IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XLVI NUMBER 13
December 27, 2023 Pages 4261 to 4911

CONTENTS IN THIS ISSUE

Pages 4304 to 4911 include **ARC 7196C** to **ARC 7242C**; **ARC 7244C** to **ARC 7256C**; **ARC 7312C**; **ARC 7313C**; **ARC 7315C**; **ARC 7354C**; **ARC 7375C**; **ARC 7377C**; and **ARC 7417C** to **ARC 7434C**

NATURAL RESOURCE COMMISSION[571] (Cont'd)

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
15	**Wednesday, January 3, 2024**	**January 24, 2024**
16	**Friday, January 19, 2024**	**February 7, 2024**
17	**Friday, February 2, 2024**	**February 21, 2024**

PLEASE NOTE:

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

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

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on January 8, 2023, at 7 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Dairy innovation program, amendments to ch 52 Filed **ARC 7127C** 12/13/23
Weights and measures, ch 85 Filed **ARC 7129C** 12/13/23

CAPITAL INVESTMENT BOARD, IOWA[123]

Agency realignment, rescind chs 1 to 4 Notice **ARC 7195C** 12/13/23

CITY DEVELOPMENT BOARD[263]

ECONOMIC DEVELOPMENT AUTHORITY[261]"umbrella"

Organization and administration, ch 1 Notice **ARC 7131C** 12/13/23
Agency procedure for rulemaking, ch 2 Notice **ARC 7132C** 12/13/23
Petitions for rulemaking, ch 3 Notice **ARC 7133C** 12/13/23
Declaratory orders, ch 4 Notice **ARC 7134C** 12/13/23
Fair information practices, ch 5 Notice **ARC 7135C** 12/13/23
Waiver rules, ch 6 Notice **ARC 7136C** 12/13/23
Voluntary annexation, ch 7 Notice **ARC 7137C** 12/13/23
Petitions for involuntary city development action, ch 8 Notice **ARC 7138C** 12/13/23
Committee proceedings on petitions for involuntary city development action, ch 9 Notice **ARC 7139C** 12/13/23
Board proceedings on petitions for involuntary boundary change after committee approval, ch 10 Notice **ARC 7140C** 12/13/23
Islands—identification and annexation, rescind ch 11 Notice **ARC 7141C** 12/13/23

CIVIL RIGHTS COMMISSION[161]

Complaint process, ch 3 Notice **ARC 7312C** 12/27/23
Discrimination in employment, ch 8 Notice **ARC 7313C** 12/27/23

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Uniform policies; future ready Iowa skilled workforce grant program; workforce grant and incentive program, amend ch 10; adopt chs 16, 34 Filed Emergency After Notice **ARC 7130C** 12/13/23

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Complaints, investigations, contested case hearings—confidentiality, 11.4(9), 11.5 Notice **ARC 7194C** 12/13/23
Renewal or extension fees—licenses, certificates, statements of professional recognition, authorizations, 12.2 Notice **ARC 7193C** 12/13/23

EDUCATION DEPARTMENT[281]

Organization and operation, ch 1 Filed **ARC 7418C** 12/27/23
Agency procedure for rulemaking and petitions for rulemaking, ch 2 Filed **ARC 7425C** 12/27/23
Declaratory orders, ch 3 Filed **ARC 7432C** 12/27/23
Waivers from administrative rules, ch 4 Filed **ARC 7420C** 12/27/23
Appeal procedures, ch 6 Filed **ARC 7427C** 12/27/23
Criteria for grants, ch 7 Filed **ARC 7431C** 12/27/23
General accreditation standards—age-appropriate instruction, library programs, compliance with legislation, parental rights, amendments to ch 12 Notice **ARC 7169C** 12/13/23
Statewide voluntary preschool program, ch 16 Filed **ARC 7421C** 12/27/23
School fees, ch 18 Filed **ARC 7426C** 12/27/23
Students first act—definition of "annual income," 20.1(1) Notice **ARC 7315C** 12/27/23
Pathways for academic career and employment program; gap tuition assistance program, ch 25 Notice **ARC 7158C** 12/13/23
Workforce training and economic development funds, ch 27 Notice **ARC 7159C** 12/13/23
High school equivalency diplomas, ch 32 Notice **ARC 7160C** 12/13/23
Educating homeless children and youth, ch 33 Filed **ARC 7434C** 12/27/23
Educational and program standards for children's residential facilities, ch 35 Notice **ARC 7162C** 12/13/23
Extracurricular interscholastic competition, ch 36 Notice **ARC 7161C** 12/13/23
Extracurricular athletic activity conference for member schools, ch 37 Notice **ARC 7163C** 12/13/23

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

EXECUTIVE COUNCIL[361]

INSPECTIONS AND APPEALS DEPARTMENT[481]

LABOR SERVICES DIVISION[875]
WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Child labor, amendments to ch 32 Notice **ARC 7142C** 12/13/23
Request for extended inspection interval, 90.6(10) Notice **ARC 7143C** 12/13/23

MEDICINE BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Standards of practice and principles of medical ethics—abortion, 13.17 Notice **ARC 7170C** 12/13/23

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Operation of natural resource commission, ch 1 Notice **ARC 7249C** 12/27/23
Forfeited property, rescind ch 10 Notice **ARC 7250C** 12/27/23
Conservation education, ch 12 Notice **ARC 7234C** 12/27/23
Permits and easements for construction and other activities on public lands and waters, ch 13
Notice **ARC 7248C** 12/27/23
Concessions, ch 14 Notice **ARC 7246C** 12/27/23
General license regulations, ch 15 Notice **ARC 7245C** 12/27/23
Docks and other structures on public waters, ch 16 Notice **ARC 7255C** 12/27/23
Leases and permits, ch 17 Notice **ARC 7242C** 12/27/23
Rental fee schedule for state-owned property, riverbed, lakebed, and waterfront lands; sand
and gravel permits, rescind chs 18, 19 Notice **ARC 7252C** 12/27/23
Manufacturer's certificate of origin, ch 20 Notice **ARC 7230C** 12/27/23
Habitat lease program, ch 21 Notice **ARC 7247C** 12/27/23
Habitat and public access program, ch 22 Notice **ARC 7251C** 12/27/23
Wildlife habitat promotion with local entities program, ch 23 Notice **ARC 7235C** 12/27/23
Blufflands protection program and revolving loan fund, ch 24 Notice **ARC 7256C** 12/27/23
Certification of land as native prairie or wildlife habitat, ch 25 Notice **ARC 7254C** 12/27/23
Relocation assistance, rescind ch 26 Notice **ARC 7253C** 12/27/23
Land and water conservation fund program, ch 27 Notice **ARC 7232C** 12/27/23
All-terrain vehicle registration revenue grant program, ch 28 Notice **ARC 7244C** 12/27/23
Local recreation infrastructure grants program, rescind ch 29 Notice **ARC 7233C** 12/27/23
Waters cost-share and grant programs, ch 30 Notice **ARC 7237C** 12/27/23
Publicly owned lakes watershed program, ch 31 Notice **ARC 7229C** 12/27/23
Private space open lands, rescind ch 32 Notice **ARC 7241C** 12/27/23
Resources enhancement and protection program: county, city, private open spaces and
conservation education grant programs, ch 33 Notice **ARC 7236C** 12/27/23
Community forestry grant program (CFGP), rescind ch 34 Notice **ARC 7231C** 12/27/23
Fish habitat promotion for county conservation boards, ch 35 Notice **ARC 7240C** 12/27/23
Waterfowl and coot hunting seasons, ch 91 Notice **ARC 7238C** 12/27/23
Deer hunting, rescind ch 94; adopt ch 106 Notice **ARC 7239C** 12/27/23

PHARMACY BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Controlled substances, 10.39(6), 12.1(1) Filed **ARC 7128C** 12/13/23

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure of podiatrists, ch 220 Notice **ARC 7175C** 12/13/23
Licensure of orthotists, prosthetists, and pedorthists, ch 221 Notice **ARC 7176C** 12/13/23
Continuing education for podiatrists, ch 222 Notice **ARC 7177C** 12/13/23
Practice of podiatry, ch 223 Notice **ARC 7178C** 12/13/23
Discipline for podiatrists, orthotists, prosthetists, and pedorthists, ch 224 Notice **ARC 7179C** 12/13/23
Continuing education for orthotists, prosthetists, and pedorthists, ch 225 Notice **ARC 7180C** 12/13/23

REVENUE DEPARTMENT[701]

Settlement authority, rescind ch 3; amend chs 7, 10, 101, 108, 254, 300, 305, 504, 603, 700,
900; adopt ch 19 Filed **ARC 7192C** 12/13/23
Collection of tax debt and debt owed to other state agencies, chs 20 to 25, 27 Notice **ARC 7181C** 12/13/23
Definitions, ch 200 Notice **ARC 7144C** 12/13/23
Sales and use tax permits, ch 201 Notice **ARC 7171C** 12/13/23
Filing returns and payment of tax, ch 202 Notice **ARC 7354C** 12/27/23
Exemption certificates, amend chs 202, 204; adopt ch 209; rescind ch 288 Notice **ARC 7196C** 12/27/23
Elements included in and excluded from a taxable sale and sales price, ch 203 Notice **ARC 7145C** 12/13/23
Rules necessary to implement the streamlined sales and use tax agreement, ch 204
Notice **ARC 7146C** 12/13/23

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mike Klimesh
Vice Chair
Senate District 32

Senator Nate Boulton
Senate District 20

Senator Mike Bousselot
Senate District 21

Senator Waylon Brown
Senate District 30

Senator Cindy Winckler
Senate District 49

Representative Megan Jones
Chair
House District 6

Representative Amy Nielsen
House District 85

Representative Rick Olson
House District 39

Representative Mike Sexton
House District 7

Representative David Young
House District 28

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Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
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CAPITAL INVESTMENT BOARD, IOWA[123]

Agency realignment, rescind chs 1 to 4 IAB 12/13/23 **ARC 7195C**	Via video/conference call Contact Alana Stamas Email: alana.stamas@iowa.gov	January 3, 2024 9 to 9:30 a.m. (If requested) January 3, 2024 2 to 2:30 p.m. (If requested)

CITY DEVELOPMENT BOARD[263]

Organization and administration, ch 1 IAB 12/13/23 **ARC 7131C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 12:30 to 12:45 p.m. January 9, 2024 8:30 to 8:45 a.m.
Agency procedure for rulemaking, ch 2 IAB 12/13/23 **ARC 7132C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 12:45 to 1 p.m. January 9, 2024 8:45 to 9 a.m.
Petitions for rulemaking, ch 3 IAB 12/13/23 **ARC 7133C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 1 to 1:15 p.m. January 9, 2024 9 to 9:15 a.m.
Declaratory orders, ch 4 IAB 12/13/23 **ARC 7134C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 1:15 to 1:30 p.m. January 9, 2024 9:15 to 9:30 a.m.
Fair information practices, ch 5 IAB 12/13/23 **ARC 7135C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 1:30 to 1:45 p.m. January 9, 2024 9:30 to 9:45 a.m.
Waiver rules, ch 6 IAB 12/13/23 **ARC 7136C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 1:45 to 2 p.m. January 9, 2024 9:45 to 10 a.m.
Voluntary annexation, ch 7 IAB 12/13/23 **ARC 7137C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 2 to 2:30 p.m. January 9, 2024 10 to 10:30 a.m.

CITY DEVELOPMENT BOARD[263](cont'd)

Petitions for involuntary city development action, ch 8 IAB 12/13/23 **ARC 7138C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 2:30 to 3 p.m. January 9, 2024 10:30 to 11 a.m.
Committee proceedings on petitions for involuntary city development action, ch 9 IAB 12/13/23 **ARC 7139C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 3 to 3:30 p.m. January 9, 2024 11 to 11:30 a.m.
Board proceedings on petitions for involuntary boundary change after committee approval, ch 10 IAB 12/13/23 **ARC 7140C**	1963 Bell Ave. Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	January 2, 2024 3:30 to 4 p.m. January 9, 2024 11:30 a.m. to 12 noon

CIVIL RIGHTS COMMISSION[161]

Complaint process, ch 3; discrimination in employment, ch 8 IAB 12/27/23 **ARC 7312C**, **ARC 7313C**	Suite 100 6200 Park Ave. Des Moines, Iowa Suite 100 6200 Park Ave. Des Moines, Iowa	January 16, 2024 10 a.m. February 16, 2024 10 a.m.

EDUCATIONAL EXAMINERS BOARD[282]

Complaints, investigations, contested case hearings—confidentiality, 11.4(9), 11.5; renewal or extension fees—licenses, certificates, statements of professional recognition, authorizations, 12.2 IAB 12/13/23 **ARC 7193C**; **ARC 7194C**	Board Room 701 E. Court Ave., Suite A Des Moines, Iowa	January 31, 2024 1 to 2 p.m.

EDUCATION DEPARTMENT[281]

General accreditation standards—age-appropriate instruction, library programs, compliance with legislation, parental rights, amendments to ch 12 IAB 12/13/23 **ARC 7169C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 2024 2:30 to 3 p.m. January 4, 2024 10:30 to 11 a.m.

EDUCATION DEPARTMENT[281](cont'd)

Pathways for academic career and employment program; gap tuition assistance program, ch 25; workforce training and economic development funds, ch 27; high school equivalency diplomas, ch 32 IAB 12/13/23 **ARC 7158C** to **ARC 7160C**	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa	January 3, 2024 1 to 1:30 p.m. January 4, 2024 9 to 9:30 a.m.
Educational and program standards for children's residential facilities, ch 35; Extracurricular interscholastic competition, ch 36; Extracurricular athletic activity conference for member schools, ch 37 IAB 12/13/23 **ARC 7161C** to **ARC 7163C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 2024 1:30 to 2 p.m. January 4, 2024 9:30 to 10 a.m.
Work-based learning, individualized career and academic plan, rescind ch 48, adopt ch 49; Iowa reading research center, ch 61; standards for teacher intern preparation programs, standards for practitioner and administrator preparation programs, rescind ch 77, adopt ch 79; standards for paraeducator preparation programs, ch 80; teacher and administrator quality programs, ch 83 IAB 12/13/23 **ARC 7164C** to **ARC 7168C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 3, 2024 2 to 2:30 p.m. January 4, 2024 10 to 10:30 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Operation of environmental protection commission, ch 1 IAB 12/27/23 **ARC 7205C**	DNR Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa	January 17, 2024 1 to 2 p.m.
	DNR Conference Room 5E Wallace State Office Bldg. Des Moines, Iowa	January 24, 2024 9 to 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Submission of information and complaints; environmental self-audits; compliance and enforcement procedures, rescind chs 3, 12, 17; adopt ch 10 IAB 12/27/23 **ARC 7206C**	DNR Conference Room 5E Wallace State Office Bldg. Des Moines, Iowa	January 16, 2024 1:30 to 3:30 p.m.
	Via video/conference call Contact Kelli Book Email: kelli.book@dnr.iowa.gov	January 25, 2024 10 to 11:30 a.m.
Delegation of construction permitting authority, rescind ch 9 IAB 12/27/23 **ARC 7207C**	Via video/conference call Contact Adam Schnieders Email: adam.schnieders@dnr.iowa.gov	January 18, 2024 11 a.m. to 12 noon
Tax certification of pollution control or recycling property, ch 11 IAB 12/27/23 **ARC 7222C**	Via video/conference call Contact Amie Davidson Email: amie.davidson@dnr.iowa.gov	January 16, 2024 1 p.m. January 17, 2024 11 a.m.
Environmental covenants, rescind ch 14 IAB 12/27/23 **ARC 7208C**	Via video/conference call Contact Keith Wilken Email: keith.wilken@dnr.iowa.gov	January 17, 2024 11 a.m.
Cross-media electronic reporting, ch 15; certificate of acceptance, ch 27 IAB 12/27/23 **ARC 7225C**, **ARC 7226C**	Via video/conference call Contact Jim McGraw Email: jim.mcgraw@dnr.iowa.gov	January 29, 2024 1 p.m. January 30, 2024 1 p.m.
Revocation, suspension, and nonrenewal of license for failure to pay state liabilities, ch 16 IAB 12/27/23 **ARC 7221C**	DNR Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 16, 2024 1 to 2 p.m.
Rescissions: Scope of title—definitions, ch 20; measurement of emissions, ch 25; prevention of air pollution emergency episodes, ch 26; ambient air quality standards, ch 28; Qualification in visual determination of the opacity of emissions, ch 29; animal feeding operations field study, ch 32; provisions for air quality emissions trading programs, ch 34; air emissions reduction assistance program, ch 35 IAB 12/27/23 **ARCs 7210C**, **7212C**, **7216C** to **ARC 7218C**, **7220C**, **7224C**, **7227C**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	January 29, 2024 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Compliance, excess emissions, and measurement of emissions, ch 21; controlling air pollution, ch 22; air emission standards, ch 23; Operating permits, ch 24; Nonattainment new source review, ch 31 IAB 12/27/23 **ARC 7209C**, **ARC 7211C**, **ARC 7213C**, **ARC 7215C**, **ARC 7228C**	Via video/conference call Contact Christine Paulson Email: christine.paulson@dnr.iowa.gov	January 29, 2024 1 p.m. January 30, 2024 1 p.m.
Fees, ch 30; construction permit requirements for major stationary sources—prevention of significant deterioration (PSD), ch 33; IAB 12/27/23 **ARC 7219C**, **ARC 7223C**	Via video/conference call Contact Wendy Walker Email: wendy.walker@dnr.iowa.gov	January 29, 2024 1 p.m. January 30, 2024 1 p.m.
Animal feeding operations, ch 65 IAB 12/27/23 **ARC 7214C**	Auditorium Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact the Department Email: afo@dnr.iowa.gov	February 14, 2024 1:30 to 3:30 p.m. February 19, 2024 1:30 to 3:30 p.m.

EXECUTIVE COUNCIL[361]

Group insurance for state employees; deferred compensation program; health maintenance organizations, adopt ch 1; rescind chs 5, 6 IAB 12/13/23 **ARC 7187C**	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 11:30 a.m. to 12 noon January 5, 2024 11:30 a.m. to 12 noon
Contingent fund—disaster aid; disaster contingency fund, adopt ch 2; rescind ch 7 IAB 12/13/23 **ARC 7188C**	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 11:45 a.m. to 12 noon January 5, 2024 11:45 a.m. to 12 noon
Inheritance tax payments, adopt ch 3; rescind ch 11 IAB 12/13/23 **ARC 7189C**	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 12 noon to 12:15 p.m. January 5, 2024 12 noon to 12:15 p.m.
Disbursement of money from civil reparations trust fund, adopt ch 4; rescind ch 12 IAB 12/13/23 **ARC 7190C**	Room G9 Iowa State Capitol Des Moines, Iowa	January 4, 2024 12:15 to 12:30 p.m. January 5, 2024 12:15 to 12:30 p.m.

HUMAN SERVICES DEPARTMENT[441]

Child care assistance program, 170.2, 170.4 IAB 12/27/23 **Regulatory Analysis**	Via video/conference call meet.google.com/jsa-xaxv-keg	January 18, 2024 11 to 11:30 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Home food processing establishments, ch 34 IAB 12/13/23 **ARC 7157C**	6200 Park Ave., Ste. 100 Des Moines, Iowa	January 3, 2024 9:30 to 10 a.m. January 8, 2024 10 to 10:30 a.m.

INSURANCE DIVISION[191]

Captive companies, ch 113 IAB 12/27/23 **Regulatory Analysis**	1963 Bell Ave. Des Moines, Iowa	January 23, 2024 10 a.m.

LABOR SERVICES DIVISION[875]

Child labor, amendments to ch 32 IAB 12/13/23 **ARC 7142C**	Room 126 6200 Park Ave. Des Moines, Iowa Dial: 312.626.6799 Meeting ID number: 813 6327 9319 Passcode: 590253	January 3, 2024 9 to 9:30 a.m. (If requested)

MEDICINE BOARD[653]

Standards of practice and principles of medical ethics—abortion, 13.17 IAB 12/13/23 **ARC 7170C**	6200 Park Ave. Des Moines, Iowa	January 4, 2024 10 a.m. to 12 noon

NATURAL RESOURCE COMMISSION[571]

Operation of natural resource commission, ch 1 IAB 12/27/23 **ARC 7249C**	Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa	January 17, 2024 2 to 3 p.m.
	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 24, 2024 10 to 11 a.m.
Forfeited property, rescind ch 10 IAB 12/27/23 **ARC 7250C**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 18, 2024 1 to 2 p.m.
Conservation education, ch 12 IAB 12/27/23 **ARC 7234C**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 16, 2024 1 p.m. January 18, 2024 1 p.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Permits and easements for construction and other activities on public lands and waters, ch 13 IAB 12/27/23 **ARC 7248C**	Via video/conference call Contact Casey Laskowski Email: casey.laskowski@dnr.iowa.gov	January 30, 2024 12 noon to 1 p.m. January 23, 2024 12 noon to 1 p.m.
Concessions, ch 14; docks and other structures on public waters, ch 16; land and water conservation fund program, ch 27; all-terrain vehicle registration revenue grant program, ch 28 IAB 12/27/23 **ARC 7232C**, **ARC 7244C**, **ARC 7246C**, **ARC 7255C**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 30, 2024 12 noon to 1 p.m. January 31, 2024 4 to 5 p.m.
General license regulations, ch 15 IAB 12/27/23 **ARC 7245C**	Conference Room 4E Wallace State Office Building Des Moines, Iowa	January 16, 2024 12 noon January 18, 2024 1 to 2 p.m.
Leases and permits, ch 17 IAB 12/27/23 **ARC 7242C**	Via video/conference call Contact Nathan Schmitz Email: nathan.schmitz@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m. January 30, 2024 12 noon to 1 p.m.
Rental fee schedule for state-owned property, riverbed, lakebed, and waterfront lands; sand and gravel permits, rescind chs 18, 19 IAB 12/27/23 **ARC 7252C**	Via video/conference call Contact Nathan Schmitz Email: nathan.schmitz@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m.
Manufacturer's certificate of origin, ch 20; habitat and public access program, ch 22; wildlife habitat promotion with local entities program, ch 23; certification of land as native prairie or wildlife habitat, ch 25 IAB 12/27/23 **ARC 7230C**, **ARC 7235C**, **ARC 7251C**, **ARC 7254C**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 16, 2024 1 to 2 p.m. January 18, 2024 1 to 2 p.m.
Habitat lease program, ch 21 IAB 12/27/23 **ARC 7247C**	Via video/conference call Contact Nathan Schmitz Email: nathan.schmitz@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m. January 30, 2024 12 noon to 1 p.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

Relocation assistance, rescind ch 26 IAB 12/27/23 **ARC 7253C**	Via video/conference call Contact Travis Baker Email: travis.baker@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m.
Local recreation infrastructure grants program, rescind ch 29 IAB 12/27/23 **ARC 7233C**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 16, 2024 1 to 2 p.m.
Waters cost-share and grant programs, ch 30 IAB 12/27/23 **ARC 7237C**	Via video/conference call Contact Nate Hoogeveen Email: nate.hoogeveen@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m. January 30, 2024 12 noon to 1 p.m.
Publicly owned lakes watershed program, ch 31 IAB 12/27/23 **ARC 7229C**	Via video/conference call Contact George Antoniou Email: george.antoniou@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m. January 30, 2024 12 noon to 1 p.m.
Private space open lands, rescind ch 32 IAB 12/27/23 **ARC 7241C**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 16, 2024 1 to 2 p.m.
Resources enhancement and protection program: county, city, private open spaces and conservation education grant programs, ch 33 IAB 12/27/23 **ARC 7236C**	Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa Via video/conference call Contact Michelle Wilson Email: michelle.wilson@dnr.iowa.gov	January 18, 2024 1:30 to 3:30 p.m. January 25, 2024 1:30 to 3:30 p.m.
Community forestry grant program (CFGP), rescind ch 34 IAB 12/27/23 **ARC 7231C**	Via video/conference call Contact Jeff Goerndt Email: jeff.goerndt@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m.
Fish habitat promotion for county conservation boards, ch 35 IAB 12/27/23 **ARC 7240C**	Via video/conference call Contact Randall Schultz Email: randy.schultz@dnr.iowa.gov	January 23, 2024 12 noon to 1 p.m. January 30, 2024 12 noon to 1 p.m.
Waterfowl and coot hunting seasons, ch 91; deer hunting, rescind ch 94, adopt ch 106 IAB 12/27/23 **ARC 7238C**, **ARC 7239C**	Conference Room 4E Wallace State Office Bldg. Des Moines, Iowa	January 16, 2024 1 to 2 p.m. January 18, 2024 1 to 2 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Licensure of podiatrists, ch 220; licensure of orthotists, prosthetists, and pedorthists, ch 221; continuing education for podiatrists, ch 222; practice of podiatry, ch 223; continuing education for orthotists, prosthetists, and pedorthists, ch 225 IAB 12/13/23 **ARC 7175C** to **ARC 7180C**	6200 Park Ave. Des Moines, Iowa Via video/conference call: meet.google.com/jji-jaoj-uqy Or dial: 1.402.921.2210 PIN: 744 558 427#	January 30, 2024 10 to 10:20 a.m. January 31, 2024 10 to 10:20 a.m.

REVENUE DEPARTMENT[701]

Tax debt, chs 20 to 25, 27; definitions, ch 200; sales and use tax permits, ch 201; elements included in and excluded from a taxable sale and sales price, ch 203; rules necessary to implement the streamlined sales and use tax agreement, ch 204; sourcing of taxable services, tangible personal property, and specified digital products, ch 205; bundled transactions, ch 206; remote sales and marketplace sales, ch 207; multilevel marketer agreements, ch 208; agricultural rules, ch 214; Exemptions primarily benefiting manufacturers and other persons engaged in processing, ch 215; telecommunication services, ch 217; resale and processing exemptions primarily of benefit to retailers, ch 225; local option sales and services tax, ch 270; new school infrastructure local option sales and services tax, rescind ch 271; flood mitigation program, ch 272; reinvestment districts program, ch 273; local option sales tax urban renewal projects, ch 274; rebate of Iowa sales tax paid, ch 275; facilitating business rapid response to state-declared disasters, ch 276; sales and use tax refund for biodiesel production, ch 277; refunds for eligible businesses under economic development authority programs, ch 278; underground storage tank rules incorporated by reference, rescind ch 289 IAB 12/13/23 **ARCs 7144C** to **7156C**; **7171C** to **7174C**; **7181C** to **7186C**	Via video/conference call Contact Nick Behlke Email: nick.behlke@iowa.gov	January 3, 2024 9 to 11 a.m. January 3, 2024 1 to 3 p.m.

