"*(2).

(5) Upon abandonment of soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the basin liner.

65.206(3) *Hydrology.*

a. For purposes of this rule, groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured as provided in this subparagraph for either a formed settled open feedlot effluent basin or an unformed settled open feedlot effluent basin. Three temporary monitoring wells shall be developed according to paragraph 65.108(6)*"c."* The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed settled open feedlot effluent basin, or to at least two feet below the proposed bottom of the footings of a formed settled open feedlot effluent basin. In addition, the wells must be installed as follows:

1. Unformed basins. For an unformed settled open feedlot effluent basin, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.206(2)*"c."*

2. Formed basins. For a formed settled open feedlot effluent basin, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed settled open feedlot effluent basin is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.206(3)*"c,"* the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The settled open feedlot effluent basin shall be constructed with a minimum separation of two feet between the top of the liner of the basin and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph 65.206(3)*"b"*(2), an open feedlot operation shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the settled open feedlot effluent basin is located.

2. Drainage tile lines are installed horizontally within 25 feet away from the outside toe of the berm of the settled open feedlot effluent basin. Drainage tile lines shall be placed in a vertical trench and encased in granular material that extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

d. Open feedlot operation structures exceeding storage capacity or dam height thresholds may be required to obtain department permits, as specified in rule 567—71.3(455B) and 567—Chapter 73.

65.206(4) *Liner design and construction.* The liner of a settled open feedlot effluent basin shall comply with all of the following:

a. The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin as determined by percolation tests conducted by the PE. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this paragraph, whichever is greater.

b. The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement, and will be based on moisture content and percentage of maximum density as determined by a standard 5-point proctor test performed in accordance with ASTM D698 (Method A). The liner thickness will be based on laboratory tests of the compacted material, with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design requirements are met.

65.206(5) *Berm erosion inspection and repair.* The owner of an open feedlot operation using a settled open feedlot effluent basin shall inspect the berms of the basin at least semiannually for evidence of erosion. If the inspection reveals erosion which may impact the basin's structural stability or the integrity of the basin's liner, the owner shall repair the berms.

65.206(6) *Unformed basins containing confinement manure and open feedlot effluent.* Unformed basins containing confinement manure and open feedlot effluent shall meet the confinement construction standards and separation distance requirements provided in Division II of this chapter. The unformed basin design shall ensure adequate storage for the annual manure generation of confinement animals, the annual runoff from the open feedlot portion, including the basin surface area, and the open feedlot runoff resulting from the 25-year, 24-hour precipitation event below the two-foot freeboard level.

65.206(7) *Settled open feedlot effluent basin (SOFEB) design and operation requirements.*

a. All SOFEBs shall have a minimum ten-foot wide top of dike.

b. All SOFEBs shall have a minimum three-foot horizontal to one-foot vertical interior and exterior side slopes.

c. All SOFEBs shall have depth markers installed labeling each foot of depth and critical pumping depths noted according to the designed operating system.

d. All SOFEBs shall be designed using the latest available NOAA Atlas 14 Volume 8 rainfall data for the county where the SOFEB is located. NOAA data can be obtained from the National Weather Service website.

567—65.207(455B,459A) AT systems—design requirements.

65.207(1) *Containment volume.*

a. Adequate capacity must be provided within the AT system or within the solids settling facility for the open feedlot operation to contain expected open feedlot effluent from November 1 to March 30 or to hold the precipitation event as required by paragraph 65.200(2)*"a,"* whichever is greater. Controls on the solids settling facility or the AT system shall prevent release of collected open feedlot effluent to waters of the United States during the period from November 1 to March 30.

b. If the containment volume required in paragraph 65.207(1)*"a"* is provided in an open feedlot operation structure whose primary purpose is to remove settleable solids from open feedlot effluent prior to discharge into an AT system, the basin shall not be required to comply with the liner design and construction requirements of subrule 65.206(4), provided the basin does not retain collected open feedlot effluent for more than seven consecutive days following a precipitation event during the period from March 30 to November 1.

65.207(2) *Solids settling.* Settleable solids shall be removed from open feedlot effluent prior to discharge of the effluent into an AT system. Solids settling shall be conducted in conformance with the requirements of paragraph 65.200(1)*"b."*

65.207(3) *Drainage tile investigation and removal.* Prior to constructing an AT system, the owner of the open feedlot operation shall investigate the site for the AT system for drainage tile lines. The investigation shall be made by digging a core trench to a depth of at least six feet from ground level at the projected center of the berm of the AT system. A written record of the investigation shall be submitted as part of the construction certification required in rule 567—65.208(455B,459A). If a drainage tile line is discovered, one of the following solutions shall be implemented:

a. The drainage tile line shall be rerouted around the perimeter of the AT system at a distance of least 25 feet horizontally separated from the toe of the outside berm of the AT system. For an area of the system where there is not a berm, the drainage tile line shall be rerouted at least 50 feet horizontally separated from the edge of the system.

b. The drainage tile line shall be replaced with a nonperforated tile line under the AT system. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet of separation between the nonperforated tile line and the soil surface of the AT system.

65.207(4) *Soils and hydrogeologic report.* An AT system constructed pursuant to a construction permit issued pursuant to rule 567—65.203(455B,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.204(455B, 459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the AT system.

b. Subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-92 or D 2488-90.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the proposed AT system for AT systems of five acres or less, with one additional soils investigation site utilized for each additional three acres of surface area or fraction thereof. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed AT system site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed AT system. The soils investigation shall be conducted to a minimum depth of ten feet below the elevation of the soil surface of the proposed AT system.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Investigation methods may include soil corings using hollow stem augers, soil test pits, or other suitable methods that do not result in soil layer mixing.

(4) Soil core holes may be used to determine current groundwater levels by completing the core holes as temporary monitoring wells and measuring the water levels in these wells not earlier than seven days after installation.

(5) Upon abandonment of the soil core holes, all soil core holes, including those developed as temporary water level monitoring wells, shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If soil test pits or other excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the AT system.

65.207(5) *Hydrology—groundwater table.* For purposes of this rule, groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

a. Groundwater level measurements. Groundwater levels shall be measured using at least one of the following methods:

(1) Temporary monitoring wells. Three temporary monitoring wells shall be developed to a minimum of ten feet below the surface of the proposed AT system and constructed in accordance with requirements of paragraph 65.109(6)*"c."* The top of the well screen shall be within five feet of the ground surface. These monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.207(4)*"c."*

(2) Test pits. Test pits may be used in lieu of temporary monitoring wells to determine the seasonal high-water table or prior to the construction of an AT system to ensure the required separation distance to the seasonal high-water table is being met. The bottom of each pit shall be a minimum of five feet below the proposed surface of the AT system. However, if the test pit is also being used to conduct the soils investigation required in paragraph 65.207(4)*"c,"* the bottom of the pit shall be a minimum of ten feet below the surface of the proposed AT system. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or an NRCS-qualified staff person. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. Test pits shall be located as needed to provide an accurate assessment of soil materials and seasonal high groundwater levels throughout the area of the proposed AT system. A description of the materials present in the test pit shall be documented by all of the following:

1. Digital photos;
2. Description of soils including mottling;
3. Weather conditions both prior to and during the period in which test pits are open.

b. Determination of seasonal high-water table. The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells or test pits not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling found in soil cores and test pits, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed, the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

c. Seasonal high-water table. The seasonal high-water table shall be a minimum of four feet below the finished grade of a VTA.

65.207(6) *Stand-alone VTA.*

a. Computer modeling. Results of predictive computer modeling for the proposed alternative technology system shall be used to determine suitability of the proposed site for the system and to predict performance of the alternative technology system as compared to the use of a 25-year, 24-hour runoff containment system, over a 25-year period. A summary of the computer modeling results shall be approved and provided to the department.

b. Size. The computer model used to determine whether the proposed AT system will meet the equivalent performance standard shall also be used to establish the minimum required size of the VTA. However, in no case shall the size of the VTA be less than the following:

(1) 100 percent of the total drainage area (feedlot and other) served if the soil permeability is from six-tenths of an inch to two inches per hour.

(2) 200 percent of the total drainage area (feedlot and other) served if the soil permeability is from two-tenths to six-tenths of an inch per hour.

c. Slope. The constructed VTA shall be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.

d. Berming. The VTA must be bermed to prevent inflow of surface water from outside areas.

e. Spreaders. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders, at a maximum six inches tall, or other practices may be required to maintain uniform flow of settled open feedlot effluent across the width of the VTA as flow moves downslope through the VTA.

f. Soil permeability. Soil permeability within the VTA must be from two-tenths to two inches per hour throughout the soil profile to a depth of five feet. Soil permeability must be verified by conducting on-site or laboratory soil permeability testing.

g. Groundwater lowering system. The seasonal high-water table within the VTA must be capable of being lowered to a depth of four to five feet with a perimeter tile system installed outside of the VTA. Design information must be provided that demonstrates the adequacy of the proposed groundwater lowering system. The tile system must satisfy the following requirements:

(1) If the tile system does not have a surface outlet accessible on the property where the AT system is located, a device to allow monitoring of the water in the tile system and a device to allow shutoff of the flow in the tile system must be installed.

(2) Tile lines in the system must be installed horizontally at least 25 feet away from the outside toe of the berm of the VTA.

h. Tile system to enhance infiltration within the VTA. A tile system may be installed at the perimeter of the VTA cells to enhance infiltration within the VTA. The tile system must satisfy the following requirements:

(1) Tile lines shall be installed at the centerline of the berms of the VTA cells.

(2) The tile lines shall be constructed such that no settled open feedlot effluent can enter the lines except through infiltration through the soil profile.

(3) A shutoff valve and sampling point located downslope of the VTA cell shall be provided for each individual tile line. However, if multiple tile lines are brought together into a common tile line, a single shutoff valve and sampling point may be utilized.

(4) Monitoring of the tile lines must be conducted in accordance with the requirements of subparagraph 65.202(7)*"d"*(2).

i. Depth to sands, gravels, or glacial outwash. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet. A soils investigation that documents sands found are in isolated sand lenses that will not have a significant impact on subsurface water flow or groundwater quality shall not prohibit use of the site.

j. Depth to bedrock. A minimum of ten feet of overburden or loose material must exist between the surface of the constructed VTA and underground bedrock.

k. Flooding. The VTA must be constructed in areas that are not subject to flooding more frequently than once in 25 years.

l. Distance to water bodies. The following distances, measured along the path of water flow, shall be provided between the point of discharge from the VTA and the receiving water body.

(1) Designated use streams referenced in 567—subrule 61.3(5). A minimum distance of 500 feet or ½ foot distance per animal unit capacity of the feedlot area which drains to the VTA, whichever is greater, shall be provided.

(2) All other uncrossable intermittent streams. A minimum distance of 200 feet shall be provided.

567—65.208(455B,459A) Construction certification.

65.208(1) The owner of an open feedlot operation who is issued a construction permit for a settled open feedlot effluent basin or AT system as provided in rule 567—65.203(455B,459A) shall submit to the department a construction certification from a PE certifying all of the following:

a. The settled open feedlot effluent basin or AT system was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 567—65.204(455B,459A). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The settled open feedlot effluent basin or AT system was inspected by the PE after completion of construction and before commencement of operation.

65.208(2) A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subrules 65.206(1) and 65.207(3), shall be submitted as part of the construction certification.

567—65.209(455B,459A) NMP requirements.

65.209(1) The owner of an open feedlot operation that has an animal unit capacity of 1,000 animal units or more or that is required to be issued an NPDES permit shall develop and implement an NMP meeting the requirements of this rule. The owner of an open feedlot operation who seeks to obtain or is required to be issued an NPDES permit shall develop and implement an NMP meeting the requirements of this rule no later than the date on which the NPDES permit becomes effective. For the purpose of this rule, requirements pertaining to open feedlot effluent also apply to settled open feedlot effluent and settleable solids.

65.209(2) Not more than one open feedlot operation shall be covered by a single NMP. For an open feedlot operation that is required to have an NPDES permit and the AFO includes an open feedlot operation and a confinement feeding operation, the NMP must include both the open feedlot operation and the confinement feeding operation if the confinement feeding operation does not have an MMP. If the confinement feeding operation portion of the AFO does have an MMP as required in rules 567—65.110(455B,459,459B) and 567—65.111(455B,459,459B), the confinement feeding operation portion shall not be included in the NMP; however, in that event, the MMP must be amended to include the information specified in paragraph 65.209(8)*"e."*

65.209(3) A person shall not remove manure, process wastewater or open feedlot effluent from an open feedlot operation structure that is part of an open feedlot operation for which an NMP is required under this rule, unless the department approves an NMP as required in this rule.

65.209(4) The department shall not approve an application for a permit to construct a settled open feedlot effluent basin or AT system unless the owner of the open feedlot operation applying for approval submits an NMP together with the application for the construction permit as provided in rule 567—65.203(455B,459A). The owner shall also submit proof that the owner has published a notice for public comment as provided in subrule 65.209(7).

65.209(5) If a construction permit is required as provided in rule 567—65.203(455B,459A), the department shall approve or disapprove the NMP as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the NMP within 60 days from the date that the department receives the NMP.

65.209(6) Prior to approving or disapproving an NMP as required in this rule, the department may receive comments exclusively to determine whether the NMP is submitted according to procedures required by the department and that the NMP complies with the provisions of this rule.

65.209(7) Public notice.

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where manure, process wastewater, or open feedlot effluent that originates from the open feedlot operation may be applied under the terms and conditions of the NMP.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the NMP.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where manure, process wastewater, or open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the NMP may be examined as provided in Iowa Code section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subrule. If such a request is received, the public hearing must be conducted within 30 days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subrule by accessing the department's Internet website. The notice for public comment shall include the address of the department's Internet website as required by the department.

65.209(8) Except as provided in paragraph 65.209(8)*"f,"* an NMP shall include all of the following:

a. An estimate of the nitrogen and phosphorus concentration of manure, process wastewater and open feedlot effluent and an estimate of the manure, process wastewater, and open feedlot volume or weight produced by the open feedlot operation.

b. Application rate calculations consistent with the requirements of subrule 65.111(12). The 100 pounds of available nitrogen per acre limitation specified in paragraph 65.111(13)*"c"* (applicable to open feedlot operations and combined open feedlot operations and confinement operations with an NPDES permit because of requirements in subrule 65.111(4)) pertaining to liquid manure applied to land currently planted to soybeans or to land where a soybean crop is planned applies only to liquid manure, process wastewater or settled open feedlot effluent.

c. The location of manure application. If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the manure, process wastewater or open feedlot effluent may be applied. The written agreement shall indicate the number of acres on which the manure, process wastewater or effluent may be applied and the length of the agreement.

d. A phosphorus index of each field in the nutrient management plan, as defined in paragraph 65.111(12)*"a,"* including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

e. Information that shows all of the following:

(1) There is adequate storage for manure, process wastewater, stockpiled manure and open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) The proper management of animal mortalities to prevent discharge of pollutants to surface water and to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on site are not disposed of in manure, process wastewater, an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

(6) Equipment used for the land application of manure, process wastewater or open feedlot effluent must be periodically inspected for leaks.

(7) Appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(8) Protocols for appropriate testing of manure, process wastewater, open feedlot effluent and soil.

(9) Protocols to land-apply manure, process wastewater or open feedlot effluent in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, process wastewater or open feedlot effluent.

(10) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

f. Sales of scraped solids or settleable solids licensed by IDALS. Open feedlot operations that will sell scraped solids or settleable solids as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A as regulated by IDALS and may, in lieu of complying with this subrule for that portion of open feedlot effluent, submit to the department a copy of the operation's site-specific IDALS license or documentation for any scraped solids or settleable solids that will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved NMP form for sales of scraped solids or settleable solids.

g. An open feedlot operation must submit a complete NMP using a new phosphorus index, including soil sampling as required in subrule 65.111(11), for each field in the NMP a minimum of once every five years, submitting the plan with the NPDES permit renewal application if the open feedlot operation has an NPDES permit.

65.209(9) If an open feedlot operation uses an alternative technology system as provided in rule 567—65.207(455B,459A), the NMP is not required to provide for settled open feedlot effluent that enters the AT system.

65.209(10) Current NMP; recordkeeping; record inspections.

a. Current NMP. The owner of an open feedlot operation who is required to submit an NMP shall maintain a current NMP at the site of the open feedlot operation and shall make the current NMP available to the department upon request. If nutrient management practices change, a person required to submit an NMP shall make appropriate changes consistent with this rule. If values other than the standard table values are used for NMP calculations, the source of the values used shall be identified.

b. Recordkeeping. Records shall be maintained by the owner of an open feedlot operation who is required to submit an NMP. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the open feedlot operation and shall be made available to the department upon request. Records to demonstrate compliance with the NMP shall include the requirements of rule 567—65.111(455B,459,459B) and the following:

(1) Weather conditions at time of application and for 24 hours prior to and following the application.

(2) Date(s) when application equipment was inspected.

(3) All applicable records identified in paragraph 65.209(8)*"e."*

c. Record inspection. The department may inspect an open feedlot operation at any time during normal working hours and may inspect the NMP and any records required to be maintained.

567—65.210 to **65.299** Reserved.

DIVISION IV
ANIMAL TRUCK WASH FACILITIES

567—65.300(455B,459A) Minimum animal truck wash effluent control requirements. An animal truck wash facility shall provide for the management of manure, process wastewater, settleable solids, scraped solids, and animal truck wash effluent by using the control method as provided in subrules 65.300(1) through 65.300(4). A release shall be reported to the department as provided in subrule 65.2(1).

65.300(1) No direct discharge of animal truck wash effluent shall be allowed from an animal truck wash facility into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

65.300(2) Land application.

a. General requirements. Animal truck wash effluent shall be land-applied in a manner which will not cause pollution of surface water or groundwater. Land application of animal truck wash effluent shall not exceed one inch per hour, and land application shall cease immediately if runoff occurs. Land application of animal truck wash effluent shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for animal truck wash effluent application if (1) land application areas are not frozen or snow-covered, (2) temperatures during application are greater than 32 degrees Fahrenheit, and (3) precipitation has not exceeded the water holding capacity of the soil to accept the effluent application without the possibility of runoff. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Separation distances. A person shall not apply animal truck wash effluent on land located within 750 feet from a residence not owned by the titleholder of the land, unless one of the following applies:

(1) The animal truck wash effluent is land-applied by injection or incorporation on the same date as the animal truck wash effluent was land-applied.

(2) The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the animal truck wash effluent is land-applied.

(3) The animal truck wash effluent is from a small animal truck wash facility or an animal truck wash facility that is part of a SAFO.

65.300(3) The owner of an animal truck wash facility who discontinues the use of the facility shall remove and land-apply in accordance with state law all manure, process wastewater and animal truck wash effluent from the animal truck wash effluent structures as soon as practical but not later than six months following the date the animal truck wash facility is discontinued.

65.300(4) Stockpiling of scraped solids and settleable solids. Stockpiles of solids scraped from animal truck wash facilities and stockpiles of settleable solids shall comply with the following requirements:

a. Stockpiles must be land-applied in accordance with subrule 65.300(2) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within 400 feet from a designated area or, in the case of a high-quality water, within 800 feet.

c. Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the inlet or sinkhole.

e. Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

567—65.301(455B,459,459A) Construction permits.

65.301(1) *Animal truck wash facilities required to obtain a construction permit.* An animal truck wash facility must obtain a construction permit as follows:

a. Prior to construction or expansion of an animal truck wash effluent structure.

b. When the department has previously issued the animal truck wash facility a construction permit and the volume of the animal truck wash effluent would be more than the volume approved by the department in the previous construction permit.

c. When the animal truck wash facility is part of a confinement feeding operation and all of the following apply:

(1) The department has issued a construction permit or an NPDES permit for the confinement feeding operation or a letter approving a construction design statement for the confinement feeding operation in lieu of a construction permit.

(2) The animal truck wash effluent will be added to an existing manure storage structure resulting in a total stored volume greater than that approved in the construction permit or the construction design statement approval letter.

d. When the animal truck wash facility is part of an open feedlot operation and all of the following apply:

(1) The department has issued a construction permit or an NPDES permit for an open feedlot operation.

(2) The animal truck wash effluent will be added to an existing settled open feedlot effluent basin resulting in a total stored volume greater than that approved in the construction permit or NPDES permit.

e. When an animal truck wash facility is constructed or expanded as part of a SAFO that includes a manure storage structure and the animal truck wash effluent will be added to the manure storage structure.

65.301(2) *Construction permit not required.* A construction permit is not required in the following situations:

a. When a small animal truck wash facility is constructed or expanded and remains a small animal truck wash facility.

b. When a small animal truck wash facility is part of a SAFO and the animal truck wash effluent is added to the manure storage structure.

65.301(3) *Construction permit applications that cannot be approved.* The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An NMP as provided in rule 567—65.306(455B,459A).

b. An engineering report, construction plans, and specifications prepared by a PE or an NRCS-qualified staff person certifying that the design of the animal truck wash effluent structure complies with the construction design standards required in Division III of this chapter.

65.301(4) *Plan review criteria; time for approval or disapproval.*

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the animal truck wash effluent structure to achieve the level of control being required of the animal truck wash facility. Applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications unless inconsistent with federal or state law or these rules will be used in this review. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

b. Time for approval or disapproval. The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department

to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance.

65.301(5) *Expiration of construction permits.* The construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within three years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

65.301(6) *Revocation of construction permits.* The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or refuse to renew a construction permit expiring according to subrule 65.301(5) if it determines that the operation of the animal truck wash facility constitutes a clear, present and impending danger to public health or the environment.

65.301(7) *Permit prior to construction.* An applicant for a construction permit shall notify the department prior to the start of construction for any animal truck wash facility. The applicant shall not begin construction of an animal truck wash facility until the person has been granted a permit for the construction by the department.

65.301(8) *Materials used in animal truck wash.* A facility that performs acid washing, aluminum brightening, or other such processes that significantly increase the metals concentration of the effluent is not considered an animal truck wash facility for purposes of this provision. Use of disinfectant materials to control and prevent animal diseases is allowed.

567—65.302(455B,459,459A) Separation distances.

65.302(1) *Separation distances for the construction or expansion of an animal truck wash effluent structure.*

a. An animal truck wash effluent structure shall not be constructed or expanded within 1,250 feet from a residence not owned by the titleholder of the animal truck wash facility, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

b. An animal truck wash effluent structure shall not be constructed or expanded within 100 feet from a public thoroughfare.

c. Any separation distance required for a confinement feeding operation structure and a location or object specified in Table 6 for "Water Wells" and "Other Distances" located at iowadnr.gov/afo/rules shall also apply to the animal truck wash effluent structure and that same location or object.

d. An animal truck wash effluent structure shall not be constructed or expanded on land that is part of a one hundred year floodplain.

65.302(2) *Exemptions to separation distances for the construction or expansion of an animal truck wash effluent structure.*

a. Paragraph 65.302(1)*"a"* does not apply if a residence, educational institution, bona fide religious institution, or commercial enterprise was constructed or expanded, or if the boundaries of a public use area were expanded, after the date that the animal truck wash facility was established. The date the animal truck wash facility was established is the date on which the animal truck wash facility commenced operating. A change in ownership or expansion of an animal truck wash facility shall not change the date of operation.

b. Paragraphs 65.302(1)*"a"* and *"b"* do not apply if the titleholder of the land benefiting from the separation distance requirement, including a person authorized by the titleholder, executes a written waiver with the owner of the animal truck wash effluent structure. The structure shall be constructed or expanded under such terms and conditions that the parties negotiate. The state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the separation distance requirement may execute a written waiver with the titleholder of the land where the structure is located. The structure shall be constructed or expanded under such terms and conditions that the parties negotiate. The waiver shall be specific to the construction or expansion project for which it is submitted. The waiver may include specific language to include future projects or expansions.

c. Paragraphs 65.302(1)*"a"* and *"b"* shall not apply to small animal truck wash facilities.

d. Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment. As specified in Iowa Code section 459.310(3), the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources, major water sources and designated wetlands, specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to a farm pond or privately owned lake as defined in Iowa Code section 462A.2 or to an animal truck wash effluent structure constructed with a secondary containment barrier according to subrule 65.108(11). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.104(5) prior to beginning construction of the animal truck wash facility.

e. Paragraphs 65.302(1)*"c"* and *"d"* shall not apply to the replacement of an unformed animal truck wash effluent structure constructed prior to April 28, 2003, with a formed animal truck wash effluent structure. The capacity of a replacement animal truck wash effluent structure shall not exceed the amount required to store animal truck wash effluent for any 18-month period.

65.302(3) *Unformed animal truck wash effluent structures.* Unformed animal truck wash effluent structures shall be separated from water wells as follows:

a. Public wells. 1,000 feet from shallow wells and 400 feet from deep wells;

b. Private wells. 400 feet from both shallow wells and deep wells.

65.302(4) *Formed animal truck wash effluent structures.* Formed animal truck wash effluent structures shall be separated from water wells as follows: for both public wells and private wells, 200 feet from shallow wells and 100 feet from deep wells.

567—65.303(455B,459A) Construction permit application.

65.303(1) An animal truck wash facility required to obtain a construction permit in accordance with the provisions of subrule 65.301(1) shall apply for the construction permit at least 90 days before the date that construction, installation, or modification is scheduled to start.

65.303(2) Application for a construction permit for an animal truck wash facility shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed animal truck wash effluent structure to achieve the level of control required of the animal truck wash facility. A construction permit application shall include the following:

a. The name of the animal truck wash facility and the name of the owner of the animal truck wash facility, including the owner's mailing address and telephone number.

b. The name of the contact person for the animal truck wash facility, including the person's mailing address and telephone number.

c. The location of the animal truck wash facility.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility that is not expanding;

(2) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility that is expanding;

(3) The construction of an animal truck wash effluent structure for a proposed new animal truck wash facility.

e. An engineering report, construction plans, and specifications prepared by a PE or by an NRCS-qualified staff person. The engineering report must demonstrate that the storage capacity of the animal truck wash effluent structure is equal to or greater than the amount of effluent to be stored for any six-month period, in addition to two feet of freeboard for an unformed animal truck wash effluent structure or one foot of freeboard for a formed animal truck wash effluent structure.

f. A report on the soil and hydrogeologic information for the site, as described in subrule 65.304(2).

g. Information including but not limited to maps, drawings and aerial photos that clearly show the location of all the following:

(1) The animal truck wash facility and all existing and proposed animal truck wash effluent structures.

(2) Any animal truck wash facility under common ownership or common management and located within 1,250 feet of the animal truck wash facility.

(3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well that is located less than the distance from the animal truck wash facility required by subrules 65.302(3) and 65.302(4). Information shall also be provided as to whether the proposed animal truck wash effluent structure will meet all applicable separation distances.

567—65.304(455B,459A) Unformed animal truck wash effluent structure—investigation; design; construction requirements. An unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to Iowa Code section 459A.205 shall meet the design and construction requirements set forth in this rule.

65.304(1) *Drainage tile investigation and removal.* Prior to constructing an unformed truck wash effluent basin, the site for the basin shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. Prior to excavation for an unformed manure storage structure, an inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm.

b. Drainage tile lines discovered during the tile inspection of an unformed manure storage structure shall be removed and rerouted in the inspection trench or in an area outside of the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of berm.

65.304(2) *Soils and hydrogeologic report.* An unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to rule 567—65.301(455B,459,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.303(455B,459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the unformed animal truck wash effluent structure.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-92 or D 2488-90.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the unformed animal truck wash effluent structure reflecting the continuous soil profile existing within the area of the unformed animal truck wash effluent structure. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed unformed animal truck wash effluent structure, including conditions found near the corners and the deepest point of the proposed unformed animal truck wash effluent structure. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the unformed animal truck wash effluent structure.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow-stem augers and other suitable methods may be used.

(4) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in subparagraph 65.304(3)*"a"*(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in subparagraph 65.304(3)*"a"*(1).

(5) Upon abandonment of soil core holes, all soil core holes, including those developed as temporary water level monitoring wells, shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the unformed animal truck wash effluent structure liner.

65.304(3) *Hydrology.*

a. Determination of groundwater table. For purposes of this rule, the groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured as provided in this subparagraph for an unformed animal truck wash effluent structure. Three temporary monitoring wells shall be installed. The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed animal truck wash effluent structure or to at least two feet below the proposed bottom of the footings of a formed animal truck wash effluent structure. In addition, the wells must be installed as follows:

1. Unformed animal truck wash effluent structure. For an unformed animal truck wash effluent structure, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.304(2)*"c."*

2. Formed animal truck wash effluent structure. For a formed animal truck wash effluent structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed animal truck wash effluent structure is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.304(3)*"c,"* the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The unformed animal truck wash effluent structure shall be constructed with a minimum separation of two feet between the top of the liner of the unformed animal truck wash effluent structure and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the unformed animal truck wash effluent structure liner to artificially lower the seasonal high-water table, the top of the unformed animal truck wash effluent structure's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph 65.304(3)*"c"*(2), an animal truck wash facility shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the animal truck wash facility was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an animal truck wash facility that expands the area of its animal truck wash facility on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at an unformed animal truck wash effluent structure, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the unformed animal truck wash effluent structure is located.

2. Drainage tile lines are installed horizontally no greater than 25 feet away from the outside toe of the berm of the unformed animal truck wash effluent structure. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

65.304(4) *Liner design and construction.* The liner of an unformed animal truck wash effluent structure shall comply with all of the following:

a. The liner shall comply with any of the following permeability standards:

(1) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the unformed animal truck wash effluent structure as determined by percolation tests conducted by the PE. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this subparagraph, whichever is greater.

(2) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the unformed animal truck wash effluent structure. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement and will be based on moisture content and percentage of maximum density as determined by a standard 5-point proctor test performed in accordance with ASTM D698 (Method A). The liner thickness will be based on laboratory tests of the compacted material, with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design requirements are met.

b. If a synthetic liner is used, the liner shall be installed to comply with the percolation rate required in subparagraph 65.304(4)*"a"*(1).

65.304(5) *Berm erosion inspection and repair.* The owner of an animal truck wash facility using an unformed animal truck wash effluent structure shall inspect the berms of the unformed animal truck wash effluent structure at least semiannually for evidence of erosion. If the inspection reveals erosion that may impact the unformed animal truck wash effluent structure's structural stability or the integrity of the unformed animal truck wash effluent structure's liner, the owner shall repair the berms.

65.304(6) *Basins containing confinement manure and animal truck wash effluent.* Basins containing confinement manure and animal truck wash effluent shall meet the confinement construction standards and separation distance requirements provided in Division II of this chapter. The basin design shall ensure adequate storage including two feet of freeboard for an unformed animal truck wash effluent structure or one foot of freeboard for a formed animal truck wash effluent structure. The basin shall contain the annual manure generated from all confinement animals.

65.304(7) *Formed animal truck wash effluent structures.* An animal truck wash facility electing to use a formed animal truck wash effluent structure may submit, in lieu of an engineering report, a construction design statement that meets the requirements in subrule 65.104(3).

567—65.305(455B,459A) Construction certification.

65.305(1) The owner of an animal truck wash facility who is issued a construction permit for an animal truck wash effluent structure as provided in rule 567—65.301(455B,459,459A) shall submit to the department a construction certification on a form provided by the department from a PE certifying all of the following:

a. The animal truck wash effluent structure was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 567—65.303(455B,459A). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The animal truck wash effluent structure was inspected by the PE after completion of construction and before commencement of operation.

65.305(2) A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subrule 65.304(1), shall be submitted as part of the construction certification.

567—65.306(455B,459A) NMP requirements.

65.306(1) The owner of an animal truck wash facility, other than a small animal truck wash facility, that has an animal truck wash effluent structure shall develop and implement an NMP meeting the requirements of this rule. However, an animal truck wash facility that is part of a confinement feeding operation, in lieu of submitting an NMP, may submit an original MMP and an updated MMP to the department.

65.306(2) A person shall not remove animal truck wash effluent from an animal truck wash facility for which an NMP is required under this rule, unless the department approves an NMP as required in this rule.

65.306(3) The department shall not approve an application for a permit to construct an animal truck wash effluent structure unless the owner of the animal truck wash facility applying for approval submits an NMP together with the application for the construction permit as provided in rule 567—65.301(455B,459,459A).

65.306(4) If a construction permit is required as provided in rule 567—65.301(455B,459,459A), the department shall approve or disapprove the NMP as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the NMP within 60 days from the date that the department receives the NMP.

65.306(5) An NMP shall include all of the following:

a. Restrictions on the application of animal truck wash effluent based on all of the following:

(1) A phosphorus index of each field in the NMP, as required in subrule 65.111(12), including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation. In addition, total phosphorus (as P2O5) available to be applied from the animal truck wash facility shall be included.

(2) Calculations necessary to determine the land area required for the application of animal truck wash effluent from an animal truck wash facility based on nitrogen or phosphorus use levels (as determined by the phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the NMP and according to requirements specified in subrule 67.111(4).

b. Information relating to the application of the animal truck wash effluent, including application methods, the timing of the application, and the location of the land where the application occurs.

c. If the application is on land other than land owned or rented for crop production by the owner of the animal truck wash facility, the plan shall include a copy of each written agreement executed by the owner and the landowner or the person renting the land for crop production where the animal truck wash effluent may be applied. The written agreement shall indicate the number of acres on which the animal truck wash effluent may be applied and the length of the agreement.

d. An estimate of the animal truck wash effluent volume or weight produced by the animal truck wash facility.

e. Information that shows all of the following:

(1) There is adequate storage for animal truck wash effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) Surface drainage is diverted from the animal truck wash facility.

(3) Chemicals or other contaminants handled on site are not disposed of in an animal truck wash facility that is not specifically designed to store such chemicals or contaminants.

(4) Equipment used for the land application of animal truck wash effluent must be periodically inspected for leaks.

(5) Appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(6) Protocols for appropriate testing of animal truck wash effluent and soil.

(7) Protocols to land-apply animal truck wash effluent in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the animal truck wash effluent.

(8) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

65.306(6) Current NMP; recordkeeping; record inspections.

a. Current NMP. The owner of an animal truck wash facility who is required to submit an NMP shall maintain a current NMP at the site of the animal truck wash facility and shall make the current NMP available to the department upon request. If nutrient management practices change, a person required to submit an NMP shall make appropriate changes consistent with this rule. If values other than the standard table values are used for NMP calculations, the source of the values used shall be identified.

b. Recordkeeping. Records shall be maintained by the owner of an animal truck wash facility who is required to submit an NMP. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the animal truck wash facility, either as a hard copy or electronically, and shall be made available to the department upon request. Records to demonstrate compliance with the NMP shall include requirements of rule 567—65.111(455B,459,459B) and the following:

(1) Weather conditions at time of application and for 24 hours prior to and following the application.

(2) For animal truck wash facilities, the soil test analysis must include phosphorus.

(3) Dates when application equipment was inspected.

(4) All applicable records identified in paragraph 65.306(5)*"e."*

c. Record inspection. The department may inspect an animal truck wash facility at any time during normal working hours and may inspect the NMP and any records required to be maintained.

These rules are intended to implement Iowa Code sections 455B.103, 455B.134, and 455B.171 and chapters 459, 459A, and 459B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 1
"Operation of Natural Resource Commission"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3(1)"a" and 455A.5
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.3

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 Kelli Book 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 Kelli Book prior to the hearing to facilitate an orderly hearing.

September 26, 2023	Wallace State Office Building
9 to 10 a.m.	Des Moines, Iowa
	Via video/conference call

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (DNR) 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
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.210.3408
Email: kelli.book@dnr.iowa.gov

Purpose and Summary

The proposed chapter governs the conduct and business operations of the Natural Resource Commission (NRC). The NRC is required by law to adopt rules describing its procedures and operations pursuant to Iowa Code section 17A.3. This proposed chapter reduces and consolidates the NRC regulations. This is accomplished by rescinding outdated and redundant provisions.

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; however, to the extent there are compliance costs, they will be borne by members of the NRC.

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

Members of the NRC and citizens of Iowa will benefit. The chapter dictates the NRC's operational procedure, especially around its regular business meetings. This provides the public with knowledge and confidence to access those meetings and engage in local government.

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. Additionally, provisions were deleted that were duplicative of statute. The proposed chapter has been streamlined as much as possible, providing regulation of the conduct and business operations of the NRC 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 costs to the DNR 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 this proposed chapter; however, the benefit of the proposed chapter is to provide a more succinct overview of the NRC's structure and business operations.

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:

No alternative methods were discussed.

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

No alternative methods were discussed.

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 571—Chapter 1 and adopt the following **new** chapter in lieu thereof:

GENERAL
TITLE I

CHAPTER 1
OPERATION OF NATURAL RESOURCE COMMISSION

571—1.1(17A,455A) Scope. This chapter governs the conduct of business by the natural resource commission. Rulemaking proceedings and contested case proceedings are governed by other departmental rules.

571—1.2(17A,455A) Meeting location and notification.

1.2(1) *Time of meetings.* The commission generally meets monthly, but is required to meet at least quarterly. The director, chairperson, or a majority of the commission may establish meetings.

1.2(2) *Notification of meetings.* The director will provide public notice of all meeting dates, locations, and agendas.

a. Notice of meetings is given by posting the agenda. The agenda lists the time, date, location, and topics to be discussed at the meeting. The agenda may include a specific time for the public to address the commission on any issue related to the duties and responsibilities of the commission, except as otherwise provided in these rules.

b. The agenda for each meeting will be posted at the Henry A. Wallace Building and on the department's website. The agenda will be provided to anyone who files a request with the department. The final agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. Any additions to the agenda after posting and distribution will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The commission may adopt additions to the agenda at the meeting only if good cause exists requiring expeditious discussion or action. The reasons and circumstances necessitating agenda additions, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

c. Written materials provided to the commission with the agenda may be examined by the public. Copies of the materials may be distributed at the discretion of the director. The director may require a fee to cover the reasonable cost to the department to provide the copies, in accordance with rules of the department.

571—1.3(17A,455A) Attendance and participation by the public.

1.3(1) *Attendance.* All meetings are open to the public. The commission may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

1.3(2) *Participation.*

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

b. Items not on agenda. The commission will not act on a matter not on the agenda, except in accordance with paragraph 1.2(2)*"b."* Persons who wish to address the commission on a matter not on the agenda should file a request with the director to place that matter on the agenda of the subsequent meeting.

c. Meeting decorum. The chairperson may limit participation as necessary for the orderly conduct of agency business. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices discontinued if they cause interference and may exclude those persons who fail to comply with that order.

571—1.4(17A,455A) Quorum and voting requirements.

1.4(1) *Quorum.* Two-thirds of the members of the commission constitutes a quorum.

1.4(2) *Voting.* The concurrence of a majority of the commission members is required to determine any matter before the commission for action, except for a vote to go into closed session which requires the concurrence of two-thirds of the members of the commission.

571—1.5(17A,455A) Conduct of meeting.

1.5(1) *General.* Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting will be by voice or by roll call. Voting will be by voice unless a voice vote is inconclusive, a member of the commission requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairperson will announce the result of the vote.

1.5(2) *Voice votes.* All commission members present should respond when a voice vote is taken.

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

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

1.5(3) *Provision of information.* The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

571—1.6(17A,455A) Minutes, transcripts, and recordings of meetings.

1.6(1) *Audio recordings.* The director may record each meeting and shall record each closed session.

1.6(2) *Minutes.* The director will keep minutes of each meeting. Minutes will be reviewed and approved by the commission.

571—1.7(17A,455A) Officers and duties.

1.7(1) *Officers.* The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.7(2) *Duties.* The chairperson will preside at meetings and will exercise the powers conferred upon the chairperson. The vice chairperson will perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary will make recommendations to the commission on approval or revision of the minutes and act as parliamentarian.

1.7(3) *Elections.* Officers will be elected annually during May.

1.7(4) *Succession.*

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

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

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

These rules are intended to implement Iowa Code sections 17A.3(1)*"a"* and 455A.5.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 12
"Conservation Education"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321G.23, 321G.24, 321I.25, 462A.3, 481A.17 and 483A.27(8)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321.26, 321G.23, 321G.24, 321I.25, 462A.12, 462A.12A, 481A.17 and 483A.27

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk to sign in and be directed to the appropriate hearing location.

September 26, 2023
11 a.m. to 1 p.m.

Conference Room 4W
Wallace State Office Building
Des Moines, Iowa

Public Comment

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

Megan Wisecup
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.238.4968
Email: megan.wisecup@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 12 sets forth the curriculum and course standards for the Department's recreation education courses and shooting sports programs. It also establishes eligibility and responsibilities for coaches, instructors, and mentors to teach, advise, and train others in these recreational programs.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Participants in recreational education classes and shooting sports will bear the costs. However, all costs are voluntarily assumed by persons choosing to participate in the courses. The costs vary depending on the program. Typical costs include registration fees, certification fees, and equipment.

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

Participants in recreational education classes and shooting sports 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 registration and certification fees for classes and equipment.

- Qualitative description of impact:

The costs vary depending on the program and the equipment purchased.

3. Costs to the State:

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

The cost to the agency to implement and enforce the rules includes staff time to administer the programs and associated program costs such as training, manuals, ammunition, targets, gear, and equipment.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Registration and certificate fees are mostly set in statute.

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

The Department is directed by law to implement these programs and to establish rules for their operation. The rules regulate the training of volunteer instructors, coaches, and mentors, which prevents state employees from having to directly serve in those roles and keeps participants safe. However, the existing rules have been carefully reviewed consistent with Executive Order 10 and can be simplified.

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

The proposed rules have been reduced for length and clarity, consistent with Executive Order 10. The new chapter closely adheres to statute.

6. Alternative methods considered by the agency:

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

No alternative methods were considered. The rules are required by state law. The chapter has been revised consistent with Executive Order 10 to closely align with underlying state law.

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

No alternative methods were considered.

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 chapter will not directly impact small business. However, outdoor recreation is economically beneficial to the state and supports a myriad of industries and jobs.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
CONSERVATION EDUCATION

DIVISION I
MENTOR AND VOLUNTEER INSTRUCTOR CERTIFICATION AND DECERTIFICATION PROCEDURES

571—12.1 to **12.19** Reserved.

571—12.20(321G,321I,462A,483A) Purpose. Pursuant to Iowa Code sections 321G.23, 321G.24, 321I.25, 321I.26, 462A.12(6), 462A.12A, and 483A.27(8), these rules set forth curriculum and course standards for the department's recreation education courses and provisions for certification of volunteer instructors and approved mentors to teach, advise, and train others.

571—12.21(321G,321I,462A,483A) Definitions. For the purpose of this division:

"Certified instructor" means a person who meets all criteria in rule 571—12.23(321G,321I,462A,483A) and the specifics contained in each education program's Instructor Policies and Procedures Manual and who wishes to voluntarily teach an education course.

"Education course" means the department's bow hunter, fur harvester, mentor, snowmobile, all-terrain vehicle (ATV), boating, snow groomer operator, and hunter education programs.

"Mentor" means a person skilled and knowledgeable in a particular activity or subject area and who has been approved by the department or a recognized partner organization to teach, advise, and train others in that activity or subject area.

"Online event and instructor management system" means a web-based application that tracks student data, allows students to register for courses, allows certified instructors to list their course offerings and to track volunteer hours and program details, and displays downloadable files.

"Outdoor skills specialist" means a person who manages and trains volunteers and mentors to participate in the recreation education programs of the department.

"Program coordinator" means a person assigned to coordinate instructor certification and development activities, develop curriculum standards for the programs, conduct outreach for the programs, train volunteer instructors and mentors and evaluate their skills, and serve as the primary contact for information about the programs.

571—12.22(321G,321I,462A,483A) Mentor and certified instructor application process.

12.22(1) *Application procedures.*

a. The instructor or mentor applicant must request an application by contacting a program coordinator or outdoor skills specialist.

b. The instructor or mentor applicant must provide all information requested on the application or the department may reject the application.

c. The application will remain on file until the instructor or mentor applicant meets all the requirements in rule 571—12.23(321G,321I,462A,483A).

d. Once the instructor applicant successfully completes all required training and meets all required qualifications, the program coordinator or outdoor skills specialist shall document that all certification requirements have been met and shall issue a certified instructor identification card to the applicant.

e. Once the mentor applicant meets all required qualifications, the program coordinator or outdoor skills specialist will notify the successful applicant and provide the applicant with guidance on the process to begin mentoring.

12.22(2) *Acceptance of mentor or certified instructor applications.* If the number of existing certified instructors or mentors in one or more of the education courses meets demand, the department may choose not to accept new applications.

571—12.23(321G,321I,462A,483A) Requirements for instructor certification and mentoring.

12.23(1) *Minimum requirements.* The conditions listed in this rule must be satisfied before an instructor applicant may become a certified instructor or an approved mentor. Failure to meet these requirements shall result in the denial of the application. The applicant will be notified of the denial by the program coordinator or outdoor skills specialist. The applicant must:

a. Submit an application as provided by the department.

b. Be at least 18 years of age.

12.23(2) *Additional certified instructor requirements.* Instructor applicants must also complete the following:

a. A training and certification course for the ATV, boating, hunter, bow hunter, fur harvester, snowmobile, and snow groomer operator education programs. Instructor training courses shall review policies and procedures of the department, required record keeping and paperwork, education course material, teaching techniques, and criteria for evaluating the performance of student skills.

b. The specific education course the instructor will be teaching.

c. An apprenticeship for the specific education program that the instructor will be teaching. The apprenticeship shall consist of either teaching a simulated class to other instructor applicants or assisting a certified instructor to prepare and present an education course to students. The hunter education program apprenticeship must be completed within one year of attending the certified instructor training course.

12.23(3) *Background check.* The instructor or mentor applicant must authorize a background check that includes, but may not be limited to, a criminal history check. A record of a felony conviction will disqualify the applicant. A record of a misdemeanor within the last three years may disqualify the instructor applicant, except for simple misdemeanors under Iowa Code chapter 321 or its counterparts in other states.

12.23(4) *Fish and wildlife violation check.* The applicant may be disqualified if the instructor applicant has accumulated any habitual offender points pursuant to rule 571—15.16(483A) within the last five years or had a license suspended by a court of law or the department.

571—12.24(321G,321I,462A,483A) Mentor and certified instructor responsibilities and requirements.

12.24(1) A mentor or certified instructor has the following responsibilities:

a. To follow all administrative rules and applicable policies and procedures as set forth by the department for the specified education program.

b. To assist in the recruitment of additional instructors and mentors.

c. To recruit and train students or mentees.

d. To actively promote and publicize the education courses and mentorship opportunities. A course must be posted at least 30 days prior to the start date.

e. To maintain order and discipline in the learning environment at all times.

f. To accurately and completely fill out forms and reports within the online event and instructor management system, or on paper forms if applicable.

g. To teach the education course or perform the mentorship role as prescribed by the department.

12.24(2) A certified instructor must teach a minimum of one course every two years. If this requirement is not met, the instructor's certification may be revoked after notification by certified mail. If an instructor's certification is revoked due to inactivity, the instructor may reapply pursuant to rule 571—12.22(321G,321I,462A,483A). Based upon the period of inactivity, some of the requirements in rule 571—12.23(321G,321I,462A,483A) may be waived by the program coordinator or outdoor skills specialist.

12.24(3) A certified hunter, bow hunter, or fur harvester education instructor must attend one continuing education instructor workshop every two years. A certified ATV, boating, snowmobile, or snow groomer operator education instructor must attend one continuing education workshop every three years.

12.24(4) A certified instructor or mentor shall represent the department in a professional and positive manner that supports the department's goals and mission. The certified instructor or mentor shall avoid even the appearance of impropriety while instructing or mentoring students.

12.24(5) A certified instructor must teach the education course with another adult present unless prior approval is obtained from the department. It is the department's preference that the certified instructor is assisted by another certified instructor. A noncertified assistant over 18 years of age may assist and must meet the same standards and expectations for character and behavior as the department has for its instructors and mentors. The certified instructor is responsible for the conduct of the noncertified assistant. The certified instructor is subject to suspension or revocation of certification based upon the actions of the noncertified assistant. A parent or legal guardian of a student in the class who is present as a direct result of the student's participation is not eligible to assist with the class.

This subrule does not apply to a conservation officer or any other department representative who is teaching an education course alone.

12.24(6) A certified instructor shall not use private residences for classes and shall limit instruction to public buildings or facilities unless a private, nonresidence venue is approved beforehand by the program coordinator or outdoor skills specialist.

12.24(7) All recreation education courses shall be made available to the public except for special circumstances that are preapproved by the department, such as courses being held in conjunction with schools, camps, and other special events.