REVENUE DEPARTMENT[701](cont'd)

Filing returns and payment of tax, ch 202; exemption certificates, amend chs 202, 204, adopt ch 209, rescind ch 288; purchases by businesses, ch 210; taxable services, ch 211; governments and nonprofits, exempt sales, taxable and exempt sales determined by method of transaction or usage, adopt chs 212, 285, rescind ch 284; miscellaneous taxable sales, ch 213; events, amusements, and other related activities, ch 216; sales and services related to vehicles, ch 218; sales and use tax on construction activities, ch 219; exemptions primarily of benefit to consumers, ch 220; miscellaneous nontaxable transactions, ch 221; receipts subject to use tax, receipts exempt from use tax, receipts subject to use tax depending on method of transaction, rescind chs 280, 281, adopt ch 282 IAB 12/27/23 **ARC 7196C** to **ARC 7204C**, **ARC 7354C**, **ARC 7375C**, **ARC 7377C**	Via video/conference call Contact Nick Behlke Email: nick.behlke@iowa.gov	January 16, 2024 9 to 11 a.m. January 16, 2024 1 to 3 p.m.

UTILITIES DIVISION[199]

Complaint procedures, ch 6 IAB 11/29/23 **ARC 7124C**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	January 8, 2024 1 to 2 p.m.
Utility records, ch 18 IAB 11/29/23 **ARC 7123C**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	January 3, 2024 9 to 10 a.m.
Nonutility services—recordkeeping and cost allocations, ch 33 IAB 11/15/23 **ARC 7111C**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	January 23, 2024 9 to 11 a.m.
Nonutility service, ch 34 IAB 11/15/23 **ARC 7112C**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	January 23, 2024 9 to 11 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer audits, 21.1(2)"d," 22.17, 24.29(3), 25.6(5) IAB 12/27/23 **Regulatory Analysis**	1000 E. Grand Ave. Des Moines, Iowa	January 16, 2024 10 a.m.

The following list will be updated as changes occur.

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

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

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

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]
  Alcoholic Beverages Division[185]
  Banking Division[187]
  Credit Union Division[189]
  Insurance Division[191]
  Professional Licensing and Regulation Bureau[193]
    Accountancy Examining Board[193A]
    Architectural Examining Board[193B]
    Engineering and Land Surveying Examining Board[193C]
    Landscape Architectural Examining Board[193D]
    Real Estate Commission[193E]
    Real Estate Appraiser Examining Board[193F]
    Interior Design Examining Board[193G]
  Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
  Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
  Arts Division[222]
  Historical Division[223]
ECONOMIC DEVELOPMENT AUTHORITY[261]
  City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
  Educational Examiners Board[282]
  College Student Aid Commission[283]
  Higher Education Loan Authority[284]
  Libraries and Information Services Division[286]
  Public Broadcasting Division[288]
  School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
  Employment Appeal Board[486]
  Child Advocacy Board[489]
  Racing and Gaming Commission[491]
  State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
IOWA PUBLIC INFORMATION BOARD[497]
LAW ENFORCEMENT ACADEMY[501]

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

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 441—Chapter 170
"Child Care Assistance Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 234.6
State or federal law(s) implemented by the rulemaking: 2023 Iowa Acts, House File 707

Public Hearing

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

January 18, 2024	Via video/conference call
11 to 11:30 a.m.	meet.google.com/jsa-xaxv-keg

Public Comment

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

Joe Campos
Phone: 515.304.0963
Email: joe.campos@idph.iowa.gov

Purpose and Summary

This proposed rulemaking implements the Child Care Assistance (CCA) program. The amendments to Chapter 170 update family income level to 160 percent of the federal poverty level (FPL), revise the provider reimbursement rates, and update the minimum hours of participation from 28 to 32 for families who do not have a special needs child. Also, these amendments revise the CCA family fee chart to update annual FPL changes.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

None were identified.

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

Low-income families that would otherwise have no ability to pay for child care and that would lose employment will benefit. Child care providers would also lose a funding stream, and many would be forced to close.

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

- Quantitative description of impact:

The number of families who will be eligible for this program is set to increase.

- Qualitative description of impact:

More families will be eligible for child care services, and providers will be paid more for the CCA children in their care.

3. Costs to the State:

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

None were identified.

- Anticipated effect on state revenues:

None were identified.

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

Inaction would have a serious impact on home-based child care businesses if eliminated. Inaction would also remove access to child care for low-income families.

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

None were identified.

6. Alternative methods considered by the agency:

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

Not applicable.

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

This rulemaking is being initiated to implement the enactment of 2023 Iowa Acts, House File 707.

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?

Smaller and home-based child care businesses are set to benefit from this rulemaking. Without this rulemaking, low-income families would have no ability to pay for child care, these families would lose employment, child care providers would lose a funding stream, and many would be forced to close.

Text of Proposed Rulemaking

ITEM 1. Amend subparagraph **170.2(1)"a"(1)** as follows:

(1) For initial eligibility, an applicant family's nonexempt gross monthly income as established in paragraph 170.2(1)*"c"* cannot exceed the amounts in this subparagraph.

1. ~~145~~ 160 percent of the federal poverty level applicable to the family size for children needing basic care; or

2. and 3. No change.

ITEM 2. Amend subparagraph **170.2(2)"b"(2)** as follows:

(2) The parent is employed ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) or an average of ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) during the month. Child care services may be provided for the hours of employment and for actual travel time between the child care location and the place of employment. If

the parent works a shift consisting of at least six hours of employment between the hours of 8 p.m. and 6 a.m. and needs to sleep during daytime hours, child care services may also be provided to allow the parent to sleep during daytime hours.

ITEM 3. Amend subparagraph **170.2(2)"b"(8)** as follows:

(8) The parent is employed and participating in academic or vocational training for ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) or an average of ~~28~~ 32 or more hours per week (28 hours per week if the family includes a special needs child) in the aggregate, during the month. Child care services may be provided for the hours of employment, the hours of participation in academic or vocational training and for actual travel time between the child care location and the place of employment or training. All of the requirements relating to academic or vocational training found at subparagraph 170.2(2)*"b"*(1), except for the requirement to be enrolled full-time, apply to the part-time training in this subparagraph.

ITEM 4. Amend paragraph **170.2(3)"a"** as follows:

a. Priority groups. As funds are determined available, families shall be served on a statewide basis from a service-area-wide waiting list as specified in subrule 170.3(4) based on the following schedule in descending order of prioritization.

(1) Families with an income at or below 100 percent of the federal poverty level whose members, for at least ~~28~~ 32 hours per week in the aggregate, are employed or are participating at a satisfactory level in an approved training program or educational program, and parents with a family income at or below 100 percent of the federal poverty level who are under the age of 21 and are participating in an educational program leading to a high school diploma or equivalent.

(2) No change.

(3) Families with an income of more than 100 percent but not more than ~~145~~ 160 percent of the federal poverty guidelines whose members, for at least ~~28~~ 32 hours per week in the aggregate, are employed or are participating at a satisfactory level in an approved training program or educational program.

(4) No change.

ITEM 5. Amend paragraph **170.4(2)"a"** as follows:

a. Sliding fee schedule.

(1) For families whose eligibility is established in subparagraphs 170.2(1)*"a"*(1) and 170.2(1)*"a"*(2), the fee schedule shown in the following table is effective for eligibility determinations made on or after July 1, ~~2022~~ 2023:

	Monthly Income According to Family Size													Unit Fee Based on Number of Children in Care		
Level	1	2	3	4	5	6	7	8	9	10	11	12	13+	1	2	3 or more
A	$1,076	$1,450	$1,824	$2,197	$2,571	$2,945	$3,318	$3,692	$4,066	$4,439	$4,813	$5,187	$5,560	$0.00	$0.00	$0.00
B	$1,133	$1,526	$1,920	$2,313	$2,706	$3,100	$3,493	$3,886	$4,280	$4,673	$5,066	$5,460	$5,853	$0.20	$0.45	$0.70
C	$1,165	$1,569	$1,974	$2,378	$2,782	$3,187	$3,591	$3,995	$4,400	$4,804	$5,208	$5,613	$6,017	$0.45	$0.70	$0.95
D	$1,196	$1,611	$2,028	$2,443	$2,858	$3,274	$3,689	$4,104	$4,520	$4,935	$5,350	$5,766	$6,181	$0.70	$0.95	$1.20
E	$1,230	$1,657	$2,084	$2,511	$2,938	$3,365	$3,792	$4,219	$4,646	$5,073	$5,499	$5,927	$6,354	$0.95	$1.20	$1.45
F	$1,263	$1,702	$2,141	$2,579	$3,018	$3,457	$3,895	$4,333	$4,773	$5,211	$5,649	$6,089	$6,527	$1.20	$1.45	$1.70
G	$1,299	$1,749	$2,201	$2,652	$3,102	$3,554	$4,004	$4,455	$4,906	$5,357	$5,807	$6,259	$6,710	$1.45	$1.70	$1.95
H	$1,334	$1,797	$2,261	$2,724	$3,187	$3,651	$4,113	$4,576	$5,040	$5,503	$5,966	$6,430	$6,892	$1.70	$1.95	$2.20
I	$1,372	$1,847	$2,324	$2,800	$3,276	$3,753	$4,228	$4,704	$5,181	$5,657	$6,133	$6,610	$7,085	$1.95	$2.20	$2.45
J	$1,409	$1,898	$2,388	$2,876	$3,365	$3,855	$4,344	$4,832	$5,322	$5,811	$6,300	$6,790	$7,278	$2.20	$2.45	$2.70
K	$1,448	$1,951	$2,454	$2,957	$3,459	$3,963	$4,465	$4,968	$5,471	$5,974	$6,476	$6,980	$7,482	$2.45	$2.70	$2.95
L	$1,488	$2,004	$2,521	$3,037	$3,553	$4,071	$4,587	$5,103	$5,620	$6,136	$6,652	$7,170	$7,686	$2.70	$2.95	$3.20
M	$1,529	$2,060	$2,592	$3,122	$3,653	$4,185	$4,715	$5,246	$5,778	$6,308	$6,839	$7,371	$7,901	$2.95	$3.20	$3.45
N	$1,571	$2,116	$2,662	$3,207	$3,752	$4,299	$4,844	$5,389	$5,935	$6,480	$7,025	$7,571	$8,116	$3.20	$3.45	$3.70
O	$1,615	$2,175	$2,737	$3,297	$3,857	$4,419	$4,979	$5,540	$6,101	$6,662	$7,222	$7,783	$8,344	$3.45	$3.70	$3.95
P	$1,659	$2,235	$2,812	$3,387	$3,963	$4,540	$5,115	$5,690	$6,267	$6,843	$7,418	$7,995	$8,571	$3.70	$3.95	$4.20
Q	$1,706	$2,297	$2,890	$3,482	$4,074	$4,667	$5,258	$5,850	$6,443	$7,035	$7,626	$8,219	$8,811	$3.95	$4.20	$4.45
R	$1,752	$2,360	$2,969	$3,577	$4,184	$4,794	$5,401	$6,009	$6,618	$7,226	$7,834	$8,443	$9,051	$4.20	$4.45	$4.70
S	$1,801	$2,426	$3,052	$3,677	$4,302	$4,928	$5,553	$6,177	$6,804	$7,428	$8,053	$8,680	$9,304	$4.45	$4.70	$4.95
T	$1,850	$2,492	$3,135	$3,777	$4,419	$5,062	$5,704	$6,346	$6,989	$7,631	$8,273	$8,916	$9,558	$4.70	$4.95	$5.20
U	$1,902	$2,562	$3,223	$3,883	$4,543	$5,204	$5,864	$6,523	$7,185	$7,844	$8,504	$9,166	$9,825	$4.95	$5.20	$5.45
V	$1,954	$2,631	$3,311	$3,989	$4,666	$5,346	$6,023	$6,701	$7,380	$8,058	$8,736	$9,415	$10,093	$5.20	$5.45	$5.70

	Monthly Income According to Family Size													Unit Fee Based on Number of Children in Care		
Level	1	2	3	4	5	6	7	8	9	10	11	12	13+	1	2	3 or more
W	$2,008	$2,705	$3,404	$4,100	$4,797	$5,495	$6,192	$6,889	$7,587	$8,284	$8,980	$9,679	$10,376	$5.45	$5.70	$5.95
X	$2,063	$2,779	$3,496	$4,212	$4,928	$5,645	$6,361	$7,076	$7,794	$8,509	$9,225	$9,943	$10,658	$5.70	$5.95	$6.20
Y	$2,121	$2,857	$3,594	$4,330	$5,066	$5,803	$6,539	$7,274	$8,012	$8,748	$9,483	$10,221	$10,957	$5.95	$6.20	$6.45
Z	$2,179	$2,934	$3,692	$4,448	$5,203	$5,961	$6,717	$7,473	$8,230	$8,986	$9,742	$10,499	$11,255	$6.20	$6.45	$6.70
AA	$2,240	$3,017	$3,795	$4,572	$5,349	$6,128	$6,905	$7,682	$8,461	$9,238	$10,014	$10,793	$11,570	$6.45	$6.70	$6.95
BB	$4,000	$5,000	$6,000	$7,000	$8,000	$9,000	$9,000	$9,000	$9,500	$9,500	$10,500	$11,000	$12,000	$6.70	$6.95	$7.20

(2) To use the chart:

1. Find the family size used in determining income eligibility for service.
2. Move across the monthly income table to the column headed by that number.
3. Move down the column for the applicable family size to the highest figure that is equal to or less than the family's gross monthly income. Income at or above that amount (but less than the amount in the next row) corresponds to the fees in the last three columns of that row.
4. Choose the fee that corresponds to the number of children in the family who receive child care assistance.

(3) For families whose eligibility is established in subparagraph 170.2(1)*"a"*(3), the fee schedule shown in the following tables is effective for eligibility determinations made on or after July 1, ~~2022~~ 2023:

Monthly Income According to Family Size (Basic Care)

Level	1	2	3	4	5	6	7	8	9	10	11	12	13+	Fee for Each Child in Care
A	$2,549	$3,434	$4,320	$5,204	$6,089	$6,975	$7,859	$8,744	$9,630	$10,514	$11,399	$12,285	$13,169	33%
B	$2,663	$3,586	$4,512	$5,436	$6,359	$7,285	$8,209	$9,132	$10,058	$10,982	$11,905	$12,831	$13,755	45%
C	$2,776	$3,739	$4,704	$5,667	$6,630	$7,595	$8,558	$9,521	$10,486	$11,449	$12,412	$13,377	$14,340	60%
D	$2,833	$3,815	$4,800	$5,783	$6,765	$7,750	$8,733	$9,715	$10,700	$11,683	$12,665	$13,650	$14,633	60%

Monthly Income According to Family Size (Special-Needs Care)

Level	1	2	3	4	5	6	7	8	9	10	11	12	13+	Fee for Each Child in Care
A	$2,549	$3,434	$4,320	$5,204	$6,089	$6,975	$7,859	$8,744	$9,630	$10,514	$11,399	$12,285	$13,169	33%
B	$2,776	$3,739	$4,704	$5,667	$6,630	$7,595	$8,558	$9,521	$10,486	$11,449	$12,412	$13,377	$14,340	45%
C	$3,002	$4,044	$5,088	$6,129	$7,171	$8,215	$9,256	$10,298	$11,342	$12,383	$13,425	$14,469	$15,510	60%
D	$3,116	$4,197	$5,280	$6,361	$7,442	$8,525	$9,606	$10,687	$11,770	$12,851	$13,932	$15,015	$16,096	60%

(4) To use the tables:

1. Determine which table to use for each child in the family by whether the child needs basic or special-needs care.

2. Find the family size used in determining income eligibility for service.

3. Move across the monthly income table to the column headed by that number.

4. Move down the column for the applicable family size to the highest figure that is equal to or less than the family's gross monthly income. Income at or above that amount (but less than the amount in the next row) corresponds to the fee for that eligible child in the last column of that row.

5. Repeat for each eligible child in the family.

ITEM 6. Amend paragraph **170.4(7)"a"** as follows:

a. Rate of payment. The rate of payment for child care services, except for in-home care which shall be paid in accordance with 170.4(7)*"d,"* shall be the actual rate charged by the provider for a private individual, not to exceed the maximum rates shown below. When a provider does not have a half-day rate in effect, a rate is established by dividing the provider's declared full-day rate by 2. When a provider has neither a half-day nor a full-day rate, a rate is established by multiplying the provider's declared hourly rate by 4.5. Payment shall not exceed the rate applicable to the provider type and age group as shown in the tables below. To be eligible for the special-needs rate, the provider must submit documentation to the child's service worker that the child needing services has been assessed by a qualified professional and meets the definition for "child with special needs," and a description of the child's special needs, including, but not limited to, adaptive equipment, more careful supervision, or special staff training.

Table 1
Half-Day Rate Ceilings for (Licensed Center)

	No Quality Rating		Quality Rating 1 or 2		Quality Rating 3 or 4		Quality Rating 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	~~$19.30~~ $23.21	$51.94	~~$20.50~~ $23.21	$51.94	~~$21.50~~ $23.21	$51.94	~~$23.21~~ $24.05	$51.94
Preschool	~~$17.00~~ $18.98	$30.43	~~$18.00~~ $19.50	$30.43	~~$18.98~~ $19.50	$30.43	~~$20.00~~ $21.00	$30.43
School Age	~~$13.50~~ $15.00	$30.34	~~$14.75~~ $15.50	$30.34	~~$15.00~~ $16.00	$30.34	~~$16.00~~ $17.00	$30.34

Table 2
Half-Day Rate Ceilings for (Child Development Home A/B)

	No Quality Rating		Quality Rating 1 or 2		Quality Rating 3 or 4		Quality Rating 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	~~$12.98~~ $14.00	~~$19.47~~ $21.00	~~$13.50~~ $14.00	~~$20.25~~ $21.00	~~$13.75~~ $14.00	~~$20.63~~ $21.00	~~$14.00~~ $15.00	~~$21.00~~ $22.50
Preschool	~~$12.50~~ $12.75	~~$18.75~~ $19.13	~~$12.75~~ $13.00	~~$19.13~~ $19.50	~~$13.00~~ $13.75	~~$19.50~~ $20.63	~~$13.75~~ $15.00	~~$20.63~~ $22.50
School Age	~~$10.82~~ $11.25	~~$16.23~~ $16.88	~~$11.25~~ $12.50	~~$16.88~~ $8.75	~~$12.00~~ $13.00	~~$18.00~~ $19.50	~~$12.50~~ $13.50	~~$18.75~~ $20.75

Table 3
Half-Day Rate Ceilings for (Child Development Home C)

	No Quality Rating		Quality Rating 1 or 2		Quality Rating 3 or 4		Quality Rating 5	
Age Group	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs	Basic	Special Needs
Infant and Toddler	~~$14.00~~ $15.25	~~$21.00~~ $22.88	~~$14.50~~ $15.25	~~$21.75~~ $22.88	~~$15.00~~ $15.25	~~$22.50~~ $22.88	~~$15.25~~ $16.25	~~$22.88~~ $24.38
Preschool	~~$13.75~~ $15.00	~~$20.63~~ $22.50	~~$14.50~~ $15.00	~~$21.75~~ $22.50	~~$14.75~~ $15.00	~~$22.13~~ $22.50	~~$15.00~~ $16.00	~~$22.50~~ $24.00
School Age	~~$11.25~~ $13.00	~~$16.88~~ $19.50	~~$12.50~~ $13.75	~~$18.75~~ $20.63	~~$13.00~~ $14.50	~~$19.50~~ $21.75	~~$14.50~~ $15.00	~~$21.75~~ $22.50

Table 4
Half-Day Rate Ceilings for Child Care Home (Not Registered)

Age Group	Basic	Special Needs
Infant and Toddler	$12.98	$19.47
Preschool	$12.50	$18.75
School Age	$10.82	$16.23

The following definitions apply in the use of the rate tables:
(1) to (9) No change.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 191—Chapter 113
"Captive Companies"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 521J.27 as enacted by 2023 Iowa Acts, Senate File 549, section 29

State or federal law(s) implemented by the rulemaking: Iowa Code section 521J.27 as enacted by 2023 Iowa Acts, Senate File 549, section 29

Public Hearing

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

January 23, 2024	1963 Bell Avenue
10 a.m.	Des Moines, Iowa

Public Comment

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

Angela Burke Boston
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Phone: 515.654.6543
Email: angela.burke.boston@iid.iowa.gov

Purpose and Summary

This proposed chapter establishes rules and procedures for implementation and administration of captive companies. The purpose of the proposed chapter is to set forth the financial, reporting, record-keeping, and other requirements that the Commissioner deems necessary for the regulation of captive companies.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Businesses that form and operate a captive company will bear the costs.

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

Businesses that form and operate a captive company 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:

Persons who elect to form a captive company will incur fees associated with the formation and ongoing regulation as established in the statute and this proposed chapter.

- Qualitative description of impact:

It is believed that Iowa Code chapter 521J as enacted by 2023 Iowa Acts, Senate File 549, and the proposed chapter will have a moderate impact on private sector jobs and employment opportunities

within the insurance industry. In addition, Iowa Code chapter 521J will bring additional revenues to the State of Iowa with the establishment and expansion of captive companies.

3. Costs to the State:

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

The Captive Company Program will incur costs associated with captive companies over the next five years in terms of personnel and implementation costs. The Division was granted two full-time equivalent positions for the Captive Company Program and was appropriated $450,000 in 2023 Iowa Acts, Senate File 557. The Division will need additional office space and supplies for these positions. The Division anticipates that there will be an annual request for additional staffing and resources necessary to fully implement the program.

- Anticipated effect on state revenues:

The introduction of captive companies to the state of Iowa and the tax on premiums of captive insurance will increase General Fund revenue; however, the amount cannot be determined.

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

Promulgation of this proposed chapter was mandated by 2023 Iowa Acts, Senate File 549, section 29.

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

The rules are mandated by and necessary for the implementation of Iowa Code chapter 521J as enacted by 2023 Iowa Acts, Senate File 549.

6. Alternative methods considered by the agency:

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

No alternative methods were considered by the Division.

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

The implementation of the proposed chapter is both mandated by and necessary for the implementation of Iowa Code chapter 521J as enacted by 2023 Iowa Acts, Senate File 549.

Small Business Impact

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

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

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

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 191—Chapter 113:

CHAPTER 113
CAPTIVE COMPANIES

191—113.1(521J) Authority. This chapter is promulgated pursuant to the general rulemaking authority vested in the commissioner by Iowa Code section 521J.27 as enacted by 2023 Iowa Acts, Senate File 549.

191—113.2(521J) Purpose. The purpose of this chapter is to set forth the financial, reporting, record-keeping, and other requirements that the commissioner deems necessary for the regulation of captive companies.

191—113.3(521J) Definitions. In addition to the definitions set forth in Iowa Code section 521J.1 as enacted by 2023 Iowa Acts, Senate File 549, and in rule 191—1.1(502,505), the following definitions apply:

"Captive manager" means a person that is on the Iowa-approved captive management firms list and, pursuant to a written contract with a captive company, provides and coordinates services including but not limited to accounting, statutory filings, signed annual statements and coordination of related services. The captive manager acts as an intermediary that facilitates and assists the captive company in meeting its statutory requirements under Iowa Code chapter 521J as enacted by 2023 Iowa Acts, Senate File 549.

"Work papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the captive company.

191—113.4(521J) Annual reporting requirements.

113.4(1) A captive company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Iowa Code section 521J.7(1) as enacted by 2023 Iowa Acts, Senate File 549. The report shall be verified by oath of at least two individuals who are executive officers of the captive company. The report shall be prepared using generally accepted accounting principles (GAAP). A hard copy shall be mailed and an electronic copy shall be filed consistent with directions from the commissioner.

113.4(2) All captive insurance companies are to use the Iowa Captive Company Annual Statement Form, except captive risk retention group insurers and special purpose captive companies, which shall use the National Association of Insurance Commissioners' (NAIC's) Annual and Quarterly Statements.

113.4(3) The Iowa Captive Company Annual Statement shall include a statement of a qualified actuary titled "statement of actuarial opinion" setting forth the opinion relating to loss and loss adjustment expense reserves.

113.4(4) A special purpose captive company domiciled in this state shall annually submit to the commissioner a material variances letter explaining any material differences between the captive company's actual results and its projections on file. For the purposes of this rule, "materiality" shall be defined as 10 percent of surplus as regards policyholders as of the preceding year end.

191—113.5(521J) Risk limitation.

113.5(1) The commissioner may limit the net amount of risk a captive company retains for a single risk after considering the impact of the retention on the captive company's capital and surplus.

113.5(2) The commissioner may also prescribe and demand additional capital and surplus of any captive company if the commissioner determines that the captive company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive company.

191—113.6(521J) Annual audit.

113.6(1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 1 for the preceding year. Financial statements furnished under this rule shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

113.6(2) The annual audit report shall be considered part of the captive company's annual report of financial condition, except with respect to the date by which it must be filed with the commissioner.

113.6(3) The annual audit shall consist of the following:

a. Opinion of independent certified public accountant.

(1) Financial statements furnished pursuant to this subrule shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.

(2) The opinion of the independent certified public accountant shall cover all years presented.

(3) The opinion must be addressed to the captive company on stationery of the accountant showing the address of issuance, bear original manual signatures or be executed in conformance with Iowa Code chapter 554D and be dated.

b. Report of evaluation of internal controls.

(1) This report shall include an evaluation of the internal controls of the captive company relating to the methods and procedures used in securing of assets and the reliability of the financial records, including but not limited to controls of the system of authorization and approval and the separation of duties.

(2) The review shall be conducted in accordance with generally accepted auditing standards, and the report shall be filed with the commissioner.

c. Accountant's letter. The accountant shall furnish to the captive company, for inclusion in the filing of the audited annual report, a letter stating the following:

(1) The accountant is independent with respect to the captive company and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board;

(2) The general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(3) The accountant understands that the audited annual report and the opinions will be filed in compliance with this rule;

(4) The accountant consents to the requirements of rule 191—113.12(521J);

(5) The accountant consents and agrees to make the work papers as described in rule 191—113.3(521J) available for review by the commissioner, designee, or appointed agent; and

(6) The accountant is properly licensed by an appropriate state licensing authority.

d. Financial statements. The following financial statements are required:

(1) Balance sheet;

(2) Statement of gain or loss from operations;

(3) Statement of changes in financial position;

(4) Statement of cash flow;

(5) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

(6) Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles and shall include:

1. Reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;

2. Summary of ownership and relationship of the captive company and all affiliated corporations or companies insured by the captive; and

3. Narrative explanation of all material transactions with the captive company. For purposes of this provision, no transaction shall be deemed material unless it involves 3 percent or more of a captive company's admitted assets as of the December 31 next preceding.

191—113.7(521J) Annual certification of loss reserves and loss expense reserves.

113.7(1) All companies shall submit an annual statement of actuarial opinion by a qualified actuary, evaluating the company's loss reserves and loss expense reserves or life and health policy and claim reserves. The statement of actuarial opinion shall conform to the Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries, the standards of the Casualty Actuarial Society, or the standards of the Society of Actuaries, as applicable, and such additional standards as the commissioner deems appropriate.

113.7(2) The individual who prepares the statement of actuarial opinion shall be approved by the commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, a member in good standing of the Society of Actuaries, or an individual who has demonstrated his or her competence to the commissioner.

113.7(3) The annual statement of actuarial opinion shall be considered part of the company's annual report of financial condition, except with respect to the date by which it must be filed with the commissioner.

113.7(4) With the exception of risk retention groups and special purpose financial insurance companies, all companies shall file such statement of actuarial opinion with the commissioner on or before June 30 for the year ending December 31 immediately preceding. Companies that have received approval to report on other than a calendar year basis shall file such opinion within 180 days after the end of their fiscal year.

113.7(5) A risk retention group domiciled in this state shall file such statement of actuarial opinion with the commissioner on or before March 1 and an actuarial opinion summary on or before March 15 for the year ending December 31 immediately preceding, written by the company's appointed actuary evaluating the company's loss reserves and loss expense reserves. The appointed actuary must be appointed by the board of directors, or its equivalent, or by a committee of the board, by December 31 of the calendar year for which the opinion is rendered. The appointed actuary must report to the board of directors each year on the items within the scope of the statement of actuarial opinion. The statement of actuarial opinion and the supporting actuarial report must be made available to the board of directors. The minutes of the board of directors should indicate that the appointed actuary has presented such information to the board of directors and that the statement of actuarial opinion and the supporting actuarial report were made available. The statement of actuarial opinion and the actuarial opinion summary shall be in the format of and contain the information required by the National Association of Insurance Commissioners' Property and Casualty Annual Statement Instructions.

A special purpose financial insurance company domiciled in this state shall file such statement of actuarial opinion on or before June 30 for the year ending December 31 immediately preceding. The statement of actuarial opinion shall be in the format of and contain the information required by the National Association of Insurance Commissioners' Life, Accident and Health Annual Statement Instructions or Property and Casualty Annual Statement Instructions, as applicable.

191—113.8(521J) Designation of independent certified public accountant.

113.8(1) Captive companies, after becoming subject to this rule, shall within 90 days report to the commissioner in writing the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this rule.

113.8(2) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

113.8(3) A captive company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within 90 days after the appointment is terminated and shall, within the same period, report the name and address of the certified public accountant that is subsequently retained.

191—113.9(521J) Consolidated or combined audits. A company may make written application to the commissioner for approval to submit a consolidated annual audit in lieu of separate annual audits if the company is part of a group of entities that consolidates its annual audit. In such cases, a consolidating or combining worksheet shall be prepared with the annual audit as follows:

113.9(1) Amounts for each captive company subject to this subrule shall be stated separately.

113.9(2) Noninsurance operations may be shown on the worksheet on a combined or individual basis.

113.9(3) Explanations of consolidating and eliminating entries shall be included.

113.9(4) A reconciliation shall be included of any differences between the amounts shown in the individual captive company columns of the worksheet and comparable amounts shown on the annual reports of such captive companies.

191—113.10(521J) Notification of adverse financial condition. A captive company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the captive company in writing of any determination by the independent certified public accountant that the captive company has materially misstated its financial condition in its report to the commissioner. The captive company shall furnish such notification to the commissioner within five business days of receipt.

191—113.11(521J) Additional deposit requirement.

113.11(1) Whenever the commissioner deems that the financial condition of a captive company warrants additional security, the commissioner may require the captive company to deposit, in trust for the captive company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the state of Iowa or a member bank of the Federal Reserve System with the commissioner.

113.11(2) The commissioner shall return the deposit or letter of credit of a captive company if the captive company ceases to do any business only after being satisfied that all obligations of the captive company have been discharged.

113.11(3) A captive company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

191—113.12(521J) Availability and maintenance of work papers of the independent certified public accountant.

113.12(1) Each captive company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the captive company available for review by the commissioner or the commissioner's appointed agent. The captive company shall require that the accountant retain the audit work papers for a period of not less than seven years after the report period.

113.12(2) The review by the commissioner shall be considered an examination or investigation by the commissioner and all work papers obtained shall be confidential records. The captive company shall require that the independent certified public accountant provide photocopies of the work papers to the commissioner. The commissioner may retain any photocopies of work papers.

191—113.13(521J) Organizational examination. In addition to the processing of the application, an organizational investigation or examination may be performed before an applicant captive company is licensed. Such examination or investigation shall consist of a general review of the applicant captive company's corporate records, including articles of incorporation, charters, bylaws, and minute books; feasibility study demonstrating the feasibility of the business plan of the captive company; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

191—113.14(GA90,SF549) Reinsurance.

113.14(1) A captive company authorized to do business in this state may take credit for reserves on risk ceded to a reinsurer subject to the following requirements:

a. No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

b. No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer based on the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

113.14(2) Reinsurance contracts shall be executed in writing setting forth the terms, provisions and conditions governing the reinsurance.

113.14(3) Copies of all reinsurance treaties and contracts will be filed and approved by the commissioner.

113.14(4) Reinsurance requirements for captive risk retention groups.

a. Permitted reinsurance.

(1) Captive risk retention groups shall not receive financial statement credit if all policies are ceded through 100 percent reinsurance arrangements, or any lesser percentage as determined in the sole discretion of the commissioner; and

(2) Credit for reinsurance will be permitted if the reinsurer complies with Iowa Code chapter 521B; or

(3) Credit for reinsurance will be permitted if the reinsurer maintains an A- or higher A.M. Best rating, or other comparable rating from a nationally recognized statistical rating organization, and the reinsurer maintains minimum capital and surplus in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements; and the reinsurer is licensed and domiciled in a jurisdiction acceptable to the commissioner; or

(4) Credit for reinsurance may be permitted if the reinsurer satisfies each of the following requirements and any other requirements deemed necessary by the commissioner:

1. The captive risk retention group shall file annually, on or before June 1, the reinsurer's audited financial statements, which shall be analyzed by the commissioner to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;

2. The reinsurer shall demonstrate to the satisfaction of the commissioner that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than three to one;

3. If the reinsurer is an affiliate of the captive risk retention group, the reinsurer shall not write third-party business without obtaining prior written approval from the commissioner. A reinsurer is affiliated, for the purpose of this subparagraph, with a risk retention group if more than 50 percent of the equity interests in such reinsurer are owned, directly or indirectly, by one or more of the members of the captive risk retention group;

4. The reinsurer shall not use cell arrangements without obtaining prior written approval from the commissioner;

5. The reinsurer shall be licensed and domiciled in a jurisdiction acceptable to the commissioner; and

6. The reinsurer shall submit to the examination authority of the commissioner.

b. The commissioner shall either require a reinsurer not domiciled in the United States to include language in the reinsurance agreement that states that in the event of the reinsurer's failure to perform its obligations under the terms of its reinsurance agreement, it shall submit to the jurisdiction of any court of competent jurisdiction in the United States or shall require compliance with paragraph 113.14(4)*"c."*

c. For credit for reinsurance and solvency regulatory purposes, the commissioner may require an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported claims.

d. Upon application, the commissioner may waive either of the reinsurance requirements in subparagraph 113.14(4)*"a"*(2) or numbered paragraph 113.14(4)*"a"*(4)"6" in circumstances where the captive risk retention group or reinsurer can demonstrate to the satisfaction of the commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the captive risk retention group and its policyholders. Any such waiver should be included in the plan of operation, or any

subsequent revision or amendment of the plan, pursuant to Section 3902(d)(1) of the Federal Liability Risk Retention Act of 1986, and the plan must be submitted by the risk retention group licensed as a captive to the commissioner of its state of domicile and each state in which the risk retention group licensed as a captive intends to do business or is currently registered. Any such waiver of a subrule 113.14(4) requirement constitutes a change in the risk retention group's plan of operation in each of those states.

e. Upon application, the commissioner may waive the requirement that a reinsurance arrangement must satisfy either paragraph 113.14(4)*"b"* or *"c"* in circumstances where the captive risk retention group or reinsurer can demonstrate to the satisfaction of the commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the captive risk retention group and its policyholders. Any such waiver should be disclosed in Note 1 of the risk retention group's annual statutory financial statement.

f. Each approved captive manager or captive risk retention group shall assess the reinsurance programs of the risk retention groups licensed as captives under their management, and within 90 days of the effective date of these rules, submit a written report to the commissioner indicating whether such risk retention groups licensed as captives are compliant with these rules. All captive risk retention groups failing to submit the report in a timely manner shall be examined, at the captive risk retention group's expense, to determine compliance with these rules.

g. Captive risk retention groups that require additional time to comply with these rules shall be permitted to take credit for reinsurance for risks ceded to reinsurers not in compliance with these rules for a period not to exceed 12 months from [the effective date of this rulemaking] and contingent upon satisfactory demonstration to the commissioner that such delay of implementation will not cause a hazardous financial condition or potential harm to its member policyholders.

191—113.15(521J) Service providers. No person shall act, in or from this state, as a captive manager, broker, producer, salesman, or reinsurance intermediary for captive business without authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

191—113.16(521J) Directors.

113.16(1) Every captive company shall report any change in its executive officers or directors to the commissioner within 30 days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

113.16(2) No director, officer or employee of a captive company shall, except on behalf of the captive company, accept, or be the beneficiary of, any fee, brokerage, gift or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the captive company. Such person may receive reasonable compensation for necessary services rendered to the captive company in the person's usual private, professional or business capacity.

113.16(3) Any profit or gain received by or on behalf of any person in violation of this rule shall inure to and be recoverable by the captive company.

191—113.17(521J) Conflict of interest.

113.17(1) Each captive company licensed in Iowa is required to adopt a conflict of interest statement for officers, directors, and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from their duty to further the interests of the captive company that the individual represents, but this shall not preclude a person from being a director or officer in more than one insurance company.

113.17(2) Each officer, director and key employee shall file a yearly disclosure with the board of directors.

191—113.18(521J) Acquisition of control of or merger with domestic captive company. No person shall make a tender offer for, or enter into any agreement to exchange securities for, or seek to acquire, or acquire in the open market or otherwise, any interest in a domestic captive company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company as defined in Iowa Code section 521A.1(3), and no person shall enter into an agreement to merge with or otherwise to acquire control of a captive company, without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic captive company, the commissioner shall consider all the facts and circumstances surrounding the application and the criteria for establishment of a captive company set out in this rule.

191—113.19(521J) Suspension or revocation. The commissioner may, by order, suspend or revoke the license of a captive company or place the same on probation on the following grounds:

113.19(1) The captive company has not commenced business according to its plan of operation within two years of being licensed;

113.19(2) The captive company has ceased to write business;

113.19(3) At the request of the captive company; or

113.19(4) Any reason provided in Iowa Code section 521J.9(1) as enacted by 2023 Iowa Acts, Senate File 549.

191—113.20(521J) Change of information in initial application.

113.20(1) Any material change in a captive company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.

113.20(2) Any change in any other information filed with the initial application must be filed with the commissioner within 60 days after the change but does not require prior approval.

113.20(3) The captive company shall immediately notify the commissioner upon making changes in board members or officers of the captive company.

191—113.21(521J) Application and forms.

113.21(1) Any person who wants to form a captive company shall make application to the commissioner for authority to conduct a captive company using the Application to Form a Captive Company.

113.21(2) One complete copy of the application, including forms, attachments, exhibits, and all other papers and documents filed as a part thereof, shall be filed electronically with the commissioner through the division's captive website, iid.iowa.gov/captive. Accompanying fees may be made by personal delivery or mail addressed to the Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315, Attention: Captive Insurance Administrator.

113.21(3) The application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.

113.21(4) A captive company must include with its application a feasibility study demonstrating the feasibility of its business plan.

113.21(5) Forms for filing with the division are available on the division's website at iid.iowa.gov/captive or by mailing a written request to the Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315.

These rules are intended to implement 2023 Iowa Acts, Senate File 549, section 29.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 871—Chapters 21, 22, 24, and 25 "Employer Auditors"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 96.11

State or federal law(s) implemented by the rulemaking: Appendix E of Employment and Training Handbook 407, 4th Edition, Tax Performance Systems

Public Hearing

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

January 16, 2024	1000 East Grand Avenue
10 a.m.	Des Moines, Iowa

Public Comment

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

Jeffrey Koncsol
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: 515.725.5400
Email: jeffrey.koncsol@iwd.iowa.gov

Purpose and Summary

This proposed rulemaking implements a portion of recent amendments to Appendix E of Employment and Training Handbook 407, 4th Edition, Tax Performance Systems, concerning state employer unemployment insurance audit functions. The amendments direct states to rename "field audits" as "employer audits" to align more closely with current employer audit practices, which may involve both in-person field audits and remote audits.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

IWD may need to update training and audit materials to reflect this change.

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

Both IWD and employers will benefit since the revised term will more appropriately describe the audit process. This could potentially decrease confusion and ensure that the audit meets the expectations of the employer.

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 revised description of audits more closely aligns with current practice, thereby better managing employer expectations.

- Qualitative description of impact:

Not applicable.

3. Costs to the State:

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

IWD will need to update audit materials to reflect this change, but the costs to do so will be minimal.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues because the processes currently exist.

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

Failure to update these rules will result in IWD being out of compliance with United States Department of Labor (USDOL) guidelines.

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

None. This change is required by USDOL.

6. Alternative methods considered by the agency:

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

There was no alternative seriously considered because this terminology is required to remain in compliance with USDOL.

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

Any other option would not comply with USDOL requirements.

Small Business Impact

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

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

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

This change will ensure that small business owners better understand that the audit will not include an in-person portion.

Text of Proposed Rulemaking

ITEM 1. Amend paragraph **21.1(2)"d"** as follows:

d. The bureau also assigns all ~~field~~ employer audit work. Information is entered into the automated system ~~which~~ that generates materials to be utilized by the ~~field~~ employer audit staff in conducting an employer inquiry and audit.

ITEM 2. Amend rule 871—22.17(96), catchwords, as follows:

871—22.17(96) Procedures of ~~field~~ employer auditors.

ITEM 3. Amend subrule 22.17(1) as follows:

22.17(1) ~~Field~~ Employer auditors are to provide a cost-effective method of promoting employers' understanding of employer rights and responsibilities under Iowa unemployment insurance laws.

ITEM 4. Amend subrule 22.17(2) as follows:

22.17(2) The department, through duly appointed ~~field~~ employer auditors, may examine an employer's records at any time, subject to the limitations of rule 871—22.1(96), to determine compliance with Iowa Code chapter 96.

ITEM 5. Amend subrule 22.17(4), introductory paragraph, as follows:

22.17(4) The department, through duly appointed ~~field~~ employer auditors, may perform a systematic audit of an employer's records as authorized by Iowa Code section ~~96.11, subsection 7,~~ 96.11(7) and as mandated by the United States Department of Labor. In addition to the provisions of subrules 22.17(1) to 22.17(3), the following provisions apply to systematic audits:

ITEM 6. Amend subrule 22.17(6) as follows:

22.17(6) When a temporary writ of injunction has been filed by the department, pursuant to Iowa Code section 96.16, against an employer because of the employer's failure or refusal to file a required report or to pay assessed contributions, penalty, and interest, ~~a field~~ an employer auditor shall have the right to inspect the enjoined business premises during reasonable hours and interview any interested parties having knowledge of or being involved with the enjoined employer to ensure that such enjoined employer and all of the employer's agents, servants, employees, and assigns are observing the conditions of the temporary writ of injunction.

ITEM 7. Amend subrule 24.29(3) as follows:

24.29(3) Verification of going out of business. When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business at a factory, establishment, or other premises, the unemployment insurance representative completes a Form 60-0240, Verification of Business Closing, and refers Form 60-0240 to the ~~field~~ employer audit section for assignment to ~~a field~~ an employer auditor who verifies the business closing. A Form 62-2056, Review of Business Status for Closing Credits, is completed for each succeeding claimant who requests to be included in a redetermination for business closing credits. This form is added to the Form 60-0240 already in the department file for the appropriate pending investigation. Upon return of the Form 60-0240 from the ~~field~~ employer audit section, an unemployment insurance representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing based on the results of the investigation.

ITEM 8. Amend subrule 25.6(5) as follows:

25.6(5) The investigation and recovery unit may seek the assistance and expertise of the ~~field~~ employer auditors.

ARC 7312C

CIVIL RIGHTS COMMISSION[161]

Notice of Intended Action

Proposing rulemaking related to complaints and providing an opportunity for public comment

The Civil Rights Commission hereby proposes to rescind Chapter 3, "Complaint Process," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Executive Order 10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 216.

Purpose and Summary

The purpose of proposed Chapter 3 is to implement the Iowa Civil Rights Act by providing parameters and expectations regarding the complaint process for discrimination complaints.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 161—Chapter 15.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Commission no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Jacob Bennington
Iowa Civil Rights Commission
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.4482
Email: jacob.bennington@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 10 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa
February 16, 2024 10 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 161—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
COMPLAINT PROCESS

161—3.1(216) Initiation of complaint.

3.1(1) *Contents of complaint.* Each complaint should contain the following:

a. The full name, address, and phone number of the person making the charge;

b. The full name and address of each respondent;

c. A clear and concise statement of the facts constituting each alleged discriminatory practice, including pertinent dates, where known;

d. Where employment discrimination is alleged, the approximate number of respondent's employees.

3.1(2) *Technical defects in complaint.* A complaint is sufficient when it includes a written statement that identifies the parties and generally describes the alleged discriminatory actions or practices. Complaints may be amended to cure technical defects or omissions including verification. Such amendments will relate back to the date the complaint was filed.

161—3.2(216) Timely filing of the complaint.

3.2(1) All alleged continuous violations that constitute a pattern or practice are timely if the most recent act occurred within 300 days of filing the complaint.

3.2(2) The 300-day filing period is subject to waiver, estoppel, and equitable tolling. Equitable tolling depends upon the facts and circumstances of the case and suspends the running of the filing period for as long as the grounds for tolling exist.

161—3.3(216) Jurisdictional review. Upon receipt of a submitted complaint form, the executive director or designee shall review the form to determine whether the commission has jurisdiction. A no jurisdiction determination constitutes a final agency action for purposes of judicial review.

161—3.4(216) Amendment process.

3.4(1) *Amendment of complaint.*

a. Complaints or any part thereof may be amended by the complainant or commission prior to the contested case hearing. Complaints may be amended to include additional allegations discovered during investigation. The issues at the contested case hearing shall include facts uncovered during investigation and are not limited to the allegations in the original complaint.

b. Amendments alleging additional discriminatory acts or practices that do not relate back to the original complaint will only be permitted if the amended complaint could have been filed as a timely complaint on the date the amended complaint was filed.

c. At the contested case hearing, the administrative law judge may amend the complaint at the administrative law judge's discretion. Where an amendment is made, the administrative law judge may grant the respondent a continuance if needed to prepare to defend the amended charge.

3.4(2) *Amendments adding successor respondents.* The complainant or the commission may at any time amend a complaint to add an alleged successor as a respondent. If a successor is added after issuance of the notice of hearing, the administrative law judge may grant a continuance to allow the successor to prepare its defense.

161—3.5(216) Notice of the complaint. Within 20 days after jurisdiction is established, the commission will serve a copy of the complaint upon the respondent by mail or electronic mail. In the absence of a response from the first named respondent within 90 days, the commission shall serve the complaint on the first named respondent by certified mail within 20 days and inform the complainant by letter of the acknowledgment of the right to withdraw the complaint or to request an administrative release to commence the complainant's own action in Iowa district court in accordance with Iowa Code section 216.16.

161—3.6(216) Preservation of records.

3.6(1) *Duty to preserve.* When a complaint has been served on a respondent, the respondent shall preserve all records relevant to the investigation until the complaint is finally adjudicated, including but not limited to:

a. Any books, papers, documents, applications, forms, or records of any form that are relevant to the scope of the investigation.

b. Records relating to other employees, applicants, or members holding or seeking positions similar to that held or sought by the complainant.

c. Records relating to other applicants for the same position or membership as the complainant.

3.6(2) *Failure to preserve.* At a contested hearing, the administrative law judge may determine that a party or agent of the party destroyed evidence relevant to the investigation. The administrative law judge may determine that the destroyed evidence was adverse to the party or agent who destroyed the evidence. The administrative law judge shall determine whether the destruction was done at a time when the party knew or should have known that the evidence destroyed was relevant to the investigation and whether the explanation for the destruction is unsatisfactory.

161—3.7 to **3.11** Reserved.

161—3.12(216) Mediation. Mediation is available to all parties irrespective of representation by counsel. Mediation may encompass all issues in the case that could be investigated. If the parties agree to seek and obtain a global settlement not limited to a resolution of the civil rights issues, the mediation may be expanded to include these collateral claims.

161—3.13 Reserved.

161—3.14(216) Document submission process.

3.14(1) *Methods of filing.* Any document, including a complaint of discrimination, may be filed by any one of the following methods:

a. By in-person delivery to the commission office during set office hours.

b. By regular or certified mail.

c. By fax. For fax transmissions, the sender may be billed a reasonable fee for each page in excess of five pages.

d. By electronic mail to the commission-established email address.

3.14(2) *Date of filing.* The date on which any document is deemed to be filed with the commission is determined according to the following:

a. Any document received by in-person delivery will be filed as of the date of in-person delivery.

b. Any document received by U.S. mail will be filed as of the mailing date pursuant to subrule 3.14(3).

c. Any document received by fax will be filed as of the date shown on the face of the fax.

d. Any document received by electronic mail will be filed as of the date received.

3.14(3) *Proof of mailing.* Proof of mailing includes a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form: "The undersigned certifies under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Civil Rights Commission, 400 E. 14th Street, Des Moines, Iowa 50319, and to the names and addresses of the persons listed below by depositing a copy thereof (in a United States post office mailbox with correct postage properly affixed or state interoffice mail). (Date) (Signature)."

3.14(4) *Conflict among proofs of mailing.* The date of mailing is the date shown by the postmark. In the absence of a legible postmark, the date of mailing is the date shown by the postage meter mark. In the absence of both a legible postmark and a legible postage meter mark, the date of mailing is the date shown by the affidavit, certificate, or certification of mailing.

161—3.15 to **3.25** Reserved.

161—3.26(216) Initial investigation of complaint—tier one investigation.

3.26(1) Questionnaire. After receipt of a complaint, the commission may mail to the parties written questionnaires. The complainant and respondent may provide responses in person, by mail, or by electronic mail.

3.26(2) Responses to the questionnaire.

a. Questionnaire responses can include written position statements. Questionnaire responses must be accompanied by supportive evidence. Attorney arguments are not considered admissible evidence. Supportive evidence should reflect how the complainant was treated and how individuals similarly situated to the complainant were treated.

b. Questionnaire responses are due 30 days from the mailing of the questionnaire. One oral or written request for an extension of 30 days or less will be granted on an informal basis without notice to the nonrequesting party. A party may assume the 30-day extension request is approved, unless otherwise notified. Any further request for extension may be subject to review by the executive director or designee and will be granted upon a showing of extenuating circumstances.

3.26(3) Failure to respond.

a. Complainant. A complaint may be administratively closed if a complainant fails to respond to questionnaires.

b. Respondent. A complaint may proceed to further investigation if the respondent fails to submit questionnaire responses with supportive evidence.

3.26(4) Suggested procedure in answering questionnaires will be provided in the cover letter of the questionnaires.

3.26(5) The tier one investigation process will determine whether further investigation is needed. If further investigation is not warranted, the complaint will be administratively closed. Further processing is warranted when the submitted information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development.

3.26(6) An administrative closure resulting from the preliminary screening determination is an evaluation of the probable merits of the case.

3.26(7) The commission may issue an investigation information request (IIR) after the issuance of the preliminary case report.

161—3.27 to **3.31** Reserved.

161—3.32(216) Secondary investigative process—tier two investigation.

3.32(1) After a preliminary screening determination concludes further investigation is warranted, the complaint shall be referred to designated staff for further investigation of the allegations of illegal discrimination, known as a tier two investigation.

3.32(2) Staff shall review any documents submitted in response to an initial information request and any other documentation submitted by the parties prior to the initiation of the tier two investigation.

3.32(3) At the discretion of the investigator, further steps may be taken, including party or witness interviews or the issuance of additional information requests or subpoenas.

161—3.33(216) Conclusion of investigation. Following the conclusion of a tier two investigation, staff may issue an investigative analysis (IA). The IA will result in one of the following:

1. An investigative closure,
2. A probable cause or no probable cause recommendation to an administrative law judge, or
3. A no jurisdiction determination.

161—3.34 and **3.35** Reserved.

161—3.36(216) Protective orders. The executive director or designee shall have the authority to issue protective orders in case files when necessary.

161—3.37(216) Investigative subpoenas.

3.37(1) *Application of rule.* This rule applies to subpoenas served before a notice of contested case hearing pursuant to rule 161—4.2(17A).

3.37(2) *Prior to notice of hearing.* Subpoenas may be issued by the executive director or designee before a notice of a contested case hearing. Only the commission has the right to demand issuance of a subpoena.