571—12.25(321G,321I,462A,483A) Grounds for revocation or suspension of instructor certification or a mentor's approved status. The department may, at any time, seek to revoke or suspend the mentor status or instructor certification of any person who:

1. Fails to meet the instructor or mentor responsibilities and requirements as outlined in rule 571—12.24(321G,321I,462A,483A).
2. Fails to follow the policies and procedures of the department.
3. Falsifies any information that may be required by the department. Falsifying information is understood to mean purposefully supplying information that is inaccurate or misleading or the intentional omission of information.
4. Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.
5. Is convicted of or forfeits a bond for any fish and game, snowmobile, ATV, or navigation violation of this state or any other state. Anyone who has a privilege to operate a motor vehicle suspended, barred, or revoked shall not be eligible to be an instructor for the snowmobile, ATV, or snow groomer operator education programs.
6. Uses profanity or inappropriate language, such as any type of lewd, sexist, or racial references or generalities; engages in any kind of discriminatory conduct due to race, color, national origin, religion, sex, age, disability, or sexual orientation; or otherwise acts in an unprofessional manner.
7. Engages in the physical punishment of a student, including the use of unreasonable or unnecessary physical force or physical contact made with the intent to cause pain, or any type of indecent contact with a child as defined by the Iowa Code.
8. Participates in a course while under the influence of alcohol or any illegal drug or while ingesting prescription medication in a manner contrary to the dosing directions given by the prescribing physician. The physician shall be a licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.
9. Has substantiated complaints filed against the instructor by the public, department personnel, or another certified instructor.
10. Is under investigation for committing, is in the process of a judicial proceeding based on the allegation of committing, or is convicted of committing a felony or a misdemeanor as defined in the statutes of this state or another state, except for simple misdemeanors under Iowa Code chapter 321 or its counterparts in other states. Every certified instructor or mentor is subject to a criminal history check and conservation violation check at any time during the instructor's or mentor's tenure as an instructor or mentor.
11. Receives compensation directly or indirectly from students for time spent preparing for or participating in an education course or mentorship.

12. Teaches an education course without another adult present without prior department approval.

571—12.26(321G,321I,462A,483A) Temporary suspensions and immediate revocations of instructor certifications or approved mentor status.

12.26(1) Any complaint made against a certified instructor or a mentor will be taken seriously and will be investigated by a program coordinator or a conservation officer. If convincing evidence exists that a certified instructor or mentor engaged in any of the activities listed in rule 571—12.25(321G,321I,462A,483A), the instructor's certification or mentor's approved status will be temporarily suspended. A letter detailing the reason(s) for the suspension will be sent via certified mail to the last-known address of the instructor or mentor. The letter will detail the length of the suspension and any corrective action to be taken before the instructor or mentor can be reinstated.

12.26(2) At the conclusion of the department's investigation, any certified instructor or mentor who is found to have engaged in the activities listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "3," "5," "7," "8," "10," or "11," shall immediately have the instructor's certification or mentor status revoked.

12.26(3) At the conclusion of the department's investigation, if a certified instructor is found to have engaged in the activities listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "1," "2," "4," "6," "9," or "12," the suspension shall be exercised at the department's discretion based upon the nature and seriousness of the misconduct.

12.26(4) For the hunter education program, bow hunter education program, and fur harvester education program, the results of the department's investigation shall be supplied to the Iowa hunter education instructor association (IHEIA), which shall review the results and supply a disciplinary recommendation to the department. The department shall consider IHEIA's recommendation when exercising its discretion to suspend or revoke the instructor's certification, based upon the nature and seriousness of the misconduct.

571—12.27(321G,321I,462A,483A) Termination of certification or mentor status. Any certified instructor or mentor has the right, at any time, to voluntarily stop teaching or mentoring. If a certified instructor voluntarily terminates the certification or the instructor's certification is terminated by the department, the instructor must return to the department the certification card and all materials that were provided to the individual.

571—12.28(321G,321I,462A,483A) Compensation for instructors and mentors. Instructors and mentors shall not receive any compensation for their time either directly or indirectly from students or mentees while preparing for or participating in a course or mentorship. However, instructors or mentors may require students and mentees to pay for actual, course-related or mentorship expenses involving facilities, meals, or materials other than those provided by the department. All certified instructors and mentors shall keep all records, bills, receipts, etc., relating to student payments for at least five years after the course and shall submit such documents to the department upon request.

571—12.29 and **12.30** Reserved.

These rules are intended to implement Iowa Code sections 321G.23, 321G.24, 321I.25, 321I.26, 462A.12, 462A.12A, and 483A.27.

DIVISION II
RECREATION EDUCATION PROGRAMS

571—12.31(321I) ATV education program.

12.31(1) The department has developed a course designed to meet the statutory requirement in Iowa Code section 321I.25. The education course is designed to teach ATV riders the principles and behaviors of safe and responsible ATV riding.

12.31(2) Reciprocity. The department recognizes safety courses taught by ATV Safety Institute (ASI)-certified instructors and those sanctioned by a governmental authority of another state. Students

who successfully complete such a course are not required to take any additional training and are eligible to receive an education card issued by the department upon proof of completion of the course and payment of the certification fee.

12.31(3) The following criteria apply to the ATV education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday.

b. Students shall register as described on the program's website.

c. Students engaging in the rider-based course must provide their own protective riding gear and a properly sized ATV. The student will follow all applicable requirements of Iowa Code chapter 321I.

12.31(4) The department will establish requirements and standards for curriculum, security protocol, and course delivery for an online education offering. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors will be allowed to charge for the courses identified in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

571—12.32(321G) Snowmobile education program.

12.32(1) The department has developed an education course designed to meet the statutory requirement in Iowa Code section 321G.23.

12.32(2) The following criteria apply to the snowmobile education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students shall register as described on the program's website.

12.32(3) The department will establish requirements and standards for curriculum, security protocol, and course delivery. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors will be allowed to charge for the courses identified in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

571—12.33(462A) Boating education program.

12.33(1) In accordance with Iowa Code sections 462A.12(6) and 462A.12A, the goal of the boating education program and education course is to promote safe and responsible boating practices.

12.33(2) Reciprocity. The department also recognizes safety courses taught by the United States Coast Guard Auxiliary and America's Boating Club/United States Power Squadrons-certified instructors. Students who successfully complete such a course are not required to take any additional training or testing from the department and are eligible to receive an education card issued by the department upon proof of completion of the course and payment of the certification fee.

12.33(3) The boating education course is taught by certified instructors virtually or in a classroom setting and shall be six to eight hours in length.

12.33(4) The following criteria apply to the boating education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students will be given a written examination that they must pass with 80 percent accuracy in order to earn an education certificate.

c. A home study course may be offered at the discretion of the department. The home study packet will contain the same written material provided in the classroom-based setting. An attestation form must be signed by the parent or guardian stating that the student completed the work. A student must pass a written examination with 80 percent accuracy in order to earn an education certificate.

d. The cost of the education course, for both the instructor-led class and the home study option, is $5 per student. Payment may be made when the student registers for the course or to the instructor at the time of class. Home study students must mail in payment with their completed course paperwork. Payment shall be made by check or money order made payable to the department. Course fees are nonrefundable.

e. Students shall register as described on the program's website.

12.33(5) The department will establish requirements and standards for curriculum, security protocol, and course delivery. Only vendors that have the National Association of State Boating Law Administrators seal of approval and have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors may charge for their courses as agreed to in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

571—12.34(483A) Hunter education program.

12.34(1) The hunter education program is designed to teach students basic survival and first-aid skills, water safety, wildlife identification, and the basics of wildlife management, hunting laws, and firearm/archery safety. The education course also stresses the importance of individual responsibility and outdoor ethics.

12.34(2) The education course is taught by certified instructors and shall have both classroom and hands-on components unless otherwise exempted by law. Where permitted, live fire exercises may be taught.

12.34(3) The hunter education program also offers an online course/field day. The online course, offered by an approved third-party vendor, covers the same subject taught in the lecture portion of the department's course and meets the standards set forth by the International Hunter Education Association—United States of America (IHEA—USA). A field day voucher must be obtained from the approved vendor upon the student's successful completion of the online course. The field day voucher is valid for one year from the date of issuance and authorizes entrance into a field day course. The field day is designed to meet the additional required elements of the hunter education program as set forth in Iowa Code section 483A.27.

12.34(4) Reciprocity. The department recognizes hunter education courses sanctioned by a governmental authority of another state, province or country that meets the current IHEA—USA content and delivery standards. Students who successfully complete such a course are not required to take any additional training and are eligible to purchase an Iowa hunting license as long as they meet all other licensing requirements.

12.34(5) The following criteria apply to the hunter education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday. If the certificate is lost, a replacement certificate may be obtained during regular business hours or online.

b. A student successfully completes the course by passing both the classroom-based instruction and a hands-on firearm component. A student successfully passes the classroom-based instruction by achieving a score of 75 percent or higher on the end of course exam. A student passes the hands-on component by demonstrating the safe handling of a firearm. Upon successful completion of the course, a student shall be issued a certification of completion.

c. Students shall register as described on the program's website.

12.34(6) An online-only course is available through the department's website. The online-only course is available for students 18 years of age or older. The online course meets the standards set by IHEA—USA. The online-only course has the same general content as the traditional classroom-based course and online/field day combination courses but requires state-specific information to be covered. To pass the course, a student must score at least 75 percent on the final exam. Upon successful completion of the course and payment of any applicable online course fees directly to the approved vendor, a student will be issued a permanent certificate that the student can download and print immediately.

12.34(7) The department offers a dual online-only handgun safety/hunter education course for Iowa residents 21 years of age or older. This course has the same general content as the traditional classroom-based course and online/field day combination course, but requires state-specific information to be covered, plus additional handgun safety curriculum. To pass the course, a student must score at least 75 percent on the final exam. Upon successful completion of the course and payment of any applicable online course fees directly to the approved vendor, a student will be issued a permanent certificate that the student can download and print immediately. This course meets the educational requirements necessary to qualify for the Iowa permit to carry.

571—12.35(321G) Snow groomer operator education program.

12.35(1) The department has developed a program to educate snow groomer operators to meet the statutory requirement of Iowa Code section 321G.2.

12.35(2) The snow groomer operator education program includes review of the department's policies and procedures, course materials, operator certification requirements, paperwork requirements, and the department's equipment agreement and completion of an apprenticeship.

12.35(3) The following criteria apply to the snow groomer operator education program:

a. An operator must be at least 18 years of age and possess a valid driver's license.

b. Operators shall agree to follow all policies and procedures as set forth by the department.

12.35(4) A student who wishes to become a certified operator must complete an apprenticeship. A student must operate the equipment under the direct supervision of a certified operator until the certified operator is confident that the student can successfully operate the equipment. Operation of snow grooming equipment is allowed only by certified operators or by an apprentice under direct supervision of a certified snow groomer operator. Proof of certification must be in the snow groomer operator's possession when the equipment is being operated.

12.35(5) Certified operators must attend a recertification course once every three years to maintain their certification.

12.35(6) The department may revoke an operator's certification if it finds that equipment was used or maintained in violation of the equipment agreement, that there are founded cases of misuse of the equipment, or that an operator does not possess a valid driver's license.

571—12.36(483A) Bow hunter education program.

12.36(1) The education course for the bow hunter education program is designed to teach bow hunters safe and ethical hunting techniques and to instill responsible attitudes toward people, wildlife, and the environment. The education course is based on the National Bowhunter Education Foundation's publications and is administered by the department. The education course covers topics such as responsibilities of a bow hunter, knowledge necessary before hunting, shot placement, tree stand safety, blood trailing, and game care.

12.36(2) The education course is offered in both a classroom and an online setting.

a. The classroom course is taught by certified instructors and consists of both a lecture and hands-on exercises. Students will be given a written examination, which they must pass with 75 percent accuracy in order to earn a certificate of completion.

b. An online course is available through the department's website. The online course meets the standards set by IHEA—USA. The online-only course has the same general content as the traditional classroom-based course. To complete the online-only course, a student must pass a final exam with a score of 75 percent or higher. Upon successful completion of the course and payment of any applicable online course fees to an approved vendor, the student will be issued a permanent certificate that the student can download and print immediately.

c. Students shall register as described on the program's website.

12.36(3) Reciprocity. The department recognizes bowhunter education courses sanctioned by a governmental authority of another state, province or country that meets the current National Bowhunter Education Foundation and IHEA—USA content and delivery standards. Students who successfully complete such a course are not required to take any additional training.

12.36(4) Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

571—12.37(483A) Fur harvester education program.

12.37(1) The fur harvester education program is designed to teach trappers safe and ethical trapping techniques and to instill responsible attitudes toward people, wildlife, and the environment.

12.37(2) The education course is offered in both a classroom and an online setting.

a. The classroom course is taught by certified instructors, and students will receive instruction and hands-on training on the history and heritage of the fur trade, biology and management of Iowa furbearers, wildlife regulations and their purpose, ethics and responsibility, fur harvesting equipment, the basics of harvesting Iowa furbearers, marketing furbearers, public relations, and the basics of outdoor safety and survival. Students will receive a certificate of completion at the end of the education program.

b. An online course is available through the department's website. The online course meets the standards set by IHEA—USA and has the same general content as the traditional classroom-based course. To complete the online course, a student must pass a final exam with a score of 75 percent or higher. Upon successful completion of the course and payment of any applicable online course fees to an approved vendor, the student will be issued a permanent certificate that the student can download and print immediately.

c. Students shall register as described on the program's website.

12.37(3) Reciprocity. The department recognizes fur harvester education courses sanctioned by a governmental authority of another state, province or country that meets the current IHEA—USA content and delivery standards. Students who successfully complete such a course are not required to take any additional training.

12.37(4) Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

571—12.38 to **12.59** Reserved.

These rules are intended to implement Iowa Code sections 321G.23, 321I.24, 321I.25, 321I.26, 462A.12, 462A.12A, and 483A.27.

DIVISION III
SHOOTING SPORTS PROGRAM

571—12.60(481A) Purpose. Pursuant to Iowa Code section 481A.17, these rules set forth the department's shooting sports programs.

571—12.61(481A) Definitions. For the purpose of this division:

"Athlete" or *"student"* means a member of a department-approved shooting sports team.

"Certified coach or instructor" means a person who wishes to coach a shooting sports team and who meets all criteria in rule 571—12.24(481A) and the specifics contained in the department's certified coach policies and procedures manual.

"Trainer" means someone who has received specialized advanced training and is certified to train coaches or instructors in a national program.

571—12.62(481A) Department-recognized shooting sports programs. The following shooting sports programs are recognized by the department:

12.62(1) *Archery.* The National Archery in the Schools Program (NASP) or other equivalent nationally recognized archery program including bullseye and 3D target training, education, and competition.

12.62(2) *Rifle and pistol.* The Scholastic Action Shooting Program (SASP) or other equivalent nationally recognized rifle and pistol program, which may include centerfire, rimfire, and air-powered disciplines.

12.62(3) *Shotgun.* The Scholastic Clay Target Program (SCTP) or other equivalent nationally recognized clay target shooting program that includes both American and international clay target disciplines.

571—12.63(481A) Administration of shooting sports programs.

12.63(1) Program coordinator. The department shall assign a program coordinator for the programs identified in rule 571—12.62(481A).

12.63(2) The program coordinator's responsibilities shall include the following:

a. Coordinate the overall program in the state.

b. Coordinate regular coach certification and development training opportunities.

c. Coordinate athlete competitions and state championship events and serve as the shoot director for championship events.

d. Develop policies and procedures for the program, including any state-specific eligibility criteria and rules of play for the program. Such standards shall be published on the department's website prior to the start of the season.

e. Enforce and uphold all national and state-specific program rules.

f. Conduct outreach for the program and serve as the primary point of contact in the state for the program.

571—12.64(481A) Certified coach or instructor requirements and responsibilities.

12.64(1) *Registration procedure.* The certified coach or instructor applicant must register with the applicable program and meet the minimum requirements in subrule 12.64(2). The applicant shall completely and accurately fill out the registration form.

12.64(2) *Minimum requirements.* Failure to meet the following requirements shall result in the denial of the applicant's registration. The applicant shall be notified of the denial by the program coordinator.

a. Minimum age. The applicant must meet the minimum age of the program.

(1) For archery, certified coaches must be 18 years of age.

(2) For rifle and pistol, certified head coaches must be 21 years of age. Certified assistant coaches must be at least 18 years of age.

(3) For shotgun, certified head coaches must be 21 years of age. Certified assistant coaches must be 18 years of age.

b. Training. The applicant must satisfactorily pass a designated training course.

c. Background check. The applicant must authorize a background check that includes, but may not be limited to, a criminal history check. A record of a felony conviction will disqualify the applicant. A record of a misdemeanor conviction (not including simple misdemeanors under Iowa Code chapter 321) within the last three years may disqualify the applicant.

d. Fish and wildlife violation check. The applicant may be disqualified if the applicant has accumulated any habitual offender points pursuant to rule 571—15.6(483A) within the last five years or had a license suspended by a court of law or the department.

12.64(3) *Certified coach or instructor responsibilities.* A certified coach or instructor has the following responsibilities:

a. Complete required data management and reporting, including updating and maintaining athlete and coach information in the online data management systems, recording shooting sports competitions and results, and recording volunteer coaching hours when required.

b. Follow all applicable administrative rules, policies, and procedures as set forth by the department for the specified shooting sports program.

c. Follow any applicable national program or state-specific program rules or policies including but not limited to handbooks, rules, and sportsmanship contracts.

d. Represent the department and associated program in a professional and positive manner that supports the department's goals and mission, and avoid even the appearance of impropriety while instructing or coaching athletes or students.

e. Recruit students and volunteer coaches for shooting sports teams.

f. Actively promote shooting sports.

g. Maintain order and discipline on the shooting sports team, model good sportsmanship, and ensure safe handling practices of the relevant shooting sports equipment at all times.

571—12.65(481A) Athlete or student requirements and responsibilities.

12.65(1) *Registration.* The athlete or student shall contact the athlete's or student's local shooting sports team to participate. The head coach will provide the athlete or student with an electronic link to register online with the applicable program.

12.65(2) *Requirements.* An athlete or student participating on a department-approved shooting sports team shall abide by the following requirements. Failure to do so may result in removal from the program, disqualification from competitions, or both.

a. Complete any national program or department-required documents prior to participation.

b. Follow any applicable national program or state-specific program rules or policies including but not limited to handbooks, rules, conduct requirements, and sportsmanship contracts.

12.65(3) *Fish and wildlife violations.* Prior to participation on a department-approved team, the athlete or student shall be subject to a fish and wildlife violations check. If the athlete or student has accumulated any habitual offender points pursuant to rule 571—15.6(483A) within the last five years or has had a hunting, fishing, or trapping license suspended by a court of law or the department, the athlete or student may be ineligible to participate on a department-approved shooting sports team for the current season. Eligibility will be reviewed prior to the beginning of the next season.

571—12.66(481A) Certified trainer requirements and responsibilities.

12.66(1) *Registration.* A certified trainer applicant must register with the applicable program. The applicant shall completely and accurately fill out the registration form. A certified trainer applicant must have successfully completed certified coach or instructor training before being eligible to become a certified trainer.

12.66(2) *Responsibilities.*

a. The trainer applicant must register with the applicable program and meet the program's minimum requirements. The applicant shall completely and accurately fill out the registration form.

b. A certified trainer shall represent the department and respective program in a professional and positive manner that supports the department's goals and mission and shall avoid even the appearance of impropriety while instructing.

c. The certified trainer will work with the program coordinator to identify and schedule training classes around the state.

d. Trainers will utilize the online class registration system for the program to create coach training classes for which coach applicants can register.

e. Certified trainers must conduct at least one class per year to remain an active certified trainer.

12.66(3) *Acceptance of new trainers.* If the number of existing certified trainers meets the demand for the program, the department may choose not to add additional trainers.

571—12.67(481A) Grounds for revocation or suspension of certification of a certified trainer, coach, or instructor. The department may, at any time, seek to revoke or suspend the certification of a certified trainer, coach, or instructor who:

12.67(1) Fails to meet the responsibilities and requirements as outlined in rule 571—12.64(481A) or 571—12.66(481A), as appropriate.

12.67(2) Fails to follow the policies and procedures of the department.

12.67(3) Falsifies any information that may be required by the department. Falsifying information is understood to mean purposefully supplying information that is inaccurate or misleading or the intentional omission of information.

12.67(4) Handles any shooting sports equipment in a negligent, reckless, or unsafe manner, or allows any student to do so.

12.67(5) Is convicted of or forfeits a bond for any fish and game, snowmobile, ATV, or navigation violation of this state or any other state.

12.67(6) Uses profanity or inappropriate language, such as any type of lewd, sexist, or racial references or generalities; engages in any kind of discriminatory conduct due to race, color, national origin, religion, sex, age, disability, or sexual orientation; or otherwise acts in an unprofessional manner.

12.67(7) Engages in the physical punishment of a student, including the use of unreasonable or unnecessary physical force or physical contact made with the intent to cause pain, or any type of indecent contact with a child as defined by the Iowa Code.

12.67(8) Coaches while under the influence of alcohol or any illegal drug or while ingesting prescription medication in a manner contrary to the dosing directions given by the prescribing physician.

12.67(9) Has substantiated complaints filed against the trainer, coach, or instructor by the public, department personnel, or another certified volunteer coach.

12.67(10) Is under investigation for committing, is in the process of a judicial proceeding based on the allegation of committing, or is convicted of committing a felony or misdemeanor as defined in the statutes of this state or another state, except for simple misdemeanors under Iowa Code chapter 321 or its counterparts in other states. Every certified trainer, coach, or instructor is subject to a criminal history check and conservation violation check at any time during the individual's tenure as a certified trainer, coach, or instructor.

12.67(11) Is suspended or expelled by a national governing body for a shooting sports program.

These rules are intended to implement Iowa Code section 481A.17.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 13
"Permits and Easements for Construction and
Other Activities on Public Lands and Waters"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6)"a," 461A.4(1)"b," 461A.25(2), and 462A.3(2)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 461A.4 and 462A.3

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 Casey Laskowski 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 Casey Laskowski prior to the hearing to facilitate an orderly hearing.

September 28, 2023 1 to 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 (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Casey Laskowski
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: casey.laskowski@dnr.iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to provide a process for permitting construction and other activities that alter the physical characteristics of public lands and waters under the jurisdiction of the Natural Resource Commission (Commission). The Commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in these lands and waters.

These proposed rules establish procedures and regulate the evaluation and issuance of permits for covered activities, which are generally referred to as sovereign lands construction permits. They also establish procedures for issuance of easements to public utilities and political subdivisions for activities that are determined to have a permanent effect on use and enjoyment of public lands and waters under Commission jurisdiction. The proposed rulemaking removes redundancies, improves clarity, and corrects typos relative to the existing chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Since the sovereign lands permit application review and permit issuance process is available free of charge, no class of persons will bear the costs of the proposed rulemaking.

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

This proposed rulemaking will benefit those persons or companies that propose construction or other activities on public lands and waters. This rulemaking is intended to improve the management of these areas for the public benefit. Classes of persons benefiting include all recreational users of public lands (through protection and wise use of these state properties) and those wishing to conduct projects on state-owned lands, including businesses, neighbors, utility companies, and local governmental entities.

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 costs to permit applicants other than the time to prepare the application and provide required information. It is difficult to quantify the impacts of this rulemaking; however, the purpose of the chapter is to authorize activities, some of which are commercial in nature, on public lands and waters. This undoubtedly produces economic benefit and opportunities, while balancing those uses with the public's interests in the properties.

- Qualitative description of impact:

This proposed rulemaking serves to permit uses of state lands and waters while ensuring protection of environmental and recreational resources. It also provides for easements on state lands for utility and governmental entities, which provide needed services to the general public.

3. Costs to the State:

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

There is no cost beyond the time of one full-time equivalent staff member and time of other staff members who help implement this rulemaking but have other assigned duties. The sovereign lands permit application review and permit issuance process is available free of charge.

- Anticipated effect on state revenues:

There will be no effect on state revenues.

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

There are minimal costs in terms of time for both applicants and the department. The benefits are that public lands and waters can be used for certain purposes, when appropriate, while protecting those public lands and waters through a prescribed review and permitting process.

The result of inaction would be that no person or business interested in construction or similar activities on the lands and waters under Commission jurisdiction would be allowed to perform those activities. This could have negative economic impacts.

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

There are no less costly alternatives available. There are no fees involved in the permitting process. The department and commission are required by Iowa Code and public trust obligations to oversee property under their jurisdiction for the benefit of the public. A free permitting process is the least costly method the department is aware of for accomplishing the purposes of this proposed rulemaking.

6. Alternative methods considered by the agency:

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

No other options were seriously considered. This is an established program that is well accepted and understood by stakeholders and which already has no fees involved.

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

No other options were seriously considered. This is an established program that is well accepted and understood by stakeholders and which already has no fees involved.

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 a substantial impact on small business. This chapter only impacts those who wish to use state lands or waters for private purposes, which no business is required to do. However, the rulemaking allows for small businesses to construct and operate on lands and waters under the jurisdiction of the Commission, when appropriate. Without the rulemaking, small businesses would not be able to construct or operate in these areas and therefore would be negatively impacted without the rulemaking.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
PERMITS AND EASEMENTS FOR CONSTRUCTION AND OTHER ACTIVITIES ON PUBLIC LANDS AND WATERS

571—13.1(455A,461A,462A) Purpose. The commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in these lands and waters.

13.1(1) These rules establish procedures and regulate the evaluation and issuance of permits for construction or other activities that alter the physical characteristics of public lands and waters under the jurisdiction of the commission, including those activities that occur over or under such lands and waters. However, these rules do not apply to activities accomplished by the department and its agents that would only temporarily alter the characteristics of public lands and waters and that would be considered management practices.

13.1(2) These rules also establish procedures for issuance of easements to public utilities and political subdivisions for activities that are determined to have a permanent effect on use and enjoyment of public lands and waters under the jurisdiction of the commission.

13.1(3) These rules do not apply to:

a. Impoundments regulated under Iowa Code chapter 462A.

b. Docks regulated under 571—Chapter 16, except as specified herein.

c. Stationary blinds regulated under rule 571—51.6(481A).

571—13.2(455A,461A,462A) Affected public lands and waters. These rules are applicable to all fee title lands and waters under the jurisdiction of the commission; dedicated lands and waters under the jurisdiction of the commission and managed by the commission for public access to a meandered sovereign lake or meandered sovereign river; meandered sovereign lakes; meandered sovereign rivers; and sovereign islands, except those portions of the Iowa River and the Mississippi River where title has been conveyed to charter cities.

571—13.3(455A,461A) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Applicant" means a person who applies for a permit or easement pursuant to these rules.

"Authorized agent" means a person, designated by the applicant, who shall be responsible to perform part or all of the proposed activity and who certifies the application according to subrule 13.9(2).

"Canal" means a narrow strip of water, artificially made, between two water bodies described in rule 571—13.2(455A,461A,462A).

"Cantilever access structure" means a structure constructed for improving the proximity of access to a lake or river, that has a support footing located entirely on littoral or riparian land above the ordinary high water mark, and that extends from the footing and is completely suspended above the water at normal water elevation with no occupation of the lakebed or riverbed.

"Channel" means a narrow body of water that may be natural or artificially made.

"Charter cities" means the city of Wapello operating under special charter enacted in 1856; the city of Camanche operating under special charter enacted in 1857; the city of Davenport by chapter 84, Acts of the 47th General Assembly; the cities of Burlington, Clinton, Dubuque, Fort Madison, Keokuk, and Muscatine by chapter 249, Acts of the 51st General Assembly; and the city of Le Claire by chapter 383, Acts of the 58th General Assembly.

"Commission" means the natural resource commission.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or the director's designee.

"Easement" means an easement authorized under Iowa Code section 461A.25.

"Fee title lands and waters" means lands and waters for which title is acquired by deed or testamentary devise.

"Lease" means a lease authorized under Iowa Code section 461A.25.

"Littoral land" means land abutting a lake.

"Meandered sovereign lakes" means those lakes which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states. A list of these lakes is available on the department's website.

"Meandered sovereign rivers" means those rivers which, at the time of the original federal government surveys, were surveyed as navigable and important water bodies and were transferred to the states upon their admission to the union to be transferred or retained by the public in accordance with the laws of the respective states upon their admission to the union. A list of such rivers is available on the department's website.

"Native stone riprap" means broken limestone, dolomite, quartzite or fieldstone meeting Iowa department of transportation specification 4130, Class D.

"Ordinary high water mark" or *"OHWM"* means the boundary between meandered sovereign lakes and rivers, except the Mississippi River, and littoral or riparian property. The OHWM is the limit where high water occupies the land so long and continuously as to wrest terrestrial vegetation from the soil or saturate the root zone and destroy its value for agricultural purposes. The OHWM is the boundary between upland and wetland as defined by the 1987 Corps of Engineers Wetlands Delineation Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (Version 2.0). For Storm Lake in Buena Vista County and Clear Lake in Cerro Gordo County, the elevation has been established by adjudication.

"Ordinary high water mark of the Mississippi River" means the elevation, as defined by criteria in the Code of Federal Regulations, 33 CFR Part 328.3 (November 13, 1986), promulgated by the U.S. Army Corps of Engineers, where the water exists at or below such elevation 75 percent of the time as shown by water stage records since construction of the locks and dams in the river.

"Permit" means a sovereign lands construction permit issued pursuant to this chapter.

"Permittee" means a person who receives a permit pursuant to these rules, which may also include the authorized agent if designated pursuant to these rules.

"Person" means the same as defined in Iowa Code section 4.1.

"Public boat ramp" means a boat ramp constructed to provide public access from public land to a water body.

"Public lands" means land under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

"Public waters" means a water body under the jurisdiction of the commission that is owned by the state or that has been dedicated for public access to a meandered sovereign lake or meandered sovereign river.

"Riparian land" means land abutting a river.

"Sovereign island" means an island located within a sovereign meandered lake or a sovereign meandered river that was transferred to the state upon its admission to the union and whose title continues to be retained by the state.

"Standard riprap" means broken stone, dolomite, quartzite, fieldstone, or broken concrete meeting Iowa department of transportation specification 4130, Class D. Broken concrete shall not have reinforcing materials protruding from the surface of the riprap. Standard riprap shall not include petroleum-based materials.

DIVISION I
PERMITS

571—13.4(455A,461A) Permits required.

13.4(1) *General.* No person shall temporarily or permanently place or build any structure or alter the characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit issued by the department prior to commencement of such activities as provided in the rules of this chapter.

13.4(2) *Hazardous conditions.* Trees, rock, brush or other natural materials located on sovereign or dedicated lands may be removed by persons without a permit issued pursuant to these rules only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and that the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental condition. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed an unauthorized action resulting in damage to public lands and waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard and provide written authorization to proceed or shall require the person to apply for a permit.

571—13.5(455A,461A) Interest in real estate. A permit shall be construed to do no more than give the permit holder a license to alter an area as specifically set forth in the permit. The permit creates no interest, personal or real, in the real estate covered by the permit.

571—13.6(455A,461A,462A) Evaluation.

13.6(1) In considering complete applications, the department will evaluate the impact of the proposed activities on public use and enjoyment of public lands or waters, on the natural resources in the areas within and surrounding the proposed activities, and the department's present and future intended management for the area against the applicant's identified and reasonable need to undertake the proposed activities and the viable alternatives that may exist with respect to the proposed activities.

13.6(2) In no event shall the department issue a permit for activities that:

a. May result in the taking, possession, transport, import, export, processing, selling, buying, transporting, or receiving any species of fish, plants or wildlife appearing on lists referenced in Iowa Code section 481B.5, unless the permittee meets one of the exemptions enumerated in rule 571—77.4(481B).

b. Have not received floodplain permits pursuant to Iowa Code chapter 455B and 567—Chapters 70 through 76, if applicable.

c. May impact a littoral or riparian property owner without the express written permission of the littoral or riparian property owner.

d. Do not comply with the review standards defined in rule 571—13.7(455A,461A,462A).

e. Interfere with department obligations or limitations related to federal funds or agreements or other restrictive covenants that may be applicable to the affected area.

f. Allow fill to be placed beyond the OHWM of waters described in rule 571—13.2(455A,461A,462A) for purposes of regaining land lost due to erosion.

13.6(3) The department may withhold a permit when the applicant has not obtained all other required permits or licenses necessary to construct and operate the proposed activity.

571—13.7(455A,461A,462A) Review standards. Department staff shall conduct an environmental review of the application. In completing the environmental review, different bureaus and staff members of the department will provide input based on law, professional judgment, data and accepted scientific theory. The following standards shall apply to permits issued under the rules of this chapter:

13.7(1) *Uses of public lands and waters.* Development of public lands and public waters permitted by these rules shall be limited to projects that meet all of the following criteria. The projects:

a. Are built to minimally impact the natural resources of public recreational use and navigation on such lands and waters. Specifically, applicants must demonstrate that the project accomplishes all of the following:

(1) Does not negatively impact water quality in or around the proposed permitted area.

(2) Minimizes erosion and sedimentation in or around the proposed area.

(3) Minimizes detrimental impacts to biological and botanical resources in or around the proposed area, including upland, wetland and sensitive areas and unique community structures.

(4) Complies with laws and regulations related to threatened and endangered species, through both federal and state programs.

b. Utilize the smallest amount of public lands and public waters.

c. Do not convert the public lands and public waters to an exclusive or private use.

d. Are the only viable method for conducting the activities, and no viable alternatives to constructing on public lands exist.

13.7(2) *Shoreline erosion protection and retaining walls.* Shoreline erosion protection activities may be permitted if the activities are in compliance with rule 571—13.6(455A,461A,462A) and the following additional standards:

a. Shoreline erosion protection activities on meandered sovereign lakes shall be limited to placement of native stone riprap, extending to a maximum of four feet horizontally within or below the elevation contour line of the OHWM. Placement of earth fill within the OHWM shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall be placed above the OHWM. When such retaining structures are placed at the OHWM, they must be faced with native stone riprap.

b. Shoreline erosion protection activities on meandered sovereign rivers, except the Mississippi River, shall be limited to placement of approved in-stream erosion control structures or native stone or standard riprap. Riprap shall extend riverward from the OHWM and may not exceed a slope of two feet horizontal to one foot vertical (2:1). Placement of earth fill below the OHWM shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the OHWM. When such retaining structures are placed at the OHWM, they must be faced with riprap.

c. Shoreline erosion protection activities on the Mississippi River shall be limited to placement of approved in-stream erosion control structures or native stone riprap. Riprap shall extend riverward from the OHWM and may not exceed a slope of two feet horizontal to one foot vertical (2:1). Placement of earth fill within the OHWM shall not be allowed. Retaining walls, sheet piling, gabions or other retaining structures shall not be placed within the OHWM. When such retaining structures are placed at the OHWM, they must be faced with native stone riprap.

d. Retaining walls on all meandered sovereign lakes and meandered sovereign rivers. The landowner shall maintain the wall system at all times and take corrective measures to eliminate any nuisance condition, repair deterioration of the structure, eliminate erosion around the structure, and repair damage to the structure caused by the action of the water or ice. When a retaining wall or other structure placed on the shoreline prevents the public from traversing the shoreline, the landowner shall

grant the public a license to walk from the landowner's property within 15 feet of the top of the wall or structure for the purpose of traversing the shoreline.

Notwithstanding the prohibitions in this subrule, nothing in this subrule shall prohibit activities that would be part of habitat development or natural resources mitigation projects constructed or approved by a political subdivision of the state and subject to review under these rules.

13.7(3) *Quality of the applicant.* Applicants or authorized agents who have a current violation for another project are not eligible for consideration for a permit under these rules unless and until all other noncompliant projects have been remediated and any enforcement actions related to the same have been resolved or satisfied.

13.7(4) *Cantilever access structures.* Permanent cantilever access structures that lawfully existed and were lawfully permitted under prior sovereign lands construction permit rules as of April 15, 2009, shall be deemed lawfully permitted under these rules. All cantilever access structures that were not lawfully installed prior to April 15, 2009, or were installed after April 15, 2009, shall be regulated as docks by 571—Chapter 16.

13.7(5) *Beaches, canals, and channels.* Permits may be granted to maintain existing beaches, canals, and channels lawfully installed as of April 15, 2009, to ensure the navigation and safety of those existing lawful beaches, canals, and channels. The department shall not permit new beaches, canals, or artificial channels or expansion of existing beaches, canals, or artificial channels, except that the department may permit new beaches, canals, and artificial channels and expansions of existing beaches, canals, and artificial channels when such establishment or expansion would be under the jurisdiction of a political subdivision of the state, would be accomplished to provide public access to the water, and would meet the review standards established by these rules.

571—13.8(455A,461A) Leases or easements as a condition of permits. If a permitted structure or its use will have a continuing impact on the availability or desirability of public lands or public waters, the permit shall be conditioned on the requirement that the permittee obtain a lease or easement under Division II of this chapter. However, a lease or easement shall not be required for proposed activities that are wholly within the scope of the permittee's littoral or riparian rights.

571—13.9(455A,461A,462A) Permit application. Applicants shall apply for permits using an application form provided by the department. Permit application resources can be found on the Permit and Environmental Review Management Tool (PERMT) at programs.iowadnr.gov/permt/. Applicants shall state the need for the proposed construction or use, the availability of alternatives, and the measures proposed to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area. The department reserves the right to refuse to review incomplete applications. Each application, including all amendments, shall be signed by the applicant and authorized agent if one shall be so appointed by the applicant. The applicant's signature shall acknowledge that the application is accurate and made in good faith.

13.9(1) For purposes of this rule, the department will deem an application complete if the application meets all of the following criteria. The application:

a. Is provided on the department's form, and all fields are completed and legible;

b. Includes the name(s), mailing address and telephone number of the applicant(s) and authorized agent(s), if applicable;

c. Describes the proposed activity, including:

(1) Physical address and legal description of the location where the proposed activity is to occur; a written description of existing natural and man-made structures and features; an aerial photograph, if possible or available; and a ground-level photograph(s) showing the area where the activity is proposed to occur;

(2) Schematic or design plans, including cross sections and plan views, that accurately and clearly depict the proposed activities;

(3) Description of the construction methods used to complete the project, the methods used to transport material to the site, and the type and amount of material to be used;

(4) Description of measures proposed to prevent or minimize adverse impacts on the property in the proposed area;

(5) Description of any borrows or disposal sites, including the location of any borrows or disposal sites and the type and amount of material to be borrowed or disposed of in them;

d. Includes identification of the OHWM, if the proposed activities are in or near a meandered sovereign lake or meandered sovereign river;

e. Describes alternative plans to undertake the activity that may be available to the applicant;

f. Identifies the need for the proposed activity in the proposed project area;

g. Provides a statement of consent for the department to enter the property during the term of the proposed permit.

13.9(2) For applications that provide for an authorized agent to perform part or all of the proposed activities, the following additional information shall be required to constitute a complete application:

a. Statement signed by the authorized agent and applicant;

b. Statement signed by the authorized agent acknowledging that the authorized agent is aware of such designation and is responsible to complete the identified work; and

c. Description of the work to be completed by the authorized agent.

571—13.10(455A,461A) Additional information or analysis required for permit review.

13.10(1) The director may require an applicant to provide additional information, at the applicant's sole cost, necessary to complete review of the application, including but not limited to study of alternatives to construction on public lands and waters, social and environmental impacts of the proposed activities, professional surveys to establish the social and environmental impacts of the proposed activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey.

13.10(2) If the applicant does not respond to a request for additional information within 90 days of such request being made by the department, the department may withdraw the application from consideration and the applicant must reapply for the permit.

13.10(3) When the director determines that the proposed activity will significantly affect the public interest, the director may hold a public meeting in the vicinity of the proposed activity. When a public meeting is held, the director shall consider public input in conjunction with other information collected or provided as part of the application review when acting on a permit application.

571—13.11(455A,461A) Permit issued or denied. The department shall promptly review all permit applications, and the director shall issue a permit or deny all or part of an application upon completion of review. A permit may include specified conditions denying the application in part and the reasons for the conditions. The denial of a permit may include a proposed removal order. A permit denial shall be final agency action, unless the unsuccessful applicant otherwise has a constitutional right to a contested case, in which case an administrative appeal pursuant to procedures in 571—Chapter 7 shall be available. The unsuccessful applicant's request for a contested case may include a request for a waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11. The decision of the presiding officer in a contested case shall constitute final agency action.

571—13.12(455A,461A) Authorized agent. When an authorized agent is designated on the application for a permit and acknowledges the same, that authorized agent shall be responsible in the same manner as the permittee to comply with the terms of the permit issued.

571—13.13(455A,461A) Inspection. The department may inspect the location during the term of the permit to ensure that the permitted activities comply with the terms of the permit. The permittee shall grant the department the right to access the permitted activities for purposes of inspecting the permitted activities during the term of the permit. If the permittee denies permission for entry, the department may obtain an order from the Iowa district court for the county in which the permitted activities or the majority of the permitted activities occur, as needed, to enable the department to carry out its inspection

duty. The intent of the inspection is to evaluate compliance with permit conditions and the impact to the natural resources and the public's recreational use of the area.

571—13.14(455A,461A) Additional information or analysis required during term of the permit. The director may require a permittee to provide additional information, at the permittee's sole cost, necessary to ensure that the permittee is complying with the terms of the permit, including but not limited to social and environmental impacts of the activities, professional surveys to establish the social and environmental impacts of the activities, professional land surveys to delineate or show real property boundaries and other characteristics, and a professional real estate appraisal of the value that a permit may convey or has conveyed.

571—13.15(455A,461A) Violations; types of enforcement actions; citation and notice of violation.

13.15(1) *Violations.*

a. A person shall be in violation of these rules and Iowa Code section 461A.4 in the event the person does any of the following:

(1) Performs construction on or undertakes other activities that alter the physical characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit required by these rules;

(2) Performs such work out of conformance with specific requirements enumerated in a permit issued in accordance with these rules; or

(3) Fails to comply with an order of the commission under these rules.

b. Each day of a violation shall be considered a separate offense.

13.15(2) *Types of enforcement actions.* A person who violates these rules shall be subject to either of the following:

a. Criminal enforcement. A peace officer of the state may issue a citation for each offense. A person who is found guilty of violating these rules shall be charged with a simple misdemeanor for each violation.

b. Civil enforcement. A civil penalty may be assessed in conformance with Iowa Code section 461A.5B and rule 571—13.17(455A,461A). Written notice of the violation(s) shall be given to the person against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. If agreement as to appropriate disciplinary sanction, if any, can be reached between the director and the person against whom disciplinary action is being considered, a written stipulation and settlement between the department and the person shall be entered. Such a settlement shall take into account how the corrective actions described in subrule 13.15(3) shall be accomplished. In addition, the stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the person, and the reasons for the particular sanctions imposed. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may issue an administrative order as described in rule 571—13.17(455A,461A).

13.15(3) *Actions to be taken upon receipt of citation or notice of violation.* A person who has violated these rules shall cease the specified unauthorized activity upon receipt of a citation or as may be stipulated in the notice of violation. The notice of violation or a written notice accompanying the citation from the department shall require the person to take one or more of the following actions within a specified time:

a. Apply for a permit to authorize completion of construction or maintenance and use, as applicable;

b. Remove materials and restore the affected area to the condition that existed before commencement of the unauthorized activity;

c. Remediate the affected area in a manner and according to a plan approved by the department. The department may enforce such a remediation at the expense of the permittee, adjacent landowner or culpable party.

571—13.16(455A,461A) Removal orders. If the violation includes the unauthorized placement of materials or personal property on the public lands or public waters under the jurisdiction of the

commission, and the person, who may include a permittee or authorized agent but may not, fails to comply with the action required by the notice, the director may cause a proposed removal order to be issued to the person responsible for such placement. The proposed removal order shall specify the removal action required and include notice of the right to an administrative appeal including a contested case hearing under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. If there is no appeal from a proposed decision that includes a removal requirement, the proposed decision shall be presented to the director for review and adoption. A removal order approved by the director shall constitute final agency action under Iowa Code sections 461A.4 and 461A.5A and may be enforced through an original action in equity filed in a district court of the state by the attorney general on behalf of the department and the commission.

571—13.17(455A,461A) Civil penalties. The department may assess a civil penalty of up to $5,000 per offense for each violation of these rules, provided the department does not utilize a criminal citation for a violation. Each day the violation continues shall be a separate offense or violation. Penalties shall be assessed through issuance of an administrative order of the director which recites the facts and the legal requirements that have been violated and a general rationale for the prescribed fines. The order also may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions and is subject to normal contested case and appellate review under procedures in 571—Chapter 7. The proposed decision in a contested case may be appealed to the commission under 571—Chapter 7. The commission may refer orders that include singular or cumulative penalties over $10,000 to the attorney general's office.

571—13.18(455A,461A) Report of completion. Once an approved activity is completed, the permittee shall notify the department via PERMT using the project's PERMT identification number created during the application process. The activity shall be subject to final approval before the department determines that the conditions of the permit have been met.

571—13.19(455A,461A) Final inspection. Once the permittee notifies the department pursuant to rule 571—13.18(455A,461A), the department shall inspect the permitted area to ensure that the permittee has complied with the terms of the permit. Such inspection shall occur within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A). In the event the department does not provide final inspection within 60 days of the department's receipt of the notice provided pursuant to rule 571—13.18(455A,461A), the permittee shall be deemed compliant and the permit shall expire. The intent of this inspection is to evaluate compliance with permit conditions and the impacts to the natural resources and the public's recreational use of the area.

571—13.20(455A,461A) Permit extensions. Prior to the expiration of a permit, a permittee or an authorized agent may submit a written request by email to the department for an extension of the permit. In evaluating whether to grant the extension, the department will consider the work completed, the work to be performed, the extent to which the permit extension is needed and the extent to which the permittee has made efforts to meet the obligations of the original permit. The department reserves the right to modify the conditions of a permit as part of any extension. An extension granted by this rule is not a project modification.

571—13.21(455A,461A) Project modifications. If projects are modified to the extent that the additional or modified work would not be allowed within the original permit, the permittee must apply for a new permit for the additional or modified work.

571—13.22(455A,461A) Transferability. Permits are transferable only upon written approval of the department and only after the department is satisfied that the permitted activities will not change and the new permittee would be eligible to receive a permit under subrule 13.7(3).

571—13.23 to **13.50** Reserved.

DIVISION II
LEASES AND EASEMENTS

571—13.51(455A,461A) Leases. Where a permitted structure or related activity will have a continuing impact on the availability or desirability of public lands or public waters or exceeds the scope of littoral or riparian rights, the permittee must enter into a lease covering the area affected by the construction. Fees for leases shall be determined by 571—Chapter 17 or other methods approved by the commission and executed pursuant to Iowa Code section 461A.25. Requests for leases shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant a lease if, in the department's sole discretion, the lease will not impair the state's intended use of the area during the term of the lease; the lease will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the lease; and the lease will not result in an exclusive use.

571—13.52(455A,461A) Easements. The director may grant an easement to political subdivisions and utility companies pursuant to Iowa Code section 461A.25, provided the following terms are met:

13.52(1) Requests for easements shall be made on the form and shall include the information required by rule 571—13.9(455A,461A,462A) under Division I of this chapter. The department may grant an easement if, in the department's sole discretion, the easement will not impair the state's intended use of the area during the term of the easement or the easement will not negatively impact a federal interest, including related deed restrictions, related to the area during the term of the agreement.

13.52(2) The value of an easement shall be determined by the director based upon a real estate appraisal or other method approved by the commission, as evidenced in the meeting minutes thereof. In addition to fees for easements, the director may assess the applicant for the reasonable transaction costs associated with the issuing of an easement, including the cost of appraisals, other methods of establishing values, and land surveys. In determining the fee for an easement, the department may consider the value the proposed activity may contribute to the department's management of the affected property.

13.52(3) Recipients of any easements granted pursuant to this rule shall assume liability for structures installed pursuant to such easement and shall comply with the standards enumerated in rule 571—13.7(455A,461A,462A), as applicable, in the sole discretion of the department.

571—13.53(455A,461A) Appeals. The department and the commission are under no legal obligation to provide any person a legal interest in property under the jurisdiction of the commission. An applicant may appeal to the director a decision of the department regarding leases and easements and request that the director reconsider a condition of an easement or a lease or a denial of an easement or a lease. The determination of the director shall be final agency action.

These rules are intended to implement Iowa Code sections 455A.5, 461A.4, 461A.5A, 461A.5B, 461A.6, 461A.18, 461A.25 and 462A.3.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 14
"Concessions"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 461A.3 and 461A.4
State or federal law(s) implemented by the rulemaking: Iowa Code sections 461A.3 and 461A.4

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held in person and via conference call as follows. Persons who wish to attend the conference call should contact Kim Bohlen 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 Kim Bohlen prior to the hearing to facilitate an orderly hearing.

September 26, 2023 12 noon to 1 p.m.	Wallace State Office Building Des Moines, Iowa 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:

Kim Bohlen
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: kim.bohlen@dnr.iowa.gov

Purpose and Summary

This proposed rulemaking establishes the rules surrounding the advertising/notice procedure, bidding process, evaluation and selection of a concessionaire/vendor, and other contract terms related to concession operations in Iowa state parks. This proposed rulemaking would allow for longer-term/larger-scope concession contracts, providing more security and efficiency for the concessionaires/vendors and additional visitor services and experiences in park areas, while also decreasing the amount of time Department staff spend on paperwork and evaluation of concessionaires/vendors.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

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:

Concessionaires, park visitors, and citizens of Iowa will benefit from the proposed 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:

There is no cost to the public to comply with this proposed rulemaking.

- Qualitative description of impact:

This proposed rulemaking does not impose burdens on the public and is a net benefit to concessionaires.

3. Costs to the State:

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

There are underlying fiscal costs related to providing notice and advertising for concession/vendor opportunities, conducting bidding, and evaluating and selection of concessionaires/vendors.