3.37(3) *Timing before subpoena is issued.* Where a person fails to provide requested information pursuant to the initial information request or subsequent information requests, a subpoena may be issued. A subpoena may be issued not less than seven days after the initial information request or subsequent information requests have been delivered to the person having possession, custody, or control of the requested materials.

3.37(4) *Contents of subpoena.* Every subpoena shall state the name of the commission and the purpose for which the subpoena is issued. The subpoena shall be directed to a specific person, or the person's attorney, or an officer, partner, or managing agent of any entity that is not a natural person. The subpoena for the unknown person having possession, custody, or control of the requested material or real evidence may be directed to the "custodian of records." The subpoena shall command the person to whom it is directed to produce designated books, papers, or other real evidence in the possession, custody, or control of that person at a specified time and place.

3.37(5) *Method and proof of service.* Personal service will be accomplished pursuant to Iowa Rule of Civil Procedure 1.1701(3). Proof of service is by acknowledgment of receipt by the person served or by the affidavit of the person who served the subpoena. Failure to file proof of service does not affect the validity of service.

3.37(6) *Objections to subpoena.*

a. An individual who intends not to comply with any part of a subpoena shall promptly petition the executive director to revoke or modify the subpoena. The petition shall separately identify each portion of the subpoena and provide the grounds upon which the petitioner does not intend to comply. A copy of the subpoena shall be attached to the petition. The commission shall mail the final determination of the petition by the executive director or designee to the petitioner.

b. The grounds for subpoena modification or revocation are met if the subpoena is:

(1) Not within the statutory authority of the commission;

(2) Not reasonably specific;

(3) Unduly burdensome; or

(4) Not reasonably relevant to matters under investigation.

c. A petition to revoke or modify a subpoena should be captioned "Motion to Quash" or "Petition to Modify/Revoke Subpoena" and include the commission case number.

3.37(7) *Failure to comply.* If an individual fails to comply with a subpoena, the executive director or designee may authorize the filing of a petition for enforcement in the district court.

3.37(8) *Open public records law.* The status of a record as a confidential public record under Iowa Code chapter 22 does not affect the authority of the commission to subpoena and compel the production of that record.

161—3.38(216) Postinvestigation determination.

3.38(1) If a case file is sent to an administrative law judge for determination, all parties will be notified of the determination in writing by mail.

3.38(2) Where the administrative law judge rejects the recommendation of the commission staff, the reasons shall be stated in writing and included in the case file.

161—3.39(216) Post-probable cause process.

3.39(1) If the administrative law judge makes a probable cause determination, a staff member shall be assigned to attempt resolution of the case through conciliation. All parties shall be notified of the time and date of any conciliation.

3.39(2) The commission will work with the complainant or complainant's attorney to formulate an initial offer. The 30-day conciliation period begins when the offer of settlement is communicated to the respondent or respondent's attorney.

3.39(3) The conciliation agreement is effective only after the agreement has been signed by all parties and a commissioner, the executive director, or a designee on behalf of the commission. A copy of the agreement shall be mailed to all parties.

3.39(4) To ensure compliance with a conciliation agreement, the commission shall take appropriate action to ensure compliance, including the filing of an action in district court seeking specific performance of the terms of the conciliation agreement or other remedies that may be available.

3.39(5) A respondent may not request reconsideration of a finding of probable cause.

161—3.40 to **3.42** Reserved.

161—3.43(216) Alternatives to commission process—administrative release/right to sue.

3.43(1) *Issuance of right to sue letter.* For a right to sue letter to be issued, the request must be filed in writing by the complainant or the complainant's attorney and include the corresponding state and federal case numbers. After a right to sue letter has been issued, the case shall be administratively closed.

3.43(2) *Exceptions to issuance of right to sue.* A right to sue letter will not be issued where the complaint was not timely filed or the commission has determined the complaint is not jurisdictional.

3.43(3) *Erroneous right to sue.* If the right to sue letter was issued erroneously, the right to sue letter will be deemed void and the case file reopened if the error is discovered within 90 days after issuance.

161—3.44 and **3.45** Reserved.

161—3.46(216) Withdrawal process.

3.46(1) *Withdrawal of complaint.* A complainant may withdraw any part of a complaint prior to notice of a contested case hearing. After notice of a contested hearing, a complainant may only withdraw a complaint or any part of a complaint at the commission's discretion. The commission may continue investigating where deemed in the public interest.

3.46(2) *Reopening of a withdrawn complaint.* A complainant may request that the complainant's withdrawn complaint be reopened within 90 days after closure only if the commission finds that the request for withdrawal was either not filed voluntarily or was filed as a result of a mistake concerning the effect of the request for withdrawal.

3.46(3) *Withdrawal as a term of settlement.* If the withdrawal is filed pursuant to a conciliation, mediation, or other settlement agreement, the complainant shall seek redress in district court. If the

district court determines that the settlement agreement is invalid, the commission may reopen the case file.

161—3.47(216) Periodic review and administrative closure.

3.47(1) *Periodic evaluation of evidence.* The executive director or designee may periodically review the complaint to determine whether further processing is warranted. When the periodic review occurs prior to the determination of probable cause, then the tier one investigative standard in subrule 3.26(5) applies. A complaint determined to not warrant further processing shall be administratively closed.

3.47(2) *Uncooperative complainant.* A case file may be administratively closed at any time if the complainant cannot be contacted after diligent efforts or is uncooperative, causing unreasonable delay in the processing of the complaint.

3.47(3) *Involuntary satisfactory adjustment.* A case file may be closed as satisfactorily adjusted when the respondent has made an offer of settlement acceptable to the executive director or designee but not to the complainant. Notice of intended closure shall state reasons for closure and be mailed to the complainant. The complainant is allowed 30 days to provide written reasons why the case file should remain open. The executive director or designee will review the response and notify the complainant of the decision.

3.47(4) *Frivolous complaints.* Following jurisdictional review, the executive director or designee may determine that a complaint is frivolous and does not warrant further processing. The executive director or designee shall only make this determination in rare circumstances and will provide notice to the chairperson of the commission regarding each case file closed pursuant to this subrule. If a case file is closed pursuant to this subrule, the complainant is eligible to request a right to sue letter pursuant to the terms of Iowa Code section 216.16 and these rules. Consideration of a frivolous complaint may include the number of previous nonmeritorious complaints filed by the complainant within the previous year.

3.47(5) *Litigation review.* The complaint may be administratively closed after a probable cause determination has been made when it is determined that the record does not justify proceeding to a public hearing. A complainant may not request to reopen the complainant's case file when the file was administratively closed following litigation review.

161—3.48 and **3.49** Reserved.

161—3.50(216) Procedure to reopen.

3.50(1) *Request for reopening of case file within 30 days.*

a. Within 30 days following the notice of the conclusion of the investigation, a party can file an intra-agency appeal. The party shall state the reasons in writing for appeal and submit any additional documentation. Within 30 days of the intra-agency appeal, the director or designee shall review the appeal. The executive director shall affirm, modify, reverse, or remand. If the case file is remanded, the executive director or designee shall transfer the case file to investigative staff for further processing.

b. The commission shall notify all parties upon receipt of any intra-agency appeal. All parties shall have 14 days to provide any response to the appeal for the executive director's or designee's consideration.

3.50(2) *Reopening of an administratively closed case file after 30 days.*

a. The commission may reopen a case file at any time a right to sue letter could have been issued under Iowa Code section 216.16(3)*"a,"* unless otherwise provided in these rules, and where the closure was affected by any of the following:

(1) False, fraudulent, or material misrepresentation of information provided to the commission concerning a material issue in the case file by the respondent, a witness, or some other person not the complainant; or

(2) Error by the commission staff.

b. The executive director or designee shall consider the information discovered under subparagraphs 3.50(2)*"a"*(1) and 3.50(2)*"a"*(2) and determine whether the complaint requires further action.

c. If it is determined that further action is necessary, the parties or their attorneys shall be notified of the reopening of the case file. If requested by the commission, the parties shall have 30 days to submit their written positions regarding the alleged new information.

3.50(3) *No probable cause determination reopening.* The commission may reopen a case file within one year of a no probable cause determination where the determination was affected by any of the following:

a. Fraud perpetrated upon the commission by some person who is not the complainant; or

b. Material misrepresentations.

3.50(4) *Reopening from breach of settlement agreement.*

a. If a party breaches a settlement agreement, the aggrieved party may seek redress with the commission or in district court.

b. If the aggrieved party seeks commission engagement, that party has 90 days from the time of an alleged breach of a settlement agreement to request the case file be reopened to continue the investigative process, but only if all the following apply:

(1) The commission is not a party to the settlement agreement;

(2) The requesting party agrees the settlement agreement is null and void; and

(3) The requesting party waives and releases any rights to seek specific performance or damages for the alleged breach in district court.

c. All parties shall be notified that a request for reopening has been made. A copy of the request for reopening shall be provided to all parties. The parties shall be afforded no less than 14 days and no more than 30 days to submit their written position and any supporting documents regarding the request.

The executive director or designee shall determine whether the agreement has been breached or the nonrequesting party failed to negotiate the agreement in good faith. If it is determined that a material breach occurred, the parties or their attorneys shall be notified of the reopening of the case file and the case file will be referred for further processing.

161—3.51 to **3.55** Reserved.

161—3.56(216) Access to file information.

3.56(1) Disclosure of the existence or contents of a case file is prohibited except in the following circumstances:

a. Upon filing an appeal in district court of a final action, parties and their attorneys may access their case file.

b. When a case has been set for a contested case hearing and notice has been mailed, parties and their attorneys may access their case file through discovery pursuant to rule 161—4.7(17A).

c. Parties and their attorneys may access the case file upon appeal of a decision rendered by the commission in a contested case. The introduction of documents into evidence from a case file during a contested case hearing does not waive the confidentiality of other documents within that case file.

3.56(2) Attorneys seeking access to case files must provide written notification of representation.

161—3.57(216) Miscellaneous.

3.57(1) *Conflicts prohibited.* The administrative law judge designated to issue a determination will not serve as administrative law judge in the contested case hearing for the same case file.

3.57(2) *Injunctions.* If the executive director or designee determines that a complainant may be irreparably injured before a contested case hearing, the executive director or designee may direct an attorney for the commission to seek appropriate injunctive relief to preserve the rights of the complainant and the public interest.

These rules are intended to implement Iowa Code chapter 216.

ARC 7313C

CIVIL RIGHTS COMMISSION[161]

Notice of Intended Action

Proposing rulemaking related to discrimination in employment and providing an opportunity for public comment

The Civil Rights Commission hereby proposes to rescind Chapter 8, "Discrimination in Employment," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Executive Order 10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 216.

Purpose and Summary

The purpose of proposed Chapter 8 is to implement the Iowa Civil Rights Act by providing parameters and expectations regarding the complaint process for discrimination complaints in employment based on protected bases.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 161—Chapter 15.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Commission no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Jacob Bennington
Iowa Civil Rights Commission
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.4482
Email: jacob.bennington@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 10 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa
February 16, 2024 10 a.m.	6200 Park Avenue, Suite 100 Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 161—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
DISCRIMINATION IN EMPLOYMENT

161—8.1(216) Definitions.

"Has a record of such an impairment" means having a history of, or being misclassified as having, a mental or physical impairment that substantially limits a major life activity.

"Major life activities" includes but is not limited to caring for oneself, manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Physical or mental impairment" includes:

1. Physiological disorders or conditions, cosmetic disfigurements, or anatomical loss affecting any of the following systems: neurological; musculoskeletal; special sense organs; respiratory and speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic or lymphatic; skin; and endocrine; or

2. Mental or psychological disorders such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Regarded as having an impairment" means:

1. The perception of having an impairment that substantially limits major life activities; or

2. Having an impairment that substantially limits major life activities because of others' attitudes toward the impairment.

"Substantially disabled" means having a physical or mental impairment that substantially limits a major life activity, having a record of such impairment, or being regarded as having an impairment.

161—8.2(216) Bona fide occupational qualifications.

8.2(1) An employer, employment agency, or labor organization may take action otherwise prohibited under commission rules where the protected basis is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

8.2(2) Bona fide occupational qualifications are narrow in scope and do not include convenience or an employer's preferences.

8.2(3) An employer or employment agency's following of federal or state statutes or regulations establishing employment standards is not illegal discrimination when the standards are bona fide occupational qualifications.

8.2(4) A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances such as acting or modeling.

8.2(5) Bona fide occupational qualifications do not include assumptions about a protected basis, comparative characteristics of a protected basis, and stereotypes based on a protected basis.

8.2(6) No publication shall advertise employment opportunities containing any indication of a preference, limitation, or restriction based upon age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, unless there is a bona fide occupational qualification.

161—8.3(216) Preemployment inquiries.

8.3(1) Preemployment inquiries into an applicant's membership in a protected class are not prohibited so far as necessary to determine an applicant's bona fide occupational qualification for the position. The burden to show the existence of a bona fide occupational qualification shall be on the employer, employment agency, or labor organization.

8.3(2) This rule does not prohibit inquiry:

a. As to whether a job applicant is over 18 years of age, or

b. For postemployment inquiries regarding age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability for legitimate record-keeping purposes.

8.3(3) An employment interviewer shall not ask about a disability unless the inquiry is made in good faith for a nondiscriminatory purpose.

161—8.4 to **8.10** Reserved.

161—8.11(216) Reasonable accommodations—assessment and placement.

8.11(1) Employers shall accommodate the known physical or mental limitations of qualified disabled applicants or employees, unless doing so would result in an undue hardship. Employers cannot deny employment to qualified disabled employees or applicants due to their need for reasonable accommodation.

8.11(2) Reasonable accommodation may include:

a. Making facilities readily accessible to individuals with disabilities; and

b. Job restructuring, modified work schedules, acquisition or modification of equipment or devices, readers or interpreters, or similar actions.

8.11(3) In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered may include:

a. The size of the employer, including the number of employees, number and type of facilities, and budget;

b. The nature of the employer's operation, including the composition and structure of its workforce; and

c. The nature and cost of the accommodation.

161—8.12(216) Physical examinations.

8.12(1) If examinations or assessments are required, they should be designed to determine whether an applicant:

a. Has the ability to perform the duties of the position.

b. Is qualified to do the work without adverse consequences such as creating a danger to the life or health of others.

c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties of the job.

8.12(2) Physical standards for employment must be reasonable and based on complete, factual information about job duties, working conditions, hazards, and essential physical requirements.

161—8.13(216) Disability arising during employment. When an individual becomes disabled during employment, the employer shall provide reasonable accommodations pursuant to rule 161—8.11(216).

161—8.14 to **8.24** Reserved.

161—8.25(216) Retirement plans and benefit systems.

8.25(1) An employer shall not be required to:

a. Hire back an employee following retirement; or

b. Hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system provided that the plan or system is not a mere subterfuge for the purpose of evading the provisions of the Iowa civil rights Act of 1965.

8.25(2) Retirement plans shall not require involuntary retirement of a person under the age of 70 because of the person's age, except where otherwise provided in state law.

8.25(3) Mandatory retirement based on age will not be applied to members of the Iowa public employees' retirement system.

8.25(4) Employer contributions to insurance, pension, and other programs are not a violation of the Act if those contributions are the same for each employee or if the resulting benefits are equal.

These rules are intended to implement Iowa Code chapter 216.

ARC 7315C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to students first act—education savings accounts and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 20, "Students First Act—Education Savings Accounts," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68.

Purpose and Summary

The current definition of "annual income" in subrule 20.1(1) refers to "net income." The Department of Education has received technical assistance to ensure that the term "net income" will no longer appear in the pertinent provisions of the Iowa Code. The technical correction proposed by this rulemaking addresses this change in a nonsubstantive manner.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

EDUCATION DEPARTMENT[281](cont'd)

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rulemaking may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend subrule 20.1(1) as follows:

20.1(1) "Annual income" means the same as ~~"net income" as defined in Iowa Code section 422.7 in effect for the year preceding an application~~ line 4 of the 2023 IA 1040 (Iowa taxable income). In calculating annual income, the department shall use information from the last year's state tax form and need not include income of individuals who have no legal obligation to provide support to the student unless said individual is married to the parent or guardian who is responsible for financially supporting the student. If "annual income" cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. The department director may consider income reductions after the filing of the preceding year's tax return. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will cease to be applicable by operation of law on July 1, 2025.

ARC 7205C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to operations and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 1, "Operation of Environmental Protection Commission," Iowa Administrative Code, and to adopt a new Chapter 1 with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3 and 455A.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 455A.

Purpose and Summary

Chapter 1 governs the conduct, structure, and business operations of the Commission. Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, the proposed new chapter reduces and consolidates the rules. This is accomplished by rescinding outdated provisions and by removing those redundant to statute, including particular provisions around conflict of interest found in Iowa Code chapter 68B and associated rules. The proposed chapter has also been streamlined as much as possible, stating the conduct, structure, and business operations of the Commission more succinctly and clearly than before.

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 of Natural Resources (Department) for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 26, 2024. Comments should be submitted electronically to Kelli Book via email and include "EPC Chapter 1 comments" in the subject of the email. Comments should be directed to:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: kelli.book@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk and be directed to the appropriate hearing location:

January 17, 2024 1 to 2 p.m.	DNR—Conference Room 5 West Wallace State Office Building Des Moines, Iowa
January 24, 2024 9 to 10 a.m.	DNR—Conference Room 5 East Wallace State Office Building Des Moines, Iowa

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.

The hearings will also be available online. A virtual link will be provided to those who make a request to take part in the hearings virtually. The request for the link shall be submitted to Ms. Book prior to the meeting date. Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 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 department's main headquarters 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.

567—1.8(17A,455A) Sales and leases of goods and services.

1.8(1) *Sales and leases.* The general provisions for the sales and leases of goods and services by commission members is governed by rule 351—6.11(68B).

1.8(2) *Consent by rule.* The commission concludes that sales or leases of goods or services described in this paragraph do not, as a class, constitute the sale or lease of a good or service which affects an official's functions. Application and department approval are not required for these sales or leases unless there are unique facts surrounding a particular sale or lease which would cause that sale or lease to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or would otherwise present a conflict of interest.

Sales or leases for which consent is granted by rule are:

a. Nonrecurring sale or lease of goods and services if the official is not engaged for profit in the business of selling or leasing those goods or services.

b. Sale or lease of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products.

c. Sale or lease of goods to general public at an established retail or consignment shop.

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

e. Sale or lease of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.

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

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

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

ARC 7206C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to inspections, compliance, self-audits, and enforcement and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 3, "Submission of Information and Complaints—Investigations," and Chapter 10, "Administrative Penalties"; to adopt a new Chapter 10, "Complaints, Audits, Enforcement Options and Administrative

Penalties"; and to rescind Chapter 12, "Environmental Self-Audits," and Chapter 17, "Compliance and Enforcement Procedures," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3, 455B.105(3), 455B.109 and 455K.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes this Notice of Intended Action to rescind Chapters 3, 12, and 17 and to rescind and replace Chapter 10.

Chapters 3, 12, and 17 govern environmental inspections, compliance, self-audits, and enforcement. Chapter 10 contains rules for assessing administrative penalties in enforcement actions. All of the chapters are proposed to be edited for length and clarity and consolidated into new Chapter 10.

In more detail, the proposed new Chapter 10 will: (1) provide guidelines for submitting and responding to complaints; (2) provide the procedures for self-disclosures of environmental violations, which may result in immunity from administrative penalties; (3) identify the Department of Natural Resources' (Department's) compliance and enforcement framework; and (4) provide the policies and procedures for the assessment of administrative penalties.

Consistent with Executive Order 10 and the five-year review of rules in Iowa Code section 17A.7(2), all of these chapters are edited for length and clarity. Additionally, several provisions in the merged chapters are repetitive to underlying statute and are proposed to be removed.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 26, 2024. Comments should be submitted electronically to Kelli Book via email and include "Chapter 10 comments" in the subject of the email. Comments should be directed to:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: kelli.book@dnr.iowa.gov

Public Hearing

Two public hearings at which persons may present their views orally or in writing will be held as follows. Upon arrival at the January 16, 2024, hearing, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location:

January 16, 2024 1:30 to 3:30 p.m.	DNR—Conference Room 5 East Wallace State Office Building Des Moines, Iowa
January 25, 2024 10 to 11:30 a.m.	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.

The January 25, 2024, hearing will be a virtual meeting only. A link for the virtual meeting will be provided to those who make a request to take part in the virtual hearing. The request for the link shall be submitted to Ms. Book via email by 8 a.m. on January 25, 2024. Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 3**.

ITEM 2. Rescind 567—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
COMPLAINTS, AUDITS, ENFORCEMENT OPTIONS AND ADMINISTRATIVE PENALTIES

DIVISION 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).

567—10.2 to **10.9** Reserved.

DIVISION II
ENVIRONMENTAL AUDITS

567—10.10(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—10.11(455K) Notice of audit.

10.11(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.

10.11(2) The department will provide written acknowledgment of receipt for notices of audit, which will include an assigned identification number.

567—10.12(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.

10.12(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.

10.12(2) The department will provide written determination either granting or denying a request for extension within 15 calendar days of receipt.

567—10.13(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.

10.13(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.

10.13(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—10.14(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.

567—10.15 to **10.19** Reserved.

DIVISION III
ENFORCEMENT OPTIONS

567—10.20(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.

10.20(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.

10.20(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.

10.20(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.

10.20(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—10.21(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—10.22(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).

567—10.23 to **10.29** Reserved.

DIVISION IV
ADMINISTRATIVE PENALTIES

567—10.30(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:

10.30(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.

10.30(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.

10.30(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.

10.30(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.

10.30(5) *Other relevant factors.* The department will consider other relevant factors which arise from the circumstances of each case.

10.30(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—10.31(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.

10.31(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.

10.31(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—10.30(455B). The actual or reasonably estimated economic benefit shall always be assessed.

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

ITEM 3. Rescind and reserve **567—Chapter 12**.

ITEM 4. Rescind and reserve **567—Chapter 17**.

ARC 7207C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to delegation of construction permitting authority and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 9, "Delegation of Construction Permitting Authority," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.105 and 455B.173.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

This proposed rulemaking will rescind Chapter 9. Importantly, the delegated authority program of Iowa Code section 455.183 will remain in full force and effect through the direct implementation of the statute.

The intended benefit of the chapter was to provide a framework for the water supply and wastewater extension delegated authority program in Iowa Code section 455B.183. However, the chapter is unnecessary for the implementation of the program due to the self-enacting nature of the Iowa Code provisions and the existence of statewide engineering design standards for drinking water and wastewater. The Department of Natural Resources (Department) intends to provide guidance to local permitting authorities to help the authorities' proper implementation of the Iowa Code.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this proposed rulemaking must be received by the Department no later than 4:30 p.m. on January 18, 2024. Comments should be directed to:

Adam Schnieders
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: adam.schnieders@dnr.iowa.gov

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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 public hearing must contact Adam Schnieders via email. A virtual meeting link and conference call number will be provided prior to the hearing. Persons who wish to make comments at the public hearing must submit a request to Mr. Schnieders prior to the hearing to facilitate an orderly hearing.

January 18, 2024 11 a.m. to 12 noon	Via video/conference call

Persons who wish to make oral comments at the 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 impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 9**.

ARC 7222C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to tax certification of pollution control or recycling property and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 11, "Tax Certification of Pollution Control or Recycling Property," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 427.1(19)"d."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 427.1(19).

Purpose and Summary

Chapter 11 clarifies the process and eligibility criteria for properties to obtain a pollution control or recycling certification from the Department of Natural Resources (Department). This certification allows the owner to apply for a property tax exemption through their local county assessor's office.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), Chapter 11 was edited for length and clarity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 17, 2024. 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

Public Hearing

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

January 16, 2024 1 p.m.	Via video/conference call
January 17, 2024 11 a.m.	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 a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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 that has been installed and is used primarily to meet an effluent standard, a water quality standard, or 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 that 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 that 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).

ARC 7208C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to environmental covenants and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 14, "Environmental Covenants," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455A.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

This proposed rulemaking will rescind and reserve Chapter 14. The Uniform Environmental Covenants Act found in Iowa Code chapter 455I is self-enacting. Therefore, rules are neither necessary nor expressly authorized. Rescinding this chapter will not impact the Department of Natural Resources' (Department's) ability to enter into effective environmental covenants with interested landowners.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 17, 2024. Comments should be directed to:

Keith Wilken
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: keith.wilken@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held by conference call as follows. Persons who wish to attend the conference call should contact Keith Wilken 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 Mr. Wilken prior to the hearing to facilitate an orderly hearing.

January 17, 2024 11 a.m.	Via video/conference call

Persons who wish to make oral comments at the 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 impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 14**.

ARC 7225C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to cross-media electronic reporting and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 15, "Cross-Media Electronic Reporting," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 554D and section 455B.105.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 15. The proposed Chapter 15 will include an updated and streamlined rule for the implementation of the federal Cross-Media Electronic Reporting Rule (CROMERR).

The CROMERR requirements are established in 40 Code of Federal Regulations (CFR) Part 3. The requirements apply to persons and signatories who submit electronic reports or other documents to the Department of Natural Resources (Department) to satisfy requirements of 40 CFR for authorized environmental programs.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the public hearings should contact Jim McGraw via email or by phone at 515.689.1439. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at either of the public hearings must submit a request to Mr. McGraw prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in the hearings and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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.

ARC 7221C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to revocation, suspension, and nonrenewal of license for failure to pay state liabilities and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 16, "Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455A.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and reserve Chapter 16. This chapter is unnecessary. It is duplicative of underlying state law (Iowa Code section 272D.8(2)) and of other related rules promulgated by the Department of Natural Resources (Department) (561—Chapter 15).

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: tamara.mcintosh@dnr.iowa.gov

Public Hearing

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

January 16, 2024 1 to 2 p.m.	Conference Room 4 East Wallace State Office Building Des Moines, Iowa

Persons who wish to make oral comments at the 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 16**.