- Anticipated effect on state revenues:

There is no anticipated increase or decrease in state revenue from this proposed rulemaking. The primary change from the current Chapter 14 is that concession contracts with a larger scale and scope will potentially enhance concession revenues.

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 informing and promoting concession/vendor opportunities, organizing bids, and assessing and choosing concessionaires/vendors are outweighed by the benefits received by both concessionaires/vendors and park visitors.

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

The proposed rulemaking is very low cost and unobtrusive and yields significant benefits to 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:

An alternative method would be to stay with a five-year concession contract term rather than extending the maximum contract term to ten years.

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

The ten-year contract term is more beneficial to concessionaires/vendors and park visitors. It is a maximum term available at the discretion of the Department, which will maintain the flexibility to offer shorter-term contracts when conditions warrant. Stakeholder feedback received by the Department also favors a ten-year concession contract term.

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 is designed to make the concessionaire process accessible to small businesses and not be unduly stringent or onerous; it does not create a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 14 and adopt the following **new** chapter in lieu thereof:

TITLE II
LICENSES, PERMITS AND CONCESSION CONTRACTS

CHAPTER 14
CONCESSIONS

571—14.1(461A) Definitions.

"Concessionaire" means a person or firm granted a contract to operate a concession in a state park or recreation area. The concessionaire is an independent contractor and not an employee or agent of the department.

"Concession operation" means operating a business within a concession area in a state park or recreation area including, but not limited to, boat rental, snack food sales, beach operation, and sale of fishing bait and tackle.

"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).

"Friends group or organization" means an organization incorporated under Iowa Code chapter 504 as a not-for-profit group which has been formed solely for the purposes of promoting and enhancing a particular state park, recreation area, or the Iowa state park system, or any combination of the three.

"Gross receipts" means the total amount received, excluding sales tax, realized by or accruing to the concessionaire from all sales, for cash or credit, of services, accommodations, materials, or other merchandise pursuant to rights granted in the contract, including gross receipts of subconcessionaires. All moneys paid into coin-operated devices, except telephones, shall be included in gross receipts.

"New concession" means the right to establish a concession operation in an area that does not currently have a concessionaire or an area where the department wishes to invite bids for a mobile type concession operation.

"Newspaper" means the same as described in Iowa Code section 618.3.

571—14.2(461A) Advertising or notice procedure.

14.2(1) *New concession.*

a. Advertising. When the department desires to obtain a new concession operation to offer multiple concession services in an area, the department shall advertise the request for proposals on the targeted small business website and the department's requests for proposals website. The department shall advertise a notice for the request for proposals in one newspaper of statewide circulation and in at least one newspaper designated by the county to be used for official publications in the county in which the state park or recreation area is located.

b. The notice shall state the following:

(1) The names and location of the area(s) in which concession operations are available.

(2) The general types of services the department would expect a concessionaire to furnish.

(3) How to obtain the request for proposals information.

(4) The deadline for submission of proposals to the department.

c. The department shall allow a minimum of 15 days between the date of publication of advertisements and the deadline for submission of proposals.

d. The request for proposals shall include the following information:

(1) A scope of work that contains detailed information regarding the types of services expected to be offered by the concessionaire and the history of the gross receipts reported for the previous five operating years by the prior concessionaire (if applicable); bid terms acceptable to the department; the name, address, and telephone number of the person to contact regarding the request for proposals; and the date and time by which the proposals must be received by the department.

(2) A map of the park in which the concession operation is proposed.

(3) A sample of the contract the successful bidder will be expected to sign.

(4) Samples of report forms that the concessionaire must submit to the department while the concession is in operation.

14.2(2) *Renewal of existing concession operation.*

a. The department may, at its option, mutually agree with the concessionaire to renew a contract during or at the end of its term. A concessionaire may request renewal during the term of a contract after a minimum of three years of concession operation and a minimum of six months prior to expiration of the existing contract. The provisions of the renewal contract shall be negotiated between the department and the concessionaire. Should either party choose not to renew the contract, appropriate notice shall be sent to the other party four months prior to the expiration date of the existing contract, and the department may advertise for bids in accordance with this chapter.

b. The department shall publish a notice of intent to renew a concession contract that has been negotiated in accordance with paragraph 14.2(2)*"a."* The notice shall be published in the same manner as provided in paragraph 14.2(1)*"a"* and shall solicit public comments regarding the renewal.

c. The department director shall, upon review of comments received, determine whether to solicit bids or proceed with the renewal of the existing contract and shall notify the concessionaire of the decision in writing. If the director denies the renewal request, the existing concessionaire may request a contested case proceeding pursuant to Iowa Code chapter 17A.

571—14.3(461A) Bidding process.

14.3(1) *Proposals.* Persons interested in operating a concession in a state park or recreation area shall submit a proposal in the format requested in the request for proposals. It is the bidder's responsibility to inspect the area proposed for concession operation and be fully aware of the condition and physical layout of the area. The proposal shall also include an explanation of any proposed operation not mentioned in the request for proposals. Concession facilities shall be bid on an "as is" basis unless the department agrees in writing to undertake certain improvements.

a. The department reserves the right to reject any or all bids.

b. If no bids are received for a concession operation, the department may:

(1) Readvertise for bids; or

(2) Contact interested persons and attempt to negotiate a contract; or

(3) Determine that there will be no concession operation in that particular area that year.

14.3(2) *Vending machines.*

a. Placement of vending machines in state parks and recreation areas shall not be subject to the advertising and bidding process established by this chapter.

b. Vending machines may be placed in state parks and recreation areas only by the publisher or distributor of the newspaper to be sold, the distributor of the soft drink to be sold in the machines, or by private vending machine companies.

c. Companies placing vending machines in state parks and recreation areas must submit a proposal to the department that states the location, number, and type of vending machines to be placed; the price(s) that will be charged to the public; and the proposed fee or commission to be paid to the state.

d. Any fees or commissions to be paid by the vendor to the state shall be paid directly to the department's central office in Des Moines, Iowa.

e. The department will not install new electrical lines, concrete pads, or any other items needed to enable installation of vending machines.

14.3(3) *Firewood sales.*

a. Firewood sales contracts shall not be subject to the advertising and bidding process established by this chapter.

b. Persons interested in selling firewood in a state park or recreation area that has no other concessionaire, or if the concessionaire has declined the opportunity to sell firewood, shall submit a request to the department that identifies the area(s) where the firewood would be sold, the price to be charged to the public, and the proposed fee or commission to be paid to the state.

c. All firewood sold or distributed in state parks and recreation areas shall be accompanied with a firewood label that meets labeling requirements identified in rule 21—46.16(177A).

d. All firewood that originates from a quarantined area and that is sold or distributed in state parks and recreation areas must be certified by the United States Department of Agriculture to show that the firewood has been processed or treated according to applicable federal regulations.

14.3(4) *Friends group or organization.*

a. Concession contracts with a friends group or organization, as defined in rule 571—14.1(461A), in state parks and recreation areas shall not be subject to the advertising and bidding process established by this chapter.

b. A friends group or organization shall submit a proposal to operate a concession operation at a particular state park or recreation area. The proposal shall state the services to be provided, the proposed hours of operation, and proposed staffing.

c. All net proceeds from the sale of merchandise and other concession services shall be spent on state park or recreation area improvement projects.

571—14.4(461A) Selection of a concessionaire. The department shall select the concessionaire it determines to be best suited for a concession operation in a state park or recreation area upon evaluation of the following information:

1. The services proposed in the concession operation.
2. The concessionaire's managerial experience and other concession-related experience.
3. The concessionaire's financial stability, based upon a review of the concessionaire's existing profitability, equity, available cash, and other applicable financial data.
4. The annual lease payment bid.
5. The length of contract proposed.
6. A check of all business and personal references given in the proposal.
7. The use of environmentally friendly practices and materials including, but not limited to, participation in recycling programs, use of items that contain recycled-content materials, use of energy-efficient appliances and equipment, and light pollution reduction.
8. The results of a criminal background check and driver's license record check.

571—14.5(461A) Concession contract—general. The term of the concession contract shall be for no more than a ten-year period without being subject to the renewal process as outlined in this chapter. The contract may be amended during its term, in writing, and effective only if the amendments are approved by all parties.

14.5(1) *Construction.* The contract may allow the construction of department-approved buildings or other facilities by the concessionaire in lieu of annual concession fee payments on an equal-value basis. The value of the buildings or facilities shall be based on actual, documented cost of construction. Any structures built under this contract condition shall become state property and cannot be removed by the concessionaire unless removal is required by the contract.

14.5(2) *Insurance.* Insurance coverage required to be carried by the concessionaire shall be "occurrence" type rather than "claims made."

14.5(3) *Exclusive rights.* The contract gives the concessionaire exclusive rights to conduct the concession operation in a particular state park or recreation area. The concessionaire must have department approval prior to allowing other vendors to do business in the area under the terms of the contract. This provision does not prohibit the department from allowing other vendors in an area if the

department identifies a service that is not under contract with the concessionaire and the concessionaire declines to provide that service.

14.5(4) *Temporary authorization.* If necessary, the department director shall have authority to issue a temporary letter of authorization to enable the successful bidder to operate a concession pending approval of the contract by the commission if commission approval is required by statute. The letter of authorization will incorporate all stipulations and conditions of the contract. The term of the letter of authorization shall not exceed 90 calendar days from the date of issuance.

571—14.6(461A) Dispute resolution. Should a dispute arise between the concessionaire and the department as to the interpretation of contract stipulations or whether the concessionaire is performing satisfactorily, the concessionaire shall initially meet with the local staff and district supervisor. If the matter cannot be resolved, the bureau chief will attempt to resolve the dispute. If the dispute cannot be resolved, the contract shall be terminated and the department may advertise for bids in accordance with this chapter. The requirements of Iowa Code section 17A.18(3) shall apply to any contract termination under the provisions of this rule. The provisions of this rule shall not be a bar to or prerequisite of the provisions of rule 571—14.7(461A).

571—14.7(461A) Suspension or termination for cause.

14.7(1) *Emergency suspension.* If the department determines that continued operation of the concession presents an immediate hazard to the public health, safety or welfare or is in violation of any state law or policy, the department may immediately suspend the contract by notice procedures described in the contract. The notice shall contain specific reasons for the emergency suspension.

The department may enforce the suspension by physically closing the concession premises. The department may assign employees to operate any part of a concession which the department determines should be opened during a suspension in order to provide continued services for park users.

If possible, the concessionaire may take action to correct the hazardous situation and request reinstatement of the contract if the department agrees that a hazardous situation no longer exists.

14.7(2) *Termination of contract.* The department may terminate the contract for one or more of the following reasons:

a. Failure to correct a hazardous condition within a reasonable time specified in the notice of emergency termination.

b. Nonconformance with the stipulations of the contract, including payment of fees.

c. Unsatisfactory performance of the concessionaire.

Upon notice of termination of the contract, the concessionaire may request a hearing under the provisions of natural resource commission rules in 571—Chapter 7.

571—14.8(456A,461A,463C) Honey Creek Resort State Park exemption. The rules in this chapter do not apply to Honey Creek Resort State Park.

These rules are intended to implement Iowa Code sections 461A.1, 461A.3, and 461A.4.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 15
"General License Regulations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A, and 483A.10

State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A, and 483A.10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (DNR) reception desk and be directed to the appropriate hearing location:

September 26, 2023
11 a.m. to 1 p.m.

Conference Room 3EW
Wallace State Office Building
Des Moines, Iowa

Public Comment

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

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Purpose and Summary

Proposed Chapter 15 governs license sales, fees, general administration, and a framework for license revocation and suspensions.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Sportsmen or -women purchasing a license to hunt, fish, or trap will bear the costs.

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

Everyone will benefit. Sportsmen or -women must, generally speaking, always have a license prior to hunting, fishing, or trapping. Additionally, the general public benefits from having well-managed wildlife populations on the landscape to see and enjoy. Furthermore, Iowa's economy greatly benefits from hunting, fishing, and trapping. According to the U.S. Bureau of Economic Analysis of 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 for the state.

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 the payment of license fees, which vary depending on the privilege sought. Iowa law requires the payment of a fee, so this obligation is a matter of statute. The proposed chapter simply designates the precise amount.

- Qualitative description of impact:

License fees vary depending on the type of privilege sought. As an example, the base fee for a resident annual fishing license is $23. The base fee for a nonresident any-sex deer license is $345.50.

3. Costs to the State:

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

DNR employs five staff to help process licenses, which includes general issuance as well as more complicated determinations around eligibility for landowner/tenant licenses, certain lottery-based licenses, and other special license types.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues from the proposed rulemaking. All edits have been made consistent with Executive Order 10's directive to, as much as possible, reduce and simplify the rules. That was accomplished by rescinding outdated and redundant language. No significant policy changes have been proposed.

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

Inaction is not possible. State law requires licenses prior to engaging in fish- and game-based recreational pursuits, and further specifies that licenses carry a fee and be subject to revocation and suspension based on fish and game code violations.

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

6. No less costly or less intrusive methods exist for achieving the purpose of the proposed rulemaking. State law requires licenses prior to engaging in fish- and game-based recreational pursuits, and further specifies that licenses carry a fee and be subject to revocation and suspension based on fish and game code violations. All license fees have a legally mandated review process to ensure the cost is reasonable and fair. No license fee increases are proposed in this 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:

No alternative methods were considered.

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 any impact on small business. Rather, hunting, fishing, and trapping greatly benefits small businesses in this state by creating jobs and generating economic activity.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
GENERAL LICENSE REGULATIONS

571—15.1(483A) Scope. The purpose of this chapter is to provide rules for license fees, sales, refunds and administration; implement the wildlife violator compact and penalties for multiple offenses; and administer special licenses available for hunting and fishing.

DIVISION I
LICENSE SALES, REFUNDS AND ADMINISTRATION

571—15.2(483A) Definitions. For the purposes of this division, the following definitions shall apply, in addition to those found in Iowa Code chapter 483A:

"Administration fee" means the fee collected by the department to pay a portion of the cost of administering the sale of licenses through electronic means.

"Immediate family member" means the spouse, a domestic partner, and all minor children of the licensee or person seeking a license.

"Licensee" means a person who applies for and receives a license under these rules from the department.

"Retail" means the sale of goods or commodities to the ultimate consumer, as opposed to the sale of goods or commodities for further distribution or processing.

"Wholesale" means the sale of goods or commodities for resale by a retailer, as opposed to the sale of goods or commodities to the ultimate consumer.

571—15.3(483A) Form of licenses. Every license shall contain a general description of the licensee. At the time of application, the applicant for a license must provide the applicant's date of birth and either a social security number or a valid Iowa driver's license number. The license shall be signed by the applicant and shall clearly indicate the privilege granted.

571—15.4(483A) Administration fee. An administration fee of $1.50 per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free annual fishing licenses, free group home fishing licenses, and boat registrations, renewals, transfers, and duplicates. An administrative fee of $3.65 will be collected from the purchaser at the time of boat registration, renewal, transfer, and duplicate purchases.

571—15.5(483A) Electronic license sales.

15.5(1) *Designation as license agent.* The director may designate a retail business establishment, an office of a governmental entity, or a nonprofit corporation as an agent of electronically issued licenses in accordance with the provisions of this rule.

15.5(2) *Application.* Application forms to sell electronically issued licenses may be secured by a written or in-person request to the Licensing Section, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. The following information must be provided on the application form:

a. The legal name, address, and telephone number of the entity applying for designation;

b. The hours open for business and general service to the public;

c. A brief statement of the nature of the business or service provided by the applicant;

d. Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system; and

e. A signature by an owner, partner, authorized corporate official, or public official of the entity applying for designation.

15.5(3) *Application review.*

a. The department shall approve or deny the application to sell electronically issued licenses based upon the following criteria:

(1) The need for a license agent in the area;

(2) The hours open for business or general service to the public;

(3) The potential volume of license sales;

(4) The apparent financial stability and longevity of the applicant;

(5) The number of point-of-sale (POS) terminals available to the department; and

(6) Type of Internet connection (dial up or high speed) used for accessing the electronic licensing system.

b. If necessary, the department may utilize a waiting list for license agent designation. The order of priority for the waiting list will be determined by the time of submittal of a complete and correct application and receipt of the required security deposit, as outlined in the application.

15.5(4) *Issuance of electronic licensing equipment.* Upon the director's approval of an application under this rule and designation of a license agent for electronic license sales, the equipment necessary to conduct such sales will be issued to the license agent by the department subject to the following terms and conditions:

a. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department an equipment security deposit in an amount to be determined by the department.

b. Prior to the issuance of the electronic licensing equipment, the approved license agent shall enter into an electronic license sales agreement with the department which sets forth the terms and conditions of such sales, including the authorized amounts to be retained by the license agent.

c. Prior to the issuance of the electronic licensing equipment, the approved license agent shall furnish to the department a signed authorization agreement for electronic funds transfer pursuant to subrule 15.5(5).

d. Electronic licensing equipment and supplies must be stored in a manner to provide protection from damage, theft, and unauthorized access. Any damage to or loss of equipment or loss of moneys derived from license sales is the responsibility of the license agent.

e. Upon termination of the agreement by either party, all equipment and supplies, as outlined in the agreement, must be returned to the department. Failure to return equipment and supplies in a usable condition, excluding normal wear and tear, will result in the forfeiture of deposit in addition to any other remedies available to the department by law.

15.5(5) *License fees.* All moneys received from the sale of licenses, less and except the agreed-upon service fee, must be immediately deposited and held in trust for the department.

a. All license agents must furnish to the department a signed authorization agreement for electronic funds transfer authorizing access by the department to a bank account for electronic transfer of license fees received by the license agent.

b. The amount of money due for accumulated sales will be drawn electronically by the department on a weekly basis. The license agent shall be given notice of the amount to be withdrawn at least two business days before the actual transfer of funds occurs. The license agent is responsible for ensuring that enough money is in the account to cover the amount due.

c. License agents may accept or decline payment in any manner other than cash, such as personal checks or credit cards, at their discretion. Checks or credit payments must be made payable to the license agent, not to the department. The license agent shall be responsible for ensuring that the license fee is deposited in the electronic transfer account, regardless of the payment or nonpayment status of any check accepted by the license agent.

15.5(6) *Termination.* Upon the termination of the electronic license sales agreement pursuant to subrule 15.5(7) or 15.5(8), the department may disconnect or otherwise block the license agent's access to the electronic licensing system.

15.5(7) *Equipment shut down and termination.* The department reserves the right to disconnect the license agent's access to the electronic licensing system or terminate the license agent's electronic license sales agreement for cause. Cause shall include, but is not limited to, the following:

a. Failing to deposit license fees into the electronic transfer account in a sum sufficient to cover the amount due for accumulated sales;

b. Charging or collecting any fees in excess of those authorized by law;

c. Discriminating in the sale of a license in violation of state or federal law;

d. Knowingly making a false entry concerning any license sold or knowingly issuing a license to a person who is not eligible for the license issued;

e. Using license sale proceeds, other than the service fee, for personal or business purposes;

f. Disconnecting or blocking access to the electronic licensing system for a period of 30 days or more; or

g. Violating any of these rules or the terms of the electronic license sales agreement. Repeated violations of these rules may result in termination of the license agent's electronic license sales agreement.

15.5(8) *Voluntary termination.* A license agent may terminate its designation and the electronic license sales agreement at its discretion by providing written notice to the department. Voluntary termination shall become effective 30 days after the department's receipt of notice.

571—15.6(483A) Refund or change requests for special deer and turkey hunting licenses and general licenses.

15.6(1) *Death of licensee.* The fee for a deer or turkey hunting license will be refunded to the licensee's estate when a licensee's death predates the season for which the license was issued and a written request from the licensee's spouse, executor or estate administrator is received by the department within 90 days of the last date of the season for which the license was issued.

15.6(2) *Military duty.* The fee for a deer or turkey hunting license will be refunded if the licensee is a member of the armed forces and is either deployed or activated for a national or state emergency during the season for which the license was issued. A written refund request must be received by the department within 90 days of the last date of the season for which the license was issued.

15.6(3) *License changes.* The department will attempt to change a licensee's choice of season or type of license if a written request is received by the licensing section prior to the start of the established season.

15.6(4) *Other refund requests.* Except as previously described in this rule, the department will not issue refunds for any licenses.

571—15.7(483A) Proof of residency required. The department shall have the authority to require persons applying for or who have received resident licenses to provide additional information to determine the person's principal and primary residence or domicile and residency status. Whether a person was issued resident or nonresident licenses by the department in previous years shall not be a determining factor of residency. Persons required to provide additional information under this rule shall be notified in writing by the department and shall have 60 days to submit all required information to the department.

571—15.8(483A) Residency status determination. Upon receipt of information requested from the person, the department may determine whether the person is a resident or a nonresident for purposes of these rules and Iowa Code chapter 483A. The department shall provide the person with written notice of the finding.

571—15.9(483A) Suspension or revocation of licenses when nonresidents obtain resident licenses.

15.9(1) *Suspension or revocation of license.* If the department finds that a nonresident has obtained a resident license, the department shall provide written notice of intent to revoke and suspend hunting, fishing, or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.9(2) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in subrule 15.9(1) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

571—15.10(483A) Licenses—fees. Except as otherwise provided by law, a person shall not fish, trap, hunt, harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, turtle, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and paying a fee as follows:

15.10(1) *Residents.*

a. Fishing license, annual — $20.
b. Fishing license, three-year — $60.
c. Fishing license, seven-day — $13.50.
d. Fishing license, one-day — $8.50.
e. Third-line fishing permit, annual — $12.
f. Fishing license, lifetime, 65 years of age or older — $59.50.
g. Fishing license, lifetime, disabled veteran or POW — $5.
h. Paddlefish fishing license, annual — $23.50.
i. Trout fishing fee — $12.50.
j. Boundary waters sport trotline license, annual — $24.
k. Hunting license, annual — $20.
l. Hunting license, annual, including the wildlife habitat fee — $33.
m. Hunting license, three-year, including the wildlife habitat fee — $99.
n. Hunting license, lifetime, 65 years of age or older — $59.50.
o. Combination hunting and fishing license, annual, including the wildlife habitat fee — $53.
p. Combination hunting and fishing license, lifetime, disabled veteran or POW — $5.
q. Deer hunting license — $30.
r. First antlerless deer license — $25.50.
s. Additional antlerless deer license — $12.
t. Wildlife habitat fee — $13.
u. Migratory game bird fee — $10.
v. Wild turkey hunting license — $26.50.
w. Fur harvester license, annual — $24.
x. Fur harvester license, annual, including the wildlife habitat fee — $37.
y. Fur harvester license, annual, under 16 years of age — $5.50.
z. Fur harvester license, lifetime, 65 years of age or older — $59.50.
aa. Fur dealer license, annual — $264.
bb. Aquaculture unit license, annual — $30.
cc. Retail bait dealer license, annual — $36.
dd. Wholesale bait dealer license, annual — $146.50.
ee. Game breeder license, annual — $18.
ff. Taxidermy license, annual — $18.
gg. Trout fishing license, lifetime, 65 years of age or older — $63.
hh. Trout fishing license, lifetime, disabled veteran — $63.
ii. Fishing license, annual, veteran — $5.

jj. Combination hunting and fishing license, annual, veteran — $5.

15.10(2) *Nonresidents.*

a. Fishing license, annual — $46.

b. Fishing license, seven-day — $35.50.

c. Fishing license, three-day — $18.50.

d. Fishing license, one-day — $10.

e. Third-line fishing permit, annual — $12.

f. Paddlefish fishing license, annual — $47.

g. Trout fishing fee — $15.50.

h. Boundary waters sport trotline license, annual — $47.50.

i. Hunting license, annual — $129.

j. Hunting license, annual, including the wildlife habitat fee — $142.

k. Hunting license, annual, under 18 years of age — $30.

l. Hunting license, annual, under 18 years of age, including the wildlife habitat fee — $43.

m. Hunting license, five-day (not applicable to deer or wild turkey seasons) — $75.

n. Hunting license, five-day, including the wildlife habitat fee (not applicable to deer or wild turkey seasons) — $88.

o. Deer hunting license, antlered or any-sex deer — $345.50.

p. Deer hunting license, antlerless-deer-only, required with the purchase of an antlered or any-sex deer hunting license — $146.50.

q. Deer hunting license, antlerless-deer-only — $263.50.

r. Preference point issued under Iowa Code section 483A.7(3)*"b"* or 483A.8(3)*"e"* — $58.50.

s. Holiday deer hunting license issued under Iowa Code section 483A.8(6), antlerless-deer-only — $88.

t. Wildlife habitat fee — $13.

u. Migratory game bird fee — $10.

v. Wild turkey hunting license, annual — $117.

w. Fur harvester license, annual — $232.

x. Fur harvester license, annual, including the wildlife habitat fee — $245.

y. Fur dealer license, annual — $586.50.

z. Fur dealer license, one-day, one location — $292.50.

aa. Location permit for fur dealer — $66.

bb. Aquaculture unit license, annual — $66.

cc. Retail bait dealer license, annual — $146.50.

dd. Wholesale bait dealer license, annual — $292.50.

ee. Game breeder license, annual — $30.50.

ff. Taxidermy license, annual — $30.50.

571—15.11 to **15.15** Reserved.

DIVISION II
MULTIPLE OFFENDER AND WILDLIFE VIOLATOR COMPACT

571—15.16(481A,481B,482,483A,484A,484B) Multiple offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be multiple offenders.

15.16(1) *Definitions.* For the purpose of this rule, the following definitions shall apply:

"Department" means the Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034.

"Multiple offender" means any person who has equaled or exceeded five points for convictions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, 484B, and 716 during a consecutive three-year period as provided in subrule 15.16(3).

"Revocation" means the taking or cancellation of an existing license or privilege.

"Suspension" means to bar or exclude one from applying for or acquiring licenses or privileges for future seasons.

15.16(2) *Recordkeeping procedures.* For the purpose of administering this rule, it shall be the responsibility of the clerk of district court for each county to deliver, on a monthly basis, disposition reports of each charge filed under Iowa Code chapters 456A, 481A, 481B, 482, 483A, 484A, 484B, and 716 to the department. Dispositions and orders of the court of all cases filed on the chapters listed in this subrule shall be sent to the department regardless of the jurisdiction or the department of the initiating officer.

a. License suspensions. In the event of a license suspension pursuant to Iowa Code section 481A.133, the clerk of court shall immediately notify the department.

b. Entering information. Upon receipt of the disposition information from the clerks of court, the department will, on a monthly basis, enter this information into a licensed system that is directly accessible to all law enforcement agencies of the state.

c. Disposition report information. Information from the disposition report that will be entered into an electronic license system which includes but may not be limited to the following:

(1) County of violation,
(2) Name of defendant,
(3) Address of defendant,
(4) Social security or driver's license number,
(5) Date of birth,
(6) Race,
(7) Sex,
(8) Height,
(9) Weight,
(10) Date and time of violation,
(11) Charge and Iowa Code section,
(12) Officer name/C-number who filed charge, and
(13) Date of conviction.

15.16(3) *Point values assigned to convictions.* Point values for convictions shall be assessed as stated in this subrule. Multiple citations and convictions of the same offense will be added as separate convictions:

a. Convictions of the following offenses shall have a point value of three:

(1) Illegal sale of birds, game, fish, or bait.
(2) More than the possession or bag limit for any species of game or fish.
(3) Hunting, trapping, or fishing during the closed season.
(4) Hunting by artificial light.
(5) Hunting from aircraft, snowmobiles, all-terrain vehicles or motor vehicle.
(6) Any violation involving threatened or endangered species.
(7) Any violations of Iowa Code chapter 482, except sections 482.6 and 482.14.
(8) Any violation of nonresident license requirements.
(9) No fur dealer license (resident or nonresident).
(10) Illegal taking or possession of protected nongame species.
(11) The unlawful taking of any fish, turtle, game, or fur-bearing animal.
(12) Illegal taking, possession, or transporting of a raptor.
(13) Hunting, fishing, or trapping while under license suspension or revocation.
(14) Illegal removal of fish, minnows, frogs, or other aquatic wildlife from a state fish hatchery.
(15) Any fur dealer violations except failure to submit a timely annual report.
(16) Any resident or nonresident making false claims to obtain a license.
(17) Illegal taking or possession of hen pheasant.
(18) Applying for or acquiring a license while under suspension or revocation.
(19) Taking game from the wild—see Iowa Code section 481A.61.

(20) Violation of Iowa Code sections 483A.27(7) and 483A.27A.
(21) Any violation of Iowa Code section 716.8 while hunting, fishing, or trapping.

b. Convictions of the following offenses shall have a point value of two:
(1) Hunting, fishing, or trapping on a refuge.
(2) Illegal possession of fur, fish, turtle, or game.
(3) Chasing wildlife from or disturbing dens.
(4) Trapping within 200 yards of an occupied building or private drive.
(5) Possession of undersized or oversized fish.
(6) Shooting within 200 yards of occupied building or feedlot.
(7) No valid resident license relating to deer, turkey, or paddlefish.
(8) Illegal importation of fur, fish, or game.
(9) Failure to exhibit catch to an officer.
(10) Trapping or poisoning game birds, or poisoning game animals.
(11) Violations pertaining to private fish hatcheries and aquaculture.
(12) Violations of the fur dealers reporting requirements.
(13) Violation of Iowa Code section 481A.126 pertaining to taxidermy.
(14) Loaded gun in a vehicle.
(15) Attempting to unlawfully take any fish, turtle, game, or fur-bearing animals.
(16) Attempting to take game before or after legal shooting hours.
(17) Wanton waste of fish, game or fur-bearing animals.
(18) Illegal discharge of a firearm pursuant to Iowa Code section 481A.54.
(19) Any violation of Iowa Code section 482.14 pertaining to commercial fishing.
(20) Failure to tag deer, turkey, or paddlefish.
(21) Applying for or obtaining more than the legal number of licenses allowed for deer or turkey.
(22) Illegal transportation of game, fish or furbearers.
(23) Violation of Iowa Code section 483A.27, except section 483A.27(7).

c. All other convictions of provisions in Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B shall have a point value of one.

15.16(4) *Length of suspension or revocation.*

a. The term of license suspension or revocation shall be determined by the total points accumulated during any consecutive three-year period, according to the following: 5 points through 8 points is one year, 9 points through 12 points is two years, and 13 points or over is three years.

b. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(2) shall have an additional suspension of one year. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(3) shall have an additional suspension of two years. Any person convicted of a violation of any provision of Iowa Code chapters 481A, 481B, 482, 483A, 484A, and 484B under the circumstances described in Iowa Code section 481A.135(4) shall have an additional suspension of three years. The foregoing provisions apply whether or not a person has been found guilty of a simple misdemeanor, serious misdemeanor or aggravated misdemeanor pursuant to Iowa Code sections 481A.135(2), 481A.135(3) and 481A.135(4). If a magistrate suspends the privilege of a defendant to procure another license and the conviction contributes to the accumulation of a point total that requires the department to initiate a suspension, the term of suspension shall run consecutively up to a maximum of five years. After a five-year suspension, remaining time will be calculated at a concurrent rate.

15.16(5) *Points applicable toward suspension or revocation.* If a person pleads guilty or is found guilty of an offense for which points have been established by this rule but is given a suspended sentence or deferred sentence by the court as defined in Iowa Code section 907.1, the assigned points will become part of that person's violation record and apply toward a department suspension or revocation.

15.16(6) *Notification of intent to suspend and revoke license.* If a person reaches a total of five or more points, the department shall provide written notice of intent to revoke and suspend hunting, fishing,

or trapping licenses as provided in 571—Chapter 7. If the person requests a hearing, it shall be conducted in accordance with 571—Chapter 7.

15.16(7) *Dates of suspension or revocation.* The suspension or revocation shall be effective upon failure of the person to request a hearing within 30 days of the notice described in subrule 15.16(6) or upon issuance of an order affirming the department's intent to suspend or revoke the license after the hearing. The person shall immediately surrender all licenses and shall not apply for or obtain new licenses for the full term of the suspension or revocation.

571—15.17(456A) Wildlife violator compact. The department has entered into the wildlife violator compact (the compact) with other states for the uniform enforcement of license suspensions. The compact, a copy of which may be obtained by contacting the department's law enforcement bureau, is adopted herein by reference. The procedures set forth in this rule shall apply to license suspensions pursuant to the wildlife violator compact.

15.17(1) *Definitions.* For purposes of this rule, the following definitions shall apply:

"Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

"Department" means the Iowa department of natural resources.

"Issuing state" means a participating state that issues a fish or wildlife citation to a person.

"Participating state" means any state which enacts legislation to become a member of the wildlife violator compact. Iowa is a participating state pursuant to Iowa Code section 456A.24(14).

15.17(2) *Suspension of licenses for noncompliance.* Upon the receipt of a valid notice of failure to comply, as defined in the compact, the department shall issue a notice of suspension to the Iowa resident. The notice of suspension shall:

a. Indicate that all department-issued hunting (including furbearer) or fishing licenses shall be suspended, effective 30 days from the receipt of the notice, unless the department receives proof of compliance.

b. Inform the violator of the facts behind the suspension with special emphasis on the procedures to be followed in resolving the matter with the court in the issuing state. Accurate information in regard to the court (name, address, telephone number) must be provided in the notice of suspension.

c. Notify the license holder of the right to appeal the notice of suspension within 30 days of receipt. Said appeal shall be conducted pursuant to 571—Chapter 7 but shall be limited to the issues of whether the person so notified has a pending charge in the issuing state, whether the person has previously received notice of the violation from the issuing state, and whether the pending charge is subject to a license suspension for failure to comply pursuant to the terms of the compact.

d. Notify the license holder that, prior to the effective date of suspension, a person may avoid suspension through an appearance in the court with jurisdiction over the underlying violations or through the payment of all fines, costs, and surcharges associated with the violations.

e. Indicate that, once a suspension has become effective, the suspension may only be lifted upon the final resolution of the underlying violations.

15.17(3) *Reinstatement of licenses.* Any license suspended pursuant to this rule may be reinstated upon the receipt of an acknowledgement of compliance from the issuing state, a copy of a court judgment, or a certificate from the court with jurisdiction over the underlying violations and the payment of applicable Iowa license fees.

15.17(4) *Issuance of notice of failure to comply.* When a nonresident is issued a citation by the state of Iowa for violations of any provisions under the jurisdiction of the natural resource commission which is covered by the suspension procedures of the compact and fails to timely resolve said citation by payment of applicable fines or by properly contesting the citation through the courts, the department shall issue a notice of failure to comply.

a. The notice of failure to comply shall be delivered to the violator by certified mail, return receipt requested, or by personal service.

b. The notice of failure to comply shall provide the violator with 14 days to comply with the terms of the citation. The violator may avoid the imposition of the suspension by answering a citation through an appearance in a court or through the payment of all fines, costs, and surcharges, if any.

c. If the violator fails to achieve compliance, as defined in this rule, within 14 days of receipt of the notice of failure to comply, the department shall forward a copy of the notice of failure to comply to the home state of the violator.

15.17(5) *Issuance of acknowledgement of compliance.* When a person who has previously been issued a notice of failure to comply achieves compliance, as defined in this rule, the department shall issue an acknowledgement of compliance to the person who was issued the notice of failure to comply.

15.17(6) *Reciprocal recognition of suspensions.* Upon receipt of notification from a state that is a member of the wildlife violator compact that the state has suspended or revoked any person's hunting or fishing license privileges, the department shall:

a. Enter the person's identifying information into the records of the department.

b. Deny all applications for licenses to the person for the term of the suspension or until the department is notified by the suspending state that the suspension has been lifted.

571—15.18 to **15.20** Reserved.

DIVISION III
SPECIAL LICENSES

571—15.21(483A) Fishing license exemption for patients of substance abuse facilities.

15.21(1) *Definition.* For the purpose of this rule, the definition of "substance abuse facility" is identical to the definition of "facility" in Iowa Code section 125.2(8).

15.21(2) *Procedure.* Each substance abuse facility may apply to the department of natural resources for a license exempting patients from the fishing license requirement while fishing as a supervised group as follows:

a. Application shall be made on a form provided by the department and shall include the name, address and telephone number of the substance abuse facility including the name of the contact person. A general description of the type of services or care offered by the facility must be included as well as the expected number of participants in the fishing program and the water bodies to be fished.

b. A license will be issued to qualifying substance abuse facilities and will be valid for all patients under the care of that facility.

c. Patients of the substance abuse facility must be supervised by an employee of the facility while fishing without a license pursuant to this rule. An employee of the substance abuse facility must have the license in possession while supervising the fishing activity of patients.

d. Notwithstanding the provisions of this rule, each employee of the substance abuse facility must possess a valid fishing license while participating in fishing.

571—15.22(481A) Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals.

15.22(1) *Definitions.* For the purpose of this rule:

"Bow and arrow" means a compound, recurve, or longbow.

"Crossbow" means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical or electric trigger and a working safety.

"Handicapped" means a person possessing a physical impairment of the upper extremities that makes a person physically incapable of shooting a bow and arrow. This includes difficulty in lifting and reaching with arms as well as difficulty in handling and fingering.

15.22(2) *Application for crossbow permit.* An individual requesting use of a crossbow for hunting deer or turkey must submit an application for a crossbow permit on forms provided by the department. The application must include a statement signed by the applicant's physician declaring that the individual is not physically capable of shooting a bow and arrow. The physician shall be a licensed

physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner. A first-time applicant must submit the crossbow permit application no later than ten days before the last day of the license application period for the season the person intends to hunt.

15.22(3) *Crossbow permit—issuance and use.* Approved applicants will be issued a permit authorizing the individual to hunt deer and turkey with a crossbow. The crossbow permit must be carried with the license and on the person while hunting deer and turkey and must be exhibited to a conservation officer upon request.

15.22(4) *Validity and forfeiture of permit.* A permit authorizing the use of a crossbow for hunting deer and turkey will be valid for as long as the person is incapable of shooting a bow and arrow. If a conservation officer has probable cause to believe the person's handicapped status has improved, making it possible for the person to shoot a bow and arrow, the department may, upon the officer's request, require the person to obtain in writing a current physician's statement. The physician shall be a licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.

If the person is unable to obtain a current physician's statement confirming that the person is incapable of shooting a bow and arrow, the department may initiate action to revoke the permit pursuant to 571—Chapter 7.

15.22(5) *Restrictions.* Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer or turkey. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

571—15.23(483A) Free hunting and fishing license for low-income persons 65 years of age and older or low-income persons who are permanently disabled.

15.23(1) *Purpose.* Pursuant to Iowa Code section 483A.24(15), the department of natural resources will issue a free annual combination hunting and fishing license to low-income persons who meet the age status or permanently disabled status as defined.

15.23(2) *Definitions.*

"Age status" means a person who has achieved the sixty-fifth birthday.

"Low-income person" means a person who is a recipient of a program administered by the state department of human services for persons who meet low-income guidelines.

"Permanently disabled" means a person who meets the definition in Iowa Code section 483A.4.

15.23(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. The application shall include an authorization allowing the department of health and human services to verify the applicant's household income if proof of income is provided through the department of health and human services.

b. The free annual hunting and fishing combination license will be issued by the department upon verification of program eligibility. The license issued under this rule will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

c. A person whose income falls below the federal poverty guidelines may apply for this license by providing either of the following:

(1) A current Notice of Decision letter. For purposes of this rule, a "current Notice of Decision letter" shall mean a letter from the department of health and human services dated in the month the application is received or dated in the five months immediately preceding the month the application is received that describes the applicant's monthly or annual household income.

(2) If a person does not have a Notice of Decision letter as described in subparagraph 15.23(3)*"c"*(1), a document shall be provided that states that the applicant's annual income does not exceed the federal poverty limit for the current year and lists income from all sources, including but not limited to any wages or compensation, social security, retirement income, dividends and interest, cash

gifts, rents and royalties, or other cash income. In addition, the applicant shall provide documentation of such income by submitting a copy of the applicant's most recently filed state or federal income tax return to the department. In the event an applicant does not have a tax return that was filed within the last year because the applicant's income level does not require the filing of a tax return, the applicant shall so notify the department, shall provide to the department bank statements, social security statements or other relevant income documentation identified by the department, and shall meet with the department to verify income eligibility under this rule.

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the guidelines are available in the subsequent year. The guidelines will be shown on the application and will be available upon request from the department.

15.23(4) *Revocation.* Any license issued pursuant to rule 571—15.23(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

571—15.24(483A) Free annual fishing license for persons who have severe physical or mental disabilities.

15.24(1) *Purpose.* Pursuant to Iowa Code section 483A.24(9), the department of natural resources will issue a free annual fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the definition of "severe mental disability" or "severe physical disability" in subrule 15.24(2).

15.24(2) *Definitions.* For the purposes of this rule, the following definitions apply:

"Severe mental disability" means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency;
3. Reflect the person's need for a combination and sequence of services that are individually planned and coordinated; and
4. Requires the full-time assistance of another person to maintain a safe presence in the outdoors.

"Severe physical disability" means a disability that limits or impairs the person's mobility or use of a hand or arm and that requires the full-time assistance of another person or that makes the person dependent on a wheelchair for the person's normal life routine.

15.24(3) *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

a. Application shall be made on a form provided by the department and shall include the name, home address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant and other information as required. The license issued under this rule will be issued by the department upon verification of program eligibility and will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain the license.

b. The application shall be certified by the applicant's attending physician with an original signature and, based upon the definition of severe mental disability or severe physical disability as provided for in this rule, declare that the applicant has a severe mental or physical disability. A medical statement from the applicant's attending physician specifying the applicant's type of disability shall be on 8½" x 11" stationery of the attending physician or on paper inscribed with the attending physician's letterhead. For purposes of this rule, the attending physician must be a currently practicing licensed physician, osteopathic physician, physician assistant, or advanced registered nurse practitioner.

15.24(4) *Revocation.* Any license issued pursuant to rule 571—15.24(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

571—15.25(483A) Transportation tags for military personnel on leave from active duty.

15.25(1) *Military transportation tags for deer and turkey.* The military transportation tag shall include the following information: name, birth date, current address of military personnel; species and sex of animal taken; date of kill; and weapon used. Only conservation officers of the department shall be authorized to issue military transportation tags.

15.25(2) *Annual limit for military transportation tags.* A person receiving a military transportation tag shall be limited to one military deer tag and one military turkey tag annually.

15.25(3) *Regulations apply to military personnel.* With the exception of the license requirement exemption set forth in Iowa Code section 483A.24(7), all hunting and fishing regulations shall apply to active duty military personnel.

571—15.26(483A) Special nonresident deer and turkey licenses. The commission hereby authorizes the director to issue special nonresident deer and turkey licenses pursuant to the provisions of 561—Chapter 12.

571—15.27 to **15.39** Reserved.

DIVISION IV
EDUCATION AND CERTIFICATION PROGRAMS

571—15.40(483A) Hunter education program.

15.40(1) This division clarifies the term "hunting license" as used in Iowa Code section 483A.27 in relation to the hunter education course requirement, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter education so as to be eligible to purchase an Iowa hunting license. For the purpose of this division, a hunting license, pursuant to Iowa Code sections 483A.1 and 483A.24, includes:

1. Hunting licenses for legal residents except as otherwise provided.
2. Hunting licenses for nonresidents.
3. Hunting preserve licenses.
4. Free annual hunting and fishing licenses for persons who are disabled or are 65 years of age or older and qualify for low-income status as described in Iowa Code section 483A.24.
5. Veteran's hunting and fishing licenses as described in Iowa Code section 483A.24.

15.40(2) Deer and wild turkey license applications. Individuals are not required to exhibit a certificate showing satisfactory completion of a hunter education course when applying for a deer or wild turkey license.

These rules are intended to implement Iowa Code chapters 456A, 481A, and 483A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 16
"Docks and Other Structures on Public Waters"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 461A.4 and 462A.3

State or federal law(s) implemented by the rulemaking: Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27, and 462A.32

Public Hearing

A public hearing at which persons may present their views orally or in writing 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 26, 2023 12 noon to 1 p.m.	Wallace State Office Building Des Moines, Iowa 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:

Craig Cutts
Sherry Arntzen
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: iowa.stateparks@dnr.iowa.gov

Purpose and Summary

This chapter regulates docks on water bodies open to the public for boating or other recreational uses. This includes a permitting system for docks operated by residential owners, commercial entities, and governmental subdivisions. It also contains the rules for the department's dock management area (DMA) program. The primary purposes of the chapter are to balance the needs of dock owners with those of the general public on public lakes and to reduce conflicts between neighboring dock owners. Additionally, the DMA program provides dock access to members of the public who are not riparian property owners.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Dock owners will bear the costs.

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

Dock owners, neighbors of dock owners, boaters, anglers, and any members of the general public who visit public water bodies 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 chapter maintains the existing administrative fee structure for dock permit applicants, which is as follows:

Class I (standard private dock): no fee
Class II (government docks; docks on local government property): no fee
Class III (non-standard private dock): $125 plus $50 per hoist/slip in excess of four
Class IV (commercial docks): $250 plus $50 per hoist/slip in excess of six

Dock Management Area program docks:

	Dock Fee	Hoist Fee
Beed's Lake	$100	$50
Black Hawk Lake Marina	$200	$50
Black Hawk Lake/Denison	$200	$50
Black Hawk North Shore	$200	$50
Blue Lake	$100	$50
Clear Lake Ventura Heights	$250	$50
Clear Lake Harbourage	$600	$100 - hoist or slip fee
Clear Lake North Shore	$250	$50
East Okoboji Beach	$250	$50
Triboji Lakeshore	$250	$50
Triboji Lazy Lagoon	$250	$50 - hoist or slip fee
Pillsbury Point	$250	$50
Lower Pine Lake	$100	$50
Lake Macbride The Pines	$600	$100 - slip fee
Lake Macbride Lakecrest	$600	$100 - slip fee
Rice Lake	$100	$50
Union Grove	$100	$50
Lake Odessa	$100	$25

- Qualitative description of impact:

Administrative fees help cover the department's costs for administering dock programs. This involves administration of permitting, investigation of proposed dock sites and designs by conservation officers, and investigations for rule compliance or in response to complaints filed by the public.

3. Costs to the State:

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

The Department's costs are Law Enforcement Bureau and Parks Bureau staff time. Dock-related work is a part of the job duties of conservation officers having public lakes in their territories. Additionally, office staff provide administrative support for dock permitting and associated activities.

- Anticipated effect on state revenues:

The proposed chapter maintains the status quo. The revenue from administrative fees helps offset the costs of staff time dedicated to docks.

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

The costs of the proposed chapter are the same as have been in effect and are minimal compared to fees charged for dock space by commercial marinas. Failing to charge fees would allow commercial entities to exclusively occupy and profit from the use of public waters with no compensation to the public and would shift the costs of evaluating individualized permits from permittees to the general public. Benefits of the proposed chapter are maintaining a balance between private dock use and public use of water bodies, and between the rights of various property owners. Docks are a frequent subject of disputes between neighbors. Without limitations on placement and size of docks, conflict would be much more frequent. Additionally, unrestricted docks would interfere with the public's use of public water bodies, including boating, fishing, and swimming, without consideration of the value of those uses.

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

The Department could assess smaller fees or no fees. That would underfund the dock program, though, which would have subsequent compliance and enforcement consequences. The department could eliminate its permitting system. That would likely create a lot more neighbor conflict, and eliminate the DMA program, which benefits many nonriparian landowners.

6. Alternative methods considered by the agency:

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

The Department has considered a wide range of alternatives for managing docks on public water bodies ranging from eliminating permitting altogether to significantly strengthening the regulatory and enforcement aspects of the rules.

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

The Department believes that the proposed chapter strikes the appropriate balance between competing interests. Eliminating permits or reducing regulation of docks will likely result in increased conflict between neighbors and between dock owners and other users of public water bodies.

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?

Businesses involved with docks include marinas, boat dealers, and other lakeside businesses. The proposed chapter requires very little for compliance. Such dock owners must obtain a dock permit and pay the administration fee. The proposed chapter contains two rule exceptions that are beneficial to businesses: (1) the administrative fee may be waived for permit applications that represent minor amendments to an existing permit, and (2) there is no hoist/slip administrative fee for courtesy hoists

or slips. Courtesy hoists/slips serve as free parking spots for the business's customers as opposed to hoists/slips that are rented for a fee by a marina to an individual for longer-term boat mooring.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
DOCKS AND OTHER STRUCTURES ON PUBLIC WATERS

571—16.1(461A,462A) Definitions.

"Artificial lake" means all river impoundments and all other impoundments of water to which the public has a right of access from land or from a navigable stream inlet. Examples are Lake Panorama, Lake Delhi, Lake Nashua, and Lake Macbride.

"Boat" means "watercraft" as defined in Iowa Code section 462A.2.

"Boat hoist" or *"lift"* means a structure placed in the water or below the ordinary high-water mark for boat storage, including platforms for storage of personal watercraft. For the purposes of this chapter, a boat hoist that is designed to store up to two small vessels such as personal watercraft or one-person sailboats may be treated as a single hoist. For the purposes of this chapter, storage of stand-up paddleboards on racks above the platform of a dock is not counted as a boat hoist or lift; however, a rack for storage of canoes or kayaks is a boat hoist.

"Catwalk" means a platform no more than four feet wide installed to provide access from a dock to a moored boat or boat hoist.