ARC 7210C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to scope of title and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 20, "Scope of Title—Definitions," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133(3).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 20. This chapter sets forth the scope of title and the definitions applicable to air quality rules in Chapters 20 through 35. After a review consistent with

Executive Order 10, the Department of Natural Resources (Department) determined that the scope of title is no longer needed because the information is generally covered in Chapters 1 through 19. Further, the Department concluded that the relevant definitions would be more appropriately placed in the subject matter chapters, specifically Chapters 21, 22, and 23. Notices of Intended Action to rescind and adopt new Chapters 21 (**ARC 7209C**, IAB 12/27/23), 22 (**ARC 7228C**, IAB 12/27/23), and 23 (**ARC 7215C**, IAB 12/27/23) that include the appropriate definitions are proposed concurrently with this rulemaking. Rescission of Chapter 20 is therefore appropriate.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 public hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 20**.

ARC 7209C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to emissions and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 21, "Compliance," and to adopt a new Chapter 21, "Compliance, Excess Emissions, and Measurement of Emissions," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 21. The proposed Chapter 21 will include the revised provisions for air quality compliance, excess emissions, and measurement of emissions, which are currently set forth in Chapter 21, "Compliance," Chapter 24, "Excess Emission," Chapter 25 "Measurement of Emissions," Chapter 26, "Prevention of Air Pollution Emergency Episodes," and Chapter 29, "Qualification in Visual Determination of the Opacity of Emissions."

After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that the rules in Chapters 21, 24, 25, 26, and 29 should be updated and placed in one chapter, specifically the new Chapter 21. Notices of Intended Action to rescind Chapters 25 (**ARC 7218C**, IAB 12/27/23), 26 (**ARC 7224C**, IAB 12/27/23), and 29 (**ARC 7216C**, IAB 12/27/23) are proposed concurrently with this rulemaking. An additional Notice is proposed concurrently to rescind Chapter 24 and adopt a new Chapter 24 (**ARC 7213C**, IAB 12/27/23) consisting of the provisions for air operating permits. New 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.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the public hearings should contact Christine Paulson via email. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make oral comments at either of the public hearings must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in the hearings and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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 that 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 recordkeeping 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 an 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 that 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.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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.

ARC 7228C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to controlling air pollution and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 22, "Controlling Pollution," and to adopt a new Chapter 22, "Controlling Air Pollution," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 22. The proposed new Chapter 22 will include the revised provisions for air quality construction permitting, as well as applicable air quality definitions currently set forth in Chapter 20, "Scope of Title—Definitions," and adoption of the National Ambient Air Quality Standards (NAAQS) currently set forth in Chapter 28, "Ambient Air Quality Standards."

After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that the rules in Chapters 22 and 28, as well as the appropriate definitions in Chapter 20, should be updated and placed in one chapter, specifically new Chapter 22. The Department also concluded that the rules for operating permits currently in Chapter 22 should be moved to another chapter that includes only these provisions. Notices of Intended Action to rescind Chapters 20 and 28 are being proposed concurrently with this rulemaking (**ARCs 7210C** and **7220C**, IAB 12/27/23). An additional Notice of Intended Action is being proposed concurrently to rescind Chapter 24 and adopt a new Chapter 24 consisting of the provisions for operating permits (**ARC 7213C**, IAB 12/27/23).

New Chapter 22 will help to protect air quality for Iowa's citizens by ensuring that new and modified stationary sources of air pollution continue to demonstrate through the construction permitting process that the proposed project emissions, when considered in conjunction with existing air emissions, will not impact the attainment or maintenance of the NAAQS. Further, new Chapter 22 will provide businesses and the public with clear, current, and consolidated permitting requirements. Citations to definitions in Chapters 21 and 24 are to the definitions proposed in the concurrent Notices of Intended Action for those chapters.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the public hearings should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at

iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at either of the public hearings must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in the hearings and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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.

"Act" means the Clean Air Act (42 U.S.C. Sections 7401, et seq.), as amended through November 15, 1990.

"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 Act.

"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 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 that 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 CFR Section 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 that 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, that 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, as amended through January 24, 2023, 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), as amended through November 7, 1986);
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 Part 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 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), as amended through November 7, 1986);
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), as amended through November 7, 1986);
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 7, 1986);
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 that 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 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 that 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.

ARC 7215C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to air emission standards and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 23, "Emission Standards for Contaminants," and adopt a new Chapter 23, "Air Emission Standards," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 23. The proposed new Chapter 23 will include the revised provisions for air emission standards, as well as several air quality definitions currently set forth in Chapter 20, "Scope of Title—Definitions."

After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that new Chapter 23 should include an improved and streamlined format for adoption by reference of federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). New Chapter 23 will also continue to provide the general emissions rates for criteria pollutants, such as particulate matter and sulfur dioxide, established to implement the National Ambient Air Quality Standards (NAAQS). Additionally, the Department concluded that the definitions in Chapter 20 would be more appropriately placed in subject matter chapters, such as new Chapter 23. A Notice of Intended Action to rescind Chapter 20 is being proposed concurrently with this rulemaking (**ARC 7210C**, IAB 12/27/23).

New Chapter 23 will help to protect air quality for Iowa's citizens by ensuring that regulated Iowa facilities are meeting the NAAQS, NSPS, and NESHAP. New Chapter 23 will also provide businesses and the public with clear, current, and consolidated air emissions requirements.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the public hearings should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at either of the public hearings must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in the hearings and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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)

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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.

ARC 7213C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to operating permits and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 24, "Excess Emission," and to adopt a new Chapter 24, "Operating Permits," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 24. The current chapter establishes the standards for the reporting of air quality excess emissions and required equipment maintenance and repair. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that rules for excess emissions would be more appropriately placed in another subject matter chapter, specifically Chapter 21. A Notice of Intended Action to rescind and adopt a new Chapter 21 (**ARC 7209C**, IAB 12/27/23) that includes updated provisions from Chapter 24 is proposed concurrently with this rulemaking.

The proposed Chapter 24 consists of the rules for air operating permits, which are currently set forth in Chapter 22, and includes updated and streamlined provisions for Title V Operating Permits, Acid Rain Permits, and Small Source Operating Permits. These requirements are established under the U.S. Clean Air Act, Sections 501 through 507 (42 U.S.C. §7661 through §7661f) and Iowa Code section 455B.133. Operating permits help to protect air quality for Iowa's citizens by ensuring that emissions equipment continues to perform as designed.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the public hearings should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at

iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at either of the public hearings must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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 U.S. Clean Air Act (42 U.S.C. §7401, et seq.), as amended through November 15, 1990.

"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 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 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 that 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 24.105(2)*"c"*(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, recordkeeping, 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) *Application denial.* 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 that 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 recordkeeping 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) Recordkeeping. With respect to recordkeeping, 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 24.108(14)*"a,"* 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,"* 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), recordkeeping, 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, as amended through March 20, 2017, 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 24.143(2)*"a"* through 24.143(2)*"h."*

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. Recordkeeping 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 24.300(4)*"a."*

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 24.300(6)*"a."*

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 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 24.300(7)*"c"*(1), (2), or (3) 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.

ARC 7218C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to measurement of emissions and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 25, "Measurement of Emissions," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 25. This chapter establishes the state and federal standards for testing and monitoring air emissions. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that reference to rules for the measurement of emissions would be more appropriately placed in another subject matter chapter, specifically Chapter 21. A Notice of Intended Action to rescind and adopt a new Chapter 21 that includes updated provisions from Chapter 25 is being proposed concurrently with this rulemaking (**ARC 7209C**, IAB 12/27/23). Rescission of Chapter 25 is therefore appropriate.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 public hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 25**.

ARC 7224C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to air pollution emergency episodes and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 26, "Prevention of Air Pollution Emergency Episodes," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 26. This chapter establishes Iowa's plans and procedures to prevent air pollution emergencies, as required by the U.S. Clean Air Act and codified in 40 Code of Federal Regulations Part 51, Appendix L. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that rules for the prevention of air pollution emergency episodes would be more appropriately placed in another subject matter chapter, specifically Chapter 21. A Notice of Intended Action to rescind and adopt a new Chapter 21 that includes updated provisions from Chapter 26 is being proposed concurrently with this rulemaking (**ARC 7209C**, IAB 12/27/23). Rescission of Chapter 26 is therefore appropriate.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 participate in the hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 26**.

ARC 7226C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to certificate of acceptance and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 27, "Certificate of Acceptance," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.145.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 27. The proposed Chapter 27 includes updated and streamlined rules.

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.

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 of Natural Resources (Department) for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the public hearings should contact Jim McGraw via email or by phone at 515.689.1439. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at either of the public hearings must submit a request to Mr. McGraw prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in the hearings and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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 that 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 that 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.

These rules are intended to implement Iowa Code sections 455B.133, 455B.143, and 455B.145.

ARC 7220C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to ambient air quality standards and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133(3).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 28. This chapter establishes that the State of Iowa ambient air quality standards shall be the National Ambient Air Quality Standards (NAAQS). The NAAQS consist of both primary and secondary standards for six criteria air pollutants, as published in 40 Code of Federal Regulations Part 50. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that reference to the adoption of the NAAQS would be more appropriately placed in the subject matter chapter, specifically Chapter 22. A Notice of Intended Action to rescind and adopt a new Chapter 22 that includes the adoption of the NAAQS is being proposed concurrently with this rulemaking (**ARC 7228C**, IAB 12/27/23). Rescission of Chapter 28 is therefore appropriate.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 participate in the hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 28**.

ARC 7216C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to opacity of emissions and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 29, "Qualification in Visual Determination of the Opacity of Emissions," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 29. This chapter establishes the federal reference method for the determination of the opacity of emissions (visible emissions) and the requirements for qualified observers. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that rules for the qualification in visual determination of the opacity of emissions would be more appropriately placed in another subject matter chapter, specifically Chapter 21. A Notice of Intended Action to rescind and adopt a new Chapter 21 that includes updated provisions from Chapter 29 is being proposed concurrently with this rulemaking (**ARC 7209C**, IAB 12/27/23). Rescission of Chapter 29 is therefore appropriate.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at a public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 participate in the hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 29**.

ARC 7219C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to fees and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 30, "Fees," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.133, 455B.133B and 455B.133C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 30. The proposed chapter will include updated and streamlined rules for air quality fees.

In more detail, 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 definitions in Chapter 22 are to the definitions proposed in the concurrent Notice of Intended Action for that chapter (**ARC 7228C**, IAB 12/27/23).

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 of Natural Resources (Department) for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

Wendy Walker
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: wendy.walker@dnr.iowa.gov

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend a public hearing should contact Wendy Walker via email or by phone at 515.725.9570. A virtual meeting link and conference call number will be provided prior to the hearings. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the air quality public input webpage (iowadnr.gov/airpublicinput). Persons who wish to make comments at a public hearing must submit a request to Ms. Walker prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	Via video/conference call

Persons who wish to make 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 participate in a hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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, an 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 that 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 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.

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.

ARC 7211C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to nonattainment new source review and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 31, "Nonattainment Areas," and to adopt a new Chapter 31, "Nonattainment New Source Review," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 31. The proposed Chapter 31 will include updated and streamlined rules for permitting requirements relating to nonattainment areas.

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. These requirements are established under Part D of Title I of the U.S. Clean Air Act (CAA), federal regulations, and Iowa Code section 455B.133.

The nonattainment new source review rules work in conjunction with emissions control plans developed for areas that have been designated as nonattainment. Combined, these rules ensure that the air quality in a nonattainment area do not further deteriorate due to the construction of new or modified sources of air emissions.

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 of Natural Resources (Department) for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend a conference call should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at a public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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) 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.

ARC 7227C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to animal feeding operations field study and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 32, "Animal Feeding Operations Field Study," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Purpose and Summary

The Commission proposes to rescind Chapter 32. This chapter specifies how the Department of Natural Resources (Department) would conduct a field study to measure the levels of hydrogen sulfide, ammonia and odor near animal feeding operations. The required field study took place between 2003-2005, and the final report was issued in January 2006. The final report and associated study documents are available on the Department's website at iowadnr.gov/Environmental-Protection/Air-Quality/Animal-Feeding-Operations. A complete chapter rescission is therefore appropriate.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 participate in the hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 32**.

ARC 7223C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to special regulations and construction permit requirements for major stationary sources and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," and to adopt a new Chapter 33, "Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD)," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and adopt a new Chapter 33. The proposed Chapter 33 will include updated and streamlined rules for the Prevention of Significant Deterioration (PSD).

The PSD program 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 under the U.S. Clean Air Act, Section 110(a)(2)(C) (42 USC §7410), and Iowa Code section 455B.133 to prevent significant deterioration of air quality. The PSD permits help ensure that large facilities with higher emitting equipment meet the National Ambient Air Quality Standards and other associated requirements to protect Iowa's air quality while ensuring that economic growth can continue.

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 of Natural Resources (Department) for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the public hearings should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to each hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at either of the public hearings must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call
January 30, 2024 1 p.m.	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 participate in the hearings and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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 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 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 (SO_2), nitrogen dioxide (NO_2) 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 and published in 40 CFR Part 51, Subpart I, as amended through October 20, 2010, 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 and published in 40 CFR Part 51, Subpart I, as amended through October 20, 2010, 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 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 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 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 4101-0066 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 that 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 that 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 that, 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 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" 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 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 or operation of the major stationary source or 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 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 that 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 that 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 Act, or a nationally applicable regulation codified by the Administrator and published 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 CO_2e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e 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 CO_2e 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 CO_2e 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 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, 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 paragraph 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	($\mu g/m^3$)	($\mu g/m^3$)	($\mu g/m^3$)	($\mu g/m^3$)	($\mu g/m^3$)
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.

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

ARC 7212C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to air quality emissions trading programs and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 34. This chapter implemented the federal air emissions trading programs to reduce emissions of specific air pollutants. The air emissions trading programs included in Chapter 34 have either been replaced by other programs or are no longer applicable. Over time, nearly all of the provisions within this chapter have been rescinded. A complete chapter rescission is therefore appropriate.

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 of Natural Resources (Department) for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 participate in the hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 34**.

ARC 7217C
ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to air emissions reduction assistance program and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 35, "Air Emissions Reduction Assistance Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455B.133.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 35. This chapter specified the process for the Department of Natural Resources (Department) to provide financial assistance to eligible applicants to reduce air pollution. The rules in Chapter 35 were developed in 2009 in response to grant funds made available to the Department under the American Recovery and Reinvestment Act (ARRA). The rules assisted the Department in creating and implementing the Reduce Iowa Diesel Exhaust (RIDE) grant program. The RIDE program ended in 2011 when the ARRA grant was closed. Rescinding Chapter 35 is therefore appropriate.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 29, 2024. 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

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 public hearing should contact Christine Paulson via email or by phone at 515.725.9510. A virtual meeting link and conference call number will be provided prior to the hearing. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the Department's webpage at iowadnr.gov/Environmental-Protection/Air-Quality/Public-Participation (scroll down to Public Input and click on Executive Order 10 Implementation). Persons who wish to make comments at the public hearing must submit a request to Ms. Paulson prior to the hearing to facilitate an orderly hearing.

January 29, 2024 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 public hearing and have special requirements, such as those related to hearing or vision impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **567—Chapter 35**.

ARC 7214C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rulemaking related to animal feeding operations and providing an opportunity for public comment

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 65, "Animal Feeding Operations," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 459.103, 459.301, 459A.104 and 459B.104.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 455B.103, 455B.134, 455B.171, 459.103, 459.301, 459A.104 and 459B.104.

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. This proposed rulemaking reduces and consolidates the AFO regulations. This is accomplished by rescinding redundant or outdated provisions. The rules also adopt a floodplain siting map as required by state law.

The proposed rulemaking will make the rules more 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 proposed rulemaking includes two other notable changes. First, the rules formally adopt a floodplains 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 rulemaking petition filed by the Iowa Environmental Council and the Environmental Law and Policy Center. Second, the Director's discretion rule provisions have been removed. In 2006, the Attorney General's Office advised the Commission and the Department of Natural Resources (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 were appropriately removed from the chapter.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 23, 2024. Comments should be directed to:

Kelli Book
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: afo@dnr.iowa.gov

Public Hearing

Two public hearings will be held on the following dates:

February 14, 2024 1:30 to 3:30 p.m.	Auditorium Wallace State Office Building Des Moines, Iowa
February 19, 2024 1:30 to 3:30 p.m.	Via video/conference call

The February 19, 2024, hearing will be a virtual meeting only. A link for the virtual meeting will be provided to those who make a request to take part in the virtual hearing. The request for the link shall be submitted to afo@dnr.iowa.gov by 9 a.m. on February 19, 2024.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 567—Chapter 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 rule 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 – effective January 1, 2023;

h. Appendix A: Open feedlot effluent control alternatives for open feedlot operations – effective December 14, 2016;

i. Appendix B: Master matrix – effective March 1, 2003;

j. Appendix C: Design specifications—formed manure storage structures – effective March 24, 2004;

k. Table 1: Major water sources—Rivers and Streams – effective December 14, 2016;

l. Table 2: Major water sources—Lakes – effective December 14, 2016;

m. Table 3: Annual pounds of nitrogen per space of capacity – effective September 15, 2010;

n. Table 4: Crop nitrogen usage rate factors – effective December 14, 2016;

o. Table 5: Manure production per space of capacity – effective September 15, 2010;

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 September 15, 2010;

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 September 15, 2010;

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 September 15, 2010;

s. Table 6c: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—swine, sheep, horses and poultry – effective September 15, 2010;

t. Table 6d: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—beef and dairy cattle – effective September 15, 2010;

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 September 15, 2010;

v. Table 8: Summary of credit for mechanical aeration – effective September 15, 2010;

w. List of high-quality water resources in 567—Chapter 61 – effective January 1, 2001;

x. NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index – published April 2023;

y. Iowa State University Extension and Outreach publication PM 1688, "A General Guide for Crop Nutrient and Limestone Recommendations in Iowa" – published February 2023;

z. Iowa State University Extension and Outreach publication PMR 1003, "Using Manure Nutrients for Crop Production"– published April 2023;

aa. Iowa State University Extension and Outreach publication AE 3550, "How to Sample Manure for Nutrient Analysis" – published January 2021; and

bb. Iowa State University Extension and Outreach publication CROP 31-8, "Take a Good Soil Sample to Help Make Good Fertilization Decisions" – published December 2016.

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 manure storage 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 manure storage 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. A minimum five-foot layer of low permeability soil (1 × 10-6 cm/sec) or rock between the bottom of a formed manure storage structure and limestone, dolomite, or other soluble rock is required if the formed manure storage structure is not designed by a PE or NRCS-qualified staff person.

b. If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than five feet, the structure shall be designed and sealed by a PE or NRCS-qualified staff person who certifies the structural integrity of the structure. A two-foot-thick layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure. However, it is recommended that any formed manure storage structure be constructed aboveground if the vertical separation distance between the bottom of the structure and the limestone, dolomite, or other soluble rock is less than five feet.

c. Groundwater monitoring shall be performed as specified by the department.

d. Backfilling shall not start until the floor slats have been placed or permanent bracing has been installed and grouted and shall be performed with material free of vegetation, large rocks, or debris.

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.

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 or open feedlot 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, designated wetlands confinement structures and animal truck wash effluent structures.* As specified in Iowa Code sections 459.310(4) and 459A.404(3), 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 or animal truck wash that includes a confinement feeding operation structure or animal truck wash effluent structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures or animal truck wash effluent structures that are part of the confinement feeding operation or animal truck wash are replaced with one or more formed manure storage structures or formed animal truck wash effluent 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 or animal truck wash that utilizes all replacement formed manure storage structures or animal truck wash effluent 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 or formed animal truck wash effluent structure.

(3) The capacity of all replacement formed manure storage structures or animal truck wash effluent structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation or animal truck wash utilizing the replacement formed manure storage structures or animal truck wash effluent structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure or animal truck wash effluent 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 or animal truck wash effluent structure which is part of the operation.

(5) The replacement formed manure storage structure or animal truck wash effluent 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 or animal truck wash is constructed on or after April 28, 2003, if it complies with the following provisions:

(1) The replacement formed manure storage structure or animal truck wash effluent structure replaces the confinement feeding operation or animal truck wash's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure or animal truck wash effluent structure complies with standards adopted pursuant to Iowa Code section 459.307 and subrule 65.108(10).

(3) The replacement formed manure storage structure or animal truck wash effluent structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation or animal truck wash's existing manure storage and handling facilities. If the formed manure storage structure or animal truck wash effluent structure will replace any existing manure storage structure or animal truck wash effluent structure, the department shall require that the replaced manure storage structure or animal truck wash effluent 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 × 10-7 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 may 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 subrule 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 eight 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 2487-06, effective May 1, 2006, or D 2488-06, effective November 1, 2006. 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 manure storage 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 manure storage 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 manure storage 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 manure storage 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 manure storage 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 manure storage 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," D384.2, effective March 2005, or Midwest Plan Service-18, Table 2-1, effective January 2004, 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 318-19, effective May 3, 2019, ACI 360R-10, effective April 2010, or ACI 350-20, effective November 6, 2020; Portland Cement Association (PCA) publication EB075, effective April 19, 2021, or PCA EB001.16, effective September 2016; or Midwest Plan Service (MWPS) publication MWPS-36 2nd Edition, effective 2005, or MWPS TR-9, effective 1999, 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 2nd Edition (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 94-18, effective December 15, 2018:

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, effective July 1, 2022. Aggregates shall conform to ASTM C 33-18, effective March 15, 2018. Blended cements in conformance with ASTM C 595, effective December 15, 2008, 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 309R, effective January 2005.

(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 manure storage 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 440.11.22, effective September 2, 2022, and Table 3 of ASTM 7957, effective February 1, 2022. 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), effective September 1, 2023. FRC shall provide a minimum average equivalent strength ratio (Re3) of 30 percent when tested in accordance with ASTM C1812/1812M, effective December 15, 2022.

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 318-19.

(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 308R-16, effective May 2016, 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, effective August 22, 2019; 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 306R-16, "Recommended Practice for Cold Weather Concreting," effective September 2016, should be followed. If ready-mix concrete temperature is above 90 degrees Fahrenheit, the ACI Standard 305R-20, "Recommended Practice for Hot Weather Concreting," effective date September 2020, 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 AE 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," effective January 1, 2001, 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 Iowa Phosphorus Index.

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 Iowa Phosphorus Index 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 Iowa Phosphorus Index 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 2.4(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 2487-06 or D 2488-06.

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), effective November 11, 1991. 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 Version 2, effective 2013, 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 2487-06 or D 2488-06.

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 2487-06 or D 2488-06.

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), effective date November 11, 1991. 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.

ARC 7249C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to operation and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 1, "Operation of Natural Resource Commission," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3 and 455A.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 455A.

Purpose and Summary

Chapter 1 governs the conduct, structure, and business operations of the Commission. Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, the proposed new chapter reduces and consolidates the rules. This is accomplished by rescinding outdated provisions and by removing those redundant to statute, including particular provisions around conflict of interest found in Iowa Code chapter 68B and associated rules. The proposed chapter has also been streamlined as much as possible, stating the conduct, structure, and business operations of the Commission more succinctly and clearly than before.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the of Natural Resources (Department) no later than 4:30 p.m. on January 26, 2024. Comments should be submitted electronically to Kelli Book via email and include "NRC Chapter 1 comments" in the subject of the email. 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: kelli.book@dnr.iowa.gov

Public Hearing

Two public hearings at which persons may present their views orally or in writing will be held via conference call as follows. The hearings will also be available online. A virtual link will be provided to those who make a request to take part in a hearing virtually. The request for the link shall be submitted to Ms. Book prior to the meeting date.

January 17, 2024 2 to 3 p.m.	Conference Room 5W Wallace State Office Building Des Moines, Iowa
January 24, 2024 10 to 11 a.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
GENERAL

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. 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.

a. The agenda for each meeting will be posted at the department's main office 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.

b. 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.

571—1.8(17A,455A) Sales and leases of goods and services.

1.8(1) *Sales and leases.* The general provisions for the sales and leases of goods and services by commission members is governed by rule 351—6.11(68B).

1.8(2) *Consent by rule.* The commission concludes that sales or leases of goods or services described in this paragraph do not, as a class, constitute the sale or lease of a good or service which affects an official's functions. Application and department approval are not required for these sales or leases unless there are unique facts surrounding a particular sale or lease which would cause that sale or lease to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or would otherwise present a conflict of interest.

Sales or leases for which consent is granted by rule are:

a. Nonrecurring sale or lease of goods and services if the official is not engaged for profit in the business of selling or leasing those goods or services.

b. Sale or lease of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products.

c. Sale or lease of goods to general public at an established retail or consignment shop.

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

e. Sale or lease of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.

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

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

These rules are intended to implement Iowa Code sections 17A.3(1)*"a"* and 455A.5.

ARC 7250C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to forfeited property and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 10, "Forfeited Property," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455A.5(6)"a."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind and reserve Chapter 10. This chapter is unnecessary. It is duplicative of state law (Iowa Code sections 481A.13A, 483A.32, and 482A.33 and chapter 809) that sufficiently details the process for disposing of seized or forfeited property used in fish and game crimes.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Craig Cutts
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: craig.cutts@dnr.iowa.gov

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 reception desk to sign in and be directed to the appropriate hearing location.

January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

Persons who wish to make oral comments at the 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 10**.

ARC 7234C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to conservation education and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 12, "Conservation Education," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 321G.2, 321G.23, 321I.2, 321I.25, 462A.12A, 481A.17 and 483A.27.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 321G.2, 321G.23, 321I.2, 321I.25, 462A.12A, 481A.17 and 483A.27.

Purpose and Summary

Proposed Chapter 12 sets forth the curriculum and course standards for the Department of Natural Resources' (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. The recreation education courses cover all-terrain vehicle riding, boating, hunter education, bow hunter education, fur harvester education, snowmobiling, and snow groomer operator education.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17.7(2), this chapter was edited for length, redundancy, and clarity. Additionally, all provisions related to the Resource Enhancement and Protection (REAP) conservation education program have been removed. Those rules will be promulgated with other REAP rules in new Chapter 33 (**ARC 7236C**, IAB 12/27/23), which is being proposed concurrently with this rulemaking.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 18, 2024. Comments should be directed to:

Megan Wisecup
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: megan.wisecup@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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 recordkeeping 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.

ARC 7248C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to permits and easements for construction on public lands and waters and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 13, "Permits and Easements for Construction and Related Activities on Public Lands and Waters," and adopt a new Chapter 13, "Permits and Easements for Construction and Other Activities on Public Lands and Waters," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6)"a," 461A.4(1)"b," 461A.25(2) and 462A.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4 and 462A.3.