"Commercial dock" means a dock used as part of a business, including a dock extending from residential property if one or more mooring spaces at the dock are rented for a fee. A dock maintenance fee charged by a property owners' association to its members is not a basis to classify a dock as commercial. This definition is not applicable to docks in dock management areas or concession operations administered by the department.

"Commission" means the natural resource commission.

"Common dock" means a dock serving two or more adjoining shoreline properties.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or the director's designee.

"Dock" means a platform-type structure extending from shoreline property over a public water body, including but not limited to platforms that provide access to boats moored on the water body.

"Dock management area" or *"DMA"* means an area designated by the department in the bed of a water body adjoining a state park, wildlife management area, or recreation area or adjoining a strip of land that was dedicated to the public and is subject to the jurisdiction of the department pursuant to Iowa Code section 461A.11(2). A dock management area as designated by the department includes an area adjoining public land from which docks extend.

"Impoundment" means a body of water formed by constructing a dam across a waterway.

"Public dock" means a dock constructed and maintained to provide public access from public land to a water body.

"Public land" means land that is owned by the state, a city, or a county or land that has been dedicated for public access to a public water body.

"Public water body" is a water body to which the public has a right of access.

"Rental" means taking compensation, trading, or bartering for the usage of a slip or hoist on a Class I or Class III dock, including the rental of a vehicle parking spot that includes the privilege of using a hoist or slip on a Class I or Class III dock.

"Shoreline property" means a parcel of property adjoining (littoral to) a lake or adjoining (riparian to) a river or other navigable stream.

"Slip" means a mooring space, usually adjacent to a dock, sometimes accessed by a catwalk.

"Water body" means a river or other stream, a natural lake, an artificial lake or other impoundment, or an excavated pit.

DIVISION I
PRIVATE, COMMERCIAL AND PUBLIC DOCKS

571—16.2(461A,462A) Scope of division and classes of permits. Permits are required for docks on all water bodies open to the public for boating or other recreational uses. This division governs permits for all types of docks except docks in dock management areas designated by the department. Classes of permits are designated as follows: Class I permits authorize standard private docks, other private docks in specified areas, and docks permitted by the U.S. Army Corps of Engineers; Class II permits authorize docks that are managed by governmental entities and extend from shoreline property owned by those governmental entities; Class III permits authorize nonstandard private docks; and Class IV permits authorize commercial docks. A dock that involves placement of fill or construction of a permanent structure in a state-owned public water body also requires a construction permit issued under 571—Chapter 13. A dock issued a permit by the U.S. Army Corps of Engineers, located on a water body managed by the U.S. Army Corps of Engineers, does not require a state dock permit under this chapter.

571—16.3(461A,462A) Standard requirements for all docks. All docks are subject to the following requirements:

16.3(1) *Adverse impacts on aquatic ecosystem.* All docks, hoists, slips and related structures shall be located, sized, configured, constructed and installed to limit their adverse impacts on the aquatic ecosystem. In areas of sensitive aquatic habitat, docks and hoists shall be located, configured, constructed and installed to minimize harm to aquatic habitat. Other restrictions may be placed on docks that are in a state-protected waters area as necessary to protect the natural features of the designated area.

16.3(2) *Adverse impacts on public access for recreational use.* A dock shall not be configured to enclose an area of a public water body and create a private water area or otherwise adversely affect public recreational use of the water body. Where walking or wading parallel to the shore below the ordinary high-water mark would be physically practical except for the obstruction created by a dock, the dock owner shall not prevent a person from stepping on or over the dock to bypass the obstruction.

16.3(3) *Location and offsets.* To the extent practical, a dock and boat hoists shall be placed near the center of the shoreline property frontage and installed perpendicular to the ordinary high-water mark to maximize offsets from neighboring properties. Each dock, hoist, moored vessel and other permitted structure shall be offset a minimum of five feet from an adjoining property line and five feet from the projection of a line perpendicular from the ordinary high-water mark at the common boundary with adjoining shoreline property as determined by the department. A minimum gap of ten feet shall be maintained between adjoining docks (including "L" or "T" or catwalk segments), hoists or moored boats. Where projection of a line perpendicular from the ordinary high-water mark is impractical, it is the intent of this rule that a ten-foot gap be maintained in a manner that is equitable to each adjoining shoreline property owner.

16.3(4) *Length.* A dock shall not extend farther from the water's edge than the distance necessary for reasonable access to the water body in relation to characteristics of the water body in the vicinity of the dock site and the impacts on the water body and other users. Access to maintain one or more boats in water with a minimum depth of three feet shall be considered sufficient access.

16.3(5) *Display of 911 address.* Each dock owner shall display the 911 address, including the street and city, assigned to the property served by the dock. The owner of a dock authorized by an individual permit shall also display the dock permit number. The information shall be displayed in block letters and numbers at least one inch high in a color contrasting with the background, on the water end of the dock, facing away from shore, and shall be plainly visible.

16.3(6) *Winter removal.* Each dock must be removed from public waters before December 15 of each year and shall not be reinstalled until the following spring unless the removal requirement is waived by a condition of a dock permit or by rule 571—16.18(461A,462A).

16.3(7) *No enclosure of private docks.* Private docks and docks in dock management areas shall not be enclosed by roofs or sides. Hoists may be enclosed by roofs and sides constructed of soft-sided natural fiber or synthetic fiber materials for the purpose of protecting watercraft.

16.3(8) *Materials and flotation specifications.* Every new floating structure authorized by this chapter shall use flotation methods and devices of a type constructed of low-density, closed-cell rigid plastic foam; high-impact polyethylene fiberglass material; wood products pressure-treated with a product approved by the United States Environmental Protection Agency for aquatic use; or other inert materials to provide flotation. Synthetic (such as plastic or fiberglass) or metal containers not originally manufactured as flotation devices may be used as dock flotation devices if they have been cleaned of any product residue, sealed and watertight, and filled with a closed-cell rigid plastic foam.

16.3(9) *Flow of water.* All docks shall be constructed and placed in a manner that allows the free flow of water beneath them.

16.3(10) *Excavation, fill and aquatic vegetation removal prohibited.* No bed material may be excavated or fill placed, and no aquatic vegetation may be removed below the ordinary high-water mark of a water body in association with construction of a dock unless excavation, placement of fill, or aquatic vegetation removal is specifically authorized by a construction permit issued under 571—Chapter 13.

16.3(11) *Storage, use, and dispensing of fuel.* The storage, use, and dispensing of any fuel on a dock on or over a public water body or adjacent public land shall be in compliance with Iowa Code chapter 101 and administrative rules that implement Iowa Code chapter 101.

16.3(12) *Electrical service.* Any electrical service on or leading to any dock used for storage or dispensing of fuel must comply with the National Electrical Code, latest revision. All electrical service leading to docks shall include ground fault circuit interrupter protection.

16.3(13) *Anchoring of river docks.* All river docks must be securely anchored to prevent them from becoming floating hazards during times of high river flows. The riparian owner is responsible for dock retrieval and removal when necessary to prevent or remove a navigation hazard.

16.3(14) *Access for inspection.* A dock, boat hoist, raft, platform, mooring buoy or any other structure on a public water body may be physically inspected at any time by a representative of the department as needed to determine whether it was placed and is maintained in a manner consistent with the requirements in these rules or with a permit issued under these rules.

571—16.4(461A,462A) Class I permits for standard private docks. This rule establishes criteria and procedures for Class I permits for private docks qualifying as standard docks under criteria in this rule and for certain other docks in areas listed in this rule.

16.4(1) *Criteria for standard docks.* A Class I permit for a standard dock may authorize a total of one dock and up to two hoists serving one residence. It may authorize a common dock serving two or more residences located on adjoining shoreline properties. A common dock may include up to three hoists per shoreline property and be eligible for a Class I dock permit. The dock must extend from shoreline property on which one or more of the residences are located and must meet all of the following criteria:

a. Dock length limits. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 50 feet of the dock is in 3 feet of water up to a maximum of 300 feet from the water's edge. These lengths shall be measured from the water's edge when the dock is installed. A dock on an artificial lake or river may extend the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge when the dock is installed. However, the department may give notice to a property owner that a shorter dock length is necessary to avoid interference with navigation or an adjoining property owner's access. The width of an "L" or "T" segment at the outer end of a dock is included in measuring the length of the dock.

b. Width and configuration of docks on natural lakes. A dock on a natural lake may have no more than one "L" or "T" segment. The total length of the "L" or "T" segment facing opposite from shore may not be greater than 20 feet including the width of the dock. The total area of the "L" or "T" segment may not exceed 200 square feet. That part of the main dock forming the center of a "T" segment or an extension of an "L" segment is included in measuring the area of the "T" or "L" segment. No other part of the dock may be more than six feet wide. Catwalks shall be at least two feet wide and considered as

part of the dock. Catwalks shall be limited in length as in an "L" or "T" segment of the dock construction and may not extend beyond the width of the hoist, except that a catwalk may be extended around the hoist for access to the hoist.

c. Compliance with standard requirements. The dock and associated hoists must comply with the standard requirements in rule 571—16.3(461A,462A) for all docks.

d. Other structures not authorized. A Class I permit does not authorize placement of any other anchored or floating structure, such as a swim raft.

16.4(2) *Class I permits for private docks in other specified areas.* This subrule authorizes issuance of Class I permits for private docks in certain areas where circumstances, including narrowness of the water areas specified below, require different dock and hoist configurations. In the following areas, docks that fail to comply with the offset or ten-foot gap requirement in subrule 16.3(3) but that meet other standard dock requirements in rule 571—16.3(461A,462A) are eligible for a Class I permit, unless they obstruct navigation or an adjoining property owner's access: canals off West Okoboji Lake; Okoboji Harbor; inside harbor of Harbourage at Clear Lake; Venetian Village Canal at Clear Lake; Cottage Reserve on Lake Macbride; Lake Panorama; canals at Lake Manawa; and Lake Delhi.

16.4(3) *Procedures for issuance of Class I dock permits.* The owner of a standard dock eligible for a Class I permit under the criteria in subrule 16.4(1) or a dock in an area specified in subrule 16.4(2) shall apply for a Class I dock permit via the department's website. The applicant shall certify that the dock meets the criteria for a Class I permit. The department shall approve the application based on the applicant's certification and shall assign a permit number, which may be a series of numbers or letters or a combination of numbers and letters. The applicant is responsible for obtaining stickers with the permit numbers and letters, for attaching them to the end of the dock facing opposite from the shoreline, and for displaying the 911 address as provided in subrule 16.3(5). Class I dock permits authorized by this rule are issued without administrative fee and remain valid until the property is sold or transferred. In the event the property is sold or transferred, the new owner may request to transfer the Class I dock permit as provided in subrule 16.17(1). A Class I dock permit shall be valid only while dock and hoists comply with the criteria for a Class I permit.

571—16.5 Reserved.

571—16.6(461A,462A) Class II permits for docks authorized by governmental entities that own or otherwise control shoreline property. This rule authorizes issuance of a Class II dock permit to a governmental entity for docks authorized by that entity to extend from public land owned or controlled by the entity. A Class II permit may include all docks and hoists authorized by a governmental entity on one water body. The Class II dock permit shall require that all docks comply with the standard requirements in rule 571—16.3(461A,462A). Class II permits may include exceptions as needed to provide continuing authorization for docks and hoists that were lawfully installed and maintained before the effective date of certain requirements as set forth in this rule. A dock on a natural lake may extend the greater of 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet from the water's edge. These lengths shall be measured from the water's edge when the dock is installed. The governmental entity authorizing maintenance of a dock and boat hoists shall be responsible for enforcing the standard requirements and length limit. The department reserves authority to determine whether the requirements of rule 571—16.3(461A,462A) and the length limit are met upon complaint of a person who claims that a public or private right is adversely affected by a permitted dock. If the department determines that a dock or hoist must be moved or removed from the water body because of an adverse effect, the department shall issue an administrative order to the governmental entity that is authorizing maintenance or use of the dock and to the person who is maintaining or using the dock. Issuance of the administrative order shall trigger a right of the governmental entity and the affected person to a contested case. If shoreline property is public land but there is uncertainty concerning the relationship between the authority of the governmental entity and the authority of the department, the Class II permit shall include a recital concerning the relative authorities of the department and the permittee. Class II permits are issued without fee and are valid until a classification change is made.

571—16.7(461A,462A) Class III permits for nonstandard private docks. All private docks that are not authorized by Class I or Class II permits shall require a Class III dock permit. In determining whether to issue a Class III permit for a private dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

16.7(1) A Class III private dock permit shall require docks or hoists to be in compliance with requirements in rule 571—16.3(461A,462A), except as provided in rule 571—16.9(461A,462A).

16.7(2) An individual private dock on a natural lake may be permitted by a Class III permit to extend 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water when the dock is installed. These lengths shall be measured from the water's edge when the dock is installed. If the water level declines after installation, additional segments may be installed during the season as needed to maintain 80 feet of dock in 3 feet of water, up to a maximum length of 300 feet from the water's edge. However, the department may give notice to a permittee that a shorter dock length is required to avoid interference with navigation or an adjoining property owner's access. The maximum permitted length of an individual private dock on an artificial lake or river is the lesser of 50 feet from the water's edge or one-fourth of the width of the waterway measured from the water's edge at normal water levels. The width of an "L" or "T" segment at the outer end of a dock is included in measuring the length of the dock.

16.7(3) The maximum number of hoists authorized by a Class III permit for an individual private dock is one hoist for every 10 feet of shoreline.

16.7(4) A Class III permit for an individual private dock on a natural lake may not authorize "L" or "T" segments containing more than a total of 240 square feet including the area of the adjoining parts of the main dock.

16.7(5) An individual private dock may be exempted by permit condition from the winter removal requirement in appropriate circumstances under criteria in rule 571—16.18(461A,462A).

571—16.8(461A,462A) Class IV permits for commercial docks. In determining whether to issue a Class IV permit for a commercial dock or to condition the permit by denying an application in part, the department shall apply the following criteria:

16.8(1) A Class IV permit shall require docks or hoists to be in compliance with requirements in rule 571—16.3(461A,462A), except as provided in rule 571—16.9(461A,462A). Greater offsets may be required for new commercial docks or hoists if needed to minimize boat traffic and congestion that spills over in front of other shoreline property not owned or controlled by the applicant.

16.8(2) A commercial dock on a natural lake may be permitted to extend a maximum of 300 feet from the water's edge. However, the applicant must provide justification for a length greater than 150 feet and demonstrate that there are no appropriate alternatives available.

16.8(3) The maximum number of hoists or slips authorized by a permit for a commercial dock is one hoist or slip for every ten feet of shoreline. This limit shall not apply where a business operated on the shoreline property primarily involves boat sales, rentals, storage, or other boat services. In calculating the hoist limit, courtesy hoists shall not be counted if they are provided without charge to boaters to temporarily moor their boats while they go ashore to access services at a business on the shoreline property.

16.8(4) A permit for a commercial dock shall not be issued or the permit will include restrictions as needed to prevent uses of the dock that would be incompatible with zoning of the shoreline property from which the dock extends (including special use exceptions or variances recognized by the local governing body). However, a change in local zoning ordinance or termination of a local variance or special use exception shall not automatically be a ground for the department to revoke or refuse to renew a dock permit.

16.8(5) Authorization for roofs or sides on commercial docks or slips may be restricted as needed to minimize adverse visual impact on owners of other property and the public.

16.8(6) Each mooring site (slip) shall be marked by an identifying number or letter, in block style at least 3 inches high, of contrasting color, and located uniformly near the vessel's bow.

571—16.9(461A,462A) Exceptions for renewal of Class III and Class IV permits for existing docks. This rule provides certain exceptions to length limits, hoist limits and platform size limits for docks and hoists that lawfully existed before the effective date of the limits. Criteria for exceptions to offset requirements are separately listed in subrule 16.9(2). Exceptions under this this rule are granted at the discretion of the department.

16.9(1) Class III and Class IV permits shall include exceptions as needed to provide continuing authorization for docks and hoists that were lawfully installed and maintained before the effective date of certain requirements as set forth in this rule. Permits shall include exceptions to the length limits in subrules 16.7(2) and 16.8(2) for docks up to 300 feet long that were lawfully installed and maintained before the effective date of the length limits. Permits shall include exceptions to the hoist limit in subrules 16.7(3) and 16.8(3), and to the platform size limit in subrule 16.7(4) for docks and hoists that were lawfully installed and maintained before the effective date of the limits. Any exceptions granted for such docks will expire upon sale or transfer of the property.

16.9(2) An exception to the offset requirements in subrule 16.3(3) shall be granted if the applicant can satisfy all three of the following criteria:

a. The lack of offset on one side of the property is compensated for by a larger offset on the other side of the property;

b. The applicant provides the department with a copy of the written consent of each affected adjoining property owner or an affidavit attesting that the affected adjacent property owner named in the affidavit has verbally given the applicant consent for the requested exception, or provides adequate documentation that the adjoining shoreline parcel is burdened by restrictive covenants, easements, or other valid use restrictions which impose on the owner of the parcel an obligation to tolerate docks and hoists that would otherwise violate the offset or gap requirements in subrule 16.3(3); and

c. The applicant demonstrates that no other dock or hoist configuration is physically practical.

571—16.10 and **16.11** Reserved.

571—16.12(461A,462A) Initial decision and right of appeal. The decision on an application for a Class II, Class III or Class IV permit shall be provided in writing and may grant the permit, grant the permit with specific conditions, or deny the permit. If the decision is to deny the permit or to issue a permit with specific conditions that deny the application in part, the written decision shall include notice of the applicant's right to request a contested case under 571—Chapter 7. An applicant's request for a contested case may include a request for a waiver under the provisions of Iowa Code section 17A.9A and 571—Chapter 11.

571—16.13(461A,462A) Application and administrative fees.

16.13(1) The applicant for a Class II, Class III or Class IV permit shall apply via the department's website. If the applicant for a Class III or Class IV permit is not the owner of the shoreline property from which the dock extends, the applicant shall identify the contractual relationship between the applicant and each property owner and shall submit as part of the application the written consent from each owner. The application shall be accompanied by plans and drawings which accurately show the size and location of each boat hoist, slip, platform, catwalk, buoy, or other structure to be maintained in front of the shoreline property. Docks in front of nonadjoining shoreline properties on the same water body owned by the same person or legal entity may be included in one application. An application for renewal of a permit for an existing dock and hoists must specifically describe each requested modification. The applicant shall submit an administrative fee with the application. The application will be assigned to a conservation officer to investigate.

16.13(2) The Class III permit application fee shall be $125 for one or more individual private docks. The Class IV permit application fee shall be $250 for one or more commercial docks. A Class III permittee shall pay an annual administrative fee of $50 for each hoist or slip in excess of a total of four hoists or slips. A Class IV permittee shall pay an annual administrative fee of $50 for each hoist or slip in excess of a total of six hoists or slips, except for each hoist or slip designated in the permit

as courtesy mooring for customers and affixed with a sign identifying it as a courtesy hoist or slip. The hoist/slip fee is due on March 1 of each year or whenever a permit is modified by adding a hoist or slip. Any fees owed to the department shall be paid in full prior to the installation of any portion of an individual private dock or commercial dock and before a boat is placed in a hoist or slip. The department may waive the permit application fee if the application is for a minor modification of an existing permit without an extension of the term of the permit.

571—16.14 to **16.16** Reserved.

571—16.17(461A,462A) Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location.

16.17(1) *Duration and transferability of dock permits; administrative fee refunds.* With the exception of Class I dock permits, each dock permit shall be issued for a term of five years unless a shorter term is needed due to specified circumstances. The administrative fee paid with an application is nonrefundable unless the application is withdrawn before the department incurs administrative expense in investigating the application. A dock permit is transferable to a new owner of the shoreline property upon request to the department by the new owner; however, if the permit contains exceptions pursuant to rule 571—16.9(461A,462A), those exceptions shall expire upon transfer, and the new owner shall immediately bring the dock into compliance with all current rules.

16.17(2) *Suspension, modification, or revocation of permits.* A dock permit may be modified, suspended, or revoked, in whole or in part, by written notice served in compliance with Iowa Code section 17A.18, if the director determines that the dock is a hazard to other users of the water body, that a violation of any terms or conditions of the permit has occurred, or that continuation of the permit is contrary to the public interest. Such modification, suspension, or revocation is effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur or that required corrective and preventative measures have been taken, or to present any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect, and suspended permits shall be reinstated, modified, or revoked. These procedures are not intended to limit the authority of a department law enforcement officer to issue a citation for a violation of a provision of Iowa Code chapter 461A or 462A, or a provision in this chapter.

16.17(3) *Investigation of complaints.* Any person adversely affected by a permitted dock or associated boat hoist may request, in writing, an investigation and a hearing to reconsider the permit. Requests for hearings shall specify adverse effects on the complainant and shall be made in accordance with procedures described in 571—Chapter 7.

16.17(4) *Determining property boundaries.* An applicant for a permit, a permittee, and an owner of shoreline property adjoining property of an applicant or permittee are responsible for determining the accurate location of common boundaries of their respective properties.

571—16.18(461A,462A) Exemptions from winter removal requirement. This rule provides for exemptions from the general requirement in Iowa Code section 462A.27 that nonpermanent structures be removed on or before December 15 of each year. Docks and other structures subject to destruction or damage by ice movement must be removed. Where a dock may be left in ice without damage to the dock, it must have reflective material visible from all directions to operators of snowmobiles, other motorized machines, or wind-propelled vessels lawfully operated on the frozen surface of the water

body. Generally, ice damage is greatest on Iowa's rivers and natural lakes. Docks must be removed by December 15 of each year unless they have the required reflective materials and are specifically exempted by a condition of a dock permit or are located in one of the areas listed as follows: artificial lakes; Upper Gar Lake; canals off West Okoboji Lake; Okoboji Harbor; Lazy Lagoon portion of Triboji dock management area; Smith's Bay on West Okoboji Lake; area between the trestle and U.S. Highway 71 bridges on Okoboji lakes; Templar Park on Big Spirit Lake; Venetian Village Canal and Harbourage Inlet on Clear Lake; Casino Bay of Storm Lake; Black Hawk Marina at Black Hawk Lake; and canals off Lake Manawa and Carter Lake. A permit shall not authorize an exception from the winter removal requirement unless the applicant provides adequate documentation that the dock will not be damaged by normal ice movement.

571—16.19(461A,462A) General conditions of all dock permits. All dock permits, unless specifically excepted by another provision of this chapter, shall include the following conditions of approval:

16.19(1) The permit creates no interests, personal or real, in the real estate below the ordinary high-water mark nor does it relieve the requirement to obtain federal or local authorization when required by law for such activity. The permit does not authorize the permittee to prevent the public from using areas of the water body adjacent to the permitted structure. However, a lawfully permitted private dock or commercial dock is property of the permittee. Use of the dock is reserved to the permittee and the permittee's invitees, subject to the public right of passage stated in subrule 16.3(2).

16.19(2) A permit is valid only while the permittee has the necessary permissions to use the adjoining shoreline property from which the dock projects.

16.19(3) The permittee shall not charge a fee for use of the dock or associated structure unless: the permit is for a commercial dock; the fee is expressly authorized by the permit; or the permittee is a homeowners association and the fee is for recovery of expenses incurred in providing access to association members.

571—16.20(461A,462A) Permit criteria for rafts, platforms, or other structures. A raft, platform, or other structure maintained on a public water body requires authorization in a permit. The raft, platform, or other structure may not be placed more than 250 feet from the shoreline, shall be equipped with reflectors that are visible from approaching boats, and shall be subject to the winter removal requirement unless specifically exempted by the permit.

571—16.21 to **16.24** Reserved.

DIVISION II
DOCK MANAGEMENT AREAS

571—16.25(461A) Designation or modification of dock management areas.

16.25(1) *Purposes and status of dock management areas.* The director may designate an area of public land under the commission's jurisdiction and adjoining water as a dock management area. The primary purpose of dock management areas is to accommodate requests for boating access from owners of properties that are close to a water body but do not include riparian or littoral property rights. Dock permittees have priority use of the docks for mooring of vessels. However, the docks may be used by members of the public at their own risk for fishing and emergency mooring when public use does not interfere with the permittee's use. Other uses allowed by the permittee shall be the responsibility of the permittee.

16.25(2) *Criteria for designation or enlargement.* In designating a dock management area or authorizing enlargement of an existing dock management area, the director shall apply the following criteria:

a. The shoreline property in question shall be public land and shall have been developed and managed for recreational access to water or determined by the department to be suitable for such access.

b. The establishment or enlargement of a dock management area shall not adversely affect other public recreational use of the water body.

c. A dock management area shall not be established or enlarged where depth or bottom configuration is incompatible with the placement of docks.

d. A dock management area shall not be established or enlarged where fish and wildlife habitat, other natural resources or scenic features would be disturbed by the presence of docks.

e. Documentation of need for a new or larger dock management area and the lack of adverse impacts of the proposal must be sufficient to clearly outweigh and overcome a presumption against increasing the number or size of dock management areas.

571—16.26(461A) Procedures and policies for dock site permits and hoist or slip assignments in dock management areas.

16.26(1) *Application permit and slip assignment.* A dock site permit authorizes a person to install and maintain a dock in a designated dock management area. Each permit shall identify the number of hoists or slips to be included for storage of boats at the dock. A separate hoist or slip assignment will be issued for each hoist or slip space at the dock. For purposes of these dock management area rules, "permittee" means the person(s) to whom a dock site permit is issued and the person(s) to whom each hoist or slip assignment is issued. Application forms for dock site permits and hoist or slip assignments in a dock management area shall be made available at a nearby DNR office.

16.26(2) *Priority selection process.* Dock site permits and hoist or slip assignments shall be available to all members of the public through a selection process based on the following order of priorities. A waiting list shall be established that follows the same order of priorities. First priority is for owners of residences adjoining or immediately across a street from the public land; second priority is for owners of other residences within the housing association or subdivision adjoining or immediately across a street from the public land; third priority is for all other Iowa residents; fourth priority is for nonresidents. The order of priorities, changes in the number of residential units per dock site, and changes in the number of vessels per residential unit will be made effective as existing permits expire. For purposes of these dock management area rules, "residence" means a single residential living unit, which may be a rental unit. Notwithstanding these priorities, if property in the first or second priority category is redeveloped with higher density residential living units, there is no assurance that dock, hoist or slip space will be available to accommodate such increased density before other property included in the first or second priority categories.

571—16.27(461A) Standard requirements for dock management area docks. Docks in dock management areas shall conform to the following requirements:

16.27(1) *Occupancy of docks.* At least two residences shall share a dock. The department may require that more residences share a dock if there is a waiting list including people in the first or second priority categories established in rule 571—16.26(461A). A maximum of six residences shall share a dock.

16.27(2) *Spacing and alignment.* Dock sites where feasible shall be at least 50 feet apart.

16.27(3) *Dimensions.*

a. Length. A dock may extend the greater of 100 feet from the water's edge or far enough so that the outer 80 feet of the dock is in 3 feet of water up to a maximum of 300 feet, but the dock shall be no longer than the length for which the applicant provides justification, and the length shall be stated in the permit.

b. Width. Docks shall be at least four feet wide and no more than six feet wide.

16.27(4) *Configuration.*

a. "L" or "T" segments. A dock shall have no more than one "L" or "T" segment. The total length of the "L" or "T" segment facing opposite from shore shall not be greater than 20 feet including the width of the dock. The total area of the "L" or "T" segment shall not exceed 200 square feet. That part of the main dock forming the center of a "T" segment or an extension of an "L" segment shall be included in measuring the area of the "T" or "L" segment. A smaller platform size limit may be required at locations specified by the department as having limited available space.

b. Catwalks. Catwalks shall be at least two feet wide and considered as part of the dock. The length limit for an "L" or "T" segment stated in paragraph "a" shall be applicable to each catwalk. A catwalk shall not extend beyond the width of the hoist.

c. Hoists. A hoist or other boat storage structure shall not be placed adjacent to any "L" or "T" segment of a dock or adjacent to any other part of a dock that is more than six feet wide. The hoist shall not exceed ten feet in width at locations specified by the department as having limited available space.

16.27(5) *Exceptions for certain dock management areas.* Notwithstanding other provisions in this rule, in artificially constructed lagoon or harbor areas, the configuration and dimensions of the docks, catwalks and hoists shall be determined by the department on an individual basis, taking into consideration the physical characteristics of the area, the mooring pattern of boats and public safety. Except at Lake Macbride, the Clear Lake Harbourage, and Lake Odessa, a maximum of two residences, each in accordance with 571—16.26(461A), shall share a single dock site.

16.27(6) *Display of dock management area sign, DMA name and dock site number.* The end of the dock facing the water shall be marked with the DMA name and dock number as assigned by the department. Each hoist shall also be marked with the hoist assignee's last name and dock site number in two-inch block letters on one of the upright poles. The dock site permittee shall be responsible for installing and maintaining a sign provided by DNR at the landward entrance to the dock. The sign shall state that the dock is privately constructed; it shall include a caution to members of the public with the statement "use at your own risk"; and it shall include the statement "no diving" with a drawing of a diver over which is superimposed the universal no symbol (a circle with a diagonal slash through it).

16.27(7) *Other requirements.* Standard requirements found in rule 571—16.3(461A,462A) shall apply to all docks in a dock management area except requirements relating to property line offsets and display of information.

571—16.28(461A) Dock management area permit restrictions and conditions. The following conditions and restrictions shall apply to docks in a dock management area.

16.28(1) *Use of dock for mooring.* Only the persons named as permittees shall have use of the dock for mooring. All vessels must be registered to the permittees and listed on the dock management area permit. A dock site permit or hoist/slip assignment may authorize an exception to allow a vessel of a tenant of the permittee's residential rental unit.

16.28(2) *Equitable sharing of dock costs.* Permittees shall agree on the equitable sharing of the cost of construction, installation, maintenance and removal of the dock and any other component of the dock. In no case shall a dock owner collect more money from hoist/slip permittees than is needed to cover legitimate dock costs nor make a profit from operating the dock. Doing so is grounds for suspension and/or revocation of the dock permit.

16.28(3) *Number of assignments allowed.* Only one dock assignment may be allocated to a residence.

16.28(4) *Number of hoists allowed.* Each permittee may be limited to one hoist for one vessel. The number of hoists and vessels for each permittee should be limited, especially when there is a waiting list that includes people in the first or second priority category established in rule 571—16.26(461A).

16.28(5) *Nontransferability of dock permits and privileges.* Dock permits and hoist or slip assignments shall not be transferred, assigned or conveyed by the permittee to any other person.

16.28(6) *Liability insurance.* Prior to constructing a dock or installing hoists, the dock site permittee shall provide proof of a current liability insurance policy in the amount of $1 million.

16.28(7) *Winter storage of docks, catwalks and hoists on public property.* Winter storage of docks, catwalks and hoists on public property shall not be allowed unless specifically authorized by a dock site permit or hoist assignment. Docks, hoists and catwalks shall be stored at locations determined by the state parks bureau district supervisor as appropriate for an individual dock management area. A dock, catwalk or hoist stored on public land without authorization from the department may be removed by the department at the owner's expense.

16.28(8) *Land use restrictions.* Nothing shall be constructed or placed on public land adjacent to any dock in a dock management area under this rule unless the construction or placement is a necessary appurtenance to the dock as determined by the director.

16.28(9) *Expiration of permits.* The term of a dock site permit and a hoist or slip assignment shall not exceed five years. Renewals shall be requested on a current application form. A permit expires when the permittee fails to apply for renewal prior to the current permit's expiration date.

16.28(10) *Cancellation for nonuse.* A dock site permit or hoist/slip assignment may be canceled for nonuse if the dock or hoist/slip is not used at least one time each calendar year in order to provide space for applicants on a waiting list.

16.28(11) *Other permit restrictions and conditions.* All restrictions and conditions in rule 571—16.19(461A,462A), except subrule 16.19(2), shall apply to all docks in a dock management area.

571—16.29(461A) Fees for docks in dock management areas. Payment of the annual dock site permit fee shall be made upon application. Payment of the annual hoist or slip fee shall be made upon application for the hoist or slip assignment. These fees may be paid in a lump sum in advance for the term of the permit or assignment. Failure to pay the annual fee by April 1 of any year may result in revocation or cancellation of the permit or assignment. Payment of any dock management area fee under this rule shall be made to the department of natural resources as specified in the permit. Annual fees are as follows:

	Dock Fee	Hoist Fee
Beed's Lake	$100	$50
Black Hawk Lake Marina	$200	$50
Black Hawk Lake/Denison	$200	$50
Black Hawk North Shore	$200	$50
Blue Lake	$100	$50
Clear Lake Ventura Heights	$250	$50
Clear Lake Harbourage	$600	$100 - hoist or slip fee
Clear Lake North Shore	$250	$50
East Okoboji Beach	$250	$50
Triboji Lakeshore	$250	$50
Triboji Lazy Lagoon	$250	$50 - hoist or slip fee
Pillsbury Point	$250	$50
Lower Pine Lake	$100	$50
Lake Macbride The Pines	$600	$100 - slip fee
Lake Macbride Lakecrest	$600	$100 - slip fee
Rice Lake	$100	$50
Union Grove	$100	$50
Lake Odessa	$100	$25

571—16.30(461A) Suspension, modification or revocation of dock management area permits. A dock management area permit may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the dock is not safe, that a violation of any terms or conditions of the permit or these rules has occurred, or that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may file a notice of appeal, requesting a contested

case pursuant to 571—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

571—16.31(461A) Persons affected by DMA permit—hearing request. Any person who claims that riparian or littoral property rights are adversely affected by a DMA dock site permit may request, in writing, a hearing to reconsider the permit. Requests for hearings shall show cause and shall be made in accordance with procedures described in 571—Chapter 7.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 17
"Leases and Permits"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6)"a" and 461A.4(1)"b"

State or federal law(s) implemented by the rulemaking: Iowa Code sections 461A.4, 461A.18, 461A.25 and 462A.32

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 Nathan Schmitz 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 Nathan Schmitz prior to the hearing to facilitate an orderly hearing.

September 28, 2023 12 noon to 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:

Nathan Schmitz
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.371.2062
Email: nathan.schmitz@dnr.iowa.gov

Purpose and Summary

The proposed Chapter 17 represents a consolidation of current Chapters 17, 18, and 19. The new chapter does the following:

1. Regulates the practice of barge fleeting in order to protect public and private rights and interest in Iowa's public waters under the Natural Resource Commission's (NRC's) jurisdiction (current Chapter 17).

2. Provides a lease fee structure for public use of state-owned lands under NRC jurisdiction. These lands are occasionally encroached upon by members of the public, sometimes inadvertently and other times for a specific permitted purpose. The fee structure compensates the public for the occupation of state-owned land through a lease (current 571—Chapter 18).

3. Regulates the removal of sand and gravel from state-owned property under NRC jurisdiction. This is accomplished via a permitting and fee system that compensates the public for the commercialization of public resources and ensures that waterways do not suffer permanent damage and remain ecologically intact and that public recreational use is not adversely affected (current 571—Chapter 19).

The Department believes that consolidating these chapters will simplify the rules by eliminating language that is common to multiple chapters. These chapters are logically grouped together because they all involve permitting activities on, or the leasing of, state-owned lands and waters.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Barge fleeting operators, lessees of state lands and waters, and sand and gravel mining operators will bear the costs.

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

Barge fleeting operators and sand and gravel operators benefit by being allowed to operate their businesses on state-owned property and by mining state-owned natural resources at reasonable rates. Lessees benefit through use of public lands, often where the alternative would be requiring costly removal of private property (structures, driveways, etc.) from state-owned property. Finally, the public benefits through protection and properly regulated use of state-owned lands and waters.

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 no change in costs between the current and proposed rules because all included programs will continue to operate as they do now. Costs are the fees paid voluntarily by those who wish to use state-owned lands and waters for private and commercial purposes.

- Qualitative description of impact:

These rules allow for commercial and private uses of public property, which allow for commercial activity and consumptive use of natural resources, while minimizing impacts to environmental and recreational resources.

3. Costs to the State:

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

There is no cost to the State beyond staff time. Importantly, the staff who implement these rules have other assigned duties.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. These chapters have been strategically consolidated and reduced consistent with Executive Order 10, but the underlying legal framework is status quo.

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

The costs to those voluntarily participating in these programs are clearly less than the benefits they receive. Commercial entities would not lease property or seek sand and gravel permits if they were not making sufficient profit from the business activities taking place there. Lessees of state property have similarly made a calculation that the lease fees justify the use of the state-owned land. The Department evaluates all of these uses to ensure that these benefits being obtained by commercial and private entities do not unduly impact the resource or the public's use of the property.

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

There are no less intrusive methods since these programs are purely voluntary. A less costly method would be not charging fees for use of state property; however, the public has a right to be compensated when private entities make exclusive or consumptive commercial use of public property. Fees for these programs are already very low.

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. These programs are well established and understood by the relevant stakeholders. They work efficiently, and the rules are being further streamlined through consolidating the chapters.

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

No alternative methods were considered.

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 mandatory, regulatory aspect to these rules. They are rules for entities who wish to voluntarily use state-owned property for private purposes, commercial purposes, or both. Any impact on small business is positive by permitting such uses, which otherwise would not be allowed.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17
LEASES AND PERMITS

571—17.1(461A) Purpose. The purpose of these rules is to regulate the practices of leasing of state-owned land, barge fleeting, and permitting of sand and gravel removal in order to protect public and private rights and interests in public waters of the state of Iowa under the jurisdiction of the commission; to protect public health, safety, and welfare; and to protect fish and wildlife habitat.

571—17.2(461A) Definitions. For the purposes of this chapter, the following definitions apply:

"Commission" means the natural resource commission.

"Deadman" means an anchor buried in the upland adjacent to a fleeting area.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or the director's designee.

"Dolphins" means a closely grouped cluster of piles driven into the bed of a waterway and tied together so the group acts as a unit to withstand lateral forces from vessels or other floating objects.

"Fleeting area" means an area within defined boundaries used to provide barge mooring service and to accommodate ancillary harbor towing under care of a fleet operator. The term does not include momentary anchoring or tying off of tows in transit and under care of the line haul towboat.

"Lease" means a lease as authorized under Iowa Code section 461A.25.

"Material" means any size particle of sand, gravel, or stone.

"Mooring barge" means a barge held in place by anchors or spuds and used to moor other barges during their stay in the fleeting area.

"Mooring cell" means a sheet pile structure, usually filled with earth, stone, or concrete, used to hold barges or other vessels in place.

"Permit" means an agreement authorized under Iowa Code section 461A.53.

"Person" means any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, municipality, cooperative, estate, trust, receiver, executor, administrator, or fiduciary and any representative appointed by order of any court or otherwise acting on behalf of others.

"Riparian rights" means the legal rights that assure the owner of land abutting a stream or lake access to or use of the water.

"State-owned lands and waters" means lands and waters acquired by the state by fee title and sovereign lands and waters.

"Watercraft" means any vessel that through the buoyant force of water floats upon the water and is capable of carrying one or more persons.

571—17.3(461A) Application for lease or permit. An applicant for, or a renewal of, a lease or permit shall submit an application to the department on forms provided by the department.

571—17.4(461A) Lease and permit approval. If the director determines that there is not a material issue concerning whether the application complies with applicable criteria in these rules, a lease will be presented to the commission for further consideration. Upon approval of the commission, the lease will be presented to the executive council for final consideration. Permits will be signed by the director or designee.

571—17.5(461A) Fee adjustments. Beginning January 1, 2024, and on each subsequent January 1, the lease or permit fee shall be adjusted on a cumulative basis, by the percentage of the Consumer Price Index annual rate for the previous year for the Midwest Urban Region, published by the U.S. Department of Labor, Bureau of Labor Statistics. This change in fee will be applied when leases or permits are created or renewed.

571—17.6(461A) Renewals of leases or permits. The permit or lease holder shall request renewal of the lease or permit no less than six months prior to its expiration or risk loss of operator's right to the area. The appropriate application fee must accompany the application documents. A lease or permit shall remain in force during the processing of an application for renewal, including any appeals process.

571—17.7(461A) Disputes concerning leases. Contested case procedures are not applicable to disputes concerning leases under this chapter, except as set forth in rule 571—17.8(461A) and subrule 17.10(9). A commission decision whether or not to recommend a lease or a particular condition of a lease is final agency action, subject to the right of an applicant or other affected person to file with the director a written request for reconsideration by the commission. The director must receive the request for reconsideration within 30 days after the commission's decision on a proposed lease. A commission decision to recommend a lease will be forwarded to the executive council of Iowa for approval after 30 days following the commission's decision unless the director has been notified of a written request for reconsideration or the filing of a petition for judicial review of the commission's recommendation.

571—17.8(461A) Termination for cause. Permits or leases may be terminated by the director at any time if a permit or lease holder fails to fulfill the obligations under the permit or lease in a timely and proper manner, or if a permit or lease holder violates any of the terms and conditions of the permit or lease. Termination proceedings shall be in compliance with Iowa Code chapter 17A and 571—Chapter 7. Upon termination or expiration of the permit or lease, the permit or lease holder shall immediately stop all operations and remove all equipment from the lands and waters covered by the permit or lease within a time frame designated in the notice of termination. In the event of failure of the permit or lease holder to remove all equipment from the premises within such time period, the director shall have the right to remove the equipment at the expense of the permit or lease holder.

571—17.9(461A) Lease fees for state-owned property, riverbed, lakebed, and waterfront lands. The following guidelines are for the purpose of expediting the administration of applications for lease and use of land under the jurisdiction of the natural resource commission, excepting those lands leased for agricultural purposes, commercial concession agreements, and agreements covering the removal of sand, gravel, and other natural materials.

17.9(1) *Annual lease fee.* Beginning January 1, 2024, the fee for leases shall be $0.0600 per square foot. Leases deemed commercial by the commission will have a minimum lease value of $300 and those deemed nonprofit or noncommercial by the commission will have a minimum lease value of $150.

17.9(2) *Administration fee.* All nonfleeting leases shall be assessed a one-time charge of 18 percent to cover the department's cost of inspecting lease sites, reviewing applications, preparing leases, and administering the lease program.

17.9(3) *Exceptions to standard lease fee.* When persons apply for permission to convert or have converted state property under the jurisdiction of the commission to personal use and the commission determines that leasing is an appropriate alternative to removal or that the above rates are not appropriate, the annual lease fee shall be determined by the commission. When determining the fee, the commission may consider availability of the property for public use, the type of personal use being made of the property, appraisal, effect on the natural resources and other items appropriate for the area involved.

571—17.10(461A) Barge fleeting regulations. The purpose of this rule is to regulate the practice of barge fleeting in order to protect public and private rights and interest in public waters of the state of Iowa under the jurisdiction of the commission.

17.10(1) *Applicability.* This rule is applicable to all public waters under the jurisdiction of the commission except that portion of the Mississippi River conveyed to certain cities by 1945 Iowa Acts, chapter 249; 1961 Iowa Acts, chapter 299; or special charters enacted by the Legislature in 1856 and 1857. This rule regulates the use of those waters for barge fleeting, including the installation of structures, physical site modification such as dredging, and operation of fleeting equipment and maneuvering of barges within the fleet.

17.10(2) *Barge fleeting leases.* A person shall not assert any exclusive privilege to conduct barge fleeting and mooring service for hire, or not for hire, and shall not prevent or obstruct any lawful use of navigable waters under the jurisdiction of the commission except within a fleeting area leased by the executive council of Iowa or at a loading or off-loading facility necessary to carry on commerce, provided the facility is constructed in compliance with Iowa department of transportation, U.S. Army Corps of Engineers, and all other applicable permits and regulations.

17.10(3) *Restricted areas.* Leases shall not be issued for a fleeting area in the following locations unless the department, subject to the approval of the commission, determines that fleeting in such areas is not contrary to the purpose of these rules as stated in rule 571—17.1(461A):

a. A site subject to unusual hazards including but not limited to high wind, strong current, violent ice movement, and hydraulic surges during the time fleeting operations are proposed to be carried out.

b. A site receiving high use for recreation, sport fishing, or commercial fishing, unless the fleeting area can be placed or structured to be compatible with such uses.

c. A site immediately adjacent to industries or other facilities, which, together with fleeting operations, present a substantial risk of fire, explosion, water pollution, or other serious safety hazards.

d. A site where fleeting area activities would restrict or interfere with or have a substantial adverse effect on the use and enjoyment of an area owned by federal, state, or local government, including but not limited to public parks, game refuges, forests, or recreation areas used for access to docks, slips, harbors, marinas, boat launching ramps or unique biological or physical features of the river valley itself.

e. A site immediately adjacent to or over a dam, sill, lock, breakwater, revetment, navigation aid, or wing dam.

f. A site within established navigation channels for commercial or recreational vessels.

g. A site within the approach area for a lock portion of a dam structure.

h. A site adjacent to bridges or vessel approach areas to bridges.

17.10(4) *Prohibited areas.* Leases shall not be issued for a fleeting area in the following locations:

a. A site that will have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat due to dredging, propeller wash or other activity related to fleeting.

b. A site that would have an adverse impact on documented threatened and endangered species.

c. A site adjacent to national monuments or registered landmarks.

17.10(5) *Riparian rights.* A fleeting area shall not be leased in any location that would interfere with the rights and privileges of the riparian property owner except with written permission of the riparian property owner.

17.10(6) *Standards.* The following standards shall apply to operation of fleeting areas:

a. A fleeting lease shall be construed to do no more than give the operator the right to designate and improve an area to be utilized for fleeting. The lease creates no interest, personal or real, in the real estate below the ordinary high-water mark except as provided in the lease.

b. Improvements in fleeting areas shall be limited to items such as construction of dolphins, mooring cells, deadmen, mooring barge anchors, and other similar methods of ensuring retention of barges if approved by the department. Improvements shall be constructed in a manner consistent with engineering standards of the U.S. Army Corps of Engineers. Structures associated with barge fleeting leases will be covered by the fees of the barge fleeting lease.

c. Fleeting activities within leased fleeting areas shall be limited to barge mooring service, ancillary harbor towing and minor barge repair or servicing. No washing or cleaning of barges is permitted, unless conducted in compliance with the requirements of Iowa Code chapter 455B, the washing activities will not have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat, and the department specifically approves the cleaning activity.

d. Barges shall not be moored to trees or other natural features of an area except with the approval of the riparian property owner or during an emergency.

e. Barge fleeting shall be conducted in a manner that minimizes bank erosion attributable to the fleeting operation.

f. Leased fleeting areas may be used for navigation and recreational pursuits such as boating and fishing only to the extent that such use does not interfere with fleeting activities. Other waterway users shall not obstruct barge fleeting activities within leased fleeting areas.

g. The right of entry of barges into a fleeting area may be refused by:

(1) The operator.

(2) The department, after conferring with the operator, when there is an imminent hazard to the public interest or to public health, safety or welfare.

h. The operator shall, at all times, be responsible for the safety and security of the barges in the fleeting area and shall take reasonable precautions to eliminate hazards to boaters or other persons in the fleeting area.

i. Lights or other warning devices as required by state and federal navigation regulations shall mark moored or fleeted barges.

j. The operator shall notify the department of the current name, address, and day and evening telephone numbers of the individual directly responsible for supervising the fleeting area who is to be notified in case of emergency.

k. A lease issued under this chapter may not be exercised until all other necessary permits or approvals have been issued by local, state or federal agencies having jurisdiction over the lease area.

17.10(7) *Application review and approval.* The following process applies to barge fleeting lease applications:

a. Upon receipt of a barge fleeting lease application that complies with the requirements of rule 571—17.3(461A), the department will review the application to determine whether the application complies with applicable criteria in these rules. In order to determine such compliance, the applicant may be required, at the applicant's expense, to provide the department with anchor design criteria, underwater surveys, and dives necessary to determine compliance.

b. Upon determination that an application complies with applicable criteria in these rules, the department staff shall give notice of receipt of the application through publication of one public notice that will be published in a newspaper as defined in Iowa Code section 618.3 where the proposed fleeting

area is located or other approved outlets. The notice shall briefly describe the location and nature of the proposed fleeting area, identify the department rules that are pertinent to the application, state whether the application is a new lease or renewal, and provide that a hearing will be scheduled if the director determines that there is a material issue concerning whether the application complies with applicable criteria in these rules. The notice shall allow interested persons 30 days from the date of publication to submit comments or a request for hearing, and shall state that a request for hearing must be supported by documentation of potential adverse effects of the proposed fleeting facility on an affected or aggrieved person. Notice will also be sent by first-class ordinary mail or an equivalent method of service to the directors of the Iowa department of transportation and the Iowa department of economic development, the Iowa secretary of agriculture, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard.

17.10(8) *Barge fleeting lease fees.* The following fees shall be paid to the department by applicants and lessees:

a. An annual lease fee based on the dimensions of the area leased as a fleeting area. Beginning January 1, 2024, the rate for the annual lease fee shall be $4.38 per 100 square feet.

b. A fee of $1,000 for the cost of review, issuance, and administration of a lease is required at the time of application for a new or renewal lease.

17.10(9) *Nonuse.* Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter within a period of two years from the issuance of the lease shall render the lease null and void unless extended by the department. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter for any period of two consecutive years shall create a rebuttable presumption that the operator intends to abandon and forfeit the lease and shall be cause for a review of the lease by the department. The operator may request a contested case proceeding in accordance with Iowa Code chapter 17A and 571—Chapter 7.