Purpose and Summary

Chapter 13 is being rescinded and replaced to remove obsolete, ineffective, excessively burdensome, or redundant administrative rules. This rulemaking is being proposed pursuant to Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2).

Chapter 13 provides a process for permitting construction and other activities that alter the physical characteristics of public lands and waters under the jurisdiction of the Commission. The Commission holds lands and waters under its jurisdiction in public trust and protects the interests of all citizens in those 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.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend a conference call should contact Casey Laskowski via email. A conference call number will be provided prior to each hearing to facilitate an orderly hearing.

January 23, 2024 12 noon to 1 p.m.	Via video/conference call
January 30, 2024 12 noon to 1 p.m.	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 a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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 (OHWM), 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.

"Commercial boat ramp" means a boat ramp installed or maintained as part of a business to provide access to a public water body where use of the ramp is available to the general public.

"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 (Iowa department of transportation's standard specifications for highway and bridge construction, 2015 edition).

"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 (Iowa department of transportation's standard specifications for highway and bridge construction, 2015 edition). 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, commercial boat ramps, 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, commercial boat ramps or artificial channels or expansion of existing beaches, canals, commercial boat ramps or artificial channels, except that the department may permit new beaches, canals, commercial boat ramps and artificial channels and expansions of existing beaches, canals, commercial boat ramps 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 through PERMT using the project's PERMT identification number created through the original 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.

ARC 7246C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to concessions and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 14, "Concessions," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 461A.3 and 461A.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.3 and 461A.4.

Purpose and Summary

This proposed rulemaking establishes rules governing the advertising and notice procedure, bidding process, evaluation and selection of a concessionaire, and other contract terms related to concession operations in Iowa state parks and recreation areas. This proposed rulemaking would allow for longer-term/larger scope concession contracts, which will provide more security and efficiency for the concessionaires. It will also provide additional visitor services and experiences in parks and recreation areas while decreasing the amount of time Department of Natural Resources (Department) staff spend on paperwork and evaluation of concessionaires/vendors.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were provisions in this chapter that were outdated or repetitive to statute. These provisions have been removed from the new version. Additionally, the length of the contract term for concessions was extended.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. 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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows. The hearings will also be available online. Persons who wish to attend the conference call or Google Meet virtual meeting should contact Kim Bohlen via email.

January 30, 2024 12 noon to 1 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 31, 2024 4 to 5 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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.

ARC 7245C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to general license regulations and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 15, "General License Regulations," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

Purpose and Summary

Chapter 15 governs hunting, fishing, and trapping license sales, fees, general administration, and a framework for license revocation and suspensions. Iowa law requires that most individuals obtain a license prior to engaging in fish- and game-based recreational pursuits. Chapter 15 ensures efficient, timely, and consistent license administration.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were numerous provisions in this chapter that were repetitive of statute or of rules elsewhere. There were other provisions that were outdated, such as those related to paper licenses and traditional wet ink signatures. These provisions have been removed from the new version of the chapter.

NATURAL RESOURCE COMMISSION[571](cont'd)

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 18, 2024. Comments should be directed to:

Mark Warren
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: mark.warren@dnr.iowa.gov

Public Hearing

Public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 12 noon	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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 Iowa Code 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 Iowa Code 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:

a. Hunting licenses for legal residents except as otherwise provided.

b. Hunting licenses for nonresidents.

c. Hunting preserve licenses.

d. 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.

e. 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.

ARC 7255C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to structures on public waters and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 16, "Docks and Other Structures on Public Waters," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 461A.4 and 462A.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4, 461A.11, 461A.18, 462A.27 and 462A.32.

Purpose and Summary

Proposed Chapter 16 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. The proposed chapter also contains the rules for the Department of Natural Resources' (Department's) dock management area (DMA) program.

The primary purposes of the proposed 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.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Craig Cutts
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: craig.cutts@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

The hearings will also be available online. Persons who wish to attend the conference call or Google Meet virtual meeting 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 Mr. Cutts prior to the hearing to facilitate an orderly hearing.

January 30, 2024 12 noon to 1 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 31, 2024 4 to 5 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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, 2023 edition. 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 16.11(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(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—16.6(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:

16.6(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—16.8(461A,462A).

16.6(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.

16.6(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.

16.6(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.

16.6(5) An individual private dock may be exempted by permit condition from the winter removal requirement in appropriate circumstances under criteria in rule 571—16.12(461A,462A).

571—16.7(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:

16.7(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—16.8(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.

16.7(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.

16.7(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.

16.7(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.

16.7(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.

16.7(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—16.8(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 16.8(2). Exceptions under this this rule are granted at the discretion of the department.

16.8(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 16.6(2) and 16.7(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 16.6(3) and 16.7(3), and to the platform size limit in subrule 16.6(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.

16.8(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 that 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—16.9(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—16.10(461A,462A) Application and administrative fees.

16.10(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 that 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.

16.10(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—16.11(461A,462A) Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location.

16.11(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—16.8(461A,462A), those exceptions shall expire upon transfer, and the new owner shall immediately bring the dock into compliance with all current rules.

16.11(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.

16.11(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.

16.11(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—16.12(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—16.13(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:

16.13(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).

16.13(2) A permit is valid only while the permittee has the necessary permissions to use the adjoining shoreline property from which the dock projects.

16.13(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—16.14(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.

DIVISION II
DOCK MANAGEMENT AREAS

571—16.15(461A) Designation or modification of dock management areas.

16.15(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.

16.15(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—16.16(461A) Procedures and policies for dock site permits and hoist or slip assignments in dock management areas.

16.16(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.

16.16(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. A permittee who has a valid hoist or slip assignment will not lose their assignment to a new higher priority applicant if the permit is renewed prior to it expiring at the end of the five-year term and payment is received by the deadline established in rule 571—16.19(461A). If the permittee fails to renew the permit, the permittee may be placed on the waiting list and the highest person on the waiting list will be offered the open hoist or slip assignment. Any permittee who moves to a new residence may be considered a new applicant when the current permit expires at the end of the five-year term. The permittee will be placed on the waiting list based on the new address, and the highest person on the waiting list will be offered the open hoist or slip assignment. 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—16.17(461A) Standard requirements for dock management area docks. Docks in dock management areas shall conform to the following requirements:

16.17(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—16.16(461A). A maximum of six residences shall share a dock.

16.17(2) *Spacing and alignment.* Dock sites where feasible shall be at least 50 feet apart.

16.17(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.

16.17(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.

16.17(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—16.16(461A), shall share a single dock site.

16.17(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).

16.17(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—16.18(461A) Dock management area permit restrictions and conditions. The following conditions and restrictions shall apply to docks in a dock management area.

16.18(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.

16.18(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.

16.18(3) *Number of assignments allowed.* Only one dock assignment may be allocated to a residence.

16.18(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—16.16(461A).

16.18(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.

16.18(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.

16.18(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.

16.18(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.

16.18(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.

16.18(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.

16.18(11) *Other permit restrictions and conditions.* All restrictions and conditions in rule 571—16.13(461A,462A), except subrule 16.13(2), shall apply to all docks in a dock management area.

571—16.19(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—16.20(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—16.21(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.

ARC 7242C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to leases and permits and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 17, "Barge Fleeting Regulations," and to adopt a new Chapter 17, "Leases and Permits," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6)"a" and 461A.4(1)"b."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4, 461A.18, 461A.25 and 462A.32.

Purpose and Summary

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 Commission's jurisdiction (current Chapter 17).

2. Provides a lease fee structure for public use of state-owned lands under Commission 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 Chapter 18).

3. Regulates the removal of sand and gravel from state-owned property under Commission 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 Chapter 19).

The Department of Natural Resources (Department) believes that consolidating these chapters will simplify the rules by eliminating language that is common to multiple chapters. This consolidation is consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2). The subjects of these chapters are logically grouped together because they all involve permitting activities on, or the leasing of, state-owned lands and waters.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend a 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 a conference call public hearing must submit a request to Nathan Schmitz prior to the hearing to facilitate an orderly hearing.

January 23, 2024 12 noon to 1 p.m.	Via video/conference call
January 30, 2024 12 noon to 1 p.m.	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 a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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.

ARC 7252C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to rental fee schedule and sand and gravel permits and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 18, "Rental Fee Schedule for State-Owned Property, Riverbed, Lakebed, and Waterfront Lands," and Chapter 19, "Sand and Gravel Permits," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6)"a," 455A.5(6)"e," and 461A.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 461A.4, 461A.25, 462A.52, 462A.53 and 462A.55 through 462A.57.

Purpose and Summary

Chapter 18 and 19 are both proposed for rescission based on the Department of Natural Resources' (Department's) Executive Order 10 (January 10, 2023) review. However, the substance of these chapters will be retained in some form and consolidated with other related chapters.

In more detail, Chapter 18 provides a fee schedule for leases of state-owned property under Commission jurisdiction. Additionally, when state-owned property is encroached upon, this chapter provides the lease fee as compensation as an alternative to requiring removal of the encroachment. This chapter was edited for length and clarity and incorporated into new Chapter 17 (**ARC 7242C**, IAB 12/27/23).

Chapter 19 provides the procedures for individuals and businesses to obtain a permit for removal of sand and gravel from state-owned lands and waters under the jurisdiction of the Commission and the rules associated with the holding of a permit. The purpose of these rules is to ensure that the waterways are protected from permanent damage, that they remain ecologically intact, and that public recreational use is not adversely affected. This chapter was edited for length and clarity and incorporated into new Chapter 17.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

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 a 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 a conference call public hearing must submit a request to Nathan Schmitz prior to the hearing to facilitate an orderly hearing.

January 23, 2024 12 noon to 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 public hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 18**.

ITEM 2. Rescind and reserve **571—Chapter 19**.

ARC 7230C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to manufacturer's certificate of origin and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 20, "Manufacturer's Certificate of Origin," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 462A.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 462A.3, 462A.77 and 462A.79.

Purpose and Summary

Proposed Chapter 20 defines the required elements of a manufacturer's certificate of origin for vessels that must be titled within the state. It also prescribes the procedures related to use and recording of the certificate of origin by purchasers and county recorders when titling a vessel.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17.7(2), this chapter was edited for length and clarity. Specifically, provisions in this chapter that were repetitive of statute or to rules elsewhere or that referenced outdated departmental forms are proposed to be removed.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 18, 2024. Comments should be directed to:

Susan Stocker
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: susan.stocker@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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.

ARC 7247C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to habitat lease program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 21, "Agricultural Lease Program," and to adopt a new Chapter 21, "Habitat Lease Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6)"a," 456A.24(5) and 456A.38.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(2), 456A.24(5), 456A.38 and 461A.25.

Purpose and Summary

Proposed Chapter 21 regulates the Department of Natural Resources' (Department's) Habitat Lease and 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.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. 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

Public Hearing

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

January 23, 2024 12 noon to 1 p.m.	Via video/conference call
January 30, 2024 12 noon to 1 p.m.	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 a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 21 and adopt the following **new** chapter in lieu thereof:

TITLE III
ASSISTANCE PROGRAMS

CHAPTER 21
HABITAT LEASE PROGRAM

571—21.1(456A) Purpose. The purpose of the habitat lease program is to enhance habitat for wildlife in the state of Iowa, thereby providing recreational opportunities to the public. Utilization of habitat

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) Habitat 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 compliance-based 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 habitat 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 habitat leases. The following terms and conditions apply to all department habitat 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 habitat 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.

ARC 7251C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to the habitat and public access program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 22, "Wildlife Habitat on Private Lands Promotion Program and Habitat and Public Access Program," and to adopt a new Chapter 22, "Habitat and Public Access Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 483A.3B(3)"c"(1).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 483A.3B(3).

Purpose and Summary

The Commission proposes to readopt rules governing the State's popular Iowa Habitat and Access Program (IHAP). IHAP provides technical assistance for the development and management of wildlife habitat as well as financial incentives to landowners in exchange for public hunting access. Since its creation in 2011, IHAP has had 274 properties enrolled, providing 40,190 acres of public recreational access. Currently, there are approximately 238 properties enrolled, providing around 33,407 acres of access. IHAP is funded by a federal grant awarded by the U.S. Department of Agriculture and from a portion of state-based wildlife habitat fees.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 18, 2024. Comments should be directed to:

Nick Baumgarten
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: nick.baumgarten@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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).

ARC 7235C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to wildlife habitat promotion and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 23, "Wildlife Habitat Promotion With Local Entities Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455A.5(6)"a."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 483A.3.

Purpose and Summary

Proposed Chapter 23 establishes the procedures to provide local entities with their share of wildlife habitat stamp revenues. 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. The proposed rules set forth a grant program to distribute these funds and specify application procedures, eligible projects, grant award criteria, payment terms, and other general grant administration terms.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

NATURAL RESOURCE COMMISSION[571](cont'd)

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 18, 2024. Comments should be directed to:

Kelsey Fleming
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: kelsey.fleming@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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 "Yellow Book" (2016). 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 that 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. Four 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 five points.

b. Active projects. Any applicant who has one or more active projects at the time of application rating will be assessed five 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 one or two bonus points if there is a strong urgency to acquire lands that might otherwise be lost.

d. Cost-effectiveness. Projects will be given one point if the grant amount requested is at least 35 percent less than the appraised amount or two 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) Recordkeeping 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.

ARC 7256C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to blufflands protection and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 24, "Blufflands Protection Program and Revolving Loan Fund," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 161A.80A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 161A.80A.

Purpose and Summary

Proposed Chapter 24 consists of rules implementing 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.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 18, 2024. 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

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

NATURAL RESOURCE COMMISSION[571](cont'd)

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.

ARC 7254C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to certification of land as native prairie or wildlife habitat and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 25, "Certification of Land as Native Prairie or Wildlife Habitat," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 427.1(23) and 427.1(24).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 427.1(23) and 427.1(24).

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 ensures that tax exempt lands are providing the public and environmental benefits the tax break is intended to reward. Properties will be evaluated consistent with these proposed rules by the Department of Natural Resources (Department) and, if eligible, officially certified. Property tax exemptions will be granted by the county assessor based on the Department's certification.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This proposed rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 18, 2024. 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

Public Hearing

Public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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.

ARC 7253C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to relocation assistance and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 26, "Relocation Assistance," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 316.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

Chapter 26 sets forth the policy and procedures to be followed regarding relocation assistance for those being displaced by a Department of Natural Resources' (Department's) land acquisition. This chapter will be repealed in its entirety.

The Department has determined that the contents of this chapter are duplicative of Iowa Code chapter 316 and the federal Uniform Relocation Assistance and Real Property Acquisition Act. Rescission of this chapter will have no material change on departmental policy. The Department's operations will continue to be governed by applicable state and federal laws.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This proposed rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 23, 2024. Comments should be directed to:

Travis Baker
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: travis.baker@dnr.iowa.gov

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 Travis Baker 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 Travis Baker prior to the hearing to facilitate an orderly hearing.

January 23, 2024 12 noon to 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 26**.

ARC 7232C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to land and water conservation fund program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 27, "Lands and Waters Conservation Fund Program," and to adopt a new Chapter 27, "Land and Water Conservation Fund Program," Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455A.5(6)"a."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.27 to 456A.35.

Purpose and Summary

This proposed rulemaking contains the implementation rules for the Land and Water Conservation Fund (LWCF), a federal cost-share program for outdoor recreational resources. This rulemaking establishes 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.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were provisions in this chapter that were outdated, duplicative, and unnecessary. These provisions are proposed to be removed from the new chapter.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Jessica Flatt
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: jessica.flatt@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location. The hearings will also be available online. Persons who wish to attend a conference call or Google Meet virtual meeting should contact Jessica Flatt 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 Ms. Flatt prior to the hearing to facilitate an orderly hearing.

January 30, 2024 12 noon to 1 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 31, 2024 4 to 5 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27
LAND AND WATER 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.

ARC 7244C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to the all-terrain vehicle registration revenue grant program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 28, "All-Terrain Vehicle Registration Revenue Cost-Share Program," and adopt a new Chapter 28, "All-Terrain Vehicle Registration Revenue Grant Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 321I.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 321I.8.

Purpose and Summary

This proposed rulemaking establishes 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.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Specifically, there were provisions in

this chapter that were outdated, duplicative, and unnecessary. These provisions have been removed from the new version.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Jessica Flatt
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: jessica.flatt@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location. The hearings will also be available online. Persons who wish to attend the conference call or Google Meet virtual meeting should contact Jessica Flatt via email.

January 30, 2024 12 noon to 1 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 31, 2024 4 to 5 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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 hearings and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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, those areas 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 a 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 area 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 facilities, shelters, and 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.

ARC 7233C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to local recreation infrastructure grants and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 29, "Local Recreation Infrastructure Grants Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in 1998 Iowa Acts, Senate File 2381.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

Chapter 29 contains rules for a local recreational facility grant fund. The grant provided state cost sharing to certain entities to fund restoration or construction of recreational complexes or facilities. Money was appropriated in 1998 to fund this grant program, and the funds were distributed in conformance with the rules. This program has been dormant for many years. Accordingly, these rules can be rescinded.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Tamara McIntosh
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: tamara.mcintosh@dnr.iowa.gov

Public Hearing

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

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

Persons who wish to make oral comments at the 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 29**.

ARC 7237C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to waters cost-share and grant programs and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 30, "Waters Cost-Share and Grant Programs," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6)"a," 461A.4(1)"b" and 462A.3(2).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 455A, 461A and 462A and section 452A.79A.

Purpose and Summary

Proposed 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. These grant programs benefit dam owners, anglers, paddlers, boaters, tubers, and other recreational users of public waters in Iowa.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

Nate Hoogeveen
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: nate.hoogeveen@dnr.iowa.gov

Public Hearing

Two public hearings at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend a 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 a conference call public hearing must submit a request to Mr. Hoogeveen prior to the hearing to facilitate an orderly hearing.

January 23, 2024 12 noon to 1 p.m.	Via video/conference call
January 30, 2024 12 noon to 1 p.m.	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 a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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 that, 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:

30.9(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.

30.9(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.

30.9(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.

30.9(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 30.9(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 that 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) *Recordkeeping.* 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.

ARC 7229C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to the publicly owned lakes watershed program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 31, "Publicly Owned Lakes Program," and to adopt a new Chapter 31, "Publicly Owned Lakes Watershed Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 456A.24(5) and 456A.33A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 456A.33A.

Purpose and Summary

Chapter 31 provides 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, 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 of Natural Resources (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. Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. 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

Public Hearing

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

January 23, 2024 12 noon to 1 p.m.	Via video/conference call
January 30, 2024 12 noon to 1 p.m.	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 a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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.

ARC 7241C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to private open space lands and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 32, "Private Open Space Lands," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 9H.5(1)"b" and 17A.7(2).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission proposes to rescind Chapter 32. The underlying statutes have changed over time, and the Department of Natural Resources' (Department's) historical role has been removed. Therefore, this chapter is no longer necessary.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. 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

NATURAL RESOURCE COMMISSION[571](cont'd)

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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024	Conference Room 4E
1 to 2 p.m.	Wallace State Office Building
	Des Moines, Iowa

Persons who wish to make oral comments at the 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 Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 32**.

ARC 7236C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to resources enhancement and protection program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 33, "Resource Enhancement and Protection Program: County, City and Private Open Spaces Grant Programs," and to adopt a new Chapter 33, "Resource Enhancement and Protection Program: County, City, Private Open Spaces and Conservation Education Grant Programs," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 455A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 455A, subchapter II.

Purpose and Summary

Proposed Chapter 33 consolidates the processes and requirements for entities to receive funding through the private cost-sharing funds in the county, city, private open spaces, and conservation education grant programs of the Resource Enhancement and Protection Fund. These provisions were formerly in Chapter 12, Division I, and Chapter 33. They will now be located in new Chapter 33.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Additionally, several provisions in the merged chapters were repetitive of underlying statute and have been removed.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 26, 2024. 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

Public Hearing

Two public hearings at which persons may present their views orally or in writing will be held as follows. Upon arrival for the in-person hearing, attendees should proceed to the fourth floor to check in at the Department reception desk to sign in and be directed to the appropriate hearing location.

The January 25, 2024, hearing will be a virtual meeting only. 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 Ms. Wilson by 9 a.m. on January 25, 2024, to facilitate an orderly hearing.

January 18, 2024 1:30 to 3:30 p.m.	Conference Room 5W Wallace State Office Building Des Moines, Iowa
January 25, 2024 1:30 to 3:30 p.m.	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 a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 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) Recordkeeping 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.

b. Reserved.

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.

a. 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 dollars utilized to support county conservation purposes.

b. 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.

c. 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 that 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.

a. 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.

b. 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 that 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 that 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 more than 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) *Recordkeeping 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.

ARC 7231C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to the community forestry grant program and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 34, "Community Forestry Grant Program (CFGP)," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455A.5(6)"a."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 461A and section 456A.24(13).

Purpose and Summary

The purpose of this chapter is to define the cost-sharing procedures between state and local public agencies or volunteer organizations to fund community tree planting projects. The Commission proposes to rescind the chapter because the program can be run with more flexibility without these rules under the terms of the underlying federal grants and the accompanying grant agreements signed by recipients and the Department of Natural Resources (Department).

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 23, 2024. Comments should be directed to:

Jeff Goerndt
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: jeff.goerndt@dnr.iowa.gov

Public Hearing

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

January 23, 2024 12 noon to 1 p.m.	Via video/conference call

Persons who wish to make oral comments at the 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 impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 34**.

ARC 7240C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to fish habitat promotion and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 35, "Fish Habitat Promotion for County Conservation Boards," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6)"a" and 483A.3A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 483A.3A.

Purpose and Summary

Proposed Chapter 35 implements a grant program where 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 of Natural Resources (Department) is directed to implement this program by the Iowa Code. Counties may voluntarily participate in this grant program, incurring the costs of staff time and required cost sharing. This proposed chapter benefits anglers by distributing grant funds for projects throughout the state.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17.7(2), this chapter was edited for length and clarity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

Randy Schultz
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: randy.schultz@dnr.iowa.gov

Public Hearing

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

January 23, 2024 12 noon to 1 p.m.	Via video/conference call
January 30, 2024 12 noon to 1 p.m.	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 a hearing and have special requirements, such as those related to hearing impairments, should contact the Department and advise of specific needs.

NATURAL RESOURCE COMMISSION[571](cont'd)

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 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 are 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 may 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) Recordkeeping 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.

ARC 7238C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to waterfowl and coot hunting seasons and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 456A.24(14), 481A.134, 481A.135, 483A.1, 483A.9A and 483A.10.

Purpose and Summary

Proposed Chapter 91 establishes and organizes waterfowl and coot hunting seasons as required by law. Waterfowl and coot hunting are exciting recreational opportunities for licensed hunters. More importantly, Iowa relies upon hunters to help manage the state's wildlife, including migratory waterfowl, which are held in trust for the people and required by law to be managed for posterity.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity. Several long provisions identifying in narrative form areas that are either open or closed to hunting have been removed and replaced with a more user-friendly visual map available on the Department of Natural Resources' (Department's) website.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 18, 2024. Comments should be directed to:

Orrin Jones
Iowa Department of Natural Resources
1203 North Shore Drive
Clear Lake, Iowa 50428
Fax: 641.357.5523
Email: orrin.jones@dnr.iowa.gov

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 571—Chapter 91 and adopt the following **new** chapter in lieu thereof:

CHAPTER 91
WATERFOWL AND COOT HUNTING SEASONS

571—91.1(481A) Duck hunting.

91.1(1) *Zone boundaries.* Zone boundaries are as specified in the November 2023 Waterfowl Hunting Map Book published on the department of natural resources' (department's) website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 1 "Waterfowl Hunting Zones."

91.1(2) *Season dates - north zone.* Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest September 30 and run for seven days. The second segment of the season will open on the Saturday nearest October 13 and continue for 53 consecutive days.

91.1(3) *Season dates - central zone.* Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 6 and run for seven days. The second segment of the season will open on the Saturday nearest October 20 and continue for 53 consecutive days.

91.1(4) *Season dates - south zone.* Special September teal season: September 1 through September 16. For all ducks: The first segment of the season will begin on the Saturday nearest October 13 and run for seven days. The second segment of the season will open on the Saturday nearest October 27 and continue for 53 consecutive days.

91.1(5) *Bag limit.* Bag limits for all species are as adopted by the U.S. Fish and Wildlife Service. The daily bag limit for scaup will be one for the first 15 days of the duck hunting season and two for the remaining 45 days.

91.1(6) *Possession limit.* For the special September teal season and for all ducks: Possession limit is three times the daily bag limit.

91.1(7) *Shooting hours.* For the special September teal season: Shooting hours are sunrise to sunset each day. For all ducks: Shooting hours are one-half hour before sunrise to sunset each day.

571—91.2(481A) Coots (split season).

91.2(1) Same as duck season dates and shooting hours.

91.2(2) Bag and possession limits. Daily bag limit is 15 and possession limit is three times the daily bag limit.

571—91.3(481A) Goose hunting.

91.3(1) *Zone boundaries.* Zone boundaries are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 1 "Waterfowl Hunting Zones."

91.3(2) *Season dates - north zone.* For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 23 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 13 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 13 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(3) *Season dates - central zone.* For all geese: The first segment of the regular goose season will begin on the Saturday nearest September 30 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 20 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 20 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(4) *Season dates - south zone.* For all geese: The first segment of the regular goose season will begin on the Saturday nearest October 6 and run for a 16-day period. The second segment of the goose season will open on the Saturday nearest October 27 and continue for 53 consecutive days. The goose season will reopen on the Saturday nearest December 27 and remain continuously open until the total number of days used for goose hunting reaches 107.

91.3(5) *Bag limit.* The daily bag limit for dark geese (Canada geese, white-fronted geese, brant and any other geese that are not light geese) is five and may include no more than two Canada geese during the first segment of the statewide season and no more than three Canada geese during the remainder of the statewide season. The daily bag limit for light geese (white and blue-phase snow geese and Ross' geese) is 20.

91.3(6) *Possession limit.* The possession limit is three times the daily bag limit for Canada geese, brant and white-fronted geese. There is no possession limit for light geese.

91.3(7) *Shooting hours.* Shooting hours are one-half hour before sunrise until sunset each day.