571—17.11(461A) Sand and gravel permits. This rule provides the procedures for obtaining a permit for removal of sand and gravel from state-owned lands and waters under the jurisdiction of the department and the rules associated with the holding of a permit.

17.11(1) *Permit applications.* Applications for permits must be accompanied by an application for a sovereign lands permit pursuant to 571—Chapter 13. Applications will be accepted at any time throughout the year. The permit for sand and gravel will run concurrently with the sovereign lands permit. If more than one application for a permit site is received, issuance will be determined by written sealed bids. Bids shall be based on royalty rates. Bids submitted with a royalty rate less than the current rate will not be accepted. The permit shall be issued to the applicant submitting the highest royalty rate bid.

17.11(2) *Application fee.* The applicant for a sand and gravel permit shall submit a fee of $100 for the cost of inspection and issuance of each permit.

17.11(3) *Insurance.* Prior to issuance of permits, approved applicants shall provide the department a certificate of insurance, covering the entire permit term, to jointly and severally indemnify and hold harmless the state of Iowa and its agencies, officials, and employees from and against all liability, loss, damage or expense that may arise in consequence of issuance of the permit.

17.11(4) *Surety bonds.* Prior to issuance of permits, approved applicants shall provide to the department a surety bond in the amount of $5,000 covering the term of the permit. The surety bond shall guarantee payment to the state of Iowa for all material removed under the permit within 60 days after expiration of the permit, unless the permit holder renews the permit within 30 days of said expiration date, and for the recovery of any costs associated with reclamation or other environmental mitigation required as a condition of issued permits.

17.11(5) *Permit conditions and operating procedures.* The following shall apply to all sand and gravel permits:

a. Permits require a sovereign lands permit and will run concurrently with that sovereign lands permit.

b. The size and configuration of permit sites shall be as designated by the director. The maximum continuous length of a river or stream covered by each permit shall be 4,500 lineal feet.

c. Removal operations authorized by permits shall not be performed within 30 feet of the existing bank or breach the bank at any location along any lake, stream or river unless written permission is obtained from the director prior to performance of such operations.

d. Removal operations authorized by permits shall not obstruct the flow of water to the extent of preventing its ultimate passage to its usual course below the lands and waters covered by the permits and shall not prevent movement of watercraft through such waters.

e. All equipment at permit sites that is on the surface of water or above or under the water shall be marked to be visible 24 hours per day. Any structure or other device below the water must be marked to indicate to watercraft operators where safe passage may occur. All markings shall conform to the uniform waterway marking system and be provided and installed by permit holders.

f. Permit sites may be inspected by the director at any time during the permit term in order to verify compliance with permit terms and conditions, or thereafter until final payment is made under a terminated permit. Permit holders shall keep a daily record of the amount of material removed in the manner described by the director. All such records shall be open to inspection by the director at all times.

g. Permit holders shall furnish an itemized statement of material removal operations to the director within ten days after the last day of each calendar month. Statements shall also be filed in months when no materials are removed. Reporting procedures may be modified on a case-by-case basis at the discretion of the director, to accommodate differences in material removal or operation methods. However, reporting periods shall not be greater than one-month intervals. Permit holders shall notify the department ten days prior to the initial start of removal operations or whenever the previous monthly statement indicated no materials were removed. Each cubic yard of sand, gravel, and stone removed under permits shall be considered to weigh 3,000 pounds. Statements shall be submitted on forms furnished by the department and shall indicate the following:

(1) Hours of removal operations performed each day on lands and waters covered by the permit.

(2) Tons of material removed from the lands and waters covered by the permit each day.

(3) Tons of material, from all sources, stockpiled at the operations site at the end of the month.

h. Royalty payments. Permit holders shall make royalty payments on a monthly basis for all material removed from permit sites within ten days after the last day of each calendar month. Monthly royalty payments shall be calculated using the tonnage of material removed as reported on the monthly statement. The royalty rate shall be $0.2500 cents per ton or the rate determined by sealed bids.

These rules are intended to implement Iowa Code sections 461A.4, 461A.18, 461A.25, 461A.52, 461A.53, 461A.55 to 461A.57, and 462A.32.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 20
"Manufacturer's Certificate of Origin"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 462A.3
State or federal law(s) implemented by the rulemaking: Iowa Code sections 462A.77 and 462A.79

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (DNR) reception desk and be directed to the appropriate hearing location:

September 26, 2023
11 a.m. to 1 p.m.

Fourth Floor
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by DNR 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
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.313.6439
Email: susan.stocker@dnr.iowa.gov

Purpose and Summary

Chapter 20 applies to all vessels required to be titled under Iowa Code chapter 462A. The chapter contains titling procedures for boat dealers, purchasers, and county recorders. The certificate of origin is required by the United States Coast Guard and the information required for the certificate is specified in the Code of Federal Regulations. In addition to ensuring federal requirements are met, this chapter also benefits the customer in theft prevention.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

No persons will bear the costs.

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

Boat owners, buyers, and sellers 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:

DNR is unable to quantify the impact of this chapter. The chapter facilitates the sale of boats while serving as a check on the sale of stolen boats.

- Qualitative description of impact:

This chapter standardizes vessel titling requirements and procedures. This benefits owners and buyer/sellers of boats in that it allows for confidence in boat titling and makes theft and sale of stolen boats more difficult.

3. Costs to the State:

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

The DNR Law Enforcement Bureau oversees this program and has minimal staff costs related to it.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

The proposed chapter does not have a net cost or benefit; rather, it reduces rule language and updates the chapter to reflect current requirements and processes.

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

DNR is not aware of any less costly or intrusive methods. The requirements of this chapter are in part mandated by federal law, are targeted to a specific purpose that is beneficial to the public, and do not impose costs on the regulated public.

6. Alternative methods considered by the agency:

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

None; this is a straightforward and narrowly targeted chapter that is both effective and noncontroversial.

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

No other reasonable alternatives are known.

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?

To the extent this chapter impacts small business, the rules implement the least restrictive or burdensome requirements possible to achieve the public benefit and compliance with federal law.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 20 and adopt the following **new** chapter in lieu thereof:

CHAPTER 20
MANUFACTURER'S CERTIFICATE OF ORIGIN

571—20.1(462A) Definitions. As used in this chapter, unless the context clearly requires a different meaning:

"At retail" means to dispose of a vessel to a person who will devote it to a consumer use.

"Beam or width" means the transverse distance between the outer sides of the boat at the widest point excluding handles and other similar fittings, attachments, and extensions.

"Capacity plate" means the U.S. Coast Guard capacity plate bearing the information required by federal regulations governing boats and associated equipment. It shall not mean capacity plate information furnished by the boating industry association, national marine manufacturers association, or any similar organization.

"Department" means department of natural resources.

"Essential parts" means all integral and body parts of a vessel required to be titled under Iowa Code chapter 462A, the removal, alteration, or substitution of which would tend to conceal the identity of the vessel or substantially alter its appearance, model, type, or mode or method of operation.

"Length" means the straight line horizontal measurement of the overall length from the foremost part of the boat to the aftermost part of the boat, measured from end to end over the deck excluding sheer, and measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the measurement.

"Manufacturer's certificate of origin" means a certification signed by the manufacturer or importer that the vessel described has been transferred to the person or dealer named and that the transfer is the first transfer of the vessel in ordinary trade or commerce. The terms "manufacturer's certificate," "importer's certificate," "manufacturer's statement," "MSO," and "MCO" shall be synonymous with the term "manufacturer's certificate of origin."

"New vessel" means every vessel that has not been sold at retail and not previously titled in this state or any other state.

"Person" means an individual, partnership, firm, corporation, or association.

"Reconstructed vessel" means every vessel of a type required to be titled under Iowa Code chapter 462A materially altered by the removal, addition, or substitution of essential parts, new or used.

"Specially constructed vessel" means every vessel of a type required to be titled under Iowa Code chapter 462A, not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vessels and not materially altered from its original construction.

571—20.2(462A) Applicability. This chapter applies to all vessels required to be titled under Iowa Code chapter 462A.

571—20.3(462A) Certificate of origin—content. The following information shall be furnished, required, and stated in the certificate of origin.

20.3(1) Date of transfer.

20.3(2) Invoice number that covers the transfer of this particular vessel.

20.3(3) Name and complete address of dealer to whom the boat is being transferred.

20.3(4) Trade name and model of vessel.

20.3(5) Model year of vessel.

20.3(6) Manufacturer's hull identification number (HIN) or serial number of hull if HIN is not available.

20.3(7) The type of boat, hull material, propulsion type, fuel type (if applicable), and engine drive type shall be listed in accordance with current United States Coast Guard requirements as specified in the Code of Federal Regulations.

20.3(8) Length overall in feet and inches (exact measurement required). For pontoon boats and houseboats, this shall be the deck measurement.

20.3(9) U.S. Coast Guard capacity plate information (where applicable).

a. Maximum horsepower rating.

b. Maximum persons capacity in whole persons.

c. Maximum weight capacity (persons, motor, gear, etc.).

20.3(10) A certification by the manufacturer that this is the first transfer of a new vessel and that all information given is true and accurate.

20.3(11) Manufacturing firm name and complete address.

20.3(12) Signature and title of authorized person.

20.3(13) Information regarding assignment of the vessel to facilitate transferring it from the dealer to the purchaser. The information shall consist of:

a. The purchaser's name and address.

b. Certification that the vessel is new and has never been registered in this or any other state.

c. Signature of authorized agent or dealer.

571—20.4(462A) Procedure—dealer.

20.4(1) Upon sale of a vessel, the dealer shall complete the first assignment information required on the reverse of the certificate of origin.

20.4(2) The dealer shall deliver the certificate of origin to the purchaser along with a bill of sale or receipt showing that the person has purchased the vessel for consumer use.

571—20.5(462A) Procedure—purchaser.

20.5(1) The purchaser shall utilize the information contained on the certificate of origin to complete the information required on the application for vessel title.

20.5(2) The purchaser shall surrender the certificate of origin to the county recorder upon applying for a vessel title.

571—20.6(462A) Procedure—county recorder.

20.6(1) The county recorder shall verify that the information contained in the application and the certificate of origin correspond and shall utilize that information so far as possible in issuing the vessel title.

20.6(2) The county recorder shall retain the certificate of origin as a part of the permanent record of that vessel's title transactions.

571—20.7(462A) Vessel titling. A person shall not title a vessel after December 31, 1987, without furnishing to the county recorder a manufacturer's certificate of origin.

These rules are intended to implement Iowa Code sections 462A.3, 462A.77 and 462A.79.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 21
"Agricultural Lease Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6)"a," 456A.24(5), and 456A.38

State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.24(2), 456A.24(5), 456A.38, and 461A.25

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 Nathan Schmitz 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 Nathan Schmitz prior to the hearing to facilitate an orderly hearing.

September 28, 2023 12 noon to 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:

Nathan Schmitz
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: nathan.schmitz@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 21 regulates the Department's Beginning Farmer Program. The purpose of this program is to provide an economic opportunity to a local farmer while simultaneously enhancing habitat for wildlife and providing recreational opportunities 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:

Farmers who voluntarily participate in the program by entering into agricultural leases with the Department will bear the costs.

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

Anyone who uses Iowa's public lands to recreate, including hunting, birdwatching, and enjoying wildlife, will benefit. Participating farmers benefit by having the opportunity to lease land for their agricultural operations.

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:

Farmer tenants pay an annual rent payment to the state. The prices are set by standards laid out in the Iowa Code. The changes proposed for this chapter will have no impact on the cost of the program to the tenants.

- Qualitative description of impact:

This program allows beginning farmers the opportunity to have first option to farm the parcels selected by the local land manager. In the event that no beginning farmers are interested, the lease is then offered to the public either through negotiation or a bid process.

3. Costs to the State:

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

There is minimal cost for this program. It is run with normal staff time and is just one part of the staff's workload. This program allows for state staff to be more efficient as they can work on other priorities, while allowing local farmers to do what they do best. The State receives appropriate compensation in rent and improved wildlife and recreational habitat, while the local farmers have more acres to farm.

- Anticipated effect on state revenues:

There is no expected change to state revenues. No changes to costs or prices are proposed.

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

No comparison is available, because this program is required by state law.

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

The current chapter is minimally intrusive and not costly for the tenants. The costs for the program are dictated by standards contained in 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, because this program is required by state law.

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

No alternative methods were rejected, because this program is 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 is a voluntary program in which small businesses (farmers) may choose to participate. They are not required to participate, and in the instance of beginning farmers, are given preference on the available leases.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 21 and adopt the following **new** chapter in lieu thereof:

ASSISTANCE PROGRAMS
TITLE III

CHAPTER 21
AGRICULTURAL LEASE PROGRAM

571—21.1(456A) Purpose. The purpose of the agricultural lease program is to enhance habitat for wildlife in the state of Iowa, thereby providing recreational opportunities to the public. Utilization of agricultural leases provides practices which are essential to successful wildlife habitat management and vegetation management and reduces associated operating expenses.

571—21.2(456A) Definitions.

"Cash rent" means an agreed-upon sum of money to be paid to the department.

"Crop share" means a sum of money to be paid to the department based upon the value of an agreed-upon portion of the harvested crop at the local market price on the date the crop is harvested.

"Crop year" means a one-year period terminating each February 28.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or a designee.

"Land manager" means the department employee or authorized agent responsible for managing a particular area under department jurisdiction.

"Lease" means the written form used to enter into an agreement whereby an operator is authorized to engage in farming operations on land under the jurisdiction of the department according to stated terms and conditions.

"Operator" means any party who enters into a lease with the department as provided in these rules.

"Program" means the lease to beginning farmers program as provided in Iowa Code section 456A.38.

"Sovereign land" means state-owned land within the ordinary high-water mark of meandered rivers and lakes where ownership was transferred directly from the United States to the state of Iowa upon its admission to the union.

571—21.3(456A) Agricultural lease policy. The policy of the department is to lease agricultural land under its jurisdiction so as to protect and enhance natural resources and to provide public use opportunities. Generally accepted farming practices will be followed so long as they are commensurate with good resource management practices. All leases shall be in writing.

21.3(1) *Agricultural land use.* Leased agricultural land is subject to any practice necessary to enable the department to carry out its resource management and subject to recreational use by the public according to the laws of the state of Iowa. Operators shall not inhibit any lawful use of the land by the public including, but not limited to, use by the public for hunting and fishing as described by the rules of the department and the laws of the state of Iowa, except as otherwise may be agreed to between the department and the operator.

21.3(2) *Soil conservation.* Farming practices shall not exceed soil loss limits as established by the USDA Natural Resource Conservation Service or the local soil and water conservation district.

21.3(3) *Lease basis.* Leases shall be in writing on a cash rent basis, except a crop share basis may be utilized when determined to be in the state's best interest.

21.3(4) *United States Department of Agriculture programs.* The inclusion, by the operator, of land under lease in any U.S. Department of Agriculture program will be allowed only if it is compatible with the department's management plan established for said land.

571—21.4(456A) Lease to beginning farmers program.

21.4(1) *Beginning farmers program.* This program shall be implemented in accordance with Iowa Code section 456A.38.

21.4(2) *Establishing annual lease payments.* Iowa Code section 456A.38(3)*"d"* provides criteria the department uses to determine lease payment amounts, including, but not limited to, the cost of the establishment or maintenance of water quality practices, wildlife habitat, vegetation management, or food plots, if applicable.

571—21.5(456A) Alternative lease procedures. In the event that no beginning farmer seeks to participate in the program, or no beginning farmer is found qualified to participate in the program for a given lease, the following procedures shall be followed by the department in administering the agricultural lease program.

21.5(1) *Advertising for bids.* A notice advertising for bids shall be published in at least one local newspaper.

21.5(2) *Prebid informational meeting.* A prebid informational meeting may be held when the land manager determines that a meeting is in the state's best interest. Notice of a prebid informational meeting shall be included in the advertisement for bids and in the written instructions to bidders. The meeting shall be held no later than one week prior to the bid opening. If a prebid meeting is required, bidders must attend to qualify to submit a bid.

21.5(3) *Form of bid.* Written sealed bids shall be utilized.

21.5(4) *Public bid opening.* All sealed bids shall be publicly opened as stated in the notice for bids. The results of the bids shall be made available to any interested party.

21.5(5) *Awarding of lease.* The amount of the bid, past experience with the bidder, the bidder's ability to comply with the terms of the lease, and the bidder's ability to perform the required farming practices shall be considered. The department reserves the right to waive technicalities and reject any or all bids not in the best interest of the state of Iowa.

21.5(6) *Negotiated leases.* The land manager may negotiate a lease with any prospective operator, subject to approval of the director, in any of the following instances:

a. No bids are received.

b. Gross annual rent is $5,000 or less.

c. Where land acquired by the department is subject to an existing tenancy.

d. To synchronize the lease period of newly leased areas with other leases in the same management unit.

e. Where a proposed lease includes only land not accessible to equipment necessary to perform the required farming operations, except over privately owned land, provided the prospective operator possesses legal access to the leased land over said privately owned land.

f. Where the director authorizes a lease as a condition of a land purchase or trade.

571—21.6(456A) Terms applicable to all agricultural leases. The following terms and conditions apply to all department agricultural leases entered into pursuant to rule 571—21.4(456A) or 571—21.5(456A).

21.6(1) *Final approval of award.* All awards of leases shall be approved by the director. Additionally, awards of all leases on sovereign land shall be subject to approval by the state executive council on recommendation of the natural resource commission.

21.6(2) *Payment of cash rent.* The operator shall pay a minimum of 10 percent of the total gross rent at the time of the signing of the lease and the balance for each crop year on or before December 1, or the operator shall pay 50 percent of the total annual rent each April 1 and the balance for each crop year on or before December 1. The appropriate minimum payment shall be determined by the land manager.

21.6(3) *Payment of crop share rent.* The operator shall pay the total annual rent on December 1 or at the time of harvest, whichever is later.

21.6(4) *Termination.* In accordance with Iowa Code section 562.6, the lease shall serve as the written agreement fixing the time of termination of the tenancy. The lease shall terminate at the end of the

agreed-upon lease term without notice. If the department requires leased land for other conservation purposes during the term of the lease, the operator shall relinquish all rights under the existing lease, upon demand by the director, at the end of the current crop year.

21.6(5) *Termination for cause.* If the operator fails to comply with any of the terms of the lease, the department may serve notice on the operator demanding redress within a specified period of time. If compliance is not made within the specified period, the department may proceed to collect any moneys which may be due and payable during the crop year in which the lease is terminated and may void the remainder of the lease. Further, the department may have a landlord's lien as set out by Iowa Code chapter 570.

21.6(6) *Previous agreements.* The department shall recognize legal agreements regarding agricultural leases which are in effect at the time the department acquires jurisdiction to the land covered by those legal agreements.

21.6(7) *Amendment to lease.* Amendments to any lease shall be evidenced by written instruments attached to and made a part of the lease. Final approval of amendments shall be made by the director.

These rules are intended to implement Iowa Code sections 456A.24(2), 456A.24(5), 456A.38, and 461A.25.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 22
"Habitat and Public Access Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 483A.3B
State or federal law(s) implemented by the rulemaking: Iowa Code section 483A.3B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (DNR) reception desk and be directed to the appropriate hearing location:

September 26, 2023
11 a.m. to 1 p.m.

Conference Room 3EW
Wallace State Office Building
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 DNR no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Baumgarten
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 712.330.6932
Email: nick.baumgarten@dnr.iowa.gov

Purpose and Summary

This chapter sets forth the procedures to open private lands to public hunting, while providing landowners with grant funds to create, manage, and enhance wildlife habitat.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no cost to landowners to comply with this rule as enrollment into the Iowa Habitat and Access Program (IHAP) is free and voluntary. Additionally, there is no cost to the public for access to the sites. Funding for IHAP comes from a portion of hunting licenses. See Iowa Code section 483A.3(1)"a." Additional funds that are used to support IHAP have included grant funds from the United States Department of Agriculture (USDA), as well as funds from other private conservation organizations.

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

Landowners benefit from technical assistance to create, manage, and enhance the wildlife habitat on their private property. Landowners also receive financial incentives. The public benefits from increased hunting access opportunities and improved wildlife habitat.

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 costs to the landowners to participate. Financial incentives are provided to landowners which are a combination of federal grant funds and state hunting license fees.

Hunters are able to access IHAP sites free of charge.

- Qualitative description of impact:

The proposed chapter outlines and allows for landowner enrollment into IHAP. Land enrolled into IHAP allows for access by hunters.

3. Costs to the State:

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

DNR costs associated with IHAP include staff oversight from the Wildlife Bureau, with assistance as needed from the Legal Bureau. The Budget and Finance Bureau helps process incentive payments. IHAP sites are subject to state hunting laws, so they are patrolled by the Law Enforcement Bureau. However, all involved staff have other assigned duties. No staff exclusively work on IHAP.

On average, over the past five years, the program has cost approximately $425,000 per year. These costs are paid for with a combination of federal grant funds and state hunting license fees. Moreover, the portion of hunting licenses used for IHAP is required by law to support programs that encourage recreational hunting on private lands.

- Anticipated effect on state revenues:

There is no anticipated change to state revenues. While this chapter has been edited consistent with Executive Order 10, the underlying legal framework is status quo.

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

The costs and benefits of IHAP greatly favor having the program. Without IHAP, Iowa would have significantly fewer acres open to public hunting. Currently, over 33,000 acres are enrolled in the program. These lands remain in private ownership but are available for public hunting use.

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

The DNR evaluated neighboring states' programs to inquire whether less costly or less intrusive methods existed for achieving the purpose of IHAP. No alternatives were identified.

Upon evaluation of neighboring states' programs (North Dakota, South Dakota, Nebraska, Kansas, and Missouri), all states required an application that was evaluated prior to enrollment. All states evaluated sites based on wildlife habitat and accessibility. All states required an agreement to be developed between the agency and the landowner. All states provided landowners with financial incentives for their enrollment into the program. All states also required funds to be returned if the agreement is terminated. Most often, the amount to be reimbursed is prorated for the amount of benefit received by the public while the agreement was active similar to Iowa.

6. Alternative methods considered by the agency:

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

DNR evaluated other states' programs when considering alternative methods. DNR found that alternative methods were not warranted.

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

DNR determined that Iowa's program is in alignment with other states and is successfully providing the intended benefits to Iowa landowners and hunters. Furthermore, DNR conducted IHAP landowner and hunter surveys in 2023 that gave further confidence that IHAP, as proposed, works for the landowners who enroll and the hunters that access the sites.

The majority of landowners (95 percent) indicated that they are satisfied with their overall experience with IHAP, would be likely to reenroll in IHAP (85 percent) and would recommend to a friend enrolling in IHAP (86 percent).

The majority of hunters (77 percent) indicated that they were satisfied with their visit to an IHAP site, that they would hunt on an IHAP site again (89 percent), and that they were successful in harvesting game (41 percent).

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. If anything, IHAP benefits small businesses. The following types of jobs in Iowa are positively impacted by hunting: 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. Additionally, IHAP supports habitat development activities, which benefits habitat management contractors.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
HABITAT AND PUBLIC ACCESS PROGRAM

571—22.1(456A,483A) Purpose and authority. These rules set forth the procedures to open private lands to public hunting, while providing grant funds to create, manage, and enhance wildlife habitat.

571—22.2(456A,483A) Eligibility. In order to be eligible for this program, an applicant shall:

22.2(1) Have land in Iowa that already contains wildlife habitat or be willing to allow development of wildlife habitat;

22.2(2) Enter into an agreement with the department; and

22.2(3) Allow public access for hunting without charge on at least 40 acres.

571—22.3(456A,483A) Application procedures. Applications will be accepted only from those eligible pursuant to rule 571—22.2(456A,483A).

22.3(1) *Applications.* Applications must be submitted on forms furnished by the department. Landowners will be notified in writing within 30 days of submission of an application whether they have been accepted into the program.

22.3(2) *Project review and selection.* Projects will be selected based on the ranked scoring criteria in the application, which prioritize sites with the greatest chance of benefiting wildlife populations and providing adequate recreational hunting opportunities. The criteria include, but are not necessarily

limited to: the site's habitat potential, site suitability, priority locations, and other relevant habitat and hunting access factors.

571—22.4(456A,483A) Agreements.

22.4(1) The commission shall enter into an agreement with approved landowners to carry out the purposes of this program.

22.4(2) Enrolled lands are subject to game management area hunting rules as contained in 571—Chapter 51. Access and boundary signs shall be placed and maintained on enrolled lands by the department.

571—22.5(456A,483A) Cost reimbursement. Whenever a landowner has been found to be in violation of an agreement or terminates the agreement early, the landowner shall reimburse the state a prorated amount of the value of wildlife habitat improvement work completed on the property divided by the entire agreement period multiplied by the unfulfilled years of the agreement, e.g., (total dollars ÷ total years) × unfulfilled years = prorated amount owed. Additionally, the landowner may be assessed early termination penalties that the department may be required to pay a contractor performing the wildlife habitat improvement work on the property.

These rules are intended to implement Iowa Code section 483A.3B(3).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 23
"Wildlife Habitat Promotion With Local Entities Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 483A.3
State or federal law(s) implemented by the rulemaking: Iowa Code section 483A.3

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk to sign in and be directed to the appropriate hearing location.

September 26, 2023
11 a.m. to 1 p.m.

Conference Room 3EW
Wallace State Office Building
Des Moines, Iowa

Public Comment

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

Kelsey Fleming
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.639.8738
Email: kelsey.fleming@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 23 establishes the procedures to provide local entities with their share of wildlife habitat stamp revenues. This allocation is required by law. The wildlife habitat stamp is a required purchase in conjunction with most hunting and trapping licenses. By law, the stamp dollars are to be spent, in part, via an allotment to local entities, and the balance is dedicated for certain conservation efforts. Local entities are defined as county conservation boards.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

All resident and nonresident hunters or fur harvesters are required to purchase a wildlife habitat stamp in conjunction with purchasing their hunting or fur harvester license. By law, a portion of the wildlife habitat fee is allocated to local entities.

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

County conservation boards benefit directly because they are eligible to receive the portion of the wildlife habitat stamp dedicated to local entities. However, the citizens of this state and visitors benefit too. These dollars are required by law to develop, enhance, or create wildlife habitat. Wildlife habitat helps protect Iowa's natural resources and also creates economically beneficial recreational opportunities in this state, such as wildlife watching, hunting, and trapping.

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:

A wildlife habitat stamp currently costs $15.

- Qualitative description of impact:

The amount a local entity can receive will depend on the entity's proposed grant project, with the total project cost being no less than $4,000. The local entity must provide, at a minimum, a 25 percent match to the requested amount according to the Iowa Code.

3. Costs to the State:

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

Costs borne will be minimal. The primary cost to the agency is through staff time for reviewing applications, processing grants, and monitoring grant compliance. However, all involved staff have other assigned duties.

- Anticipated effect on state revenues:

There is no anticipated change to state revenues. This chapter has been edited for length and clarity consistent with Executive Order 10; however, the underlying grant framework is status quo.

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 costs to grant recipients via a match is voluntary, self-imposed, and depends on their proposed project. However, the benefits are quite significant. These grant dollars must be used to establish or maintain wildlife habitat, which is beneficial to Iowa's natural resources and creates significant economic activity. According to the U.S. Bureau of Economic Analysis of the U.S. Department of Commerce, hunting is linked to nearly 7,000 jobs in Iowa and generates $47.8 million in taxes based on $227 million in salaries and wages.

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

The Department evaluated whether other states had less costly or less intrusive methods of implementing a program for allocating habitat stamp revenues to county conservation boards for acquisition and development of lands for wildlife habitat that must be open to hunting and trapping. No alternatives were identified.

6. Alternative methods considered by the agency:

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

The Department did not identify any alternative methods. The proposed rules closely adhere to the requirements of state law.

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

No alternative methods were considered.

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. This grant program is limited to county conservation boards. However, many small businesses benefit from hunting and other outdoor recreational pursuits, which public lands and excellent wildlife habitat support.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
WILDLIFE HABITAT PROMOTION WITH LOCAL ENTITIES PROGRAM

571—23.1(483A) Purpose and definition. The purpose of this chapter is to designate procedures for allotments of wildlife habitat stamp revenues to local entities. These funds must be used specifically for the acquisition of whole or partial interests in land from willing sellers for use as wildlife habitats, and the development and enhancement of wildlife lands and habitat areas. The department will administer the stamp funds for the purposes as stated in the law at both the state and local levels. The following definition applies in these rules:

"Waiver of retroactivity" means approval by the department for an applicant to purchase land prior to the next round of wildlife habitat fund application reviews. The waiver allows the applicant to remain eligible for the next round of wildlife habitat funds when extenuating circumstances exist that require an immediate purchase of the subject property by the applicant or a third party that will hold the property until funds become available to the applicant.

571—23.2(483A) Availability of funds. Habitat stamp funds are dependent on stamp sales. The amount of moneys available at any time will be determined by revenues received by the department. Final stamp sales for each calendar year will be determined by July 1 of the following year.

23.2(1) *Local share.* Funds available for local entities shall be specified in the department's budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

23.2(2) *Distribution.* After deducting 5 percent to be held for contingencies, the remaining local share will be available on a semiannual basis each year.

571—23.3(483A) Project limitations. Because of administrative costs, no application for assistance totaling less than $3,000 (total project cost—$4,000) will be considered.

571—23.4(483A) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the director, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, such as waterfowl refuges. Fees charged for recreational purposes will not be allowed on land purchased or developed with wildlife habitat funds. Wildlife habitat promotion funds shall not be used to fund mitigation lands or banks, or other lands, to satisfy mitigation requirements. Only the following types of project expenditures will be eligible for cost-sharing assistance.

23.4(1) *Acquisition projects.* Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the department staff. Applicants whose applications have been approved for funding must submit an appraisal that meets

the Uniform Appraisal Standards for Federal Land Acquisitions. The appraisal requirements may be waived when the staff determines that they are impractical for a specific project. Cost sharing will not be approved for more than 75 percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.10(3) or by reimbursement to local entities. When a county receives or will receive financial income directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action, 75 percent of that income will be transferred to the department unless the grantee has demonstrated and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee must recommend, and the director and commission must approve, plans for the expenditure of income. In the absence of acceptable wildlife habitat development or acquisition plans, the county will transfer 75 percent of income received to the department as it is received. The department will credit that income to the county apportionment of the wildlife habitat stamp fund as described in subrule 23.2(1). The schedule of those reimbursements from a county to the state will be included in the project agreement.

23.4(2) *Development and enhancement projects.* Equipment purchases are not eligible. Donated labor, materials and equipment use, and force account labor and equipment use shall not be eligible for cost-sharing assistance. Force account means the agency's own labor and equipment use. Development projects are limited to lands legally controlled by the grantee for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the public agency.

571—23.5(483A) Application for assistance.

23.5(1) *Form.* Applications shall be submitted on forms provided by the department.

23.5(2) *Time of submission.* The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

23.5(3) *Local funding.* By signing the application, the applicant agency is certifying that all required match has been identified and is committed and available for the project. An applicant shall certify in writing that it has the 25 percent match committed and available, by signing on the signature block provided on the application, and shall state the means of providing for the local share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action will be completely documented in the application.

571—23.6(483A) Project review and selection.

23.6(1) *Review and selection committee.*

a. A review and selection committee, hereinafter referred to as the committee, composed of one person appointed by the director to represent the department and designated by the director as chairperson and four persons appointed by the director to represent county conservation boards shall recommend grant applications and amendments for funding. Additionally, there shall be at least two alternates designated by the director to represent the county conservation boards in the event of a conflict of interest.

b. Conflict of interest. An individual who is a member, volunteer, or employee of a county conservation board that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

23.6(2) *Application rating system.* The committee will apply a numerical rating system to each grant application which is considered for fund assistance that will be posted on the department's website, providing at least 90 days' notice. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	2
Existing or potential habitat quality	3
Species diversity	1

Each criterion will be given a score of from 0 to 10 that is then multiplied by the weight factor. Three additional criteria will be considered in the rating system:

a. Prior assistance. Any applicant who has never received a prior grant for acquisition of land will be given a bonus of 5 points.

b. Active projects. Any applicant who has one or more active projects at the time of application rating will be assessed 5 penalty points for each project that has not been completed. A project is deemed closed after the project has had a final inspection, all funds have been paid and, in the case of acquisition, the title has been transferred from the seller.

c. Urgency. Projects may be given 1 or 2 bonus points if there is a strong urgency to acquire lands that might otherwise be lost.

d. Cost-effectiveness. Projects will be given 1 point if the grant amount requested is at least 35 percent less than the appraised amount or 2 points if at least 45 percent less than the appraised amount.

All points will be totaled for each application, and those applications receiving the highest scores will be recommended for fund assistance to the extent of the allotment for each semiannual period, except that any project scoring a total of not more than 45 points will not be funded.

23.6(3) *Applications not selected for fund assistance.* All applications not selected for fund assistance will be retained on file for consideration and possible funding for three consecutive review periods or until a request for withdrawal is received from the applicant.

23.6(4) *Rating system not used.* The rating system will not be applied during any semiannual period in which the total grant request, including backlogged applications, is less than the allotment. Applications will be reviewed only to determine eligibility and overall desirability, and to ascertain that they meet minimum scoring requirements.

23.6(5) *Rating of scores for tiebreakers.* If two or more projects receive the same score, the committee shall use the points awarded to the highest weighted factor and so forth, beginning with existing or potential habitat quality, to determine which project has a higher rank. If after considering the existing or potential habitat quality points the project scores remain tied, the committee will then consider the points awarded for species diversity. If after considering the species diversity points the project scores remain tied, the committee will then consider the points awarded for wildlife habitat needs.

571—23.7(483A) Commission review. The commission will review committee recommendations semiannually at the next following commission meeting. The commission may accept or reject any application recommended for funding.

571—23.8(483A) Grant amendments. Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and fund assistance. Project changes must be approved by the selection committee and then by the director prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns will not be approved if the work has already been performed.

571—23.9(483A) Timely commencement of projects. Projects for which grants are approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission. Each project will be assigned a project period. Extensions will only be granted in case of extenuating circumstances.

571—23.10(483A) Payments.

23.10(1) *Grant amount.* Grant recipients will be paid 75 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

23.10(2) *Project billings.* Grant recipients shall submit billings for reimbursements or cost sharing on forms provided by the department.

23.10(3) *Acquisition projects.* If clearly requested in the project application and the applicant has shown good cause for such procedure, the department may approve direct payment to the seller of the state's share provided that marketable fee simple title, free and clear of all liens and encumbrances or material objections, is obtained by the local entity at the time of payments and state funds are then available.

23.10(4) *Development projects.* On approved development projects, payment will be made by the department only as reimbursement for funds already expended by the local entity.

571—23.11(483A) Record keeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income from other sources that normally would have been paid to the previous landowner resulting from a purchase agreement or other title transfer action. A copy of the county's audits particularly showing such income and disbursements for the grant period will be submitted to the department's budget and grants bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state laws.

571—23.12(483A) Penalties. Whenever any property, real or personal, acquired or developed with habitat stamp fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it will be considered an unlawful use of the funds. The department shall notify the local entity of any such violation.

23.12(1) *Remedy.* Funds used unlawfully must be returned to the department for inclusion in the wildlife habitat stamp fund, or a property of equal value at current market prices and with commensurate benefits to wildlife must be acquired with local, non-cost-shared funds to replace it. Such replacement must be approved by the commission. The local entity shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this rule are in addition to others provided by law.

23.12(2) *Land disposal.* Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with habitat stamp fund assistance is no longer of value for the project purpose, or that the local entity has other good cause, the land, with the approval of the commission, may be disposed of and the proceeds thereof used to acquire or develop an area of equal value, or 75 percent of the proceeds shall be returned to the state for inclusion in the wildlife habitat stamp fund.

23.12(3) *Ineligibility.* Whenever a local agency is in violation of this rule or the grant agreement, it shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code section 483A.3.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 24
"Blufflands Protection Program and Revolving Loan Fund"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 161A.80A
State or federal law(s) implemented by the rulemaking: Iowa Code section 161A.80A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk and be directed to the appropriate hearing location:

September 26, 2023
11 a.m. to 1 p.m.

Conference Room 3EW
Wallace State Office Building
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:

Kelly Smith
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: kelly.smith@dnr.iowa.gov

Purpose and Summary

Chapter 24 implements a revolving loan fund for the protection of significant blufflands along the Mississippi and Missouri rivers. These rules are required by state law. The rules specify loan application and approval processes, loan terms, and land management requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Participation in the program is voluntary. Loan recipients are obligated to pay back the loan; however, the loan is interest-free so long as the property is conveyed to a public entity in trust for conservation purposes.

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

Citizens of Iowa will benefit. This is a very successful program with minimal cost to the agency. In addition, 14 blufflands have been protected along the premier Mississippi and Missouri rivers, which are nationally significant natural resources.

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:

Participation in the program is voluntary. Loan recipients are obligated to pay back the loan; however, the loan is interest-free so long as the property is conveyed to a public entity in trust for conservation purposes.

- Qualitative description of impact:

The loans vary depending on the acquisition.

3. Costs to the State:

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

Costs to the agency are minimal due to the low volume of applications and resulting loans to monitor. The agency's primary cost is staff time. All involved staff have other duties.

- Anticipated effect on state revenues:

There is no anticipated change to state revenues. The fund is a revolving loan, so proceeds are returned to the account to fund other projects. Additionally, no new loans are permissible after July 1, 2025.

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

There is no comparison available, because this fund is created in state law and the rules are mandated.

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

Participation is voluntary. Loan recipients are obligated to pay back the loan; however, the loan is interest-free so long as the property is conveyed to a public entity in trust for conservation purposes.

6. Alternative methods considered by the agency:

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

As long as the blufflands protection program and revolving fund exists in the Iowa Code, there will need to be implementation rules. The rules closely adhere to the requirements of state law.

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

No alternative methods were considered.

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 rule will not have a substantial impact on small business. While amendments to the rules have been made consistent with Executive Order 10, the underlying legal framework is status quo.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24
BLUFFLANDS PROTECTION PROGRAM AND REVOLVING LOAN FUND

571—24.1(161A) Definitions. For the purpose of this rule:

"Fund" means the bluffland protection revolving fund established in Iowa Code section 161A.80A.

"State-owned lands" means lands in which the state holds the fee title through acquisition and lands in which the state holds title by virtue of its sovereignty, including the beds of the Mississippi River and Missouri River.

571—24.2(161A) Types of acquisitions. Acquisition must be fee simple and title to lands purchased must be free of encumbrances, unless approved by the director on the recommendation of the attorney general. Loan applicants shall submit an abstract of title to lands to be purchased with loans from the fund for examination by the attorney general prior to issuance of any loan.

571—24.3(161A) Application for loans. Conservation organizations shall apply for loans on forms available on the department's website.

571—24.4(161A) Approval of loan applications. The director shall appoint a committee to review and evaluate loan applications. The committee shall make appropriate recommendations to the director.

571—24.5(161A) Interest and other terms of loan agreements. Loans shall be for a maximum term of five years with payment due at the end of the loan term. At the end of the loan term, an appropriate conservation easement approved by the department shall be in effect unless the fee title is conveyed to a public entity in trust to be held for conservation purposes. Simple interest at an annual rate of 4 percent shall accrue on the principal amount of the loan and shall be payable with the principal at the end of the loan term. However, interest shall be waived for the period commencing with the effective date of an approved conservation easement. All interest shall be waived if the fee title is conveyed to a public entity in trust for conservation purposes. The loan agreement and documents establishing security for the loan shall be in a form approved by the department and the attorney general. The applicant shall execute and deliver a first mortgage in favor of the state of Iowa acting through the department of natural resources or provide equivalent security to secure the principal and interest due on the loan. The mortgage shall contain provisions for foreclosure in accordance with Iowa Code chapter 654.

571—24.6(161A) Eligible expenditures with loan funds. Loan funds shall be limited to the following: land purchase, usual and customary incidental costs (not including personnel, staff time, and administrative overhead), land appraisal fees and land survey fees.

571—24.7(161A) Custody and management of land during loan term. Loan recipients must hold title to blufflands acquired throughout the term of the loan. Where practicable, lands purchased with loan funds shall be available for public use under terms and conditions stated in the loan agreement. If the bluffland is sold before the end of the loan term, it must first be offered to a governmental entity. If no governmental entity agrees to purchase the land, it may be sold to a private buyer provided title is first encumbered by a conservation easement granted to the conservation organization or the state of Iowa or its political subdivisions. The easements shall ensure that the natural, scenic or cultural resources of the bluffland are permanently protected. If the bluffland is sold before the end of the loan term, the loan balance shall become due immediately at the time of sale. A loan recipient may enter into agreements, at any time, with governmental entities for the care, management and public use of lands purchased with loan funds.

571—24.8(161A) Loans not to exceed appraised value. Loans from the fund shall not exceed the appraised value of the land to be acquired plus approved incidental expenses listed in rule 571—24.6(161A).

These rules are intended to implement Iowa Code sections 161A.80A and 161A.80B.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 25
"Certification of Land as Native Prairie or Wildlife Habitat"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 427.1(23) and 427.1(24)
State or federal law(s) implemented by the rulemaking: Iowa Code section 427.1(23) and 427.1(24)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk and be directed to the appropriate hearing location:

September 26, 2023
11 a.m. to 1 p.m.

Fourth Floor
Wallace State Office Building
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 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
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: monica.thelen@dnr.iowa.gov

Purpose and Summary

Chapter 25 establishes criteria for land to qualify for native prairie and wildlife habitat property tax exemptions. It also establishes land certification and decertification procedures. The criteria and evaluation procedure ensure that tax-exempt lands are providing the public and environmental benefits the tax break is intended to reward. Properties will be evaluated consistent with this rule by the Department and, if eligible, officially certified. Property tax exemptions will be granted by the County Assessor based on the Department's certification.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There is no cost to landowners to have their property certified as native prairie or wildlife habitat. It is free and voluntary. Once certified, landowners apply for the property tax exemption with their local County Assessor. This is also free and voluntary.

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

Private property owners are able to have their qualifying property certified as either native prairie or wildlife habitat by the Department if they meet the certification requirements defined in this chapter. This benefits the property owner as they can then apply for a property tax exemption with their County Assessor.

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 costs to the landowners to have their property certified. In fact, once certified, landowners benefit from a property tax reduction.

- Qualitative description of impact:

The tax benefit will vary based on local tax rates.

3. Costs to the State:

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

The only costs to the State to implement the rulemaking are Wildlife Bureau staff time to certify the property and ensure that it meets the qualification requirements. All involved staff have other assigned duties. No staff exclusively work on these certifications or exemptions.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. While this chapter has been edited for length and clarity consistent with Executive Order 10, the underlying legal framework is status quo. The Department will continue to certify (or verify past certifications) and county assessors will grant a property tax reduction for properties that are certified.

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

This tax exemption scheme is a matter of state law. The Natural Resource Commission (Commission) is charged with establishing criteria for eligibility based on the statutory framework. Clear eligibility criteria is important to ensure that properties receiving the tax benefits are providing the environmental benefits the tax break is intended to reward.

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

No less costly or intrusive methods exist. The purpose of the native prairie and wildlife habitat property tax exemptions is to provide landowners with a property tax reduction if they are protecting native prairie and/or wildlife habitat on their property. Without certification to determine that the property is, in fact, native prairie or wildlife habitat, the environmental benefit of the exemptions would not be realized.

6. Alternative methods considered by the agency:

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

None. As long as the property tax exemptions exist in Iowa Code, there will need to be certification requirements to ensure that the correct properties receive the exemption.

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

No alternative methods were considered.

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. There is no small business involvement in the certification process.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 25 and adopt the following **new** chapter in lieu thereof:

CHAPTER 25
CERTIFICATION OF LAND AS NATIVE PRAIRIE OR WILDLIFE HABITAT

571—25.1(427) Purpose. The purpose of this chapter is to define lands that qualify for native prairie and wildlife habitat property tax exemptions and to provide procedures whereby owners may have them certified as such.

571—25.2(427) Definitions. Before lands will be certified as either "native prairie" or "wildlife habitat" under Iowa Code section 427.1, they must meet the criteria of the following definitions:

"Native prairie" is defined as those lands that have never been cultivated, are unimproved, and are natural or restored grasslands wherein at least 50 percent of the plant canopy is a mixture of grass and forb species that were found originally on Iowa's prairie lands.

"Wildlife habitat" is defined as those parcels of agricultural land of two acres or less, composed of native species having adequate ground cover, that are devoted exclusively for use as habitat for wildlife and are protected from all other economic uses of any kind.

571—25.3(427) Restrictions. Lands classified as native prairie or wildlife habitat under this rule shall not be used for economic gain of any type. This includes the storage of equipment, machinery, and crops, or receiving lease or rental payments. There shall not be any buildings, used or unused, on the tax parcel containing the exempted area.

571—25.4(427) Maintenance. Maintenance activities, including burning, chemical treatment, or selective brush removal, may be performed on native prairies if approved by the county conservation board or by the department of natural resources in areas not served by a county conservation board. Similar activities, as well as seedings and plantings, may be performed on wildlife habitats if approved by the department of natural resources.

571—25.5(427) Certification. In order to have lands certified as native prairie or wildlife habitat, the taxpayer must make an application to the department of natural resources on forms made available by the department. The application shall describe and locate the property to be exempted on a map.

571—25.6(427) Decertification. Whenever land certified as natural prairie or as wildlife habitat is used for economic gain or otherwise becomes ineligible for tax-exempt status, the Department shall notify the appropriate assessor.

These rules are intended to implement Iowa Code section 427.1.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 27
"Lands and Waters Conservation Fund Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6)"a"

State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.27 through 456A.33, 456A.34, and 456A.35

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk to sign in and be directed to the appropriate hearing location.

September 26, 2023
12 noon to 1 p.m.

Conference Room 4E
Wallace State Office Building
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 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
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.975.8569
Email: jessica.flatt@dnr.iowa.gov

Purpose and Summary

This proposed rulemaking contains the implementation rules for the Land and Water Conservation Fund (LWCF), a federal cost-share program. LWCF funds the development and maintenance of local outdoor recreational resources. This rulemaking identifies eligible participants (county conservation boards and incorporated cities), provides the procedure for the application and approval process, lists eligible uses, and outlines required tracking and documentation of spending. This rulemaking ensures the federal funds are spent in a manner consistent with federal requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The LWCF is funded by federal dollars. Local sponsor applicants (county conservation boards and incorporated cities) must provide a cost share for their proposed project; however, the program is otherwise free and voluntary. It is in the local entities' best interest to participate in the program and receive a share of the project's cost.

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

Citizens of Iowa and local sponsor applicants will benefit from the proposed rulemaking. This is a very successful program with minimal cost to the agency. The grant funds develop and maintain outdoor recreational resources, such as campgrounds, trails, playgrounds, splashpads, sports fields, and support

facilities, such as restrooms. These projects support Iowans' quality of life and generate tangential economic activity.

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:

Funding recipients must provide a cost share to their proposed project.

- Qualitative description of impact:

The grant funds develop and maintain outdoor recreational resources, such as campgrounds, trails, playgrounds, splashpads, sports fields, and support facilities, such as restrooms. These projects support Iowans' quality of life and generate tangential economic activity.

3. Costs to the State:

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

Costs to the agency are minimal and are limited to staff time. The Department administers the program, which includes providing the application and grant procedures to the public, coordinating the review and selection committee and grant review meeting, compiling grant agreements, and tracking grant award fund utilization. The Department typically processes 10 to 20 grants a year. However, all involved staff have other assigned duties.

- Anticipated effect on state revenues:

The proposed rules do not have any effect on state revenue. The grant is funded with federal dollars.

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

The costs of the grant program are minimal to the State, and costs to grant recipients via a cost share is voluntary, self-imposed, and depends on the proposed project. However, the benefits are quite significant. The grant funds develop and maintain outdoor recreational resources, such as campgrounds, trails, playgrounds, splashpads, sports fields, and support facilities, such as restrooms. These projects support Iowans' quality of life and generate tangential economic activity.

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 federal grant requirements.

6. Alternative methods considered by the agency:

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

A program guideline document in lieu of a rulemaking was considered.

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

Oversight and processes in the Iowa Administrative Code ensure that federal 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 businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27
LANDS AND WATERS CONSERVATION FUND PROGRAM

571—27.1(456A) Purpose. The purposes of the federal Land and Water Conservation Fund, hereinafter referred to as the LWCF, are as stated in Section 1(b) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. §200301). The Iowa department of natural resources, hereinafter referred to as the department, acting through its director, will administer the LWCF for the same purposes at the state and local levels. All state and local projects will comply with the federal statute and program guidelines.

571—27.2(456A) Apportionment distribution.

27.2(1) *Iowa apportionment.* The state expects to receive an annual apportionment from the LWCF. This annual apportionment, after deducting any amount necessary to cover the department's costs of administering the program and state outdoor recreation planning costs, shall be divided into two shares for state and local entity grants with the local entity share being not less than 50 percent.

27.2(2) *Local share.* The local share of the annual LWCF apportionment shall be available for local entity grants on an annual basis.

571—27.3(456A) Eligibility requirements. The following eligibility requirements shall apply to local entities:

27.3(1) Participation in the LWCF shall be limited to county conservation boards and incorporated cities.