91.3(8) *Light goose conservation order season.* Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service beginning the day after the regular goose season closes and continuing until May 1.

a. Zone boundaries. Statewide.

b. Shooting hours. One-half hour before sunrise to one-half hour after sunset.

c. Bag limit. No bag limit.

d. Possession limit. No possession limit.

e. Other regulations. Methods of take approved by the U.S. Fish and Wildlife Service for hunting light geese during the conservation order season shall be permitted.

91.3(9) *Metropolitan goose hunting seasons and specified areas.*

a. Season dates. The second Saturday in September for nine consecutive days.

b. Bag limit. Daily bag limit is five Canada geese.

c. Possession limit. Three times the daily bag limit.

d. Specified areas.

(1) Cedar Rapids/Iowa City. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

(2) Des Moines. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

(3) Cedar Falls/Waterloo. Areas are as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 2 "Metropolitan Goose Hunting Areas."

571—91.4(481A) Closed areas. Waterfowl and coots may be hunted statewide except in specific areas.

91.4(1) *Waterfowl and coots.* There shall be no open season for ducks, coots and geese as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 3 "Areas Closed to Waterfowl Hunting."

91.4(2) *Canada geese.* There shall be no open season on Canada geese in certain areas described as specified in the November 2023 Waterfowl Hunting Map Book published on the department's website (www.iowadnr.gov/Hunting/Migratory-Game-Birds), chapter 4 "Areas Closed to Canada Goose Hunting."

571—91.5(481A) Canada goose hunting within closed areas.

91.5(1) *Closed areas.* All areas are as described in 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 who may hunt with the permittee. The permit will also contain a description of the property covered by the permit. The permit must be carried by a member of the hunting party whose name is listed on the permit. Conservation officers will keep a record of permittees and locations of properties that are covered by permits.

(2) Eight consecutively numbered tags will be issued with each permit. Geese will be tagged around the leg immediately upon being reduced to possession and will remain tagged until delivered to the person's abode.

(3) No one may attempt to take Canada geese under this permit unless the person possesses an unused tag for the current year.

(4) No landowner or tenant shall be responsible or liable for violations committed by other individuals listed on the permit issued to the landowner or tenant.

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.

ARC 7239C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Proposing rulemaking related to deer hunting and providing an opportunity for public comment

The Natural Resource Commission (Commission) hereby proposes to rescind Chapter 94, "Nonresident Deer Hunting," and Chapter 106, "Deer Hunting by Residents," and to adopt a new Chapter 106, "Deer Hunting," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455A.5(6)"a," 481A.39, 481A.48, 481C.2(3), 483A.8 and 483A.24.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 481C and sections 481A.38, 481A.48, 483A.8 and 483A.24.

Purpose and Summary

Proposed 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 deer license application procedure, timing, and general eligibility as well as the state's deer depredation program.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), current Chapter 94 (nonresident deer hunting) and current Chapter 106 (resident deer hunting; landowner/tenant; deer depredation) are proposed to be merged and strategically consolidated into this new chapter. The newly revised deer hunting chapter was also edited for overall length and clarity.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 18, 2024. 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

Public Hearing

Two public hearings 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 reception desk to sign in and be directed to the appropriate hearing location.

January 16, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa
January 18, 2024 1 to 2 p.m.	Conference Room 4E Wallace State Office Building Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **571—Chapter 94**.

ITEM 2. 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 (dated December 2023) 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 Antlerless-deer-only	Optional Antlerless-deer-only
	All Methods	Bow		
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 (www.iowadnr.gov/Hunting/Deer-Hunting) a proposed allocation and accept public comments for at least 30 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 that 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 that 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.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to filing returns and payment of tax and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 202, "Filing Returns and Payment of Tax," Iowa Administrative Code, and adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 421.9A, 421.26, 421.28, 423.1, 423.14, 423.22, 423.31 to 423.33, 423.36, 423.45 and 423.47.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 202 and adopt a new Chapter 202. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also proposes new language to provide additional clarity. The chapter describes the procedures for filing sales and use tax returns. The rules are intended to help the public understand the process for filing sales and use tax returns.

A Regulatory Analysis, including the proposed rule text, was published on October 18, 2023. A public hearing was held on November 8, 2023. No public comments on the Regulatory Analysis were

received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on November 21, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Rescind 701—Chapter 202 and adopt the following **new** chapter in lieu thereof:

CHAPTER 202
FILING RETURNS AND PAYMENT OF TAX

701—202.1(423) Sales and use tax return filing.

202.1(1) *In general.* A retailer owing $1,200 or more in sales or use tax per calendar year shall file a sales and use tax return once per month. This monthly return is due on or before the last day of the month following the end of the month in which the tax was collected. A retailer owing less than $1,200 in sales or use tax per calendar year shall file a sales and use tax return at least once per annual year, due on or before January 31 for the prior calendar year. A retailer otherwise expected to file a return annually may file a return on a monthly basis if the retailer prefers to do so. Every return shall be signed and dated.

202.1(2) *New retailers.* A retailer who has never held an Iowa sales or use tax permit and has never collected or accrued sales or use tax in Iowa shall indicate at the time the retailer registers for its permit whether it expects to file a return monthly or annually.

202.1(3) *Changes to filing frequency.* A retailer registered to file an annual sales and use tax return should update its return filing frequency as needed. The department may adjust a retailer's filing frequency if the retailer has remitted $1,200 or more in its first year of operation in Iowa and the department has notified the retailer that it meets or exceeds the filing threshold.

202.1(4) *Calculating the $1,200 filing frequency threshold.* The threshold for determining whether a retailer should file a monthly or an annual sales and use tax return shall be calculated by adding sales and use taxes due in a calendar year. Other excise taxes should not be included in the calculation, even though they may be reported on the sales and use tax return.

202.1(5) *Electronic filing requirement and exception.* Retailers required to file a monthly sales and use tax return shall file the return through GovConnectIowa. A retailer who is unable to file a return electronically may request permission from the director to file a paper return. A retailer requesting such permission shall provide proof of its inability to file electronically.

202.1(6) *Simplified electronic return due date.*

a. A retailer registered to collect Iowa tax through the Streamlined Sales Tax Registration System as a Model 1 seller shall file a simplified electronic return on or before the twentieth day of each month following the end of the month in which the tax was collected.

b. Any other retailer using the simplified electronic return shall file the return on or before the last day of the month following the end of the month in which the tax was collected.

This rule is intended to implement Iowa Code section 423.31.

701—202.2(423) Reporting sales or use taxes. A taxpayer with a reporting obligation for either sales tax or use tax but not both shall affirmatively indicate on the sales and use tax return that the taxpayer has no tax to report for the appropriate tax type. A taxpayer does this by making the appropriate indication on an electronic return or by entering a zero on the taxable amount line in the tax section of a paper return for which the taxpayer does not have tax to report. A taxpayer who fails to do so will be treated as not reporting for that tax type.

This rule is intended to implement Iowa Code section 423.31.

701—202.3(423) Sales and use tax remittance. Sales or use tax owed by a retailer shall accompany the sales and use tax return for the period in which the tax became due. Retailers filing a monthly sales and use tax return electronically shall remit tax electronically. Retailers filing a paper return may remit tax by mail, payable to the Iowa Department of Revenue. Remittances transmitted electronically are considered to have been made on the date the remittance is completed in GovConnectIowa.

This rule is intended to implement Iowa Code section 423.31.

701—202.4(423) Due dates, weekends, and holidays. Due dates that fall on a Saturday, Sunday, or holiday shall be treated in accordance with Iowa Code section 421.9A. Iowa Code section 421.9A contains a definition of "holiday."

This rule is intended to implement Iowa Code section 421.9A.

701—202.5(423) Consolidated returns. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made, and the second is certain affiliated corporations.

202.5(1) *Permit holders with multiple locations.* A permit holder procuring more than one permit may file a separate return for each permit or, if a request to consolidate pursuant to Iowa Code section 423.31(4) has been approved by the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

202.5(2) *Affiliated corporations.* Any group consisting of a parent corporation and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property, specified digital products, or taxable services, may make an application to the director for permission to file a consolidated Iowa sales tax return. The application shall:

a. Be in writing.

b. Be signed by an officer of the parent company.

c. Contain the business name, address, federal identification number, and Iowa sales and use tax permit number of every corporation seeking the right to file a consolidated return.

d. State the initial tax period for which the right to file a consolidated return is sought.

e. Be filed no later than 90 days prior to the beginning of the identified initial tax period.

f. Contain any additional relevant information that the director may, in individual instances, require.

202.5(3) *Requirements common to returns filed under this rule.* The following provisions apply to permit holders filing consolidated returns pursuant to either subrule 202.5(1) or 202.5(2):

a. Proper form. Taxpayers shall file consolidated returns through GovConnectIowa.

b. Working papers. All working papers used in the preparation of the information required to complete the returns must be available for examination by the department.

c. Offsetting collections among affiliates. Undercollections of sales tax at one or more locations or by one or more affiliates shall not be offset by overcollections at other locations or by other affiliates.

This rule is intended to implement Iowa Code section 423.31.

701—202.6(423) Direct pay permits and negotiated rate agreements.

202.6(1) *Direct pay permits in general.* Qualified purchasers, users, and consumers of tangible personal property, specified digital products, or taxable services pursuant to Iowa Code chapter 423 may remit tax owed directly to the department instead of having the tax collected and remitted by the seller. A qualified purchaser, user, or consumer shall not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department or personnel authorized by the director.

a. Qualifications for a direct pay permit. To qualify for a direct pay permit, an applicant will meet all of the following criteria:

(1) Be a purchaser, user, or consumer of tangible personal property, specified digital products, or taxable services.

(2) Have an accrual of sales and use tax liability of more than $8,000 in a month. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of $8,000 in sales and use tax liability in a month to qualify if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one

location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer will need to indicate which locations will be utilizing the direct pay permit at the time of application.

(3) Remit tax and file returns pursuant to Iowa Code section 423.31. Paragraph 202.6(1)*"d"* contains further details.

b. Nonqualifying purchases or uses. The granting of a direct pay permit is not allowed for any of the imposed taxes listed in Iowa Code section 423.36(9)*"b."*

c. Application and permit information. To obtain a direct pay permit, a purchaser, user, or consumer will fully and properly complete an application form prescribed by the director and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department or vendors over the last two years prior to application, an average of $8,000 in a month. Upon approval, the director or personnel authorized by the director will issue a direct pay permit to qualifying applicants. The direct pay permit will contain direct pay permit identifying information, including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—288.3(423).

d. Remittance and reporting. Direct pay permit holders shall remit and report sales, use, and local option sales tax on a monthly basis. Remittance of tax due under a direct pay permit will begin with the first month after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit shall be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a monthly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 423.35. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 421.27.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the department. A direct pay permit is not transferable and cannot be assigned to a third party. The department may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 423.36(9). If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. Record-keeping requirements. The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit will retain possession of the direct pay permit and keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(423).

(2) Vendor. A vendor will retain a valid exemption certificate under rule 701—288.3(423) that is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—288.3(423).

202.6(2) *Negotiated rate agreements.*

a. In general. Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by

agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in paragraph 202.6(1)*"b,"* and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

b. Required information. All negotiated rate agreements shall contain the following information or an explanation for its omission:

(1) The name of the taxpayer who has entered into the agreement with the department.

(2) The name and title of each person signing the agreement and the name, telephone or fax number, and email or physical address of at least one person to be contacted if questions regarding the agreement arise.

(3) The period during which the agreement is in effect, the renewal or extension rights (if any) of each party, and the effective date of the agreement.

(4) The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items that will be excluded from the agreement, and any circumstances that will result in a changed rate or rates or changed composition of classes to which rates are applicable.

(5) Actions or circumstances that render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.

(6) Rights, if any, of the parties to resort to mediation or arbitration.

(7) An explanation of the department's right to audit aspects of the agreement, including any right to audit remaining after the agreement's termination.

(8) The conditions by which the agreement may be terminated and the effective date of the termination.

(9) The methodology used to determine the negotiated rate and any schedules needed to verify percentages.

(10) Any other matter deemed necessary to the parties' mutual understanding of the agreement.

This rule is intended to implement Iowa Code section 423.36.

701—202.7(423) Regular permit holders responsible for collection of tax. A permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the permit holder shall be required to have a form, either in possession or in the vehicle, that authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 423.14 and 423.36.

701—202.8(423) Sale of business.

202.8(1) *Final return due.* A retailer selling the business shall file a return within the succeeding month and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser, and the tax becomes delinquent one month after the sale.

202.8(2) *Record retention.* A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. 701—subrule 285.28(2) provides for possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code section 423.33.

701—202.9(423) Bankruptcy, insolvency, or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 423.31.

701—202.10(423) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return that includes the sales price from sales from all machines or devices operated by the retailer in Iowa during the tax period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the sales price.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—202.11(423) Claim for refund of tax.

202.11(1) *Eligibility for refund; filing claims.* Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare and file the claim on Form IA 843, Refund Return, with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based.

202.11(2) *Denial of refund claim—appeal.* If the claim for refund is denied, and the person wishes to appeal the denial, the department will consider an appeal to be timely if filed no later than 60 days following the date of denial. Rule 701—7.9(17A) contains more information on appeals.

202.11(3) *Request for abeyance.* When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 423.47. The claim must be filed requesting that it be held in abeyance pending the outcome of any action that will have a direct effect on the tax, penalty, or interest involved. Nonexclusive examples of such action would be court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE 1: X, an Iowa sales tax permit holder, is audited by the department for the period from July 1, 2014, to June 30, 2017. A $10,000 tax, penalty, and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 2023.

X, on October 1, 2023, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 2017. The claim will be totally denied as beyond the three-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 2017, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of its audit liability if the decision in Y's case was also applicable to X.

EXAMPLE 2: X is audited by the department for the period from July 1, 2015, to June 30, 2018, and assessed July 31, 2018. X pays the assessment on December 31, 2018. No protest was filed, and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 2020, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision that makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 2017, through June 30, 2018, will be allowed since this is the only portion within the three-year statute of limitations set forth in Iowa Code section 423.47. If the claim had been filed on or before December 31, 2019, then the entire audit period could have been considered for refund since the claim would have been filed within one year of payment.

202.11(4) *Refund of use tax.* A taxpayer will need to file an amended return in order to claim a refund of use tax. A taxpayer cannot use Form IA 843, Refund Return, to claim this refund.

This rule is intended to implement Iowa Code sections 423.45 and 423.47.

701—202.12(423) Immediate successor liability for unpaid tax. To ensure all sales or use tax due is paid, Iowa Code section 423.33(2) applies to a retailer selling the retailer's business or stock of goods

or ceasing the retailer's business and the immediate successor. For the purpose of this rule, "retailer" includes all persons liable for tax under Iowa Code sections 421.26 and 423.33.

202.12(1) *Immediate successors having a duty to withhold.*

a. An immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price to pay the delinquent tax, penalty, or interest, if necessary. "Immediate successor" includes but is not limited to the following examples:

(1) An entity resulting from the action of a sole proprietor who organizes a business in which the sole proprietor is the only or the controlling stakeholder.

(2) A sole proprietorship established from an entity of which the sole proprietor was the exclusive, majority, or controlling stakeholder.

b. Reserved.

202.12(2) *More than one immediate successor.* If a retailer sells a business or stock of goods to two or more persons, the following requirements apply:

a. Sale to two or more persons. If a retailer sells a substantial portion of the business or the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person or persons are immediate successors that are jointly and severally liable.

b. Purchase of differing places of business. If one retailer owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

202.12(3) *Sale of a retailer's business.* Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property or specified digital products constitutes the selling of the retailer's business, and the person to whom the business is sold is an immediate successor and liable for tax.

EXAMPLE: A is a furniture dealer. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property and specified digital products used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department $7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

202.12(4) *Good faith.* An immediate successor to a licensee's, retailer's, or seller's business or stock of goods has purchased the licensee's, retailer's, or seller's business or stock of goods in good faith that no delinquent tax, interest, or penalty was due and unpaid if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists.

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid. Immediate successors shall not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor may request a certified statement from the department on forms provided by the department.

(1) Prior to issuing a certified statement, the department may contact both the immediate successor and the licensee, retailer, or seller regarding the request for a certified statement from the department.

(2) A certified statement provided by the department will be recognized by the department as valid as of the issuance of the statement.

(3) A certified statement provided by the department is the preferred evidence that a purchase of a business or stock of goods was made in good faith and that no delinquent tax, interest, or penalty was due and paid.

b. The immediate successor has taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase.

(1) A "certified statement" from a licensee, retailer, or seller is a statement the truth of which is attested to before a notary public. A certified statement from a licensee, retailer, or seller will not be recognized by the department as valid unless it includes all of the following:

1. The name of the business being purchased or a description of the stock of goods being purchased.

2. The names of the licensee, retailer, or seller and the prospective purchaser(s).

3. The tax identification numbers of both the licensee, retailer, or seller and prospective purchaser(s). Entities shall include a federal employer identification number (FEIN). Individuals shall include a social security number (SSN) or individual tax identification number (ITIN).

4. An attestation signed by the licensee, retailer, or seller attesting that no delinquent tax, interest, or penalty of the retailer is unpaid as of the date of the closing of the sale.

(2) A certified statement has been taken from a licensee, retailer, or seller "in good faith" if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer's statement was false or no reason to question the truth of the retailer's statement.

This rule is intended to implement Iowa Code sections 421.28 and 423.33.

701—202.13(423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax.

202.13(1) *Personal liability—how determined.* There are various criteria that can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

a. The duties of officers as outlined in the corporate bylaws.

b. The duties that various officers have assumed in practice.

c. Which officers are empowered to sign checks for the corporation.

d. Which officers hire and fire employees.

e. Which officers control the financial affairs of the corporation.

(1) An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills that had been selected for payment will be paid.

(2) "Final control" means a significant control over which bills should or should not be paid, rather than exclusive control.

(3) The observations in paragraph 202.13(1)*"e"* are applicable to partnerships as well as corporations.

202.13(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An "open account" is one that is neither finally settled nor finally closed but is still running and open to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an account receivable. The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a "note receivable" rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

This rule is intended to implement Iowa Code section 421.26.

701—202.14(423) Sales tax or use tax paid to another state.

REVENUE DEPARTMENT[701](cont'd)

202.14(1) *Equal or greater tax paid to another state.* When a person has already paid to any other state of the United States a state sales, use, or occupational tax on specifically identified tangible personal property or taxable services on its sale or use, prior to bringing the property into Iowa, and the tax is equal to or greater than the current rate of tax imposed by the Iowa use tax law, no additional use tax is due to the state of Iowa by such person.

202.14(2) *Less tax paid to another state.* If the amount of tax already paid by such person to any other state of the United States on specifically identified tangible personal property or taxable services prior to bringing the property into Iowa is less than the current rate of tax imposed by Iowa law, use tax shall be due to the state of Iowa on the difference in tax paid to the foreign state and the tax due under the Iowa law.

202.14(3) *Claiming exemption for tax paid.* When a person claims exemption from payment of use tax on the grounds that the tax has already been paid to any other state of the United States with respect to the sale or use of the property or service in question prior to bringing the property into Iowa, the burden of proof is upon that person to show the department, county treasurer, or motor vehicle division of the Iowa department of transportation, by document, that the tax has been paid.

202.14(4) *Credit not allowed against Iowa tax.* Credits shall not be allowed for sales, use, or occupational tax already paid in any state of the United States against the Iowa use tax relating to the acquisition cost of property being brought into this state when such tax already paid was paid on the sales price of lease or rental payments of tangible personal property used in another state.

This rule is intended to implement Iowa Code section 423.22.

701—202.15(423) Registered retailers selling tangible personal property on a conditional sale contract basis. A retailer shall report and remit to the department the full amount of tax computed on the full sale price on the return for the tax period during which the sale was made.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—202.16(423) Registered vendors repossessing goods sold on a conditional sale contract basis. A registered retailer repossessing tangible personal property that has been sold on a conditional sale contract basis and remitting use tax to the department on the full purchase price may take a deduction on the retailer's sales and use tax return for the tax period in which the goods were repossessed, in an amount equal to the credit allowed to the purchaser for the goods returned, if the retailer has returned use tax to the purchaser on the unpaid balance.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

ARC 7196C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to exemption certificates and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 202, "Filing Returns and Payment of Tax," and Chapter 204, "Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement"; to adopt Chapter 209, "Exemption Certificates"; and to rescind Chapter 288, "Determination of a Sale and Sale Price," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

REVENUE DEPARTMENT[701](cont'd)

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.3, 423.31, 423.45 and 423.51.

Purpose and Summary

The purpose of this proposed rulemaking is to adopt new rules 701—202.17(423) and 701—204.8(423), adopt new 701—Chapter 209, and rescind and reserve 701—Chapter 288. 701—Chapter 288 contained a number of rules that the Department has determined are either unnecessary, obsolete, or duplicative of statutory language and that should be rescinded. Further, the Department determined that rules on returned merchandise, freight and other transportation charges, and premiums and gifts were better suited to be included in 701—Chapters 202, 204, and 213, which align more with those rules' subject matters. The Notice for 701—Chapter 204 (**ARC 7146C**, IAB 12/13/23) has already been published. The Notices for 701—Chapters 202 (**ARC 7354C**, IAB 12/27/23) and 213 (**ARC 7375C**, IAB 12/27/23) are published herein. Therefore, the rules that will be adopted and added to those chapters are included in this proposed rulemaking.

Additionally, the Department determined that the rule that described the Department's interpretation of the underlying statutes relating to the use of exemption certificates would be better suited in a chapter solely on that topic, so the Department proposes readopting and moving the rule into 701—Chapter 209, which was previously reserved, in order to provide easier accessibility to the public. The Department proposes revisions to the rule in order to provide for better organization and clarification and to remove unnecessary, obsolete, and duplicative statutory language.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** rule 701—202.17(423):

701—202.17(423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the sales price. No allowance is to be made for the return of any merchandise that (1) is exempt from either sales or use tax, or (2) has not been reported in the taxpayer's tax previously paid.

This rule is intended to implement Iowa Code section 423.31.

ITEM 2. Adopt the following **new** rule 701—204.8(423):

701—204.8(423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges is subject to sales or use tax is dependent upon the terms of the sale agreement.

204.8(1) *Charges separately stated.* When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the sales price of the freight or transportation charges is not subject to tax. This exemption does not apply to the service of transporting electrical energy or the service of transporting natural gas.

204.8(2) *Charges not separately stated.* When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the sales price of the freight or transportation charges become a part of the sales price of the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such a charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice.

204.8(3) *Exemption.* The sales price from charges for delivery of electricity or natural gas are exempt from tax to the extent that the sales price from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapter 423. The exclusions from this

exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples that explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

204.8(4) *Applicable charges.* Freight and transportation charges include, but are not limited to, the following charges or fees: freight, transportation, shipping, delivery, or trip charges.

204.8(5) *Examples.*

EXAMPLE 1: Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption in Iowa Code section 423.3(70).

EXAMPLE 2: Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long-distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity and constitutes separate sales of electricity and transportation services. In these circumstances, amounts that ABC pays DEF for transport of the electricity are taxable.

EXAMPLE 3: As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF, which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4: In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity that it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5: Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount which ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property.

EXAMPLE 6: Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas that is transported to its plant in processing the tangible personal property manufactured there. The receipts that EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG $9.95 as a delivery

fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of $9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

ITEM 3. Adopt the following **new** 701—Chapter 209:

CHAPTER 209
EXEMPTION CERTIFICATES

701—209.1(423) Exemption certificates.

209.1(1) *General provisions.* A valid exemption certificate, whether furnished by the department or a seller, must be fully completed, dated, and signed if a paper certificate is used.

a. A fully completed exemption certificate must include the following information:

(1) Name of both the purchaser and seller.

(2) The purchaser's address and type of business (e.g., retailer, manufacturer).

(3) Reason for tax-exempt purchase (e.g., resale, processing).

(4) When required, purchaser's identification number, (examples include Iowa-issued sales and use tax permit, another state's issued sales tax identification number, and Federal Employer Identification Number).

b. Either a fully completed exemption certificate or capture of the data elements listed in paragraph 209.1(1)*"a"* must be obtained at the time of sale or within 90 days subsequent to the date of sale.

c. Department-furnished exemption certificates are valid for up to three years.

209.1(2) *Liability.* The sales tax liability is on both the seller and purchaser; however, a seller is relieved of the liability if the seller obtains a fully completed exemption certificate or captures all the data elements listed in paragraph 209.1(1)*"a."*

a. If no exemption certificate or the data elements are obtained within 90 days of the sale, a seller obligated to collect tax from a purchaser is relieved of liability if the seller obtains a fully completed exemption certificate taken in good faith or provides proof the transaction was not subject to tax within 120 days of the department's request for substantiation.

b. No liability relief is available for sellers who do any of the listed activities in Iowa Code section 423.51(2).

c. The purchase of tangible personal property, specified digital products, or services that are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the purchaser of the responsibility for tax if at some later time the transaction is determined to be taxable.

d. A person who is selling tangible personal property, specified digital products, or services, but who does not make any taxable sales at retail, is not required to hold a permit. When this person purchases tangible personal property, specified digital products, or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

209.1(3) *Other acceptable forms.* Purchasers may also use a Multistate Tax Commission's Uniform Sales & Use Tax Resale Certificate, available at mtc.gov, or a Streamlined Sales Tax Agreement Certificate of Exemption, available on the department's website or at streamlinedsalestax.org, as an alternative to a department-issued certificate.

209.1(4) *Blanket certificates.* Sellers and purchasers with a recurring business relationship, as described in Iowa Code section 423.51(3)*"d,"* may use blanket exemption certificates covering more than one transaction.

This rule is intended to implement Iowa Code sections 423.45 and 423.51.

701—209.2(423) Fuel exemption certificates.

209.2(1) *Use of fuel exemption certificates.* The use and acceptance of fuel exemption certificates must comply with Iowa Code section 423.45(5). For purposes of this subrule, terms mean the same as defined in Iowa Code section 423.45(5).