27.3(2) A local entity shall have assessed outdoor recreation supplies, demands and needs and shall have allowed for input by affected citizens within the service area of any proposed project. Applications shall include documentation of these planning processes.

571—27.4(456A) Assistance ceiling. Local entities are eligible to receive annual assistance from the LWCF of up to $250,000 per proposal. No grant shall be approved that exceeds the allotment for the review period.

571—27.5(456A) Grant application submission.

27.5(1) *Form of application.* Grant applications for both state and local projects shall be on forms and follow guidelines provided by the department. Projects selected for funding with land and water conservation assistance must be in accordance with state comprehensive outdoor recreation plan (SCORP) priorities.

27.5(2) *Application timing.* For local projects, grant applications shall be reviewed and selected for funding on an annual basis as provided in subrule 27.2(2). The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. State projects will be reviewed, evaluated and submitted to the National Park Service for approval as soon as practicable upon notification of Iowa's apportionment.

27.5(3) *Local funding.* An applicant shall certify that it has committed its share of project costs. Cash donations must be on deposit and a bond issue must have been passed by the electorate if such passage is necessary if either or both is a source of local funding.

27.5(4) *Development project application.* An application for a development project grant shall include development on only one project site with the exception that an application may include development of a like nature only on several sites.

571—27.6(456A) Project review and selection.

27.6(1) *Review and selection committee for local projects.*

a. A five-member review and selection committee, hereinafter referred to as the committee, shall be composed of three staff members of the department as appointed by the director, one member appointed by the director with input from the Iowa association of county conservation boards, and one member appointed by the director with input from the Iowa league of cities and the Iowa parks and recreation association. Additionally, there shall be at least two alternates designated by the director with input from both associations and the league of cities. The committee shall determine which grant applications shall be selected for funding at the local level.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

27.6(2) *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.

27.6(3) *Open project selection process for local projects.* The department will create an open project selection process in program guidelines published at least 90 days prior to a grant application due date. The project selection process rating system will include, at minimum, the following components: objective criteria and standards based on local need and priorities identified in SCORP, process for public participation, assurances that the distribution of LWCF assistance is accomplished in a nondiscriminatory manner and conformance to LWCF eligibility and evaluation criteria.

27.6(4) *Open project selection process for state projects.* State projects are chosen by the department based on priorities and funding.

571—27.7(456A) Public participation for local projects. All grant applicants will be advised of the time and place of the grant review session. A time period for public comment will be allowed at the review session.

571—27.8(456A) Director's review. The director will review, amend, reject, or approve committee recommendations after each review period for local projects. Appeals of the director's decision may be made to the commission.

571—27.9(456A) Federal review. All applications selected for fund assistance shall be submitted to the administering federal agency for final review and grant approval.

571—27.10(456A) Grant amendments. Projects for which grants have been approved may be amended. Amendments to increase project costs and fund assistance due to cost overruns will not be approved.

571—27.11(456A) Timely commencement of projects and project period. Grant recipients are expected to carry out their projects in an expeditious manner. Physical work on the project shall commence within one calendar year of the federal award date. Failure to do so may be cause for termination of the project and cancellation of the grant. Project period is assigned by federal statute.

571—27.12(456A) Reimbursements.

27.12(1) *Grant amount.* Grant recipients are reimbursed up to 50 percent of all eligible costs incurred on a project up to the amount of the grant.

27.12(2) *Project billings.* The following information applies to local grants only. Grant recipients shall submit billings for reimbursements on forms provided by the department or through a cover letter. No more than two project billings shall be allowed. A final billing shall be submitted within 90 days following project completion.

27.12(3) *Documentation.* Grant recipients shall provide documentation as required by the department to substantiate all costs incurred on a project.

571—27.13(456A) Recordkeeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the department, the state auditor's office and the U.S. Department of the Interior.

These rules are intended to implement Iowa Code sections 456A.27 through 456A.33, 456A.34, and 456A.35.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 28
"All-Terrain Vehicle Registration Revenue Grant Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321I.2
State or federal law(s) implemented by the rulemaking: Iowa Code section 321I.8

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk to sign in and be directed to the appropriate hearing location.

September 26, 2023
12 noon to 1 p.m.

Conference Room 4E
Wallace State Office Building
Des Moines, Iowa

Public Comment

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

Jessica Flatt
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.975.8569
Email: jessica.flatt@dnr.iowa.gov

Purpose and Summary

This proposed rulemaking sets forth the rules for the all-terrain vehicle registration grant program. The rulemaking identifies eligible participants (political subdivisions and incorporated private organizations), provides the procedure for the grant application and approval process, lists eligible uses, and outlines required tracking and documentation of spending. These rules are mandated by state law.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The all-terrain vehicle registration grant program is funded by all-terrain vehicle registration fees. Sponsor organizations receiving funding through the program will bear minimal costs that are outweighed by the benefits of the proposed rulemaking.

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

Citizens of Iowa, sponsor organizations, and off-highway vehicle owners. This is a very successful program with minimal cost to the agency. The grant funds develop and maintain all-terrain vehicle (ATV) riding trails for the public to use, among other projects. Recreational areas like these support Iowans' quality of life and generate tangential economic activity.

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:

Funding recipients are not required to provide a cost-share to their proposed project. There is also no project value cap.

- Qualitative description of impact:

The grant funds develop and maintain ATV riding trails for the public to use, among other projects. Recreational areas like these support Iowans' quality of life and generate tangential economic activity.

3. Costs to the State:

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

Costs to the agency are minimal and are limited to staff time. Department administration of the program includes providing the application and grant procedures to the public, coordinating the review and selection committee and grant review meeting, compiling grant agreements, and tracking grant award fund utilization. The Department typically processes eight grants a year. However, all involved staff have other assigned duties.

- 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 grant program are minimal to the state. The benefits to grant recipients and the public are quite significant. The grant funds develop and maintain ATV riding trails for the public, among other projects. Recreational areas like these support Iowans' quality of life and generate tangential economic activity.

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 state law.

6. Alternative methods considered by the agency:

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

A program guideline document in lieu of a rulemaking was considered.

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

Oversight and process in the Iowa Administrative Code better protects the user-generated funding source.

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 28 and adopt the following **new** chapter in lieu thereof:

CHAPTER 28
ALL-TERRAIN VEHICLE
REGISTRATION REVENUE GRANT PROGRAM

571—28.1(321I) Definitions.

"All-terrain vehicle (ATV)" means the same as defined in Iowa Code section 321I.1.

"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.

"Director" means the same as defined in Iowa Code section 321I.1.

"High-quality natural area" means an area that includes high-quality native plant communities, highly restorable native plant communities or an area that provides critical wildlife habitat. An on-site evaluation by qualified person(s) for each proposed site is necessary in making this determination.

"Local share" means those funds available for use by incorporated organizations or other public agencies through cost-sharing, grants, subgrants or contracts.

"Previously disturbed" means an area where the plant community has been severely disturbed and has not recovered or the natural (native) plant biota is nearly gone. Such an area has been so heavily disturbed that the plant community structure has been severely altered and few or no higher plants of the original community remain. Examples are newly cleared land, cropland, severely overgrazed pasture or second-growth forest, quarries, mines, and sand pits.

"Sponsor" means the incorporated organization or other public agency receiving funding from the all-terrain fund grant program through an agreement to acquire, develop, maintain or otherwise improve designated riding areas and trails.

"State share" means those funds that may be used by the state for administration, law enforcement, or other expenses related to the program.

571—28.2(321I) Purpose and intent. This program provides funds from the all-terrain vehicle registration fund to political subdivisions and incorporated private organizations for the acquisition of land, development and maintenance of designated riding areas and trails, and facilities for such use on lands which may be in other than state ownership. This chapter is intended to clarify procedures in Iowa Code section 321I.8 and to execute agreements between the department and sponsors, under the authority of the director. All designated riding areas, trails and facilities established or maintained using revenues under this program shall be open to use by the general public.

571—28.3(321I) Distribution of funds. The local share of state all-terrain vehicle registration funds as established in Iowa Code section 321I.8 and this rule shall be distributed in accordance with this chapter and upon execution of agreements. The local share of the registration fund shall be at least 50 percent of appropriate registration revenues. The remaining revenues shall be known as the state share. State share funds shall not exceed 50 percent of the total registration revenue generated for the program per fiscal year.

571—28.4(321I) Application procedures.

28.4(1) *Forms.* Applications for local share moneys shall be made on forms available from the department. The application must be completed and signed by the chairperson or chief executive officer of the applying sponsor. The application must be accompanied by a copy of the minutes of the sponsoring organization meeting at which the request was approved.

28.4(2) *Grant application submission.* The process of applying for a grant shall follow guidelines, and the application shall be on form(s) provided by the department. The department shall publish on its website the date and time for submitting an application, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Applications will be posted on the department's website, at minimum, at least once per year.

571—28.5(321I) Review and selection committee.

28.5(1) The committee responsible for reviewing, ranking and selecting projects to receive funding from the local share of the all-terrain vehicle registration revenue shall be comprised of two representatives appointed by the president of the Iowa Off-Highway Vehicle Association and three department representatives appointed by the director.

28.5(2) The review and selection committee shall meet in a manner as determined by the department within 30 days following the application deadline. Applications eligible for funding will be reviewed and ranked by the committee. The committee's recommendations will be submitted to the director for approval.

571—28.6(321I) Director's review of approved projects. The director shall review, amend, reject or approve committee selections. Appeals of the director's decision may be made to the commission. Applicants shall be notified of their grant status in writing within 30 days after the review and selection committee meeting.

571—28.7(321I) Project selection criteria. In reviewing projects to receive available funding, the following minimum criteria shall be used:

1. Projects proposing maintenance and operation of existing designated riding areas and trails.
2. Development within existing designated riding areas or trails.
3. Projects having documented local support and involvement.
4. Acquisition and development projects located in areas of high demand with preference given to projects with the most long-term, stable management plan and that have the least adverse environmental and social impacts.

571—28.8(321I) Items eligible for funding. Items listed in this rule or approved by the director which can reasonably be utilized in the operation, development, or maintenance of designated riding areas or trails shall be eligible for funding.

28.8(1) Land acquisition. Purchasing of easements or fee title land acquisition as approved by the review and selection committee and director. Title to property acquired using the local share of registration revenues shall be in the name of the sponsor unless otherwise approved by the commission. The grant may be used for prepayment or reimbursement of land acquisition expenses, including appraisals, surveys and abstracts in addition to the property cost. The grant may pay the sale price or appraised value, whichever is less. Appraisals are required and must be approved by the department. Payments may be made directly to the landowner by the department. The grant agreement may contain provisions in addition to those contained in this chapter for disposal of property if it ceases to be managed and used for the purpose for which it was acquired. Land acquisitions (or leases) using all-terrain registration revenues shall utilize the following specific criteria:

a. Designated riding areas shall be limited to previously disturbed areas. High-quality natural areas and historical and cultural areas shall be avoided. If a proposed riding area contains fragments of any of the aforementioned areas, they shall be managed and protected as off-limit sites.

b. In making the determination of whether high-quality natural areas and historical or cultural areas exist, an expert in the said field shall complete a thorough assessment utilizing all available resources, including local expertise.

c. Prior to land acquisition, a public informational meeting shall be held to address the proposed designated riding area. The meeting shall be posted in accordance with Iowa Code section 362.3, and meeting minutes shall be made available to the commission.

d. Neighboring property owners shall be notified of the proposed designated riding area. Public comment received by the department or local political subdivision will be evaluated and presented to the commission.

e. A local project sponsor shall be willing and able to maintain the designated riding area and shall implement and abide by an approved operational plan, which includes a cooperative agreement with the local sponsor and political subdivision.

f. A local sponsoring political subdivision shall support the designated riding area and may provide local input.

g. The topography and associated soil erosion potentials shall be cost-effectively manageable as determined by the review and selection committee.

h. The commission shall make the final determination whether to acquire a tract of land as a designated riding area.

i. An act of the commission can undesignate a riding area.

28.8(2) Operation and maintenance of property that has been designated as a riding area by a local political subdivision and the commission.

28.8(3) Hourly wages may be reimbursed for operation and maintenance. Labor costs shall be documented in manner approved by the department and shall be accompanied by proof that the cost was paid by the sponsor. If labor and repair are contracted, reimbursement shall be at the amount specified in the grant agreement. The sponsor shall obtain any federal, state or local permits required for the project.

28.8(4) Actual material cost of tools, gravel, gates, bridges, culverts, and fencing supplies. Diesel fuel, propane, gasoline, oil, parts and repair bills for equipment used for a r e a management.

28.8(5) Purchase of approved equipment to be used for maintenance of designated riding areas. Cost of leasing equipment used to maintain designated riding areas.

28.8(6) Program and facility liability insurance. Insurance shall be in place for project sponsors receiving grant funds. If insurance is purchased by the sponsor, proof of liability insurance shall be provided to the department. The state may purchase a statewide insurance policy covering all project sponsors receiving funds from the grant program, in which case a copy of the policy shall be made available to covered sponsors upon request. This insurance coverage may include liability insurance for the landowner(s) or other insurable interests. All-terrain vehicle fund moneys shall not be used to purchase insurance for special events. The total payment from the all-terrain vehicle fund shall be 100 percent of the approved actual cost. All insurance paid under this subrule must be furnished by companies licensed to do business in Iowa.

28.8(7) Cost of law enforcement for designated riding areas.

28.8(8) Developmental expenditures. Access roads, parking lots, picnicking, camping and playground facilities; sanitary, shelter, concession facilities; and utilities.

28.8(9) Pursuant to an agreement between the department and the Iowa Off-Highway Vehicle Association, miscellaneous personal expenses for an association representative may be reimbursed at a rate approved by the director. Expenses shall be documented in a manner approved by the department and submitted at the end of the term specified in the agreement.

28.8(10) Travel expenses. In-state travel reimbursement for overnight lodging, registration costs, and mileage to educational events, conferences, and meetings as approved by the review and selection committee and the director. Out-of-state travel for up to three sponsors annually will be eligible. Reimbursement rates will follow department policy.

28.8(11) Direct payment to vendors. The department may establish operational procedures to facilitate direct payment to vendors for:

a. Major expenditures or specialty items, including land acquisitions, development expenses, program liability insurance fees, equipment, and trail signs.

b. Unexpected repairs, including materials or other expenses costing more than $250 that may be necessary to operate and maintain the designated riding area in a safe manner.

571—28.9(321I) Use of funded items. Manufactured products or machinery purchased by sponsors with all-terrain vehicle fund moneys shall be used only for the purpose of establishing or maintaining designated riding areas, trails, or facilities and as emergency rescue equipment, where applicable.

571—28.10(321I) Disposal or trade of equipment, facilities or property.

28.10(1) Without prior written approval of the department, sponsors shall not dispose of or trade any manufactured products, machinery, facilities or property with a purchase value over $5,000 if a portion or all of the actual cost was paid for with the all-terrain vehicle fund. Sponsors shall, in the case of equipment or facilities, reimburse the all-terrain vehicle fund a percentage of the disposal price received, that percentage being the percent of the original purchase price paid by the fund.

28.10(2) Real property and equipment shall be disposed of as stipulated in the grant agreement under which they were acquired. Reimbursements from the sale of real property and equipment shall be credited to the all-terrain vehicle fund.

571—28.11(321I) Recordkeeping. Sponsors receiving funds under this program shall keep adequate records relating to the administration of the grant, particularly relating to all incurred costs as stated in the grant agreement. These records shall be available for audit by appropriate personnel of the department and the state auditor's office.

571—28.12(321I) Sponsors bonded. Prior to receiving prepayment from this grant program, all nonpublic sponsors must produce proof that their chairperson and treasurer are covered under a fidelity bond, personal or surety, to the sponsor in a sum of no less than the total prepayment amount for each office.

571—28.13(321I) Competitive bids. Any equipment or development expense costing more than $2,500 and funded by the all-terrain vehicle fund must be purchased through a competitive bid or quotation process. Documentation of such process must be submitted before funds are released by the state. Items purchased by any other means are not reimbursable by the state.

571—28.14(321I) Prepayment for certain anticipated costs. Only those expenditures contained in signed agreements may be prepaid. Program or facility liability insurance may be prepaid up to 100 percent. Approved facility and development costs and operations and maintenance costs may be prepaid up to 90 percent.

571—28.15(321I) Expense documentation, balance payment or reimbursement.

28.15(1) Documentation of expenditures eligible for prepayment or reimbursement shall be submitted in a manner approved by the department and shall be accompanied by applicable receipts. The sponsoring organization shall sign a certification stating that all expenses for which reimbursement is requested are related to the program and have been paid by the sponsor prior to requesting reimbursement. The sponsoring organization shall provide copies of canceled checks or other verification of expenditure payment.

28.15(2) The sponsor is responsible for maintaining auditable records of all expenditures of funds received whether by prepayment or on a reimbursement basis. This documentation shall include logs of maintenance equipment, operation and repair. Work done under contract to the sponsor requires a copy of the contract and copies of canceled checks showing payment.

28.15(3) Documentation of expenditures under the all-terrain vehicle revenue program must be received within 60 days of the project end date as specified in the grant agreement, unless the project sponsor has requested an extension and the extension has been approved in writing by the department. Failure by the sponsor to complete projects in a timely manner may be cause for termination of the agreement or ineligibility for future grants.

28.15(4) Approved expenditures by the sponsor in excess of the prepayment amount received, up to the maximum approved amount, will be reimbursed by the department if appropriately documented. In

instances where the sponsor has expended less than the amount prepaid, the sponsor shall reimburse the balance to the department to be credited back to the all-terrain vehicle fund.

571—28.16(321I) Use of funds. If a grantee desires to use the approved funds for a purpose not within the approved project scope as stated in the grant agreement, the grantee shall request an amendment to the project. If the department and review and selection committee approve a project amendment, the department shall notify the project sponsor in writing. Whenever any real or personal property acquired, developed or maintained with registration funds passes from the control of the grantee or is used for purposes other than the approved project purpose, such an act will be considered an unlawful use of the funds. Whenever the director determines that a grantee is in violation of this rule, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the department.

These rules are intended to implement Iowa Code sections 321I.1, 321I.2, and 321I.8.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 30
"Waters Cost-Share and Grant Programs"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6)"a," 461A.4(1)"b," and 462A.3(2)

State or federal law(s) implemented by the rulemaking: Iowa Code section 452A.79A and chapters 455A, 461A, and 462A

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 Nate Hoogeveen 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 Nate Hoogeveen prior to the hearing to facilitate an orderly hearing.

September 28, 2023 12 noon to 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:

Nate Hoogeveen
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.205.2486
Email: nate.hoogeveen@dnr.iowa.gov

Purpose and Summary

Chapter 30 creates a cost-share partnership between state and local public entities to acquire or develop public recreational boating accesses to Iowa waters, to plan and develop constructed water trail amenities, and to implement safety projects at low-head dams.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Program delivery will not be changed, meaning no classes of persons will be differently affected by the proposed changes from the status quo. All costs are voluntarily undertaken by governmental entities or dam owners as part of the cost-sharing provisions of these grant programs.

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

Simplified, concise language will make the chapter more understandable and efficient for all. The grant programs benefit dam owners, anglers, paddlers, boaters, tubers, and other recreational users of public waters in Iowa. These programs may benefit local businesses due to demand for services related to water recreation and water trails.

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:

Funds appropriated to these voluntary grant programs will be delivered in the same manner as they are currently. It is difficult to quantify the impacts of these programs; however, it is clear that the water access and water trails programs have a positive economic impact by facilitating and promoting use of public waterways. Users of public waterways patronize bait shops, convenience stores, restaurants, livery services, and other local businesses. The dam safety program contributes to these uses through removing obstacles to use of rivers, improved safety for paddlers, and improved fisheries through restoration of movement between stream reaches.

- Qualitative description of impact:

These programs improve access to and safety on public water bodies in Iowa. These improved recreational opportunities provide economic, health, and quality of life benefits to the public.

3. Costs to the State:

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

Costs to the State are limited to the staff time of Department employees who administer the grant programs. All involved staff have other assigned duties.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

The proposed chapter largely maintains the status quo, but with more simplified and concise rule language consistent with the required Executive Order 10 review. This chapter is needed to administer the funds that are dedicated by Iowa Code or legislative appropriation for these specific purposes.

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

This chapter is about supplying local partners with grant funds to develop water trails and to mitigate dangerous dams. It is purely a procedural chapter, with no regulatory aspects. The Department considers the current cost-share grant programs to be the most fair and efficient way to deliver these programs for Iowans.

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. These simple grant programs are effective and efficient. The Department has simplified and clarified rule language in the proposed chapter.

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

No alternative methods were considered.

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 impose any regulatory burdens on small business. It does have a positive impact on small business by funding projects that are designed by local engineering firms and constructed by local contractors. Additionally, the recreational activities supported by these new accesses and water trails provide customers for local businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 30 and adopt the following **new** chapter in lieu thereof:

CHAPTER 30
WATERS COST-SHARE AND GRANT PROGRAMS

DIVISION I
WATER RECREATION ACCESS COST-SHARE PROGRAM

571—30.1(452A) Title and purpose. This division provides rules for the water recreation access cost-share program. The purpose of this division is to define procedures for cost sharing between state and local public agencies to provide for the acquisition or development of public recreational boating accesses to Iowa waters.

571—30.2(452A) Availability of funds. Moneys derived from the excise tax on the sale of motor fuel used in watercraft under Iowa Code section 452A.79 are deposited as a "marine fuel tax" and are subject to appropriation by the general assembly to the department of natural resources. Each year, as part of its approval of the department's capital improvement plan, the commission may designate an amount to be available for this program.

571—30.3(452A) Eligibility of development projects. Projects proposing to develop properties or facilities for the purposes of providing or enhancing recreational boating access consistent with Iowa Code section 452A.79A may apply for funding. Additional eligibility guidance or requirements may be provided during the application process described in 571—30.9(452A).

571—30.4(452A) Eligibility of acquisition projects. Projects proposing to acquire land for recreational boating/canoeing access are eligible to apply for water access funding. Costs for a department-approved appraisal report and the cost of surveys necessary to determine acreage and establish boundaries are also eligible for assistance on those projects approved for funding. Additional eligibility guidance or requirements may be provided during the application process described in 571—30.8(452A).

571—30.5 Reserved.

571—30.6(452A) Waiver of retroactivity. In case of extreme urgency involving land acquisition, a grant applicant may formally request a written "waiver of retroactivity" which, if granted by the director of the department of natural resources, will permit the applicant to acquire the real property immediately without jeopardizing the applicant's chances of receiving a grant. However, the granting of the waiver in no way implies or guarantees that any subsequent grant application covering the acquisition will be selected for funding by the water access committee. The request for the waiver must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a county map on

which the land to be acquired is located. Acceptable justification would include situations in which land is to be sold at auction or by sealed bids or when the landowner requires immediate purchase.

571—30.7(452A) Establishing project priorities. The director shall appoint a six-member water access committee representing a cross section of department responsibilities for the purpose of reviewing and establishing priorities for cost sharing.

571—30.8(452A) Application procedures. Applications for funds shall be reviewed and selected for funding at least once per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website.

571—30.9(452A) Cost-sharing rates. All projects approved for assistance will normally be cost-shared at a 75 percent state/25 percent local ratio. Exceptions to the normal funding formula may occur under the following conditions:

1. Where a local public agency agrees under terms of a long-term agreement to assume maintenance and operation of a department of natural resources water access facility, the approved development or improvements needed on that facility may be funded at up to 100 percent.
2. Where feasible and practical, the department will provide funds to cover 100 percent of materials needed for a development project if the local subdivision agrees to provide 100 percent of the labor and equipment to complete that development.
3. Where joint use will be made of a project by commercial interests as well as by recreational boaters, only that portion of a project attributable to the use by recreational boaters will be cost-shared through this program.
4. When, at the discretion of the director, some alternate funding level is deemed appropriate.

571—30.10(452A) Joint sponsorship. Two or more local public agencies may join together to carry out a water access project. However, for the purposes of the grant program, the committee will accept only one local agency as the prime project sponsor. Any written agreements between the local agencies involved in any joint venture will be made a part of any grant application. The application rating system will be applied only to the prime sponsor. The project agreement will be negotiated with the prime sponsor and reimbursements will be paid to it.

571—30.11(452A) Control of project site. In order for a project site to be eligible for a development grant, it must be under the physical control of the grant applicant, either by fee title, lease, management agreement, or easement. The term of a lease, management agreement, or easement must be commensurate with the life expectancy of the proposed development.

571—30.12(452A) Project agreements.

30.12(1) A cooperative agreement approved by the director between the department and the local grant recipient describing the work to be accomplished and specifying the amount of the grant and the project completion date will be negotiated as soon as possible after a grant has been approved. Maximum time period for project completion shall be two years for acquisition or development projects, unless an extension approved by the director is authorized. However, agreements covering land acquisition will be dependent upon receipt of a department-approved appraisal report since assistance will be based on the approved appraised valuation or the actual purchase price, whichever is the lesser. Approved development projects costing over $25,000 must have plans certified by a registered engineer before an agreement will be issued.

30.12(2) Cooperative agreements between the department and the local project sponsor may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. Any increase in fund assistance will be subject to the availability of funds. Amendments to increase scope or fund assistance must be approved by the director before work is commenced or additional costs incurred. A project sponsor may request amendment of the agreement for a previously completed project

to allow commercial use under the conditions specified in 571—30.9(452A), paragraph "3." The director shall have the authority to approve such amendments.

30.12(3) All approved projects, except those in which the project is owned by the state and managed by a local entity, having a grant request in excess of $25,000 will be presented to the natural resource commission members for their information prior to project initiation. The commissioners may act to disapprove or modify projects.

571—30.13(452A) Reimbursement procedures. Financial assistance from the water access fund will typically be in the form of reimbursement grants which will be made on the basis of the approved percentage of all eligible expenditures up to the amount of the approved grant.

Reimbursement requests will be submitted on project billing forms provided by the department.

30.13(1) For acquisition projects, one copy each of the following additional documentation will be required.

a. Deed.

b. Invoices or bills for any appraisal or survey expense.

c. All applicable canceled checks or warrants.

d. A certificate of title prepared by the agency's official legal officer.

30.13(2) For development projects, grant recipients shall provide documentation as required by the department to substantiate all project expenditures.

30.13(3) Reimbursements will be made on real estate contract payments using the following procedures:

a. The grant recipient will submit to the department a copy of the real estate contract which must stipulate that the grant recipient will get physical control of the property on or before the date the first contract payment is made.

b. The grant recipient will submit to the department a copy of any approval which it is required to obtain from any governing body to enter into a real estate contract.

c. The grant recipient will submit to the department an up-to-date title opinion from its official legal officer indicating that the landowner has and can convey clear title to the grant recipient.

d. The grant recipient will submit a project billing with photocopy of the canceled warrant when claiming reimbursement.

e. When final payment has been made and title obtained, the grant recipient will submit to the department a copy of the deed and a certificate of title from its official legal officer. Only one reimbursement request may be submitted if the total project cost is $10,000 or less. If more than $10,000, no more than two reimbursement requests may be submitted.

A final reimbursement request shall be submitted within 90 days following the completion date indicated on the cooperative agreement. Failure to do so may be cause for termination of the project with no further reimbursement to the grant recipient.

Ten percent of the total reimbursement due any grant recipient for a development project will be withheld pending a final site inspection or until any irregularities discovered as a result of a final inspection have been resolved. Final site inspections will be conducted by assigned department staff within 30 days of notification by project sponsor that a project is completed.

571—30.14 to **30.50** Reserved.

These rules are intended to implement Iowa Code section 452A.79.

DIVISION II
WATER TRAILS DEVELOPMENT PROGRAM AND
LOW-HEAD DAM PUBLIC HAZARD PROGRAM

571—30.51(455A,461A,462A) Definitions. For purposes of this division, the following definitions shall apply:

"Commission" means the natural resource commission.

"Coordinator" means the staff person of the department responsible for implementing this division.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"Low-head dam" means a uniform structure across a river or stream that causes an impoundment upstream, with a recirculating current downstream.

"Navigable waters" means all lakes, rivers, and streams that can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

"Scoring committee" means the water trails scoring committee, which consists of the coordinator, two department staff members appointed by the director, and two representatives and two alternates of the water recreation community selected by the director.

"Sponsor" means an eligible applicant, as described in these rules.

"Water trail" means a point-to-point travel system on a navigable water and a recommended route connecting the points.

571—30.52(455A,461A,462A) Purpose and intent. The water trails development program and the low-head dam public hazard program provide funds to assist development of local water trails on navigable waters of the state of Iowa and to support safety projects for low-head dams in the state of Iowa. The programs will be available to fund two types of projects: those that enhance water trails development and recreation and those that are limited to projects that primarily enhance dam safety in order to reduce drownings.

571—30.53(455A,461A,462A) Program descriptions.

30.53(1) *Water trails development program.* The department will provide funds to cities and counties in the state of Iowa to plan and develop water trails throughout the state. The goal of the water trails development program is to assist and encourage the development of community-driven water trails that provide features described in statewide and local plans and herein.

30.53(2) *Low-head dam public hazard program.* The department will provide funds to dam owners, including counties, cities, state agencies, cooperatives, and individuals, within Iowa to undertake projects that warn the general public about drowning hazards related to low-head dams or that remove or otherwise modify low-head dams to create a safer experience on Iowa's navigable waters and enhance fish passage, aquatic habitat, and navigation.

571—30.54(455A,461A,462A) Application. The coordinator may announce the availability of funds for the programs, designate a time and place for receiving proposals, identify any additional requirements to those enumerated in this division for successful applications, and provide at least 90 days for sponsors to submit such proposals.

571—30.55(455A,461A,462A) Grant requirements. By submitting a proposal pursuant to this division, a sponsor will agree to the following terms and conditions:

30.55(1) *Agreements.* Before funds are disbursed, the sponsor will enter into a project agreement with the department. The agreement shall detail and further define the relationship of the parties.

30.55(2) *Timely commencement of projects.* Funds must be completely expended within two years of the award. If the sponsor is not able to complete a project within the original time period, the sponsor must seek and receive a written extension from the department to receive reimbursements for expended funds. Any advanced funds must be returned after either the completion date or extension date if the department determines the project cannot be completed in a timely manner.

30.55(3) *Expenditures.* The sponsor shall expend all funds in accordance with the sponsor's governance documents, which may include applicable provisions of the Iowa Code.

30.55(4) *Record keeping.* The sponsor shall keep all project records for three years after the final report is completed. These records are to be available for audit by the state.

30.55(5) *Permits and licenses.* The sponsor must obtain any and all required licenses and permits from federal, state, and local authorities before commencing any activity pursuant to a grant award.

30.55(6) *Control of project site.* The sponsor must demonstrate that the project site or sites are under the physical control of the sponsor or its partners, either by fee title, lease, management agreement, or easement. The sponsor assumes long-term maintenance of the integrity of the project and shall enter into such agreements with landowners or other relevant parties as may be necessary to ensure such long-term maintenance.

571—30.56 Reserved.

571—30.57(455A,461A,462A) Proposal evaluation.

30.57(1) Proposals will be evaluated by the scoring committees for each program.

30.57(2) Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

571—30.58(455A,461A,462A) Sponsor eligibility.

30.58(1) *Water trails development program.* The water trails development program is limited to local divisions of Iowa government.

30.58(2) *Low-head dam public hazard program.* The low-head dam public hazard program is available to dam owners or their agents, including counties, cities, state agencies, cooperatives, nonprofit organizations, and individuals.

571—30.59(455A,461A,462A) Project eligibility.

30.59(1) *Water trails development program.* The scoring committee will evaluate proposals for water trails development projects. Eligible projects may include master planning, engineering, and development such as water accesses with parking and related easement and property acquisition; navigational, interpretive, and warning signs; portages to aid navigation or avoid hazards; related amenities adjacent to the water trail such as access roads, canoe and bike racks, restrooms, picnic areas, campsites, and water-accessible cabins; and promotional, educational, and educational materials such as mapping, brochures, kiosks, display panels, and online information.

30.59(2) *Low-head dam public hazard program.* The scoring committee will evaluate proposals for projects that enhance safety and fish passage at low-head dams on or adjacent to navigable waters in Iowa. The department may divide grants into categories and scoring criteria corresponding to project types, such as warning signage, feasibility studies, engineering, and construction.

571—30.60(455A,461A,462A) Cost-share requirements.

30.60(1) *Water trails development program.* Grant proposals for water trails development projects require a minimum of 20 percent cost share of the total project to be provided by the sponsor.

30.60(2) *Low-head dam public hazard program.* Grant proposals for low-head dam safety and mitigation projects require a minimum of 50 percent cost share of the total project to be provided by the sponsor.

571—30.61(455A,461A,462A) Evaluation criteria.

30.61(1) *Water trails development program.* The scoring committee will prioritize projects based on impacts for public use, local and private resource contributions, support of statewide and local plans and guidelines, public acceptance, safety, location on a designated or planned water trail, and annual priorities established by the coordinator.

30.61(2) *Low-head dam public hazard program.* The scoring committee will prioritize projects based on public safety, stream health, fish passage, aesthetic, recreational and navigational improvements, urgency of failure, local contributions and stakeholder support, and appropriate cost and scale.

These rules are intended to implement Iowa Code chapters 455A, 461A, and 462A and section 464A.11 and 2008 Iowa Acts, House File 2700.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 31
"Publicly Owned Lakes Watershed Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 456A.24(5) and 456A.33A
State or federal law(s) implemented by the rulemaking: Iowa Code section 456A.33A

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 George Antoniou via email. Persons who wish to make oral comments at the conference call public hearing must submit a request to George Antoniou prior to the hearing to facilitate an orderly hearing.

September 28, 2023
10 a.m.

Via video/conference call:
us02web.zoom.us/j/82347854378?pwd
=d3IvaGg4Ky9MUFVGeURiOW1OSFFEQT09
Meeting ID: 823 4785 4378
Passcode: t%im4H

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:

George Antoniou
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: george.antoniou@dnr.iowa.gov

Purpose and Summary

Chapter 31 establishes the procedure to establish a priority list of watersheds above significant public lakes where private landowners are eligible to receive cost-share moneys to establish soil and water conservation practices. For larger context, as part of annual appropriations to the Iowa Department of Agriculture and Land Stewardship (IDALS), the State allocates cost-share moneys for approved soil and water conservation practices on watersheds above certain publicly owned lakes. These areas must first be identified on a priority list established by the Department. These practices provide a benefit to the landowner through soil conservation and to the public through improved water quality in the affected public lakes.

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 to comply with this rulemaking. All costs to any member of the public are through voluntary participation in the program.

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

Landowners located within eligible watersheds are able to access a higher rate of cost-share moneys through the Iowa Financial Incentive Program. Lake users benefit through improved water quality.

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 fiscal year 2008, this process has resulted in the implementation of 625 practices (e.g., grade stabilization structures, grassed waterways, terraces, sediment control basins, cover crops and residue management). This work has benefited 16,922 acres and reduced soil loss to significant public lakes by 7,978 tons/acre/year.

- Qualitative description of impact:

This process establishes a priority list of watersheds above significant public lakes where private landowners are eligible to receive cost-share moneys to establish soil and water conservation practices. The purpose is to target locations within the watersheds that contribute significant sediment to the lake for installation of permanent or management soil conservation practices. Voluntary implementation of these practices has been critical in protecting and enhancing the quality of Iowa lakes.

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 annually develop the list of eligible watersheds have other assigned duties, and the review process involves a minimal amount of time. The review is based on compliance with the application requirements, available funding, and current IDALS and Department priorities. Staff does, on occasion, provide technical support to Soil and Water Conservation Districts as they are putting together their applications.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

There are no mandatory costs to this voluntary program, which is largely implemented by IDALS. This chapter briefly summarizes the Department's and Natural Resource Commission's roles in the process, which are mandated by the Iowa Code. Benefits include soil conservation on the properties of private landowners who voluntarily participate and water quality benefits at the public lakes whose watersheds are protected.

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

This program is entirely voluntary. The application process is not overly burdensome.

6. Alternative methods considered by the agency:

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

No alternative methods were considered. The Department's role in this program is limited and is mandated by the Iowa Code.

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

No alternative methods were considered.

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 substantially impact small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 31 and adopt the following **new** chapter in lieu thereof:

CHAPTER 31
PUBLICLY OWNED LAKES WATERSHED PROGRAM

571—31.1(456A) Purpose. The purpose of this chapter is to set forth the policy and procedures to be utilized by the department of natural resources to establish a priority list of watersheds above significant public lakes where private landowners are eligible to receive cost-share moneys to establish soil and water conservation practices pursuant to Iowa Code chapter 161A.

571—31.2(456A) Definitions.

"Commission" means the natural resource commission.

"Department" means the department of natural resources.

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

"Program" means the publicly owned lakes watershed program.

"Significant public lake" means a lake meeting the criteria set forth in Iowa Code section 456A.33B(1)*"c."*

"Watershed" means those lands that drain into a significant public lake.

571—31.3(456A) Priority of watersheds. Pursuant to Iowa Code section 456A.33A, the commission shall annually establish a priority list of watersheds above existing or proposed significant public lakes.

571—31.4(456A) Application. Applications shall be submitted annually, as specified by the division. The division will then forward received applications to the department for determination of program eligibility. The department will review applications based on compliance with application requirements.

These rules are intended to implement Iowa Code section 456A.33A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 33
"Resource Enhancement and Protection Program: County, City, Private Open Spaces and Conservation Education Grant Programs"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.19
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 455A, subchapter II

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held in person and via conference call as follows. Persons who wish to attend the conference call should contact Michelle Wilson 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 Michelle Wilson prior to the hearing to facilitate an orderly hearing.

September 28, 2023
1 to 2 p.m.

Conference Room 4E
Wallace State Office Building
Des Moines, Iowa
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:

Michelle Wilson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: michelle.wilson@dnr.iowa.gov

Purpose and Summary

Chapter 33 defines the process and requirements for entities to receive funding from the Resource Enhancement and Protection (REAP) Fund. REAP is a popular and successful program. Since 1989, the Fund has provided $141 million to political subdivisions and nongovernmental organizations for the purpose of creating outdoor spaces (acquisition or development) for the citizens of Iowa.

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 classes of persons that will bear the costs of the proposed rulemaking.

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

Citizens of Iowa, political subdivisions, and nongovernmental organizations will benefit from the proposed 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:

REAP is a free grant program that does not require a match, except for the private/public partnership grant. Participation is voluntary and is in an entity's best interest.

- Qualitative description of impact:

Funds awarded to political subdivisions and nongovernmental organizations are used to build trails, parks, and other amenities that are open and free for all citizens of Iowa to enjoy. These spaces provide opportunities to enhance tourism and economic development to an area, amplifying the spaces' impact and use.

3. Costs to the State:

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

The REAP grants are hosted via a cloud-based portal, which generates some costs. However, it has proved to be effective and efficient and makes applying for grants and reviewing grants much easier. Other costs come from staff time in supporting the review and select committees and applicants. However, all involved staff have other assigned duties.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. The grant is funded by an annual state appropriation. The rules do not create new or different funding sources.

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

This grant program is very popular and highly successful. Since 1989, REAP has touched all 99 counties, either through grant-funded projects or the annual county allocation and per capita allocation dollars. The benefits of this program far exceed any cost to the Department in the administration of the program.

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

This proposed rulemaking is intended to be straightforward and without a lot of nuance, so applicants to the grant programs may easily submit proposals for the review and selection committee to evaluate and submit for award. Upon award, the proposed rulemaking is intended to convey in the easiest terms the submission process for reimbursement of costs to meet state audit requirements.

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 by the Natural Resource Commission (Commission). These proposed rules are mandated by state law and are narrowly tailored to statutory requirements.

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

These proposed rules are mandated by state law and are narrowly tailored to statutory 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?

There is no expected impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33
RESOURCE ENHANCEMENT AND PROTECTION PROGRAM: COUNTY, CITY, PRIVATE OPEN SPACES AND CONSERVATION EDUCATION GRANT PROGRAMS

DIVISION I
GENERAL PROVISIONS

571—33.1(455A) Purpose. The purpose of these rules is to define procedures for the administration of the private cost-sharing funds within the open spaces account, the county conservation account, the city park and open spaces account, and the conservation education grant program of the resource enhancement and protection (REAP) fund.

571—33.2(455A) Resource enhancement policy. The REAP program and its various elements shall constitute a long-term integrated effort to wisely use and protect Iowa's natural resources through the acquisition and management of public lands; the upgrading of public park and preserve facilities; environmental education, monitoring, and research; and other environmentally sound means. Expenditure of funds from the county conservation account, the city park and open spaces account and the private cost-sharing portion of the open spaces account shall be in accord with this policy.

571—33.3(455A) Definition. In addition to the definitions in Iowa Code section 455A.1, the following definition shall apply to this chapter:

"Open spaces" means those natural or cultural resource areas that contain natural vegetation, fish, or wildlife, or have historic, scenic, recreation and education value. Examples of open spaces in cities and towns include, but are not limited to, parks, riverfronts and town squares. In rural areas, open spaces include, but are not limited to, such areas as woodlands, prairies, marshlands, river corridors, lake shores, parks and wildlife areas.

571—33.4(455A) Grant applications, general procedures.

33.4(1) Applications for all grant programs shall be made on forms provided by the department.

33.4(2) Applications shall provide sufficient detail as to clearly describe the scope of the project. Any application that is not complete at the time of project review and scoring, or for which additional pertinent information has been requested and not received, shall not be considered for funding.

33.4(3) Application deadlines are the same for county, city, and private open space grant programs. Applications will be reviewed and projects selected for funding at least once per year. The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website.

33.4(4) Joint applications are permitted. One entity must serve as the primary applicant. Joint projects sponsored by entities competing for funds from different REAP accounts (e.g., a joint city/county project) are allowable. Applications must clearly spell out the respective shares of project costs to be derived from various REAP accounts if the project is approved for funding. Any cooperative agreement between joint applicants must be provided as a part of the application.

33.4(5) Applicants shall not use other department grants, such as land and water conservation fund or wildlife habitat promotion with local entities, as leveraged funds for a project requesting REAP funds. Likewise, REAP funds shall not be used as matching funds for applications to other grants.

571—33.5(455A) Appraisals. Appraisal reports must be approved or disapproved in writing by the director. Grants may include incidental costs associated with the acquisition, including, but not limited to, costs for appraisals, abstracts, prorated taxes, deed tax stamps, recording fees and any necessary surveys and fencing.

571—33.6(455A) Groundwater hazard statements. Grantees must obtain a properly completed groundwater hazard statement on all proposed acquisitions before the acquisition is completed. The statement must be filed with the department and county recorder pursuant to Iowa Code section 558.69. Prior to the acquisition of any property that has an abandoned or unused well, hazardous waste disposal site, solid waste disposal site, or underground storage tank, the grantee must file with the department a plan that details how these conditions will be managed to best protect the environment. This plan must be approved in writing by the director before the land is acquired.

571—33.7(455A) Rating systems not used. During any funding cycle when total grant requests are less than the allotment available, the rating system need not be applied. All applications will be reviewed by the appropriate committee for eligibility to ensure they meet minimum scoring requirements and to ensure consistency with program policy and purposes.

571—33.8(455A) Applications not selected for grants. All applications for projects considered eligible but not scoring high enough to be awarded a grant immediately will be retained by the department until two months prior to the next regular submittal date during which time they may be funded. If not approved for funding by that time, applicants will be notified by the department in writing. The original application will be returned to applicants only upon request. The applicant may resubmit the project or an amended version of the project for scoring and consideration during the next application cycle by resubmitting an original or amended application and five copies by the respective deadline.

571—33.9(455A) Similar development projects. An application for a development project grant may include development on more than one area if that development is of a like type (e.g., tree and shrub plantings).

571—33.10(455A) Timely commencement and completion of projects. Grant recipients are expected to commence and complete projects in a timely and expeditious manner. A project period commensurate with the work to be accomplished will be established and included in the project agreement. Project sponsors may receive up to 90 percent of approved grant funds at the start of the project period. Failure to initiate the project or to complete it in a timely manner may be cause for termination of the project, return of unused grant funds at the time of termination, and cancellation of the grant by the department.

571—33.11(455A) Waivers of retroactivity. Normally, grants for acquisitions or developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be granted in writing by the director and receipt of a waiver does not ensure funding, but only ensures that the project will be considered for funding along with all other applications.

571—33.12(455A) Project amendments. Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and grant amount. All amendments must be approved by the appropriate project review and selection committee and by the director. Amendments that result in an increase in the cost of the project in excess of $25,000 or 25 percent of the approved cost, whichever is greater, or that involve a change in the project purpose also must be approved by the commission.

571—33.13(455A) Record keeping and retention. Grant recipients shall keep adequate records relating to the administration of a 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. All records shall be retained in accordance with state laws.

571—33.14(455A) Penalties. Whenever any property, real or personal, acquired or developed with REAP funds passes from the control of the grantee or is used for purposes other than the approved project purpose, it will be considered an unlawful use of the funds. If a grantee desires to use the approved funds for a purpose other than the approved project purpose that is an approved use of funds under the provisions of Iowa Code chapter 455A and these rules, the grantee shall seek an amendment to the project purpose by following the provisions provided in this rule. The department shall notify the grantee of any such violation.

33.14(1) *Remedy.* Funds used without authorization, for purposes other than the approved project purpose, or unlawfully must be returned to the department for deposit in the account of the REAP fund from which they were originally apportioned. In the case of diversion of property acquired with REAP fund assistance, property of equal value at current market prices and with similar open space benefits may be acquired with local, nongrant funds to replace it. Such replacement must be approved by the appropriate review and selection committee and the director. In the case of diversion of personal property, the grantee shall remit to the department at the current valuation of the real estate. The grantee shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided in this subrule are in addition to others provided by law.

33.14(2) *Land disposal.* Whenever the department, and, if a city or county, the grantee, determine that land acquired or developed with REAP fund assistance is no longer of value for the program purposes, or that the grantee can show good cause why the land should no longer be used in accord with the approved project purpose, the land may be disposed of with the director's approval and the proceeds therefrom used to acquire or develop an area of equal value, or the grantee shall remit to the department funds at the current valuation of the real estate for inclusion in the account from which the grant was originally made. If land acquired through the private grant program is determined to be no longer of interest by the state, the proposed dispersal of the property shall be reviewed by the grantee, and the grantee shall have the first right of refusal on an option to take title to the property in question. For projects that only received developmental money, the life of the project is deemed closed after a period of 20 years from the date of the original grant; repayment of the grant will not be required.

33.14(3) *Ineligibility.* Whenever the director determines that a grantee is in violation of this rule or in violation or noncompliance with other grants administered by the department, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

571—33.15(455A) Public communications. Grant recipients shall participate in public communications activities to inform the public of the REAP program and of their particular project. The project will not be considered successfully completed, for purposes of this rule, until evidence is provided to the department REAP coordinator that the following requirements have been met. The remaining 10 percent payment of the grant total will not be issued until such evidence has been provided. Evidence includes but is not limited to photographs showing sign placement, newspaper or magazine clippings, printed brochures or flyers available to the public, exhibits for public display and other related materials. Information gathered from site inspections by the department may also be considered acceptable evidence.

33.15(1) *Signs.* Grant recipients are required to adequately display the 12-inch by 12-inch REAP signs, provided by the department at no charge, on project locations where appropriate so that users of the project can readily see that REAP is at least partially responsible for the project. The REAP signs will be maintained and replaced as necessary as long as the department has signs available.

33.15(2) *Dedication ceremony.* Grant recipients shall hold a public meeting or event to dedicate the project. Information provided during the event shall include information in regard to the REAP program

and its role in supporting the project. This information shall also be provided to local news media by use of a news release. Local and state elected officials shall be invited to attend and participate.

33.15(3) *Grants include public communications plan.* A description of the public communications plan shall be included in every project submitted as a grant request. Grant recipients shall carry out the plan if their project is funded.

DIVISION II
COUNTY GRANTS

571—33.16(455A) County conservation account. All funds allocated to counties under this program may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment; except as restricted by Iowa Code section 455A.19.

33.16(1) *Expenditure guidelines.* All expenditures and restrictions shall be in accordance with Iowa Code section 455A.19. Expenditure of funds for personnel costs are allowed by Iowa Code section 455A.19, but only when personnel are clearly directed toward the purpose and policy of the REAP program. Personnel costs are not allowable under the competitive grant program. Up to 20 percent of a total project's cost may be used to cover costs of engineering and design work or other consultant fees directly associated with the project.

33.16(2) *Competitive grant project planning and review committee.*

a. The makeup of this committee is as follows: two representatives of the department appointed by the director; two county conservation board directors appointed by the director of the department with input from the Iowa association of county conservation boards; and one member selected every three years by a majority vote of the director's appointees. Additionally, there shall be at least two alternates designated by the director with input from the Iowa association of county conservation boards. The members shall select a chairperson at the first meeting during each calendar year. Terms of appointment to the committee shall be on a three-year staggered term basis.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

33.16(3) *Competitive grant project selection criteria.* Under the competitive grant program, a project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. The criteria and scoring system shall be submitted to the director and natural resource commission for approval. Criteria and scoring systems must be distributed to all counties at least 90 days prior to the project application deadline. In order to be eligible for award, an applicant must receive, at a minimum, 50 percent of the total allowable points.

33.16(4) *Availability of funds.* Those funds allocated on a per capita basis and those awarded in the competitive grant program shall be allocated only to counties dedicating property tax revenue at least equal to 22 cents per $1,000 of the assessed value of the county's taxable property to conservation purposes. Annual certification from the county auditor of each county shall be made on forms provided by the department. The certification shall include information on total assessed value of taxable property in the county; budget of the county conservation board, including a distinction of that which is derived from sources other than property taxes; and a schedule of expenditures and staffing. A copy of this certification must be filed with the director. REAP program funds received shall not reduce or replace county tax revenues appropriated for county conservation purposes.

a. County conservation purposes include and are limited to the following activities and responsibilities:

(1) Operation and maintenance of real property and equipment under the jurisdiction and control of the county conservation board, and utilized by the public for museums, parks, preserves, parkways, playgrounds, recreational centers, county forests, county wildlife areas, establishment and maintenance of natural parks, multipurpose trails, restroom facilities, shelter houses and picnic facilities and other county conservation and recreational purposes as provided in Iowa Code section 350.4.

(2) The acquisition and development of real estate utilized for purposes authorized by Iowa Code chapter 350. The cost of planning, engineering or architectural services directly related to acquisition and development is allowable as a county conservation purpose.

(3) The county conservation board's share of joint operations of facilities and programs as described in Iowa Code section 350.7. The cost of the county's weed control program, as required by Iowa Code chapter 317, may specifically be included as a county conservation purpose if the county conservation board director or a member of the county conservation board staff is appointed county weed commissioner by the board of supervisors, and is given full authority to plan and accomplish an environmentally sound vegetative management program.

(4) The administration of the county conservation program, including and limited to the expenses of board members, salary and expenses of the county conservation board director, and related clerical, technical and support costs charged directly to the county conservation board's budget.

(5) Any reimbursement from the county conservation board's budget for the actual expense of county-owned equipment, use of county equipment operators, supplies, and materials of the county, or the reasonable value of county real estate made available for the use of the county conservation board as provided by Iowa Code section 350.7. Such reimbursements shall be supported by daily time and activity records detailing the hourly charge for equipment and operator use, the specific quantities and cost of materials used, or a fee appraisal prepared by an independent fee appraiser and approved by the director.

(6) No other costs, including indirect costs as computed for purposes of federal grant programs or distribution of general county overhead, are allowable as a county conservation purpose.

33.16(5) *Certification procedures.* The annual certification that a county is dedicating property tax revenue at least equal to 22 cents per $1,000 of the assessed value of the county's taxable property to conservation purposes shall be submitted by the county auditor to the department on forms provided by the department. Certification is based upon actual expenditures for conservation purposes during the previous fiscal year. Submission of a certification by October 1 of any year will qualify the county for per capita funds held in reserve for that county and establish eligibility for participation in the competitive grant program. The certification will remain in effect through June 30 of the following year. Counties that fail to meet this requirement for any given fiscal year are ineligible for that fiscal year. A county that is ineligible can reestablish eligibility for a future fiscal year through the certification process.

The levy of property taxes for county conservation board purposes shall be calculated in the following manner. First, the actual expenditures for all county conservation purposes for the fiscal year shall be determined. Next, the total of all receipts derived from county conservation activities and all grants and donations received or billed for from whatever source for county conservation purposes shall be determined. The total of all receipts and grants shall then be subtracted from the total expenditures. This result shall then be divided by the total taxable value of all county property to determine the amount per thousand utilized to support county conservation purposes.

Transfers of property tax receipts to the reserve account established under Iowa Code section 350.6 shall be included as expenditures in the fiscal year that transfers occur for purposes of the calculation of the certified levy. Withdrawals from the reserve account and expenditures and receipts reflected in the special resource enhancement account created as provided in Iowa Code section 455A.19 shall not be included in the calculation of the certified levy.

If a dispute arises over the appropriateness of a county expenditure as a county conservation purpose or the accuracy and correctness of the certified levy by the county auditor, the director shall notify the state auditor and request that a recommendation be included in the next audit report. Upon receipt of the audit report, the director shall make a final determination and adjust subsequent distributions to the county or request reimbursement from the county as necessary.

33.16(6) *Fund distribution schedule.* Funds from the county resource account which are distributed on a per capita and per county basis shall be distributed by the department to each eligible county quarterly.

33.16(7) *Special account.* Each county board of supervisors shall create a special resource enhancement account in the office of the county treasurer, and the county treasurer shall credit all REAP funds from the state to that account.

REAP funds received by the county shall not be used to fund any program or activity that was funded in prior years by other county revenues. Expansion of previously funded programs is permitted. Each county board director, as part of financial documentation regarding the special resource enhancement and reserve accounts, shall document that county expenditures of REAP funds supported only programs and activities not funded in prior years by county revenues other than REAP funds. For purposes of this documentation, expenditures from the special resource enhancement account for land acquisition shall be viewed as a new program and not a continuation of previous land acquisition programs. Expenditures from the special resource enhancement account for routine maintenance of facilities must involve only facilities previously constructed or otherwise acquired with REAP funds. REAP funds may be used for renovation, expansion or upgrading of facilities regardless of the source of funding for the original facilities, except as prohibited by Iowa Code section 455A.19. Likewise, expenditures from the special resource enhancement account for equipment, supplies, materials, or staff salaries must directly relate to the establishment or expansion of programs or activities with REAP funds, and such programs or activities shall not have been previously funded with other county revenues.

Failure to adequately document expenditures from the special resource enhancement account or to provide the documentation as previously described regarding these expenditures upon request by the state auditor or department staff will result in the county losing its eligibility to receive per capita and competitive grants from the REAP program for a period of one to three years. A county which loses its eligibility may reestablish its eligibility by certifying that the county tax dollars dedicated to county conservation purposes during the previous fiscal year were at least 22 cents per $1,000 of assessed taxable property.

DIVISION III
CITY GRANTS

571—33.17(455A) Competitive grants to cities. Fifteen percent of available funds in the REAP fund (after the $350,000 annual allocation to the conservation education board and 1 percent of revenues to the fund are allocated to the administration fund) shall be allocated annually to the city park and open spaces grant account. That 15 percent shall be divided into three portions according to the percentage of the state's urban population in each category, with each portion available on a competitive basis to cities falling within one of the following three size categories: (1) cities of less than 2,000; (2) cities between 2,000 and 25,000; and (3) cities larger than 25,000. Funds shall be initially apportioned to each category as per this rule. If at the time of project review and scoring there are funds available in any category which exceed the requests for grants in that category, those funds may, at the director's discretion, be transferred to another category where requests exceed the funds available.

33.17(1) *Eligible sponsors.* Any incorporated city or town in the state may make application for a grant.

33.17(2) *Grant ceilings.* Incorporated cities and towns are eligible to receive annual grants from the REAP fund in accordance with the following schedule:

Population	Maximum
0 — 1,000	$ 50,000
1,001 — 5,000	75,000
5,001 — 10,000	100,000
10,001 — 25,000	125,000
25,001 — 50,000	150,000
50,001 — 75,000	200,000
over 75,000	300,000

The grant ceiling may be waived upon approval by the director if (1) the project is regional in nature or is projected to serve a minimum of 100,000 people; or (2) the project cannot be staged over a multiyear period so that a separate grant application might be submitted each year.

33.17(3) *Review and selection committee.*

a. The director shall appoint a five-member review and selection committee to evaluate project applications. This committee shall include one member representing each of the three size classes of cities (e.g., one from a city of less than 2,000, one from a city of 2,000 to 25,000, and one from a city of over 25,000). The director shall request a list of candidates from the Iowa league of cities and Iowa parks and recreation association. The remaining two members of the committee shall be a representative of the department and an at-large member. Additionally, there shall be at least two alternates designated by the director from the candidates list provided by the Iowa league of cities and the Iowa parks and recreation association. The committee shall elect its own chairperson from its members. Members shall serve three-year staggered terms.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

33.17(4) *Project selection criteria.* A project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. The criteria and scoring system shall be submitted to the director and natural resource commission for approval. Criteria and scoring systems must be distributed to all counties at least 90 days prior to the project application deadline. In order to be eligible for award, an applicant must receive, at a minimum, 50 percent of the total allowable points.

DIVISION IV
PRIVATE GRANTS

571—33.18(455A) Private cost-sharing program. At least 10 percent of the funds placed in the open spaces account shall be made available for cost sharing with private entities for cost sharing at a maximum level of 75 percent.

33.18(1) *Protection defined.* Protection is defined as the purchase of all or a portion of the rights associated with ownership of real property so as to ensure that open space values associated with that property are protected in perpetuity. Protection methods, in order of preference, include, but are not limited to, fee title acquisition, purchase of easements, or other mechanisms that provide long-term assurance of open space protection. Title for acquired properties shall be vested in the state of Iowa, and projects must be consistent with priorities established by the department.

33.18(2) *Eligibility to participate.* Any trust, foundation, incorporated conservation organization, private individual, corporation or other nongovernmental group able to provide funds or interest in land sufficient to equal at least 25 percent of a proposed protection project may submit or cause to have submitted a project for funding consideration. Except however, a private organization established to benefit a specific governmental entity is not eligible to submit a project. Governmental entities are also not eligible to submit a project.

33.18(3) *Grant amount.* The department will provide grants for up to 75 percent of the appraised cost of the land plus incidental acquisition costs. Costs in excess of these must be borne by the grantee.

33.18(4) *Project review and selection committee.*

a. The director shall appoint a committee to review and score projects. The committee shall include the following: three persons representing the private sector and two alternates selected from a pool of potential names as submitted to the director by the various private eligible groups; administrator of the conservation and recreation division of the department, or the administrator's designee; and the bureau chiefs of the department's wildlife bureau and parks, forests, and preserves bureau or their designees. The committee shall elect its own chairperson from its members. The committee will report to the director the order in which proposed projects were ranked using criteria as specified in subrule 33.18(5).

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

33.18(5) *Project selection criteria.* A project planning and review committee shall establish criteria and scoring systems to be utilized in project evaluation. The criteria and scoring system shall be submitted to the director and natural resource commission for approval. Criteria and scoring systems must be distributed to all counties at least 90 days prior to the project application deadline. In order to be eligible for award, an applicant must receive, at a minimum, 50 percent of the total allowable points.

33.18(6) *Department rejection of applications.* The director may remove from consideration by the project review and selection committee any application for funding the acquisition of property that the department determines is not in the state's best interest for the department to manage. The department's basis for determining such interest may include, but not be limited to, inaccessibility to the project area, environmental contamination and unacceptable use restrictions, management cost, the proximity to other governmental entities that may impose use restrictions or special tax assessments on the area, or lack of conformance with priorities established by the department. Examples of use restrictions can include prohibitions on hunting, trapping, timber harvest, vegetation management, and easements that affect the range of public use and activities that could otherwise be allowed.

33.18(7) *Certification of availability of funds.* Applicants must certify at the time of application that sufficient funds, land, letter of credit, or other acceptable financial instrument is available from private sources to cover the private share of the project.

33.18(8) *Acquisition responsibilities and process.* The grantee is responsible for obtaining an appraisal that is approvable by the department and for obtaining the director's written approval of that appraisal. The grantee is responsible for negotiating an option to purchase the property with the seller. If the option contains any requirements for action by the department or restrictions on the use of the land, those requirements or restrictions must be approved by the director and the commission before they are incorporated into the option. The grantee is responsible for closing the transaction, recording the transaction with the appropriate county recorder, and providing the department with a copy of the deed naming the department as owner and a title vesting certificate. The director may, under special conditions, allow title to be vested in the name of a city or county. Necessary assurances may include the placement of special conditions on that title, the existence of an approved, long-term management agreement or other measures as deemed appropriate by the commission. The department may provide assistance at the request of the grantee, or at the director's recommendation.

DIVISION V
CONSERVATION EDUCATION BOARD

571—33.19(455A) Conservation education program policy. The conservation education program board shall constitute a long-term integrated effort to support conservation education for Iowa educators and students. To support this policy, the board may establish guidelines from time to time to direct applicants to priority areas for funding and shall give preference to grants that meet these guidelines. The board may provide funding for activities that expand the impact of the project and provide accessibility for widespread adoption of programs for implementation by others. The board may provide funding for tracking of project implementation and evaluation.

33.19(1) *Conservation education program board.* The board will review and amend, as needed, the review and selection criteria for competitive grants and policies of conduct.

33.19(2) *Definitions.* The following definitions shall apply to this division:

"Board" means REAP conservation education program board.

"Conservation education programs" means programs developed for formal (K-12 students), nonformal (preschool, adult and continuing education) and higher education (postsecondary and adult) programs, within the subject areas of natural resource conservation and environmental protection.

"Educator" means any person who teaches environmental/conservation education. This may apply to certified teachers, governmental or private naturalists, education specialists, or others so determined by the board.

"Environmental/conservation education materials" means materials that are developed or produced that provide knowledge, skills, processes and strategies that enhance Iowa citizens' understanding of natural resources conservation and environmental issues.

"Stipends for Iowa educators who participate in innovative conservation education programs" may include tuition costs; acceptable food and lodging costs; substitute teacher costs; mileage expenses or separate allowances when applicable for educators to attend board-approved environmental/conservation education workshops, in-service programs and conferences; and other costs as approved by the board.

571—33.20(455A) Eligibility for funds. In years in which funds are made available, grant applications may be submitted by institutions of higher learning; government agencies, including local school districts; nonpublic schools; area education agencies; organizations; and individuals with an Iowa residence. Preference shall be given to Iowa participants.

571—33.21(455A) Grant applications, general procedures.

33.21(1) Applications for all grant programs shall be made on forms provided by the department.

33.21(2) The board shall establish criteria and scoring systems to be utilized in the project evaluation and approved during a regularly scheduled board meeting. Criteria and scoring systems must be distributed to all potential applicants at least 90 days prior to the project application deadline.

33.21(3) Joint applications are permitted. One entity must serve as the primary applicant. Joint projects sponsored by entities (e.g., an organization or institution, and an area education agency) competing for funds from different REAP accounts are allowable. Applications must clearly spell out the respective shares of project costs to be derived from various REAP accounts if the project is approved for funding. Any cooperative agreement between joint applicants must be provided as a part of the application.

33.21(4) Similar development projects. An application for a conservation education program grant may serve more than one target population (e.g., scouting and K-6 classrooms).

571—33.22(455A) Grantee responsibilities.

33.22(1) *Timely completion of projects.* Projects are expected to be completed in a 12-month time period; however, up to 18 months may be allowed by the board for grants difficult to accomplish in 12 months. The board may consider extending the time period of a grant upon request.

33.22(2) *Record keeping and retention.* Grant recipients shall keep adequate records relating to the administration of a project, particularly all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

33.22(3) *Midterm and final reports.* Grantees shall provide midterm and final reports that include information detailing progress toward goals and objectives, expenditures and services on forms provided for those reports. The reports shall clearly identify the status of fundraising relevant to the approved project and problems that may cause a delay in completing the project within the approved project period. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee until the time that the report is received. Grants are considered active until the board notifies the grantee that the grant has been terminated or completed by the terms of the grant. At the completion of the project and prior to the final payment, a final written report shall be submitted by the grantee to the board. The final 10 percent payment shall be withheld pending this report, which shall include a 75- to 100-word summary of project results. This summary will be posted on the state environmental education website. No new awards shall be made for continuation programs when there are delinquent reports from prior grants.

33.22(4) *Contract revisions.* The grantee shall immediately inform the board of any revisions in the project budget in excess of 10 percent of a line item. The board and the grantee may negotiate a revision

to the contract to allow for expansion or modification of services, but shall not increase the total amount of the grant. The board retains the authority to approve or deny contract revisions.

33.22(5) *Nonapplication of copyright.* Program materials developed from REAP funds for conservation education materials shall bear the REAP logo. However, materials developed under this grant shall not be copyrighted by the grantee unless the board gives permission.

33.22(6) *Restrictions.* Funds allocated under this chapter shall not be used for out-of-state travel or equipment, such as typewriters, computers, and hardware, or for construction, renovation, or remodeling costs unless specifically approved by the board.

571—33.23(455A) Board review and approval. The board or its designee shall review and rank projects for funding, and funds shall be awarded on a competitive basis. If delegated, the reviewing, scoring and ranking of projects will be presented to the board as recommendations. The board may approve or deny funding for any project or part thereof.

33.23(1) In each year that funds are made available by the Iowa legislature, payments shall be as follows:

a. For grant periods in excess of 90 days, up to 50 percent shall be paid at the beginning of the grant period, up to 40 percent at the midpoint of the grant period, and the balance upon successful completion as determined by the board.

b. For grant periods of fewer than 90 days, 75 percent shall be paid at the beginning of the grant period and the balance at successful completion as determined by the board.

33.23(2) The board shall notify successful applicants and shall provide a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the department prior to the award of any funds under this program.

571—33.24(455A) Waivers of retroactivity. Normally, grant program developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be issued in writing by the board. Receipt of a waiver does not ensure funding, but only ensures that the project will be considered for funding along with all other applications.

571—33.25(455A) Penalties. Whenever any property, real or personal, acquired or developed with REAP funds passes from the control of the grantee or is used for purposes other than the approved project purpose, it will be considered an unlawful use of the funds. If a grantee desires to use the approved funds for a purpose other than the approved project purpose, the grantee shall seek an amendment to the project purpose. The board shall notify the grantee of any apparent violation.

571—33.26(455A) Remedy. Funds used unlawfully, without authorization, or for other than the approved project purpose shall be returned to the department within the period specified by the board or director. The remedies provided in this rule are in addition to others provided by law.

571—33.27(455A) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties shall agree upon the termination conditions, including the effective date, and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

571—33.28(455A) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion whenever it is determined by the board that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The department shall administer the conservation education grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the conservation education grants, the contracts shall be terminated

or renegotiated. The board may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order. The grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

33.28(1) *Failure to initiate or complete project.* Failure to initiate or complete the project in a timely manner shall be cause for termination of the project by the board. The grantee shall return unused grant funds at the time of termination.

33.28(2) *Ineligibility.* Whenever the board 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 board.

571—33.29(455A) Responsibility of grantee at termination. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends moneys for other than specified budget items approved by the board, the grantee shall return moneys for unapproved expenditures.

571—33.30(455A) Appeals. Appeals to the decisions on grant awards shall be filed with the director of the department. The letter of appeal shall be filed within ten working days of receipt of notice of decision and shall be based on a contention that the process was arbitrary; was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice or was altered without adequate public notice; or involved conflict of interest by staff or board members. The director of the department shall notify the board of the appeal. The board may submit evidence in support of its decision within ten days of notice from the director. The director shall issue a decision within a reasonable time following receipt of the appeal.

These rules are intended to implement Iowa Code sections 455A.19 and 455A.21.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 35
"Fish Habitat Promotion for County Conservation Boards"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6)"a" and 483A.3A
State or federal law(s) implemented by the rulemaking: Iowa Code section 483A.3A

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 Randy Schultz 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 Randy Schultz prior to the hearing to facilitate an orderly hearing.

September 28, 2023 12 noon to 1 p.m.	Via video/conference call

Public Comment

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

Randy Schultz
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 319.217.9317
Email: randy.schultz@dnr.iowa.gov

Purpose and Summary

Chapter 35 implements a grant program whereby fishing license fee funds are used by county conservation boards to conduct projects that provide access to, protection of, or enhancement of fish habitat for anglers. The Department is directed to implement this program by the Iowa Code.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Counties may voluntarily participate in this grant program and will bear the costs if so.

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

This chapter benefits all anglers by distributing grant funds throughout the state.

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:

Grant funds fund projects that improve angling and angling access. Fishing contributes to the economy through angler purchases and travel. The most recent five years of grant funding are included below:

Year	Number of Projects	Total Dollars
2019	18	$625,793
2020	19	$758,512
2021	20	$539,064
2022	16	$722,205
2023	17	$766,495

- Qualitative description of impact:

Grant projects provide outdoor recreation opportunities and increase angler satisfaction, 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 incurs costs for staff time. However, all involved staff have other assigned duties.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues.

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

The proposed chapter implements a grant program that is 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:

The program could be implemented without requiring cost sharing; however, the cost sharing allows for more projects to be funded with the available funds. This requirement has never negatively impacted participation.

6. Alternative methods considered by the agency:

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

No alternative methods were considered. This is a nonregulatory chapter covering a voluntary grant program.

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

No alternative methods were considered.

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 571—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35
FISH HABITAT PROMOTION FOR COUNTY CONSERVATION BOARDS

571—35.1(483A) Purpose and definitions. The purpose of this chapter is to designate procedures for the allotment of fish habitat revenue to county conservation boards. These funds shall be used specifically to acquire from willing sellers whole or partial interest in land for use as or for protection of fish habitats and to develop and enhance fishable waters and habitat areas.

The following definitions apply in these rules:

"Commission" means the natural resource commission.

"County" means a county conservation board.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"District" means a county conservation district.

571—35.2(483A) Availability of funds. Fish habitat funds are dependent on sales. Revenues received by the department determine the amount of moneys available at any time.

35.2(1) *Local share.* Funds available for county conservation boards shall be specified in the department's budget in accordance with legislative appropriations. At least 50 percent of the fish habitat revenue will be apportioned to county conservation boards.

35.2(2) *Distribution.* After deduction of 5 percent to be held for contingencies, the remaining local share will be available on an annual basis. The department shall divide fish habitat funds equally among the districts. The districts have two years to obligate fish habitat funds once the funds are made available. After two years, the department will apportion all unobligated funds equally among the districts.

571—35.3(483A) Program eligibility. All counties are eligible to participate in this program.

571—35.4(483A) Eligibility for cost-sharing assistance. A project is not eligible for cost sharing unless the commission specifically approves the project or the applicant has received a written waiver of retroactivity from the director prior to the project's initiation. A project must allow for public fishing to be eligible for cost sharing; however, the review and selection committee as described in subrule 35.6(1) may recommend for commission approval projects with restrictions on boating.

35.4(1) *Acquisition projects.* A licensed appraiser shall appraise lands or rights thereto to be acquired, and the appraisal shall be approved by department staff. The appraisal requirement may be waived when the staff determines that it is impractical for a specific project. The cost share shall not be approved for more than 90 percent of the approved appraised value. Acquisition projects are eligible for cost share either by direct payment as described in subrule 35.11(6) or by reimbursement to counties.

35.4(2) *Eligible acquisition activities.*

a. Acquisition for pond and lake construction.

b. Acquisition of fishable streams, ponds and lakes.

c. Acquisition for watershed protection.

35.4(3) *Development projects.* Eligible expenditures for development projects include, but are not limited to, preliminary expenses, contracts, the purchase of materials and supplies, rentals, and extra labor that is hired only for the specific project. The purchase of equipment is not an eligible expenditure. Donated labor, materials and equipment-use and use of a county's own labor and equipment are not eligible for cost-share assistance. Development projects are limited to lands legally controlled by the

county for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the county.

35.4(4) *Enhancement projects.* For purposes of this rule, "enhancement" is considered to be synonymous with "development." Eligible enhancement activities include:

a. Physical placement of fish habitats in ponds, lakes, pits and streams.
b. Armoring of pond, lake, pit and stream shores.
c. Construction of aeration systems.
d. Dredging of ponds or lakes.
e. Construction of ponds and lakes.
f. Construction of sediment-retaining basins.
g. Repair of lake dam/outlets.
h. Manipulation of fish populations and aquatic vegetation.
i. Removal of dams.
j. Construction of fish ladders.
k. Construction of fish barriers.
l. Construction of rock-faced jetties.

35.4(5) *Project income.* When, as a result of a purchase agreement or other title transfer action involving cost sharing with fish habitat funds, a county directly or indirectly receives financial income that would have been paid to the previous landowner, 90 percent of that income shall be transferred to the department unless the county has identified and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee shall recommend, and the director and commission shall approve, plans for the expenditure of income received pursuant to this subrule. In the absence of acceptable fish habitat development or acquisition plans, the county shall transfer to the department 90 percent of the income received as it is received. The department shall credit that income to the county's apportionment of the fish habitat fund as described in subrule 35.2(1). The schedule of those reimbursements from a county to the state shall be included in the project agreement.

571—35.5(483A) Application for assistance. Applications must contain sufficient detail as to clearly describe the scope of the project and how the area will be managed.

35.5(1) *Form.* Applications must be submitted on forms provided by the department.

35.5(2) *Time of submission.* Applications for funds will be reviewed and selected for funding at least once per year. The department will publish on its website the date and time for submitting a funding proposal, providing at least 90 days' notice. Applications must be submitted to the department as described on the website. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of funds. In emergencies, a county may request a waiver so that an acquisition project may be approved for retroactive payments if funds are available and the project meets all other criteria.

35.5(3) *Joint applications.* Joint applications are permitted. One county shall serve as the primary applicant. A joint application shall clearly describe the respective share of project costs for each county named. Any cooperative agreement between the counties named shall be provided as a part of the application.

35.5(4) *County funding.* An applicant shall certify that it has committed its share of project costs and that these funds are available and shall state the means of providing for the county share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action shall be completely documented in the application.

35.5(5) *Multiple development projects.* An application for development project assistance may include development on more than one area if the development is of a like nature.

571—35.6(483A) Project review and selection.

35.6(1) *Review and selection committee.*

a. Each district shall have a review and selection committee, hereinafter referred to as the committee. Each committee shall be composed of at least five county directors or their designees, with at least two designated alternates. Each district's committee shall determine which grant applications and amendment requests will be selected for funding. For advisory purposes only, a department biologist or designee shall be present during review and selection of grant applications and amendment requests.

b. Conflict of interest. An individual who is a member, volunteer, or employee of an entity that has submitted a project cannot serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual's place.

35.6(2) *Consideration withheld.* The committee shall not consider any application that on the date of the selection session is incomplete or for which additional pertinent information has been requested but not received.

35.6(3) *Application rating system.* The committee shall apply a rating system to each grant application considered for fund assistance. The department shall develop the rating system. The rating system shall be used to rate each application, and those applications receiving the highest ratings shall be selected for fund assistance to the extent of the allotment for each annual period. If the amount of grant moneys available exceeds that requested, applications will be reviewed only to determine eligibility.

571—35.7(483A) Commission review. The director shall present the committees' recommendations to the commission at its next meeting following the rating of projects for funding. The commission may approve or disapprove funding for any project on the list.

571—35.8(483A) Grant amendments. If funds are available, projects for which grants have been approved may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. The director shall approve project changes prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns shall not be approved if funds have already been committed or the work has already been performed.

571—35.9(483A) Timely commencement of projects. Grant recipients are expected to carry out their projects in an expeditious manner. A project for which a grant is approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission.

571—35.10(483A) Project period. A project period that is commensurate with the work to be accomplished shall be assigned to each project. Extensions will be granted only in case of extenuating circumstances.

571—35.11(483A) Payments.

35.11(1) *Grant amount.* Grant recipients will be paid 90 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

35.11(2) *Project billings.* Grant recipients shall submit billings for reimbursement or cost sharing on forms provided by the commission.

35.11(3) *Project billing frequency.* Project billings shall be submitted on the following basis:

a. Up to $10,000 total project cost—one billing.

b. Over $10,000 total project cost—no more than two billings.

35.11(4) *Documentation.* Grant recipients shall provide documentation to substantiate all costs incurred on a project as may be required by the department.

35.11(5) *Development projects.* Eighty percent of the approved local share may be paid to the county when requested, but not earlier than start-up of the project. The department, pending successful completion and final inspection of the project, shall withhold 20 percent of the local share until any irregularities discovered as a result of a final site inspection have been resolved.

35.11(6) *Acquisition projects.* The department may make payment directly to a property seller pursuant to the following criteria:

a. The county requests direct payment in the project application and shows good cause for such procedure;

b. The seller provides to the county a marketable fee simple title, free and clear of all liens and encumbrances or material objections at the time of payment; and

c. Sufficient program funds are available at the time of transfer.

571—35.12(483A) Record keeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income that normally would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action. A copy of the county's audits showing such income and disbursements for the grant period shall be submitted to the department's budget and grant bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state law.

571—35.13(483A) Penalties. Whenever any real or personal property acquired or developed with fish habitat fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it shall be considered an unlawful use of the funds. The department shall notify the county of any such violation.

35.13(1) *Remedy.* Funds thus used unlawfully shall be returned to the department for inclusion in the fish habitat fund, or local, non-cost-shared funds shall be used to acquire a replacement property of equal value at current market prices and with commensurate benefits to fish. The replacement property must be approved by the commission. The county shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this subrule are in addition to others provided by law.

35.13(2) *Land disposal.* Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with fish habitat fund assistance is no longer of value for the project purpose or that the county has other good cause, the commission may authorize that the land be disposed of and the proceeds thereof used to acquire or develop an area of equal value or that 90 percent of the proceeds be returned to the state for inclusion in the fish habitat fund.

35.13(3) *Ineligibility.* If the department determines that a county has unlawfully used fish habitat funds, the county shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code section 483A.3A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 61
"State Parks, Recreation Areas, and State Forest Camping"

Iowa Code section(s) or chapter(s) authorizing rulemaking: sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 through 461A.51, 461A.57, and 723.4 and chapters 463C and 724

State or federal law(s) implemented by the rulemaking: Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 through 461A.51, 461A.57, and 723.4 and Iowa Code chapters 463C and 724

Public Hearing

A public hearing at which persons may present their views orally or in writing in person and via conference call as follows. Persons who wish to attend the conference call should contact Jessica Manken 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 Jessica Manken prior to the hearing to facilitate an orderly hearing.

September 26, 2023 12 noon to 1 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa Via video/conference call

Public Comment

Any interested person may submit written or oral 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:

Jessica Manken
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515.571.4010
Email: jessica.manken@dnr.iowa.gov

Purpose and Summary

Chapter 61 regulates the public's access and use of state parks, recreation areas, and state forest camping.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

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 will benefit from the proposed 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:

The proposed rulemaking does not have an economic impact or cost associated with it.

- Qualitative description of impact:

The proposed rulemaking does not impose financial burdens on the public.

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 reservations for camping, rental facilities, and other special privileges; oversight of vessel storage; and assistance to park visitors 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 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 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:

No alternative methods were considered.

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 61 and adopt the following **new** chapter in lieu thereof:

PARKS AND RECREATION AREAS
TITLE VI

CHAPTER 61
STATE PARKS, RECREATION AREAS, AND STATE FOREST CAMPING

571—61.1(461A) Definitions.

"Bank" or *"shoreline"* means the zone of contact of a body of water with the land and an area within 25 feet of the water's edge.

"Basic unit" or *"basic camping unit"* means the portable shelter used by one to six persons.

"Beach" means the same as defined in rule 571—64.1(461A).

"Beach house open shelter" means a building located on the beach that is open on two or more sides and that may or may not have a fireplace.

"Cabin" means a dwelling available for rental on a nightly or weekly basis. Cabins may or may not contain restroom and kitchen facilities.

"Camping" means erecting a tent, hammock, or shelter of natural or synthetic material; placing a sleeping bag or other bedding material on the ground; or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

"Centralized reservation system" means a system that processes reservations using more than one method to accept reservations. Each method simultaneously communicates to a centralized database at a reservation contractor location to ensure that no campsite or rental facility is booked more than once.

"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 Young Men's or Young Women's Christian Association. "Chaperoned, organized youth group" does not include family members of a formal organization.

"Fishing" means the same as described in Iowa Code sections 481A.72, 461A.42 and 481A.76.

"Free climbing" means climbing with the use of hands and feet only and without the use of ropes, pins and other devices normally associated with rappelling and rock climbing.

"Group camp" means the camping area at Lake Keomah State Park where organized groups (i.e., family groups or youth groups) may camp. Dining hall facilities are available.

"Immediate family" means spouses, parents or legal guardians, domestic partners, dependent children and grandparents.

"Lodge" means a day-use building that is enclosed on all four sides and may have kitchen facilities such as a stove or refrigerator and that is available for rent on a daily basis. "Lodge" does not include buildings that are open on two or more sides and that contain fireplaces only.

"Modern area" means a camping area that has showers and flush toilets.

"Nonmodern area" means a camping area in which no showers are provided and that contains only pit-type latrines or flush-type toilets. Potable water may or may not be available to campers.

"Open shelter" means a building that is open on two or more sides and that may or may not include a fireplace.

"Open shelter with kitchenette" means a building that is open on two or more sides and contains a lockable, enclosed kitchen area.

"Organized youth group campsite" means a designated camping area within or next to the main campground where chaperoned, organized youth groups may camp.

"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 in park or recreation area natural surroundings without the use of a wheeled conveyance.

"Possession" means the same as defined in Iowa Code section 481A.1(27).

"Prohibited activity" means any activity other than fishing as defined in this chapter including, but not limited to, picnicking and camping.

"Property" means personal property such as goods, money, or domestic animals.

"Recreation areas" means the following areas that have been designated by action of the commission:

Area	County
Badger Creek Recreation Area	Madison
Brushy Creek Recreation Area	Webster
Clair Wilson Park	Dickinson
Emerson Bay and Lighthouse	Dickinson
Fairport Recreation Area	Muscatine
Lower Gar Access	Dickinson
Marble Beach	Dickinson
Mines of Spain Recreation Area	Dubuque
Pleasant Creek Recreation Area	Linn
Templar Park	Dickinson
Volga River Recreation Area	Fayette
Wilson Island Recreation Area	Pottawattamie

"Refuse" means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid or solid waste or other discarded material.

"Rental facilities" means facilities that may be rented on a daily or nightly basis and includes open shelters, open shelters with kitchenettes, beach house open shelters, warming lodges, lodges, cabins, yurts and group camps.

"Reservation window" means a rolling period of time in which a person may reserve a campsite or rental facility.

"Scuba diving" means swimming with the aid of self-contained underwater breathing apparatus.

"State park" means areas managed by the state and designated by action of the commission and listed on the department's website at www.iowadnr.gov.

"State park managed by another governmental entity" means areas designated by action of the commission and listed on the department's website at www.iowadnr.gov.

"State preserve" means the areas or portions of the areas dedicated by actions pursuant to Iowa Code section 465C.10 and listed on the department's website at www.iowadnr.gov.

"Swim" or *"swimming"* means to propel oneself in water by natural means, such as movement of limbs, and includes but is not limited to wading and the use of inner tubes or beach toy-type swimming aids.

"Walk-in camper" means a person arriving at a campground without a reservation and wishing to occupy a first-come, first-served campsite or unrented, reservable campsite.

"Yurt" means a one-room circular fabric structure built on a platform that is available for rental on a nightly or weekly basis.

571—61.2(461A) Centralized reservation system. The centralized reservation system of the department accepts and processes reservations for camping, rental facilities, and other special privileges in state parks, recreation areas, and state forests. The system is accessible through the department's website at www.iowadnr.gov. The operating policies and procedures for the centralized reservation system are available upon request.

571—61.3(461A) Camping in state parks and recreation areas.

61.3(1) *Procedures for camping registration.*

a. Registration of walk-in campers occupying nonreservable campsites or unrented, reservable campsites will be on a first-come, first-served basis and will be handled by a self-registration process. Registration forms will be provided by the department. Campers shall, within one-half hour of arrival at the campground, complete the registration form, place the appropriate fee in the envelope and place the envelope in the depository provided by the department. One copy of the registration form must then be placed in the campsite holder provided at the campsite. The camping length of stay identified on the camping registration form must begin with the actual date the camper registers, pays and posts the registration at the campsite.

b. Campsites are considered occupied and registration for a campsite shall be considered complete when the requirements of paragraph 61.3(1)*"a"* have been met.

c. Campsite registration must be in the name of a person 18 years of age or older who will occupy the camping unit on that site for the full term of the registration.

61.3(2) *Organized youth group campsite registration.*

a. Registration procedures for organized youth group campsites shall be governed by paragraphs 61.3(1)*"a," "b"* and *"c."*

b. A chaperoned, organized youth group may choose to occupy campsites not designated as organized youth group campsites. However, the group is subject to subrules 61.3(1), 61.3(3) and 61.3(5) pertaining to the campsite the group wishes to occupy.

61.3(3) *Restrictions on campsite/campground use.* This subrule sets forth conditions of public use that apply to all state parks and recreation areas. Specific areas as listed in subrule 61.3(4), rule 571—61.10(461A) and rule 571—61.13(461A) are subject to additional restrictions or exceptions. The conditions in this subrule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

a. No more than six persons shall occupy a campsite except for the following:

(1) Families that exceed six persons may be allowed on one campsite if all members are immediate family and cannot logically be split to occupy two campsites.

(2) Campsites that are designated as chaperoned, organized youth group campsites.

b. Camping is restricted to one basic unit per site except that a small tent or hammock may be placed on a site with the basic unit.

c. Each camping group shall utilize only the electrical outlet fixture designated for its particular campsite.

d. Each camping group will be permitted to park one motor vehicle not being used for camping purposes at the campsite. Unless otherwise posted, one additional vehicle may be parked at the campsite.

e. All motor vehicles, excluding motorcycles, not covered by the provision in paragraph 61.3(3)*"d"* shall be parked in designated extra-vehicle parking areas.

f. Walk-in campers occupying nonreservable campsites or unrented, reservable campsites shall register as provided in subrule 61.3(1) within one-half hour of entering the campground.

g. Campers occupying nonreservable campsites shall vacate the campground or register for the night prior to 3 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights for nonreservable campsites. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of three nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

h. Walk-in campers shall not occupy unrented, reservable campsites until 10 a.m. on the first camping day of their stay. Campers shall vacate the campground by 3 p.m. of the last day of their stay. Initial registration shall not exceed two nights. Campers may continue to register after the first 2 nights on a night-to-night basis up to a maximum of 14 consecutive nights, subject to campsite availability. All members of the camping party must vacate the state park, recreation area, or state forest campground after the fourteenth night and may not return to the state park, recreation area, or forest campground until

a minimum of three nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

i. Campers with reservations shall not occupy a campsite before 4 p.m. of the first day of their stay. Campers shall vacate the site by 3 p.m. of the last day of their stay. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of three nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department program.

j. Minimum stay requirements for camping reservations. From May 1 to October 31, a two-night minimum stay is required for weekends. The two nights shall be designated as Friday and Saturday nights. However, if October 31 is a Friday, the Friday and Saturday night stay shall not apply. If October 31 is a Saturday, the Friday and Saturday night stay shall apply. The following additional exceptions apply:

(1) A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.

(2) A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday when the Fourth of July occurs on a Monday.

k. Buddy campsite reservations. Buddy campsites are between two to four individual sites that are grouped together and can only be reserved and used collectively. Campers reserving buddy campsites through the centralized reservation system must reserve both or all four of the individual sites that make up the group buddy campsite or buddy campsite.

l. In designated campgrounds, equine animals and llamas must be stabled at a hitching rail, individual stall or corral if provided. Equine animals and llamas may be hitched to trailers for short periods of time to allow for grooming and saddling. These animals may be stabled inside trailers if no hitching facilities are provided. Portable stalls/pens and electric fences are not permitted.

m. Campers shall use only straps to secure hammocks to trees on campsites. Straps must be a minimum of one inch wide.

n. Special events. The department director or director's authorized representative may authorize camping in areas outside designated campgrounds for certain special events as defined in rule 571—44.2(321G,321I,461A,462A,481A). Requests shall be reviewed on a case-by-case basis and permitted under the provisions of 571—Chapter 44.

61.3(4) *Area-specific restrictions on campground use.* In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to specific areas listed as follows:

a. Brushy Creek Recreation Area, Webster County.

(1) In the designated equestrian campgrounds, the maximum number of equine animals to be tied to the hitching rails is six. Persons with a number of equine animals in excess of the number permitted on the hitching rail at their campsite shall be allowed to stable their additional animals in a trailer or register and pay for an additional campsite if available.

(2) In the designated equestrian campgrounds, equine animals may be tied to trailers for short periods of time to allow grooming or saddling; however, the tying of equine animals to the exterior of trailers for extended periods of time or for stabling is not permitted.

b. Recreation area campgrounds. Access into and out of designated campgrounds shall be permitted from 4 a.m. to 10:30 p.m. From 10:31 p.m. to 3:59 a.m., only registered campers are permitted in and out of the campgrounds.

c. Lake Manawa State Park, Pottawattamie County. Except for the following limitations on campground length of stay, campsite use restrictions as stated in subrule 61.3(3) shall apply to Lake Manawa. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Lake Manawa campground for more than 14 nights in any 30-day period.

d. Walnut Woods State Park, Polk County. Except for the following limitations on campground length of stay, campsite use restrictions as stated in subrule 61.3(3) shall apply to Walnut Woods.

Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Walnut Woods campground for more than 14 nights in any 30-day period.

61.3(5) *Campground fishing.* Rule 571—61.13(461A) is not intended to prohibit fishing by registered campers who fish from the shoreline within the camping area.

571—61.4(461A) State forest camping areas established and marked.

61.4(1) Areas to be utilized for camping shall be established within the following state forests:

a. Shimek State Forest in Lee and Van Buren Counties.

b. Stephens State Forest in Appanoose, Clarke, Davis, Lucas and Monroe Counties.

c. Yellow River State Forest in Allamakee County.

61.4(2) Signs designating the established camping areas shall be posted along the access roads into these areas and around the perimeter of the area designated for camping use.

61.4(3) Areas approved for backpack camping (no vehicular access) shall be marked with appropriate signs and shall contain fire rings.

571—61.5(461A) Campground reservations. Procedures and policies regarding camping reservations in established state forest campgrounds shall be the same as those cited in rule 571—61.2(461A). Reservations will not be accepted for backpack campsites.

571—61.6(461A) Camping fees and registration.

61.6(1) *Fees.*

a. Backpack campsites. No fee will be charged for the use of the designated backpack campsites.

b. The fees for camping in established state forest campgrounds shall be set by the department pursuant to 561—Chapter 16.

61.6(2) *Procedures for camping registration.*

a. Backpack campsites. Persons using backpack campsites shall register at the forest area check station or other designated site.

b. The procedures for camping registration in established state forest campgrounds shall be the same as those cited in paragraphs 61.3(1)*"a," "b,"* and *"c."*

c. Organized youth group campsites. The procedures for camping registration for organized youth group campsites shall be the same as those cited in subrule 61.3(2).

571—61.7(461A) State forest camping restrictions—area and use.

61.7(1) Restrictions of campsite or campground use in established state forest campgrounds shall be the same as those cited in paragraphs 61.3(3)*"a," "b," "d"* through *"j,"* and *"l"* through *"n."*

61.7(2) Hours. Access into and out of the established camping areas shall be permitted from 4 a.m. to 10:30 p.m. From 10:31 p.m. to 3:59 a.m., only registered campers are permitted in the campgrounds.

61.7(3) Firearms use prohibited. Except for peace officers acting in the scope of their employment, the use of firearms, fireworks, explosives, and weapons of all kinds by the public is prohibited within the established camping area as delineated by signs marking the area.

571—61.8(461A) Rental facilities.

61.8(1) *Procedures for rental facility registration.*

a. Registrations for all rental facilities must be in the name of a person 18 years of age or older who will be present at the facility for the full term of the reservation.

b. Rental stay requirements for cabins and yurts.

(1) Except as provided in subparagraphs 61.8(1)*"b"*(2) and 61.8(1)*"b"*(3), cabins and yurts may be reserved for a minimum of two nights throughout the entire season.

(2) Cabins and yurts must be reserved for a minimum of three nights (Friday, Saturday, and Sunday nights) for the national Memorial Day holiday weekend, the Fourth of July holiday weekend when the Fourth of July occurs on a Monday, and the national Labor Day holiday weekend.

(3) The department may require cabins with restroom and kitchen facilities to be reserved for a minimum stay of one week (Friday p.m. to Friday a.m.) during the time period beginning with the

Friday of the national Memorial Day holiday weekend and ending with the Thursday after the national Labor Day holiday.

(4) All unreserved cabins, all unreserved yurts and the group camp must be rented for a minimum of two nights on a walk-in first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

(5) Reservations or walk-in rentals for more than a two-week stay will not be accepted for any facility.

c. Persons renting cabins, yurts or the group camp facility must check in at or after 4 p.m. on the first day of the rental period. Check-out time is 11 a.m. or earlier on the last day of the rental period.

d. Except by arrangement for late arrival with the park staff, no cabin, yurt or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not arrive. When arrangements for late arrival have been made, the person must appear prior to the park's closing time established by Iowa Code section 461A.46 or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park staff if next-day arrival is to be later than 9 a.m.

e. Except at parks or recreation areas with camping cabins or yurts, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. One small tent shall be allowed at each cabin or yurt in the designated areas and is subject to the occupancy requirements of paragraph 61.3(3)*"b."*

f. Open shelters and beach house open shelters that are not reserved are available on a first-come, first-served basis. If the open shelters with kitchenettes are not reserved, the open shelter portions of these facilities are available on a first-come, first-served basis.

g. Except by arrangement with the park staff in charge of the area, persons renting a lodge, shelter, or beach house open shelter facility and all guests shall vacate the facility by 10 p.m.

61.8(2) *Damage deposits for cabins, lodges, open shelters with kitchenettes, and yurts.*

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.

b. Damage deposits will be refunded only after authorized personnel inspect the facility to ensure that the facility and furnishings are in satisfactory condition.

c. If it is necessary for department personnel to clean up the facility or repair any damage beyond ordinary wear and tear, a log of the time spent in such cleanup or repair shall be kept. The damage deposit refund shall be reduced by the applicable hourly fee for the time necessary to clean the area or repair the damage and by the cost of any repairs of furnishings.

d. The deposit is not to be construed as a limit of liability for damage to state property. The department may take legal action necessary to recover additional damages.

571—61.9(461A) Wet and dry storage for vessels. The department may provide limited temporary vessel storage for individuals who own vessels that are actively used on waters in state parks and recreation areas.

61.9(1) *Vessel storage fees.* A person who fails to pay a vessel storage fee by the established payment due date shall forfeit the slip assignment.

61.9(2) *Storage slip assignment.*

a. Slip assignments shall be made on a first-come, first-served basis. Park staff may establish a waiting list upon receiving more requests for storage slips than the number of slips available. The waiting list shall be maintained in chronological order of the requests received.

b. Slip assignments shall be valid for one year with the option to renew annually.

c. In the event a person on a waiting list refuses a specific slip assignment, the person's name will be removed from the waiting list.

61.9(3) *Storage slip requirements and conditions.*

a. Each storage slip is limited to no more than one vessel at any given time.

b. All vessels in a storage slip must have a current boat registration.

c. Slip assignments must be in the same name of the person to whom the vessel that will occupy the slip is registered.

d. Dry storage slips shall be maintained in a clean and orderly manner. Failure to maintain the slip in a satisfactory condition will result in forfeiture of the slip assignment and any storage fees paid.

e. Slip assignments are not transferable.

571—61.10(461A) Restrictions—area and use. This rule sets forth conditions of public use that apply to all state parks and recreation areas. Specific areas as listed in subrule 61.3(4), rule 571—61.11(461A) and rule 571—61.14(461A) are subject to additional restrictions or exceptions. The conditions in this rule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

61.10(1) *Animals.*

a. The use of equine animals and llamas is limited to roadways or to trails designated for such use.

b. Animals are prohibited within designated beach areas.

c. Livestock are not permitted to graze or roam within state parks and recreation areas. The owner of the livestock shall remove the livestock immediately upon notification by department personnel in charge of the area.

d. Animals are prohibited in all park buildings, with the following exceptions:

(1) Service dogs and assistive animals.

(2) Dogs in designated cabins and yurts. A maximum of two dogs of any size shall be allowed in any designated cabin or yurt.

(3) Animals being used in education and interpretation programs.

e. Except for dogs being used in designated hunting areas during hunting season or in designated dog training areas outside of the nesting period closure from March 15 to July 15, pets such as dogs or cats shall not be allowed to run at large within state parks, recreation areas, or preserves. Such animals shall be on a leash or chain not to exceed six feet in length and shall be either led by or carried by the owner, attached to an anchor/tie-out or vehicle, or confined in a vehicle. Pets shall not be left unattended in campgrounds. Dogs shall be kenneled when left unattended in a cabin or yurt and shall not be left unattended if tied up outside of the cabin or yurt.

61.10(2) *Beach use/swimming.*

a. All swimming shall take place between sunrise and sunset. Swimming is prohibited between sunset and sunrise.

b. Except as provided in paragraphs 61.10(2)*"c"* and *"d,"* all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state parks and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

c. Persons may scuba dive in areas other than the designated beach area provided they display the diver's flag as specified in rule 571—41.10(462A).

d. Swimming outside beach area.

(1) Persons may swim outside the beach area under the following conditions:

1. The swimmer must be accompanied by a person operating a vessel and must stay within 20 feet of the vessel at all times during the swim;

2. The vessel accompanying the swimmer must display a flag, which is at least 12 inches square, is bright orange, and is visible all around the horizon; and

3. The person swimming pursuant to this subparagraph must register with the park staff in charge of the area and sign a registration immediately prior to the swim.

(2) Unless swimming is otherwise posted as prohibited or limited to the designated beach area, a person may also swim outside the beach area provided that the person swims within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach. Any vessel, except one being uprighted, must be attended at all times by at least one person remaining on board.

(3) A passenger on a sailboat or other vessel may enter the water to upright or repair the vessel and must remain within ten feet of that vessel.

e. The provisions of paragraph 61.10(2)*"a"* shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

f. Alcoholic liquor, beer, and wine, as each is defined in Iowa Code section 123.3, are prohibited on the beaches located within Lake Macbride State Park and Pleasant Creek State Recreation Area. This ban does not apply to rental facilities located within the 200-foot buffer of land surrounding the sand or fenced-in area that have been officially reserved through the department.

61.10(3) *Bottles.* Possession or use of breakable containers, the fragmented parts of which can injure a person, is prohibited in beach areas of state parks and recreation areas.

61.10(4) *Chainsaws.* Except by written permission of the director of the department, chainsaw use is prohibited in state parks and recreation areas. This provision is not applicable to employees of the department in the performance of their official duties.

61.10(5) *Firearms.* The use of firearms in state parks and recreation areas as defined in rule 571—61.1(461A) is limited to the following:

a. Lawful hunting as traditionally allowed at Badger Creek Recreation Area, Brushy Creek Recreation Area, Pleasant Creek Recreation Area, Mines of Spain Recreation Area (pursuant to rule 571—61.12(461A)), Volga River Recreation Area and Wilson Island Recreation Area.

b. Target and practice shooting in areas designated by the department.

c. Special events, festivals, and education programs sponsored or permitted by the department.

d. Special hunts authorized by the commission to control animal populations.

61.10(6) *Fishing off boat docks within state areas.* Persons may fish off all state-owned docks within state parks and recreation areas. Persons fishing off these docks must yield to boats and not interfere with boaters.

61.10(7) *Garbage.* Using government refuse receptacles for dumping household, commercial, or industrial refuse brought as such from private property is prohibited.

61.10(8) *Motor vehicle restrictions.*

a. Except as provided in these rules, motor vehicles are prohibited on state parks, recreation areas and preserves except on constructed and designated roads, parking lots and campgrounds.

b. Use of motorized vehicles by persons with a physical disability. Persons with a physical disability may use certain motorized vehicles to access specific areas in state parks, recreation areas and preserves, according to restrictions set out in this paragraph, or otherwise provided for by department other power-driven mobility device (OPDMD) processes, in order to enjoy the same recreational opportunities available to others.

(1) Reasonable accommodations. Each person with a physical disability or mobility impairment may request a reasonable accommodation to park or recreation area staff in order to use an OPDMD within state parks, recreation areas, and preserves. 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.

(2) Permits. Except where areas or trails are preapproved for OPDMD use, persons with a physical disability or mobility impairment must have a permit issued by park or recreation area staff in order to use a motorized vehicle in specific, approved areas within state parks, recreation areas, and preserves.

(3) 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.

(4) 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.

(5) Prohibited acts and restrictions.

1. Except as provided in paragraph 61.10(8)*"b,"* the use of a motorized vehicle on any park, recreation area or preserve by a person without a valid permit or at any site not approved on a signed map is prohibited. Permits and maps shall be carried by the permittee at any time the permittee is

using a motorized vehicle in a park, recreation area or preserve and shall be exhibited to any department employee or law enforcement official upon request.

2. The speed limit for an approved motorized vehicle off-road will be no more than 3 miles per hour, unless otherwise approved in writing. The permit of a person who is found exceeding the speed limit will be revoked.

3. The permit of any person who is found causing damage to cultural and natural features or abusing the privilege of riding off-road within the park will be revoked, and restitution for damages or other remedies available under the law may be sought.

61.10(9) *Noise.* Creating or sustaining any unreasonable noise in any portion of any state park or recreation area is prohibited at all times. The nature and purpose of a person's conduct, the impact on other area users, the time of day, location, and other factors that would govern the conduct of a reasonable, prudent person under the circumstances shall be used to determine whether the noise is unreasonable. Between the hours of 10:30 p.m. and 6 a.m., noise that can be heard at a distance of 120 feet or three campsites shall be considered unreasonable.

61.10(10) *Opening and closing times.* Except by arrangement or permission granted by the director or the director's authorized representative or as otherwise stated in this chapter, the following restrictions shall apply: All persons shall vacate all state parks and preserves before 10:30 p.m. each day, except authorized campers in accordance with Iowa Code section 461A.46, and no person shall enter into such parks and preserves until 4 a.m. the following day.

61.10(11) *Paintball guns.* The use of any item generally referred to as a paintball gun is prohibited in state parks, recreation areas and preserves.

61.10(12) *Rock climbing or rappelling.* The rock climbing practice known as free climbing and climbing or rappelling activities that utilize bolts, pitons, or similar permanent anchoring equipment or ropes, harnesses, or slings are prohibited in state parks and recreation areas, except by persons or groups registered with the park staff in charge of the area. Individual members of a group must each sign a registration. Climbing or rappelling will not be permitted at Elk Rock State Park, Marion County; Ledges State Park, Boone County; Dolliver Memorial State Park, Webster County; Stone State Park, Woodbury and Plymouth Counties; Maquoketa Caves State Park, Jackson County; Wildcat Den State Park, Muscatine County; or Mines of Spain Recreation Area, Dubuque County. Other sites may be closed to climbing or rappelling if environmental damage or safety problems occur or if an endangered or threatened species is present.

61.10(13) *Speech or conduct interfering with lawful use of an area by others.*

a. Speech commonly perceived as offensive or abusive is prohibited when such speech interferes with lawful use and enjoyment of the area by another member of the public.

b. Quarreling or fighting is prohibited when it interferes with the lawful use and enjoyment of the area by another member of the public.

61.10(14) *Animal population control hunts.* Animal hunting as allowed under Iowa Code section 461A.42(1)*"c"* shall be designated annually by the commission. During the dates of special hunts, only persons participating in special hunts shall use the area or portions thereof as designated by the department and signed as such.

571—61.11(461A) Certain conditions of public use applicable to specific parks and recreation areas. In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to the specific areas listed as follows:

61.11(1) *Hattie Elston Access and Clair Wilson Park, Dickinson County.*

a. Parking of vehicles overnight on these areas is prohibited unless the vehicle operator and occupants are actively involved in boating or are fishing as allowed under rule 571—61.14(461A).

b. Overnight camping is prohibited.

61.11(2) *Mines of Spain Recreation Area, Dubuque County.* All persons shall vacate all portions of the Mines of Spain Recreation Area prior to 10:30 p.m. each day, and no person or persons shall enter into the area until 4 a.m. the following day.

61.11(3) *Pleasant Creek Recreation Area, Linn County.* Fishing access into and out of the north portion of the area between the east end of the dam to the campground shall be closed from 10:30 p.m. to 4 a.m., except that walk-in overnight fishing will be allowed along the dam. The area known as the dog trial area shall be closed from 10:30 p.m. to 4 a.m., except for those persons participating in a department-authorized field trial. From 10:31 p.m. to 3:59 a.m., only registered campers are permitted in the campground.

61.11(4) *Wapsipinicon State Park, Jones County.* The land adjacent to the park on the southeast corner and generally referred to as the "Ohler property" is closed to the public from 10:30 p.m. to 4 a.m.

571—61.12(461A) Mines of Spain hunting, trapping and firearms use.

61.12(1) The following described portions of the Mines of Spain Recreation Area are established and will be posted as wildlife refuges:

a. That portion within the city limits of the city of Dubuque located west of U.S. Highway 61 and north of Mar Jo Hills Road.

b. The tract leased by the department from the city of Dubuque upon which the E. B. Lyons Interpretive Center is located.

c. That portion located south of the north line of Section 8, Township 88 North, Range 3 East of the 5th P.M. between the west property boundary and the east line of said Section 8.

d. That portion located north of Catfish Creek, east of the Mines of Spain Road and south of the railroad tracks. This portion contains the Julien Dubuque Monument.

61.12(2) Trapping and archery hunting for all legal species are permitted in compliance with all open-season, license and possession limits on the Mines of Spain Recreation Area except in those areas designated as refuges by subrule 61.12(1).

61.12(3) Firearms use is prohibited in the following described areas:

a. The areas described in subrule 61.12(1).

b. The area north and west of Catfish Creek and west of Granger Creek.

61.12(4) Deer hunting and hunting for all other species are permitted using shotguns only and are permitted only during the regular gun season as established by 571—Chapter 106. Areas not described in subrule 61.10(3) are open for hunting. Hunting shall be in compliance with all other regulations.

61.12(5) Turkey hunting with shotguns is allowed only in compliance with the following regulations:

a. Only during the first shotgun hunting season established in 571—Chapter 98, which is typically four days in mid-April.

b. Only in that area of the Mines of Spain Recreation Area located east of the established roadway and south of the Horseshoe Bluff Quarry.

61.12(6) The use of a handgun or any type of rifle is prohibited on the entire Mines of Spain Recreation Area except as provided in subrule 61.12(4). Target and practice shooting with any type of firearm is prohibited.

61.12(7) All forms of hunting, trapping and firearms use not specifically permitted by 571—61.12(461A) are prohibited in the Mines of Spain Recreation Area.

571—61.13(461A) After-hours fishing—exception to closing time. Persons shall be allowed access to the areas designated in rule 571—61.14(461A) between the hours of 10:30 p.m. and 4 a.m. under the following conditions:

1. The person shall be actively engaged in fishing.
2. The person shall behave in a quiet, courteous manner so as not to disturb other users of the park.
3. Access to the fishing site from the parking area shall be by the shortest and most direct trail or access facility.
4. Vehicle parking shall be in the lots designated by signs posted in the area.
5. Activities other than fishing are allowed with permission of the director or an employee designated by the director.

571—61.14(461A) Designated areas for after-hours fishing. These areas are open from 10:30 p.m. to 4 a.m. for fishing only. The areas are described as follows:

61.14(1) *Black Hawk Lake, Sac County.* The area of the state park between the road and the lake running from the marina at Drillings Point on the northeast end of the lake approximately three-fourths of a mile in a southwesterly direction to a point where the park boundary decreases to include only the roadway.

61.14(2) *Clair Wilson Park, Dickinson County.* The entire area including the parking lot, shoreline and fishing trestle facility.

61.14(3) *Clear Lake State Park, Ritz Unit, Cerro Gordo County.* The boat ramp, courtesy dock, fishing dock and parking lots.

61.14(4) *Elinor Bedell State Park, Dickinson County.* The entire length of the shoreline within state park boundaries.

61.14(5) *Elk Rock State Park, Marion County.* The Teeter Creek boat ramp area just east of State Highway 14, access to which is the first road to the left after the entrance to the park.

61.14(6) *Green Valley State Park, Union County.* The shoreline adjacent to Green Valley Road commencing at the intersection of Green Valley Road and 130th Street and continuing south along the shoreline to the parking lot on the east side of the dam, and then west along the dam embankment to the shoreline adjacent to the parking lot on the west side of the spillway.

61.14(7) *Hattie Elston Access, Dickinson County.* The entire area including the parking lot shoreline and boat ramp facilities.

61.14(8) *Honey Creek State Park, Appanoose County.* The boat ramp area located north of the park office, access to which is the first road to the left after the entrance to the park.

61.14(9) *Geode State Park, Des Moines County portion.* The area of the dam embankment that is parallel to County Road J20 and lies between the two parking lots located on each end of the embankment.

61.14(10) *Lake Keomah State Park, Mahaska County.*

a. The embankment of the dam between the crest of the dam and the lake.

b. The shoreline between the road and the lake from the south boat launch area west and north to the junction with the road leading to the group camp shelter.

61.14(11) *Lake Macbride State Park, Johnson County.* The shoreline of the south arm of the lake adjacent to the county road commencing at the intersection of Cottage Reserve Road at the north end of the north-south causeway proceeding across the causeway thence southeasterly along a foot trail to the east-west causeway, across the causeway to the parking area on the east end of that causeway.

61.14(12) *Lake Manawa State Park, Pottawattamie County.* The west shoreline including both sides of the main park road, commencing at the north park entrance and continuing south one and one-half miles to the parking lot immediately north of the picnic area located on the west side of the southwest arm of the lake.

61.14(13) *Lower Pine Lake, Hardin County.* West shoreline along Hardin County Road S56 from the beach southerly to the boat ramp access.

61.14(14) *Mini-Wakan State Park, Dickinson County.* The entire area.

61.14(15) *North Twin Lake State Park, Calhoun County.* The shoreline of the large day-use area containing the swimming beach on the east shore of the lake.

61.14(16) *Pikes Point State Park, Dickinson County.* The shoreline areas of Pikes Point State Park on the east side of West Okoboji Lake.

61.14(17) *Prairie Rose State Park, Shelby County.* The west side of the embankment of the causeway across the southeast arm of the lake including the shoreline west of the parking area located off County Road M47 and just north of the entrance leading to the park office.

61.14(18) *Rock Creek Lake, Jasper County.* Both sides of the County Road F27 causeway across the main north portion of the lake.

61.14(19) *Union Grove State Park, Tama County.*

a. The dam embankment from the spillway to the west end of the parking lot adjacent to the dam.

b. The area of state park that parallels BB Avenue, from the causeway on the north end of the lake southerly to a point approximately one-tenth of a mile southwest of the boat ramp.

61.14(20) *Upper Pine Lake, Hardin County.* Southwest shoreline extending from the boat launch ramp to the dam.

61.14(21) *Viking Lake State Park, Montgomery County.* The embankment of the dam from the parking area located southeast of the dam area northwesterly across the dam structure to its intersection with the natural shoreline of the lake.

571—61.15(461A) Vessels prohibited. Rule 571—61.14(461A) does not permit the use of vessels on the artificial lakes within state parks after the 10:30 p.m. park closing time. All fishing is to be done from the bank or shoreline of the permitted area.

571—61.16(461A,463C) Honey Creek Resort State Park. This chapter shall not apply to Honey Creek Resort State Park. Where permission is required to be obtained from the department, an authorized representative of the department's management company may provide such permission in accordance with policies established by the department.

These rules are intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and chapters 463C and 724.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 91
"Waterfowl and Coot Hunting Seasons"

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. §703–712; and final regulations in 88 Fed. Reg. 54830-54863 (Aug. 11, 2023).

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk and be directed to the appropriate hearing location:

September 26, 2023 11 a.m. to 1 p.m.	Conference Room 3EW Wallace State Office Building 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 no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Orrin Jones
1203 North Shore Drive
Clear Lake, Iowa 50428
Email: orrin.jones@dnr.iowa.gov

Purpose and Summary

Chapter 91 contains the regulations for hunting waterfowl and coot and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

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 have nominal compliance costs. The majority of costs relate to proper equipment, but waterfowl hunting is a voluntary recreational pursuit. The primary cost of compliance is in purchasing the appropriate hunting licenses, which include either a resident ($22) or nonresident hunting license ($131), habitat fee ($15), migratory game bird fee ($11.50) and federal duck stamp ($25). However, these costs do not originate in Chapter 91.

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

Iowa waterfowl hunters, who are able to participate in an exciting recreational activity, and the general public, who benefit from having sustainably managed waterfowl species to see and enjoy, 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 the season dates are within the framework established by the U.S. Fish and Wildlife Service (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 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 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 (which includes waterfowl but other species as well) 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 rulemaking. 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 considered. Waterfowl hunting is mostly regulated by USFWS regulations. Chapter 91 aligns closely with the federal framework.

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

No alternative methods were considered.

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
WATERFOWL AND COOT HUNTING SEASONS

571—91.1(481A) Duck hunting.

91.1(1) *Zone boundaries.* As specified in the Waterfowl Hunting Map Book published on the department of natural resource's (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.* As specified in the 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. As specified in the 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. As specified in the 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. As specified in the 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 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 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 described in subrule 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 subparagraph 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 subparagraph 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 subparagraph 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 that 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.

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 rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48(2), and 483A.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 106
"Deer Hunting"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6)"a," 481A.39, 481A.48, 481C.2(3), 483A.8, and 483A.24

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 481C and sections 481A.38, 481A.48, 483A.8, and 483A.24

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department of Natural Resources (Department) reception desk and be directed to the appropriate hearing location:

September 26, 2023
11 a.m. to 1 p.m.

Conference Room 3EW
Wallace State Office Building
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 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
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: chris.ensminger@dnr.iowa.gov

Purpose and Summary

Chapter 106 governs deer hunting by residents and nonresidents in the state of Iowa. This chapter 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. Chapter 106 also addresses landowner/tenant eligibility and deer depredation.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Deer hunters will have nominal compliance costs. The majority of costs relate to proper equipment, but deer hunting is a voluntary recreational pursuit. The primary cost of compliance is in purchasing the appropriate hunting licenses, which consist of either a resident ($22) or nonresident hunting license ($131), habitat fee ($15), and resident ($15 to $33) or nonresident ($91 to $498) deer tag.

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

Iowa deer hunters, who are able to participate in an exciting recreational activity, will benefit, and the general public will benefit from having sustainably managed deer herd to see and enjoy. Iowa's deer herd is an important generator of economic activity in the state (see below).

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 Iowa's wild deer by more than 130,000 hunters in the state.

- Qualitative description of impact:

The impacts of this chapter are far reaching, from recreational hunters enjoying a dynamic sport, to positive economic generation 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 Department's primary cost is from staff time to implement and enforce the rules. This includes Wildlife Bureau staff time 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 members work exclusively on deer hunting-related matters.

- Anticipated effect on state revenues:

A detailed 2022 survey of nearly 1,100 Iowans conducted by Responsive Management, Inc., estimated 433,000 people participate in hunting activities in Iowa annually. As mentioned previously, at least 130,000 of them choose deer as one of the species they pursue. According to the U.S. Bureau of Economic Analysis of the U.S. Department of Commerce, hunting (deer and other species) is linked to nearly 7,000 jobs in Iowa and generates $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 deer hunting in Iowa would eliminate the revenues described previously. Additionally, an unmanaged deer herd would cause an increasing amount of damage to landowners, including to commodity crops and motorists. Additionally, the Natural Resource Commission and the Department are currently charged by law with managing Iowa's deer herd, and are directed to promulgate rules with hunting seasons, dates, methods of take, etc. Chapter 106 must exist so long as that obligation exists in law.

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 deer herd in a balanced state against recreational opportunities and negative interactions. Importantly, the Department is charged by law with managing the herd at a self-sustaining, biologically balanced population level.

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 deer herd.

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

No alternative methods were considered.

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 deer 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 106 and adopt the following **new** chapter in lieu thereof:

CHAPTER 106
DEER HUNTING

PART I
DEER HUNTING

571—106.1(481A) Licenses. When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident or nonresident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt).

106.1(1) *Types of resident licenses.*

a. General deer licenses. General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in counties designated by the natural resource commission (commission) during the first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

b. Antlerless-deer-only licenses. Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler. Paid antlerless-deer-only licenses shall be valid in one county or in one deer population management zone and in one season as selected at the time the license is purchased. Free and reduced-fee antlerless-deer-only licenses shall be valid on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

c. Bow season licenses. General deer and antlerless-deer-only licenses, paid or free, shall be valid in both segments of the bow season.

d. Regular gun season licenses. Paid general deer and antlerless-deer-only licenses shall be valid in either the first or the second regular gun season, as designated on the license. Free general deer licenses and antlerless-deer-only licenses shall be valid in both the first and second regular gun seasons.

e. Muzzleloader season licenses. General deer and antlerless-deer-only licenses, paid or free, shall be valid in either the early or the late muzzleloader season, as designated on the license.

106.1(2) *January antlerless-deer-only resident licenses.*

a. Population management season. Licenses for the population management January antlerless-deer-only season may be issued for counties designated by the commission following a 30-day public comment period. Population management January antlerless-deer-only licenses shall

be issued for a county only when a minimum of 100 antlerless-deer-only licenses, as described in 106.10(5), remain unsold in that county as of the third Monday in December. If 100 or more antlerless-deer-only licenses remain unsold for a given county as of the third Monday in December, those remaining antlerless-deer-only licenses shall be made available for the population management January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in 106.10(5) is met.

b. Excess tag season. Licenses for the excess tag January antlerless-deer-only season may be issued in any county. Excess tag January antlerless-deer-only licenses shall be issued for a county only when a minimum of one antlerless-deer-only license, as described in 106.10(5), remains unsold for a given county through January 10. Remaining antlerless-deer-only licenses shall be made available starting on January 11 for the excess tag January antlerless-deer-only season in that county until the relevant antlerless-deer-only quota as described in 106.10(5) is met.

106.1(3) *Types of nonresident licenses.*

a. Any-deer licenses. Any-deer licenses shall be valid for taking deer of either sex in the zone and season designated by the hunter when the application is submitted as described in 571—106.8(483A).

b. Mandatory antlerless-deer-only licenses. Each hunter who is successful in drawing an any-deer license must also purchase an antlerless-deer-only license for the same zone and season as the any-deer license. If the hunter is unsuccessful in drawing an any-deer license, neither the any-deer nor antlerless-deer-only license will be issued. Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler.

c. Optional antlerless-deer-only licenses. A hunter who is not successful in drawing an any-deer license may purchase an antlerless-deer-only license as described in 571—106.8(483A).

d. Bow season license. Bow and arrow deer licenses shall be valid for deer of either sex or antlerless deer during the bow season and in the zone designated by the hunter at the time the application is submitted.

e. Regular gun season license. Regular gun season licenses will be issued for deer of either sex or antlerless deer. Regular gun season licenses will be issued by zone and season and will be valid in the zone and season designated by the hunter when the application is submitted.

f. Muzzleloader season license. Muzzleloader season licenses will be issued for deer of either sex or antlerless deer and shall be valid only during the muzzleloader season and in the zone designated by the hunter when the application is submitted.

g. Excess tag January antlerless-deer-only license. Beginning on January 11, nonresident hunters may obtain antlerless-deer-only licenses for the excess tag January antlerless-deer-only season specified in 106.2(4). Licenses will be available only in those counties specified in 106.10(3) until the quota provided in 106.10(5) is filled. All regulations specified in Chapter 106 for the January antlerless deer season for resident hunters including limits, shooting hours, method of take, tagging and reporting requirements will also apply to nonresident hunters during this season.

h. 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—106.2(481A) Season dates. Deer may be taken only during the following seasons:

106.2(1) *Bow season.* Deer may be taken in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year.

106.2(2) *Regular gun seasons.* Deer may be taken in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

106.2(3) *Muzzleloader seasons.* Deer may be taken in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

106.2(4) *Resident population management and excess tag January antlerless-deer-only seasons.* Deer may be taken in accordance with the type, season, and zone designated on the license from January 11 through the second Sunday following that date.

571—106.3(481A) Shooting hours. Legal shooting hours shall be from one-half hour before sunrise to one-half hour after sunset in all seasons.

571—106.4(481A) Limits.

106.4(1) *Bow season.* The daily bag limit is one deer per license. The possession limit is one deer per license.

106.4(2) *Muzzleloader seasons.* The daily bag limit is one deer per license. The possession limit is one deer per license.

106.4(3) *Regular gun seasons.* The bag limit is one deer per license. The possession limit is one deer per license.

106.4(4) *Resident population management and excess tag January antlerless-deer-only seasons.* The bag limit is one deer per license. The possession limit is one deer per license.

106.4(5) *Maximum annual possession limit.* The maximum annual possession limit for a deer hunter is one deer for each legal license and transportation tag obtained.

571—106.5(481A) Areas closed to hunting. There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

571—106.6(483A) Nonresident zones open to hunting. Licenses will be valid only in designated areas as follows:

106.6(1) *Nonresident zone boundaries.* As specified in the nonresident deer hunting zones map published on the department's website (www.iowadnr.gov/Hunting/Deer-Hunting) "Nonresident Deer Hunting Zones."

106.6(2) Reserved.

571—106.7(483A) Nonresident license quotas. A limited number of nonresident deer licenses will be issued in zones as follows:

106.7(1) *Zone license quotas.* Nonresident license quotas are as follows:

	Any-sex licenses		Mandatory	Optional
	All Methods	Bow	Antlerless-deer-only	Antlerless-deer-only
Zone 1	90	31	90	
Zone 2	90	31	90	
Zone 3	560	196	560	
Zone 4	1280	448	1280	
Zone 5	1600	560	1600	
Zone 6	800	280	800	
Zone 7	360	126	360	
Zone 8	240	84	240	
Zone 9	880	308	880	
Zone 10	100	35	100	
Total	6000	2099	6000	3500

106.7(2) *Quota applicability.* The license quota issued for each zone will be the quota for all bow, regular gun and muzzleloader season licenses combined. No more than 6,000 any-deer licenses and 6,000 mandatory antlerless-deer-only licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 any-deer and 6,000 mandatory antlerless-deer-only licenses, no more than 35 percent in any zone can be bow licenses. A maximum of 4,500 optional antlerless-deer-only licenses will be issued on a county-by-county basis. The licenses will be divided between the counties in the same proportion as resident antlerless-deer-only licenses. Hunters must designate a zone or county and season when purchasing the license and hunt only in that zone or county and season.

571—106.8(483A) Nonresident application procedure. Applications for nonresident deer hunting licenses must be made through the electronic licensing system for Iowa (ELSI) telephone order system or the ELSI Internet license sales website.

106.8(1) *Any-deer licenses.* Applications for any-deer and mandatory antlerless-deer-only licenses will be accepted from the first Saturday in May through the first Sunday in June. No one may submit more than one application during the application period. Hunters may apply as individuals or as a group of up to 15 applicants. All members of a group will be accepted or rejected together in the drawing. If applications have been sold in excess of the license quota for any 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 and telephone order charges will not be refunded. If any zone's license quota for any-deer and mandatory antlerless-deer-only licenses has not been filled, the excess any-deer and mandatory antlerless-deer-only licenses will be sold on a first-come, first-served basis through the ELSI telephone ordering system or the ELSI Internet license sales website. Excess any-deer and mandatory antlerless-deer-only licenses will be sold beginning the last Saturday in July until the quota has been filled or the last day of the hunting period for which the license is valid, whichever occurs first. Members of a group that are rejected may purchase licenses individually if excess any-deer and mandatory antlerless-deer-only licenses or optional antlerless-deer-only licenses are available.

106.8(2) *Optional antlerless-deer-only licenses.* Optional antlerless-deer-only licenses must be purchased through the ELSI telephone ordering system or the ELSI Internet license sales website. Licenses for taking only antlerless deer will be available on the same date as excess any-deer licenses are sold as explained in 106.8(1). Optional antlerless-deer-only licenses will only be issued for one of the two regular gun seasons and for qualified disabled hunters (571—106.15(481A)). They will be sold first-come, first-served until the county quota is filled, or until the last day of the season for which a license is valid. If optional antlerless-deer-only licenses are still available on December 15, they may be purchased by nonresidents to hunt during the period from December 24 through January 2. These licenses will be available to nonresidents who have not purchased a nonresident deer license during one

of the current deer seasons. The hunter must have in possession a valid nonresident small game hunting license and proof of having paid the current year's wildlife habitat fee. Optional antlerless-deer-only licenses will be valid only in the season and county designated by the hunter at the time the license is purchased.

a. Nonresident landowners. Nonresidents who own land in Iowa will have preference in obtaining optional antlerless-deer-only licenses. Nonresidents must qualify as landowners following the criteria stated in 106.17(1) and 106.17(3) through 106.17(6), except that nonresident tenants and family members of nonresident landowners and tenants do not qualify and nonresident optional antlerless-deer-only licenses will not be free of charge. If a farm unit is owned jointly by more than one nonresident, only one owner may claim landowner preference in the same year. Nonresidents who own land jointly with a resident do not qualify for preference. Nonresidents who have provided proof to the department that they own land in Iowa and meet the qualifying criteria may purchase an optional antlerless-deer-only license for one of the two regular gun seasons when excess any-deer licenses go on sale or for the holiday season beginning December 15. Such proof must be provided before an optional antlerless-deer-only license can be purchased and must be resubmitted each year in which an optional antlerless-deer-only license is purchased. These licenses do not count against the county quota.

b. Nonresident proof of land ownership. Nonresidents who request preference for optional antlerless-deer-only licenses will be required to submit a copy of their state of Iowa property tax statement for the current year or sign an affidavit that lists the legal description of their land, date purchased, and book and page number, or instrument number, where the deed is recorded.

106.8(3) *Preference points.* Each individual applicant who is unsuccessful in the drawing for an any-deer license will be assigned one preference point for each year that the individual 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. Preference points will apply only to obtaining any-deer licenses. Once an applicant receives an any-deer nonresident deer hunting license, all preference points will be removed until the applicant is again unsuccessful in a drawing or purchases a preference point as described in 106.8(4). Preference points will apply to any zone or season for which a hunter applies. The first drawing for any-deer licenses 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 any-deer 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.

106.8(4) *Purchasing preference points.* A nonresident who does not want to hunt in the current year may purchase one preference point per calendar year. The preference point will apply to the next year's drawing for any-deer licenses. The preference point will be treated in the same manner as preference points obtained by hunters who are unsuccessful in the any-deer license drawing. A nonresident may not purchase a preference point and apply for an any-deer license in the same calendar year. Preference points may be purchased only during the application period for any-deer licenses.

571—106.9(481A) Free and reduced-fee deer licenses for resident landowners and tenants. A maximum of one free general deer license, two free antlerless-deer-only licenses, and two reduced-fee antlerless-deer-only licenses may be issued to a qualifying landowner or eligible family member and a qualifying tenant or eligible family member. Eligibility for licenses is described in 571—106.17(481A). The free general deer license shall be available for one of the following seasons: the youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. One free antlerless-deer-only license shall be available for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. The second free antlerless-deer-only license shall be valid only for the January antlerless-deer-only season and will be available only if

a portion of the farm unit lies within a county where paid antlerless-deer-only licenses are available during that season. Each reduced-fee antlerless-deer-only license shall be valid for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, first and second regular gun seasons, or January antlerless-deer-only seasons. January antlerless-deer-only licenses will be available only if a portion of the farm unit is located in a county where paid antlerless-deer-only licenses are available in that season.

571—106.10(481A) Resident paid deer license quotas and restrictions. Paid deer licenses, including antlerless-deer-only licenses, will be restricted in the type and number that may be purchased.

106.10(1) *Paid general deer licenses.* Residents may purchase no more than two paid general deer licenses, one for the bow season and one for one of the following seasons: early muzzleloader season, late muzzleloader season, first regular gun season, or second regular gun season. No more than 7,500 paid statewide general deer licenses will be sold for the early muzzleloader season. Fifty additional paid early muzzleloader season licenses will be sold through and will be valid only for the Iowa Army Ammunition Plant. There will be no quota on the number of paid general deer licenses issued in the bow season, late muzzleloader season, first regular gun season, or second regular gun season.

106.10(2) *Paid antlerless-deer-only licenses.* Paid antlerless-deer-only licenses have quotas for each county and will be sold for each county until quotas are reached.

a. Paid antlerless-deer-only licenses may be purchased for any season in counties where licenses are available, except as outlined in 106.10(2)*"b."* A license must be used in the season, county or deer population management area selected at the time the license is purchased.

b. No one may obtain paid licenses for both the first regular gun season and second regular gun season regardless of whether the licenses are valid for any deer or antlerless deer only. Paid antlerless-deer-only licenses for the early muzzleloader season may only be purchased by hunters who have already purchased one of the 7,500 paid statewide general deer licenses. Hunters who purchase one of the 7,500 paid statewide general deer licenses for the early muzzleloader season may not obtain paid antlerless licenses for the first or second regular gun season.

c. Prior to September 15, a hunter may purchase one antlerless-deer-only license for any season for which the hunter is eligible. Beginning September 15, a hunter may purchase an unlimited number of antlerless-deer-only licenses for any season for which the hunter is eligible, as set forth in 106.10(2)*"b,"* until the county or population management area quotas are filled. Licenses purchased for deer population management areas will not count in the county quota.

106.10(3) *Population management and excess tag January antlerless-deer-only seasons.* Only antlerless-deer-only licenses, paid or free, are available in counties pursuant to the conditions described in 106.1(2). A license must be used during the population management or excess tag January antlerless-deer-only season as described in 106.2(4) and in the county or deer population management area selected at the time the license is purchased. Free antlerless-deer-only licenses shall be available only in the portion of the farm unit located in a county where paid antlerless-deer-only licenses are available during the population management or excess tag January antlerless-deer-only season.

106.10(4) *Free resident landowner/tenant licenses.* A person obtaining a free landowner/tenant license may purchase any combination of paid bow and paid gun licenses available to persons who are not eligible for landowner/tenant licenses as described in 571—106.17(481A).

106.10(5) *Antlerless-deer-only licenses.* Paid antlerless-deer-only licenses shall be available by county as designated annually by the commission. Prior to the commission designating the quotas, the department shall publish on its website a proposed allocation and accept public comments for at least thirty days.

571—106.11(481A) Method of take. Permitted weapons and devices vary according to the type of season.

106.11(1) *Bow season.* Only longbow, compound, or recurve bows shooting broadhead arrows are permitted during the bow season. Arrows must be at least 18 inches long.

a. Crossbows, as described in 106.11(1)*"b,"* may be used during the bow season in the following two situations:

(1) By persons with certain afflictions of the upper body as provided in 571—15.22(481A); and

(2) By persons over the age of 65 with an antlerless-deer-only license as provided in Iowa Code section 483A.8B.

b. Crossbow means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical trigger and a working safety. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead.

c. No explosive or chemical device may be attached to any arrow, broadhead or bolt.

106.11(2) *Regular gun seasons.* Only the following shall be used in the regular gun season: 10-, 12-, 16-, and 20-gauge shotguns shooting single slugs; any handgun or rifle as described in Iowa Code section 481A.48; and any muzzleloaders as described in 106.11(3).

106.11(3) *Muzzleloader seasons.* Only muzzleloading rifles, muzzleloading muskets, muzzleloading pistols, and muzzleloading revolvers will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloading rifle, muzzleloading musket, muzzleloading pistol, muzzleloading revolver, any handgun as defined in 106.11(2), crossbow as described in 106.11(1)*"b,"* or bow as described in 106.11(1). All muzzleloaders as described in this subrule shall only shoot a single projectile between .44 and .775 of an inch.

106.11(4) *January antlerless-deer-only seasons.*

a. Population management January antlerless-deer-only season. Bows, crossbows, shotguns, muzzleloaders, and handguns, as each is described in this rule, and rifles as described in Iowa Code section 483A.8(9) may be used during the population management January antlerless-deer-only season.

b. Excess tag January antlerless-deer-only season. Only rifles as described in Iowa Code section 483A.8(9) shall be used during the excess tag January antlerless-deer-only season.

106.11(5) *Prohibited weapons and devices.* The use of dogs, domestic animals, bait, firearms except as provided for in this chapter, crossbows except as provided in 106.11(1), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, 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. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.11(2) or 106.11(3). Only handguns as described in 106.11(2) may be used to hunt deer and only when a handgun is a lawful method of take.

106.11(6) *Discharge of firearms from roadway.* No person shall discharge a rifle, including a muzzleloading rifle or musket, or a handgun from a highway while deer hunting. In addition, no person shall discharge a shotgun shooting slugs from a highway north of U.S. Highway 30. A "highway" means the way between property lines open to the public for vehicle traffic, including the road ditch, as defined in Iowa Code section 321.1(78).

106.11(7) *Hunting from blinds.* No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 106.2(2), unless such blind exhibits a solid blaze orange marking which is a minimum of 144 square inches in size and is visible in all directions. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term "blind" is defined as an enclosure used for concealment while hunting, constructed either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

571—106.12(481A) Procedures to obtain licenses. All resident deer hunting licenses must be obtained using the ELSI. Licenses may be purchased from ELSI license agents, or online at www.iowadnr.com, or by calling the ELSI telephone ordering system.

106.12(1) *Licenses with quotas.* All paid deer hunting licenses for which a quota is established may be obtained from the ELSI system 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.

106.12(2) *Licenses without quotas.* All deer hunting licenses that have no quota may be obtained from the ELSI system beginning August 15 through the last day of the hunting period for which a license is valid.

106.12(3) *Providing false information.*

a. Any person who provides false information about the person's identity or eligibility for any paid or free landowner/tenant deer license and tag and who attests that the information is correct by accepting and signing the license or tag shall have the person's hunting license revoked as a part of the sentencing for such criminal conviction, and the person shall not be issued a hunting license for one year pursuant to the authority of Iowa Code section 483A.24(2)*"f"* and 571—15.6(483A).

b. In addition to any legal penalties that may be imposed, the obtaining of a license in violation of this rule shall invalidate that deer license and transportation tag and any other deer hunting license and transportation tag obtained during the same year.

571—106.13(481A) Transportation tag.

106.13(1) *Use of transportation tag.* A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is located after being taken or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person or with a tag that was purchased after the deer was taken. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption. The hunter who killed the deer must tag the deer using the transportation tag issued in that person's name unless lawfully party hunting.

106.13(2) *Party hunting.*

a. Resident party hunting. During the first and second regular gun seasons and the January antlerless-deer-only seasons, any resident hunter present in the hunting party may use their tag on a deer harvested by another resident.

b. Nonresident party hunting. Party hunting is not allowed by nonresidents.

571—106.14(481A) Resident youth deer and severely disabled hunts.

106.14(1) *Licenses.*

a. Youth deer hunt. A youth deer license may be issued to any Iowa resident who is not over 15 years old on the day the youth obtains 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 general deer license for which the youth's family is eligible.

Each participating youth must be accompanied by an adult who possesses a regular 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). Only one adult may participate for each youth hunter. 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 general deer license but may also obtain any other paid or free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only

licenses must be obtained in the same manner with which other hunters obtain them, as described in 106.10(2).

b. Severely disabled hunt. Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one general deer license to hunt deer during the youth season. A person applying for this license must either possess a disability parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). The attending physician shall be currently practicing medicine and shall be a medical doctor, a doctor of osteopathy, a physician assistant, or a nurse practitioner. Forms are available online at www.iowadnr.gov, by visiting the Department of Natural Resources office at the Wallace State Office Building, Des Moines, Iowa, or any district office, or by calling 515.725.8200. A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain any other paid and free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner by which other hunters obtain them, as described in 106.10(2).

106.14(2) *Season dates.* Deer of either sex may be taken statewide for 16 consecutive days beginning on the third Saturday in September. A person who is issued a youth deer hunting license and does not take a deer during the youth deer hunting season may use the deer hunting license and unused tag during any subsequent deer seasons. The license will be valid for the type of deer and in the area specified on the original license. The youth must follow all other rules specified in this chapter for each season, including method of take. If the tag is filled during any of the seasons, the license will not be valid in subsequent seasons.

106.14(3) *Shooting hours.* Legal shooting hours will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

106.14(4) *Limits and license quotas.* An unlimited number of licenses may be issued. The daily and season bag and possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.14(5) *Method of take and other regulations.* Deer may be taken with shotguns, bows, handguns, rifles, or muzzleloaders as permitted in 571—106.11(481A). Youth hunters using a handgun must be accompanied and under direct supervision throughout the hunt by a responsible person with a valid hunting license who is at least 21 years of age, with the consent of a parent or guardian. The responsible person with a valid hunting license who is at least 21 years of age shall be responsible for the conveyance of the pistol or revolver while the pistol or revolver is not actively being used for hunting. "Direct supervision" means the same as defined in Iowa Code section 483A.27A(4). All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

106.14(6) *Procedures for obtaining licenses.* Paid and free youth season licenses and licenses for severely disabled hunters may be obtained through ELSI beginning August 15 through the last day of the youth season.

571—106.15(481A) Nonresident deer hunting season for severely disabled persons.

106.15(1) *Licenses.* A nonresident meeting the requirements of Iowa Code section 321L.1(8) may apply for or purchase a nonresident deer hunting license to participate in a special deer hunting season for severely disabled persons. Nonresidents applying for this license must have on file with the department of natural resources either a copy of a disabilities parking permit issued by a state department of transportation or an Iowa department of natural resources form signed by a physician that verifies their disability.

106.15(2) *Season dates.* Any deer or antlerless deer may be taken in the hunting zone indicated on the deer license during 16 consecutive days beginning the third Saturday in September.

106.15(3) *Shooting hours.* Legal shooting hours will be from one-half hour before sunrise until one-half hour after sunset each day regardless of the type of weapon used.

106.15(4) *Limits.* Daily bag and possession limit is one deer. A person may shoot and tag only one deer by utilizing the license and tag issued in the person's name.

106.15(5) *License quotas.* Licenses for the special hunting season for severely disabled persons shall be issued from the quotas established in 571—106.7(483A). A special quota will not be set aside for severely disabled persons.

106.15(6) *Method of take and other regulations.* Deer may be taken with shotgun, bow, muzzleloading rifle or pistol as defined in 571—106.11(483A). All participants must meet the hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for taking deer with a gun or bow shall apply.

106.15(7) *Application procedures.* Persons meeting the requirements for this season must apply following the procedures described in 571—106.12(483A). A person who does not have a form on file to verify a disability will not be entered into the drawing or be allowed to purchase a license and will have the license fee refunded, less a $10 administrative fee to cover the cost of handling the application as provided in 571—subrule 15.8(1). License agent writing fees, department administrative fees, Internet sales charges and telephone order charges will not be refunded.

These rules are intended to implement Iowa Code sections 481A.38, 481A.48, 483A.8, and 483A.24.

PART II
DEER DEPREDATION

571—106.16(481A) Deer depredation management. The deer depredation management program provides assistance to producers through technical advice and additional deer licenses and permits where the localized reduction of female deer is needed to reduce damage. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.16(1) *Method of take and other regulations.* Legal weapons and restrictions will be governed by 571—106.11(481A). For deer shooting permits only, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93. The producer or designee must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122.

106.16(2) *Eligibility.* Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nursery stock, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding $1,000 in a single growing season, or the likelihood that damage will exceed $1,000 if preventive action is not taken, or a documented history of at least $1,000 of damage annually in previous years.

c. Producers who lease their deer hunting rights are not eligible for the deer depredation management program.

106.16(3) *Depredation management plans.* Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage. If deer damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a depredation management plan will be developed by depredation biologists in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, permanent fencing costing less than $1,000, allowing more hunters, increasing the take of antlerless deer, and other measures.

(2) Depredation permits to shoot deer may be issued to Iowa residents to reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the depredation biologist and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.16(4) *Depredation permits.* Two types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for a fee of $5 for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued up to the number specified in the management plan.

(2) The landowner or an eligible family member, which shall include the landowner's spouse or domestic partner and juvenile children, may obtain one depredation license for each season established by the commission.

(3) Depredation licenses will be valid only for hunting antlerless deer, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(4) All other regulations for the hunting season specified on the license apply.

(5) Depredation licenses are valid only on the land where damage is occurring and the immediately adjacent property unless the land is within a designated block hunt area as described in 106.16(4)*"a"*(6). Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

(6) Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation licenses issued to producers within the block hunt area are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt area boundaries. Creation of a given block hunt area does not authorize trespass.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers who have an approved department deer depredation plan, and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued for a fee of $5 to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops or agricultural crops may be valid for taking deer outside of a hunting season depending on the nature of the damage. The number and type of deer to be killed will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved signs an agreement with the department.

(5) All deer killed must be recovered and processed for human consumption.

(6) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(7) Antlers from all deer recovered must be turned over to the conservation officer within 48 hours. Antlers will be disposed of according to department rules.

(8) For out-of-season shooting permits, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93.

c. Depredation licenses and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

d. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd. This restriction does not apply in situations where shooting permits are issued for public safety concerns.

e. A person who receives a depredation permit pursuant to this paragraph shall pay a $1 fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger (HUSH) program administered by the commission and a $1 writing fee for each license to the license agent.

571—106.17(481A) Eligibility for free landowner/tenant deer licenses.

106.17(1) *Who qualifies for free deer hunting licenses.*

a. Owners and tenants of a farm unit and the spouse and juvenile child of an owner or tenant who reside with the owner or tenant are eligible for free deer 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 defined. "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.

106.17(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.

106.17(3) *What "actively engaged in farming" means.* 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 who 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.

106.17(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.

106.17(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.

106.17(6) *Where free licenses are valid.* A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. "Farm unit" means all parcels of land in tracts of two or more contiguous acres that are operated as a unit for agricultural purposes and 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.

106.17(7) *Registration of landowners and tenants.* Landowners and tenants and their eligible family members who want to obtain free deer hunting licenses must register with the department before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

571—106.18(481A) Harvest reporting. Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

These rules are intended to implement Iowa Code chapter 481C.

CIVIL REPARATIONS TRUST FUND

Pursuant to 361—subrule 12.2(1), the Executive Council gives notice that the Civil Reparations Trust Fund balance as of August 7, 2023, is approximately $1,014,926.06. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the Office of the State Treasurer by contacting Victoria Newton, Executive Secretary, State Capitol Room 113, Des Moines, Iowa 50319; telephone 515.281.5368. Applications must be filed on the thirtieth day after the date of publication of this notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361—Chapter 12.

ARC 7067C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rulemaking related to Iowa jobs training program

The Director of the Workforce Development Department (Department) hereby amends Chapter 7, "Iowa Jobs Training Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 7, 260F and 261.

Purpose and Summary

The Economic Development Authority has entered into an agreement under Iowa Code chapter 28E with the Department to administer the Iowa Jobs Training Program (260F Program). These amendments clarify opportunities for small businesses and cross-entity businesses to take advantage of 260F Program funding opportunities.

Community colleges have consistently voiced concerns on behalf of small businesses that 260F Program training is unavailable for small business leadership because small business executives often run or have day-to-day tasks that involve employee functions. When these small business executives are excluded from 260F Program training, the business loses an essential opportunity for improvement.

Community colleges have also pointed out that many businesses have multiple divisions (such as a retail business also having a manufacturing arm), which similarly precludes these cross-entity businesses from benefitting from 260F Program funding opportunities.

The amendments aim to reduce barriers to receiving 260F Program funding.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on February 22, 2023, as **ARC 6916C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Authority Board on August 8, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the 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 11, 2023.

The following rulemaking action is adopted:

ITEM 1. Amend rule **261—7.3(260F)**, definitions of "Eligible business" and "Employee," as follows:

"Eligible business" or *"business"* means a business training employees which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, warehousing or wholesaling products, conducting research and development, or providing services in interstate commerce, but excludes solely retail, health, or professional services and which meets the other criteria established by the authority. A business engaged in the provision of services must have customers outside of Iowa to be eligible. The business site to receive training must be located in Iowa. "Eligible business" does not include a business whose training costs can be economically funded under Iowa Code chapter 260E, a business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state, or a business which is involved in a strike, lockout, or other labor dispute in Iowa. If a business closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state, then the business is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

"Employee" means a person currently employed by a business who is to be trained. An employee for whom training is planned must hold a current position intended by the employer to exist on an ongoing basis with no planned termination date. Training is available only to an employee who is hired by the business, who is currently employed by the business, and for whom the business pays withholding tax. However, "employee" does not include a person with executive responsibilities, a replacement worker who is hired as a result of a strike, lockout, or other labor dispute in Iowa, or an employee hired as a temporary worker. "Employee" does include a person with executive responsibilities if such person works in both an executive- and employee-based capacity for a small business with a total labor force of fewer than 50 persons.

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ARC 7068C

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Adopted and Filed

Rulemaking related to Iowa hazard mitigation plan

The Homeland Security and Emergency Management Department hereby amends Chapter 9, "Iowa Comprehensive Plan," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 29C.8.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 29C.8.

Purpose and Summary

This rulemaking will formally adopt the Iowa Hazard Mitigation Plan.

Iowa currently has an "Enhanced" State Hazard Mitigation Plan (Enhanced Plan). This Enhanced Plan must be updated and formally adopted every five years pursuant to Federal Emergency Management Agency (FEMA) regulations. Historically, the Department has used the rulemaking process to formally adopt the Enhanced Plan. The current Enhanced Plan cited in 605—Chapter 9 was adopted on September 17, 2018, and expires September 18, 2023.

Through this Enhanced Plan, Iowa is eligible for additional federal disaster recovery grant funds. For example, because of the Enhanced Plan, Iowa becomes eligible for 33 percent extra funding from the Hazard Mitigation Grant Program (HMGP). This grant program helps fund long-term projects to mitigate impacts from future disasters. An Enhanced Plan is also needed for funding through the Public Assistance Grant Program, which helps repair infrastructure like roads, bridges, and water control facilities following a disaster. Because of Iowa's Enhanced Plan, these programs have brought in nearly $2 billion over the last 15 years.

There is no process to request a federal waiver should the approved Enhanced Plan lapse.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 12, 2023, as **ARC 7045C**. A public hearing was held on August 2, 2023, at 10:30 a.m. in the Goldfinch Room, 7900 Hickman Road, Windsor Heights, Iowa, and via video/conference call. 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 on August 16, 2023.

Fiscal Impact

There are no costs to implement this change; however, should the approved Enhanced Plan fall out of compliance with federal standards, Iowa would no longer be eligible for federal disaster recovery grant funds at the current levels.

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 11, 2023.

The following rulemaking action is adopted:

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

ITEM 1. Amend rule 605—9.3(29C), introductory paragraph, as follows:

605—9.3(29C) Iowa Hazard Mitigation Plan. The Iowa Hazard Mitigation Plan is developed in accordance with Iowa Code section 29C.8 and has been adopted on ~~September 17, 2018~~ September 18, 2023, published, and maintained by the department. This plan details the state government goals, objectives, and strategies to mitigate a wide range of natural, technological, or human-caused disasters in accordance with Section 322 of the Stafford Act, 42 U.S.C. 5165.

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