209.2(2) *Necessary information.* A fuel exemption certificate, as defined in Iowa Code section 423.45(5), must be dated and contain the following information, including, but not limited to:

a. The seller's name and address;

b. The purchaser's name and address;

c. The type of fuel purchased, such as electricity or propane;

d. Description of the purchaser's business, such as farmer or manufacturer;

e. A general description of the type of processing in which the fuel is consumer, such as grain drying, raising livestock, generating electricity, or the manufacture of tangible personal property;

f. Claimed exemption percentage.

209.2(3) *Additional documentation.* The seller may demand from the purchaser additional documentation attached to the fuel exemption certificate, which is reasonably necessary to support the claim of exemption for fuel consumed in processing; however, additional documentation is not required under the circumstances listed in Iowa Code section 423.45(5)*"f."* In the absence of separate metering, documentation reasonably necessary to support a claim for exemption must consist of either an electrical consultant's survey or of a document prepared by the purchaser in accordance with the requirements of subrule 209.2(5).

209.2(4) *Exemption determination.* When the amount of the exemption is modified pursuant to Iowa Code section 423.45(5)*"d,"* a purchaser must notify the seller of any change in percentage.

209.2(5) *Determining percentage of electricity used in processing.* When electricity is purchased for consumption both for processing and for taxable uses, and the use of the electricity is recorded on a single meter, the purchaser must allocate the use of the electricity according to taxable and nontaxable consumption if an exemption for nontaxable use is to be claimed. The calculations that support the allocation, if properly performed, can serve as the documentation reasonably necessary to support a claim of exemption for fuel used in processing. The following method with its alternative table may be used to determine the percentage of electricity used on the farm or in a factory that is exempt by virtue of its being used in processing. Paragraph 209.2(5)*"e"* provides information on alternative methods of computing exempt use, including exempt use by a new business. First, the base period for the calculations must be selected.

a. Ordinarily, the 12 months previous to the date upon which the exemption is calculated are used as the base period for determining the percentage of electricity exempt as used in processing. The immediately previous 12-month period is used because it is a span of time that is (1) recent enough to accurately reflect future electric usage; (2) extended enough to take into account variations in electrical usage resulting from changes in temperature occurring with the seasons; and (3) is not so long as to require unduly burdensome calculations. However, individual circumstances can dictate that a shorter or longer period than 12 months will be used or that some 12-month period other than that immediately previous to the date upon which the exemption certificate is filed, will be used.

EXAMPLE 1: Farmer A files a fuel exemption certificate for the period beginning January 1, 2022. The year 2021 had a very mild winter, a relatively cool summer, and a very dry autumn. Farmer A uses no electricity for grain drying and substantially less electricity than usual for heating and cooling his livestock buildings. Farmer A must use a 12-month period that is more representative of his usual exempt electrical consumption than that of January through December 2021.

EXAMPLE 2: Company A manufactures its product in a factory that has no windows and is heavily insulated. The factory always runs 40 hours per week, 52 weeks per year. Because of these and other circumstances, Company A's electrical usage does not vary significantly from month to month, and it is easy enough to document this. Company A can calculate its percentage of exempt use of electricity based on a one-month, rather than a 12-month, period.

EXAMPLE 3: Company B manufactures widgets. The "economic cycle" for widget production is, on average, 36 months long. During this economic cycle, there are times when, for months at a time, the factory will operate three shifts. At other times, for weeks at a time, the entire factory will be shut down and its personnel laid off. The only accurate way to determine the exempt percentage of electricity used is to calculate electrical use over the entire economic cycle. Therefore, 36 months, rather than 12 months, would be the base period.

b. Calculating kilowatts used per hour by various electrical devices. The first step in computing the percentage of exemption is to determine the number of kilowatts used per hour for each device in the farm or factory. If kilowatts consumed per hour of a device's use is not listed on the device or otherwise readily obtainable, formulas can be used to determine this information.

(1) Lights. For incandescent bulbs, add rated wattages and divide by 1,000. For fluorescent lights, add rated wattages plus an additional 20 percent of rated wattages, then divide by 1,000.

Incandescent Lights:

$$\frac{\text{Watts}}{1{,}000} = \text{Kilowatts Per Hour}$$

Fluorescent and Other High Intensity Lights:

$$\frac{\text{Watts} + .20\ (\text{Watts})}{1{,}000} = \text{Kilowatts Per Hour}$$

(2) Devices other than lights. For these devices, use the wattage rating given by the manufacturer and divide by 1,000 to obtain approximate kilowatts used per hour of operation.

$$\frac{\text{Watts}}{1{,}000} = \text{Kilowatts Per Hour}$$

If an appliance does not list a watt rating, tables provided by Iowa State University Cooperative Extension Service can be used especially by farmers who are attempting to compute their exempt percentage of electricity used. Persons using a table are reminded to convert watts to kilowatts before proceeding to further calculations.

c. The average number of kilowatts consumed per hour of operation for any one device must next be multiplied by the total number of hours which the device is operated during the base period. A person may use intermediate calculations.

(1) EXAMPLE 1: Assume that a machine used in processing consumes 20 kilowatts per hour of operation. The machine is operated, during a 12-month base period, 40 hours per week during 50 weeks. The machine is not placed in operation when the factory is closed for two weeks' vacation. Exempt use is calculated as follows:

Kilowatts per hour	×	Hours operated per week	×	Weeks operated in 12-month period equals number of exempt kilowatt hours

In this example, 20 x 40 x 50 = 40,000 exempt kilowatt hours.

(2) EXAMPLE 2: Assume that a grain dryer uses 30 kilowatts per hour of operation. During a 12-month base period, the grain dryer is used in processing 200 hours per month, for 3 months. The calculation for total number of kilowatt hours of exempt use for the 12-month period is as follows:

Kilowatts per hour	×	Hours operated per month	×	Number of months of exempt use equals total number of exempt kilowatt hours

In this example, 30 x 200 x 3 = 18,000 exempt kilowatt hours.

(3) EXAMPLE: The following is a very simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

d. Example worksheet. The following is a simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

REVENUE DEPARTMENT[701](cont'd)

	Kilowatts Per Hour of Operation	Average Hours of Operation Per 12-Month Base Period	Average Kilowatt Hours Per 12-Month Base Period	Total
All Exempt Usage				
Production Machine #1	10	1000	10000	
Production Machine #2	10	1000	10000	
Other	10	1000	10000	
Total Exempt Usage				30000(A)
All Taxable Usage				
Air Conditioners	10	3000	30000	
General Lighting	10	3000	30000	
Office Equipment	10	3000	30000	
Space Heaters	10	3000	30000	
Other	10	3000	30000	
Total Taxable Usage				150000(B)
Total—All Usages				180000(C)

$$\frac{30000}{180000} \text{ or } \frac{A}{C} = \text{Percentage of Electricity Purchase Qualifying for Exemption} = 16.60\%$$

The number actually used in the base period can be determined by reference to billings for the base period. If the number of kilowatt hours calculated to have been used does not approximate the number actually used in the base period, the calculations are deficient and should be performed again. Once the precise percentage of exemption has been calculated, that percentage must be applied during any period for which a purchaser is requesting exemption. Any substantial and permanent change in the amount of electricity consumed or in the proportion of exempt and nonexempt use of electricity is an occasion for recomputing the exempt percentage and for filing a new exemption certificate.

e. Alternative methods. The following are nonexclusive alternatives to the above method of determining the percentage of electricity, which is exempt because it is used in processing.

(1) If currently only one meter exists to measure both exempt and nonexempt use of electricity, the most accurate method of determining exempt and nonexempt use may be separate metering of these two uses. This possibility is especially practical if all exempt use results from the activities of one machine, however large.

(2) If separate metering is impossible or impractical, it may be useful to employ the services of an energy consultant. If using an energy consultant's service is impractical, it may be possible to secure, from the manufacturer of a machine used in processing, the number of kilowatts that a machine uses per hour of operation. Often, these manufacturer's studies give a more accurate measure of a machine's use of electricity than the formulas set out in paragraph 209.2(5)*"b"* above. This circumstance is especially true with regard to large electric motors.

(3) If a business is new, and no historical data exists for use in calculating exempt and nonexempt percentages of electricity or other fuel consumed, any person calculating future exempt use must make the best projections possible. If calculating future exempt use with no past historical data to serve as a basis for the calculations, it is suggested that conservative estimates of exempt use be made. Using these conservative estimates can avoid future liability for sales tax on the part of the purchaser of the electricity. Possibly, in calculating exempt use of fuel for a new business, historical data from existing similar businesses can be used if available from persons not in direct competition to the person claiming the exemption. The calculation and the exemption certificate must be updated once data from an accurate 12-month cycle, or other appropriate cycle, is available.

REVENUE DEPARTMENT[701](cont'd)

209.2(6) *Applicability.* The provisions of subrule 209.2(5) explaining the determination of the percentage exemption for electricity also apply to other types of fuel such as natural gas, LP, etc., when used for exempt purposes.

This rule is intended to implement Iowa Code section 423.45.

701—209.3(423) Special certificates of beer and wine wholesalers. Beer or wine purchased from a wholesaler holding a Class A or F permit has been purchased for resale if the purchaser provides the wholesaler with a retail beer or wine permit or liquor license number. A wholesaler's record of account with an individual retailer is a complete and correct exemption certificate for the purposes of beer or wine sales and provides all the protection that the usual exemption certificate, as described in rule 701—209.1(423), provides if the record of account contains the retailer's beer or wine permit or liquor license number and all other information concerning the account is taken in good faith by the wholesaler. For the purposes of this rule, the words "beer," "permit," "retailer," "wholesaler," and "wine" mean the same as defined in Iowa Code section 123.3.

This rule is intended to implement Iowa Code section 423.45.

ITEM 4. Rescind and reserve **701—Chapter 288**.

ARC 7197C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to purchases by businesses and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 210, "Purchases by Businesses," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 99F.10(6) and 423B.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2 and 423.3.

Purpose and Summary

The purpose of this proposed rulemaking is to repromulgate Chapter 210. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. This chapter also includes rules that were previously in other chapters that the Department has determined are more closely related to the subject matter of this chapter. This chapter describes the Department's interpretation of the underlying statute to help the public understand the taxability of purchases by businesses.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

REVENUE DEPARTMENT[701](cont'd)

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 10 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 210 and adopt the following **new** chapter in lieu thereof:

CHAPTER 210
PURCHASES BY BUSINESSES

701—210.1(423) Wholesalers and jobbers selling at retail. Sales made by a wholesaler or jobber to a purchaser for use or consumption by the purchaser or in the purchaser's business and not for resale

are considered retail sales and subject to tax, even if sales are made at wholesale prices or in wholesale quantities.

This rule is intended to implement Iowa Code section 423.2(1).

701—210.2(423) Materials and supplies sold to retail stores. The sales price of materials and supplies sold to retail stores for their use and not for resale shall be subject to tax. The retail store is the final buyer and ultimate consumer of such items as fuel, cash registers, adding machines, typewriters, stationery, display fixtures and numerous other commodities that are not sold by the store to its customers.

This rule is intended to implement Iowa Code section 423.2.

701—210.3(423) Tangible personal property and specified digital products purchased for resale but incidentally consumed by the purchaser. A retailer engaged in the business of selling tangible personal property or specified digital products who takes merchandise from stock for personal use, consumption, or gifts shall report these items as "goods consumed" on the sales and use tax return and remit sales tax and any applicable local option sales tax on the purchase cost of the items. This rule does not authorize purchase for resale of items intended to be used by the retailer.

This rule is intended to implement Iowa Code section 423.2.

701—210.4(423) Property furnished without charge by employers to employees. When an employer furnishes tangible personal property, including meals, or specified digital products to employees without charge or uses merchandise for gifts or consumption, the cost to the employer of the tangible personal property or specified digital products shall be subject to sales tax and any applicable local option sales tax and reported on the employer's return as "goods consumed" if the employer has not previously paid tax to a retailer. However, the food purchased by the employer for meals prepared for employees is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.5(423) Owners or operators of buildings. Owners or operators of buildings who purchase items to be used by them in maintaining the building are the users or consumers and shall pay sales tax to their suppliers.

210.5(1) When owners or operators of buildings remeter and bill their tenants for electric current, gas, or any other taxable service consumed by the tenants, such owners or operators shall be considered to be purchasing the electric current, gas, or other taxable service for resale. These owners or operators shall hold permits and shall be liable for the tax upon the sales price of the sale of such service. When the building owners or operators purchase all of the electric current, gas, or other services for resale and consume a portion in the operation of the building, they shall be liable for sales tax on that portion consumed, based upon the cost of the electric current or gas purchased for resale.

210.5(2) When the management of a building sells heat to other buildings or other persons and charges for such service as a sale of heat, such transactions are considered sales at retail and shall be subject to tax.

210.5(3) When heat is furnished to tenants as a service to them, incidental to the renting of the space, there shall be no tax. When heat is sold separately and billed to the tenants separately, such service shall be taxable.

210.5(4) When a building manager makes sales of tangible personal property, specified digital products, or taxable services at retail, the manager shall be required to procure a permit and collect and remit tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.6(423) Blacksmith and machine shops. When a blacksmith or machine shop operator fabricates finished tangible personal property from raw materials and sells such property at retail, tax shall apply on the total charge, which includes the fabrication labor. Rule 701—211.28(423) contains information on the taxable service of machine operation.

This rule is intended to implement Iowa Code section 423.2.

701—210.7(423) Truckers engaged in retail business. Truckers or haulers engaged in the sale of tangible personal property to ultimate users or consumers shall be deemed as making taxable sales.

This rule is intended to implement Iowa Code section 423.2.

701—210.8(423) Out-of-state truckers selling at retail in Iowa. Truckers or persons engaged in the sale of tangible personal property at retail in Iowa based outside of Iowa by means of hauling the tangible personal property into the state shall collect and remit Iowa sales tax. To ensure the remission of tax on Iowa sales, the department has the statutory authority to require a bond deposit from sellers classified in this rule. This right shall be exercised when necessary.

This rule is intended to implement Iowa Code section 423.2.

701—210.9(423) Iowa dental laboratories.

210.9(1) *Sales by dental laboratories.* Iowa dental laboratories are engaged in selling tangible personal property to Iowa dentists. Such laboratories shall hold a retail sales tax permit and collect and report all tax due from dentists in all transactions involving taxable retail sales.

210.9(2) *Purchases not subject to tax.* Iowa dental laboratories shall not be subject to tax on those purchases of tangible personal property that form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or would be exempt if purchased directly by the dentist's patient.

210.9(3) *Purchases subject to tax.* Iowa dental laboratories are the final user or consumer of all tangible personal property, including tools, office supplies, equipment, and any other tangible personal property not otherwise exempt. Sales tax shall be remitted to its Iowa supplier when purchasing in this state, and use tax shall be remitted directly to the department when such items are purchased from out-of-state suppliers, unless the out-of-state supplier is registered with the department and collects sales or use tax for the state.

This rule is intended to implement Iowa Code sections 423.2 and 423.33.

701—210.10(423) Dental supply houses. Dental supply houses are engaged in selling tangible personal property to dentists and dental laboratories. Such dental supply houses shall collect and report all tax due from purchasers in all transactions involving taxable retail sales. This shall not include sales of tangible personal property that will form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or would be exempt if sold directly to an individual.

This rule is intended to implement Iowa Code section 423.2.

701—210.11(423) News distributors and magazine distributors. News distributors and magazine distributors engaged in intrastate sales of magazines and periodicals in Iowa to vendors that are engaged in part-time distribution of such magazines are deemed to be making sales at retail. The sales price of such sales shall be subject to sales tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.12(423) Magazine subscriptions by independent dealers. The sales price of the sale of subscription magazines or periodicals derived by independent distributors or dealers in the state of Iowa that secure such subscriptions as independent dealers or distributors shall be subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.13(423) Sales by finance companies. A finance company that repossesses or acquires tangible personal property or specified digital products in connection with its finance business and sells tangible personal property or specified digital products at retail in Iowa shall be required to hold a permit and remit the current rate of tax on the sales price of such sales at retail in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—210.14(423) Bowling.

210.14(1) *Pinsetters.* The rental of automatic pinsetters by bowling alley operators is subject to the imposition of sales tax since the pinsetters are not resold to patrons. Therefore, the operator of the alley is considered the consumer of the pinsetter rental.

210.14(2) *Shoes.* The rental of bowling shoes is subject to the imposition of sales tax as equipment rental.

210.14(3) *Score sheets.* The sales of bowling score sheets to operators of bowling establishments are subject to the imposition of sales tax since the operators are the consumers of such score sheets.

This rule is intended to implement Iowa Code section 423.2.

701—210.15(423) Various special problems relating to public utilities.

210.15(1) *Late payment charges.* The amount of any charge, commonly called a "late payment charge," imposed by a public utility on its customers shall not be subject to tax if the charge is in addition to any charge for the utility's sale of its commodity or service and is imposed solely for the privilege of deferring payment of the purchase price of the commodity or service and furthermore is separately stated and reasonable in amount.

210.15(2) *Due dates.* The date of the billing of charges for a public utility's sales shall be used to determine the period in which the utility shall remit tax upon the amount charged. The utility shall remit tax upon the sales price of any bill during the period that includes the billing date. Thus, if the date of a billing is March 31 and the due date for payment of the bill without penalty is April 20, tax upon the sales price contained in the bill shall be included in the return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a deposit.

210.15(3) *Franchise fees.* In general, the amount of any franchise fee that a public utility pays to a city for the privilege of operating and that is directly or indirectly passed on to the utility's customers shall be included in sales price subject to tax. This will be true even if the amount of the franchise fee is computed as a percentage of other sales price subject to tax and is separately stated and separately charged to the immediate consumer of the commodity or service. However, if, in the future, it becomes lawful for a city to impose a sales or use tax and such tax is imposed upon the customers of public utilities in the guise of a franchise fee, the amount of this city excise tax shall not be subject to Iowa tax if the tax imposed by the city is separately stated and separately billed.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.16 Reserved.

701—210.17(423) Communication services furnished by hotel to its guests. When a hotel purchases telephone communication services from telephone companies and furnishes those services to guests, tax shall apply to the entire charge that the hotel makes to its guests for such communication service, regardless of whether a guest's calls are local or long-distance within the state. However, the hotel would purchase any communication service that it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.18(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries or others shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.19(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.20(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations. The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent.

This rule is intended to implement Iowa Code section 423.1(50).

701—210.21(423) Mergers that do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one business to another pursuant to a statutory merger, the transfer is not a "sale" in which the sales price is subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute; (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging business to a surviving business and not for any consideration; and (3) the merging business is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

EXAMPLE A: Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement, which results in the transfer of A's assets to C and the dissolution of A. In return, A's stockholders receive stock in C. The sales price of A's transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property, and the sales price of the sale may be subject to Iowa sales tax. However, 701—subrule 18.28(2) contains more information concerning a casual sale exemption applicable to the liquidation of a business.

701—210.22(422,423) Railroad rolling stock. Railroad rolling stock is that portion of railroad property that is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails to transport persons or property whether for hire or not for hire and includes materials and parts used therefor. Locomotives, railroad cars, and materials and parts used therefore shall be exempt from tax. This exemption includes maintenance-of-way equipment that is used to transport persons or property. Also, fuel and lubricants used in railroad rolling stock are materials used in railroad rolling stock and their sales are exempt from tax. Enumerated services are not railroad rolling stock and are not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(71).

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to taxable services and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 211, "Taxable Services," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

REVENUE DEPARTMENT[701](cont'd)

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.3 and 423.36.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 211 and adopt a new Chapter 211. The Department proposes amendments to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statute to help the public understand the taxability of services.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 211 and adopt the following **new** chapter in lieu thereof:

CHAPTER 211
TAXABLE SERVICES

701—211.1(423) Definitions and scope.

211.1(1) *Definitions.* For purposes of this chapter:

"Persons engaged in the business of" means persons who offer the named service or services to the public or others in exchange for consideration, regardless of whether such person offers the service or services continuously, part-time, seasonally, or for short periods.

"Repair" includes the mending or renovation of existing parts and the replacement of defective parts or subassemblies. Repair does not include the installation of new parts or accessories that are not replacements.

"Specified digital products" means the same as defined in Iowa Code section 423.1.

211.1(2) *Scope.* Iowa imposes tax upon the sales price of rendering, furnishing, or performing at retail services listed in Iowa Code section 423.2(6). Some of these services are described in more detail in this chapter.

This rule is intended to implement Iowa Code section 423.2.

701—211.2(423) Services purchased for resale. Services purchased for resale are not subject to sales tax. A service is purchased for resale when it is subcontracted by the person contracted to perform the service. Tax imposed on services is collectible at the time the service is complete even if the services are not purchased by the ultimate beneficiary.

EXAMPLE 1: D owns an auto repair shop, and F brings an automobile in to have the air conditioner fixed. D is unable to fix the unit, so the car is sent to G, who is an air conditioning specialist. The sale of G's service to D is a sale for resale by D to F, so there is no tax imposed. The sale from D to F is subject to sales tax.

EXAMPLE 2: R operates a retail farm implement dealership. R accepts a motorboat as part consideration for a piece of farm equipment. R then contracts with D to repair the motor on the boat. R does not normally sell motorboats in the regular course of R's business. Therefore, the repair service performed by D for R is subject to sales tax.

This rule is intended to implement Iowa Code section 423.3(2).

701—211.3(423) Fur storage and repair.

211.3(1) *In general.* Persons engaged in the business of storing fur for preservation and future use and refurbishing, repairing, and renovating fur, including the addition of new skins and furs, are selling a service subject to sales tax.

211.3(2) *Definition.* For purposes of this rule:

"Fur" includes both natural fur and synthetic products resembling fur.

This rule is intended to implement Iowa Code section 423.2(6)*"u."*

701—211.4(423) Investment counseling. Persons engaged in the business of counseling others relative to investment in or on the disposition of property or rights, whether real, personal, tangible, or intangible, and who charge for that counseling, are selling a service subject to sales tax. This includes investment counseling rendered, furnished, or performed by a trust department.

This rule is intended to implement Iowa Code section 423.2(6)*"e."*

701—211.5(423) Bank and financial institution service charges.

211.5(1) *In general.* The service charges imposed by financial institutions relating to a depositor's checking account are subject to sales tax. If the same service is performed by a financial institution relating to an account that does not qualify as a checking account, the service charge imposed by the financial institution is not subject to sales tax.

211.5(2) *Definitions.* For purposes of this rule:

"Bank" means an institution empowered to do all banking business, including issue negotiable notes, discount notes, receive deposits payable on demand, and buy and sell bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks do not fall within the meaning of a bank.

"Checking account" means an account on which withdrawals may be made from the account via a written instrument, including but not limited to a check, draft, or negotiable order of withdrawal (NOW). Whether or not an account pays interest does not determine whether an account qualifies as a checking account. The term "checking account" is characterized by its general meaning rather than a technical definition, and other types of accounts, not described in this rule, may qualify as checking accounts. Certificates of deposits do not qualify as checking accounts.

"Financial institutions" means the same as defined in Iowa Code section 423.2(6)*"f."*

211.5(3) *Checking account charges.* All charges relating to a checking account are subject to sales tax, including but not limited to charges for the following:

a. Withdrawals made by check or bank card.

b. Nonproprietary automatic teller machine (ATM) transactions.

c. Transferring funds from one account to another (if billed to a checking account).

d. Stop payment.

e. Debit card replacement.

f. Copy and research.

g. Bill payment.

h. Returned deposit items.

i. Issuance of a certified check, drawn from a particular account.

211.5(4) *Other service charges.* Service charges not usually subject to sales tax by virtue of having no relationship to checking accounts include but are not limited to:

a. Safety deposit box rentals.

b. Mortgage and loans.

c. Trust department fees for probating estates, administering trusts, administering agency accounts, administering pension and profit-sharing plans, serving as stock transfer agents or registrars, serving as farm managers, and fees or commissions charged to customers for handling security transactions. Some of these services may qualify as investment counseling and may be subject to sales tax.

d. Real estate appraisals.

e. Servicing real estate loans.

f. Contract collection and collection not related to the maintenance of a checking account.

g. Special lockbox handling.

h. Finance charges, including those for credit cards.

i. Escrow agent.

j. Safekeeping, handling and cashing coupons or certificates kept in a bank's possession.

k. Penalties on early withdrawal for saving certificates.

l. Purchasing or selling securities for customers, unless used as a disguise for investment counseling fees.

m. Real estate collection exchange, including collecting and transferring mortgage payments.

n. Traveler's or a similar type of check, bank cashier's checks, bank drafts, or money orders with no relation to a customer's checking account.

o. Check exchanges.

p. Noncustomer point of sale or ATM access fees or service charges.

211.5(5) *Exceptions.* Fees charged to a checking account depositor for a depositor's failure to adhere to contractual obligations with a bank or financial institution are not subject to sales tax. These charges, such as fees for overdrafts or returned checks, are penalties rather than service charges. Bank service charges that are never assessed against the expense of maintaining a checking account are not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6)*"f."*

701—211.6(423) Barber and beauty.

211.6(1) *In general.* Persons engaged in the business of barbering and beauty are selling a service subject to sales tax.

211.6(2) *Definitions.* For purposes of this rule:

"Barbering" means the same as defined in Iowa Code section 158.1.

"Barbershop" means the same as defined in Iowa Code section 158.1.

"Beauty" means the same as "cosmetology" and "esthetics" as those terms are defined in Iowa Code section 157.1.

211.6(3) *Sales tax permits.*

a. Each barber, beauty or other beautification shop or establishment shall receive only one permit and remit tax as one enterprise when operated under a common management.

b. When an operator leases space and is an independent operator, the lessee shall notify the department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding income tax, unemployment compensation, and social security taxes.

211.6(4) *Leasing.* The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee on each report to the department and which net taxable sales are included in the lessor's return. Rule 701—288.11(423) contains more information.

This rule is intended to implement Iowa Code sections 423.2(6)*"g"* and 423.36.

701—211.7(423) Photography and retouching.

211.7(1) Definitions. For purposes of this rule:

"Photography" means the art or process of capturing or producing still or moving images, films, or videos using any device designed to record or capture images, film, or video. Taxable sales associated with photography services include but are not limited to sitting or photoshoot fees and fees relating to taking or producing photographs or videos, including editing.

"Retouching" means the alteration, restoration, or renovation of a picture, film, video, image, artwork, likeness, or design.

211.7(2) In general. The sales price of photography services and retouching services are taxable regardless of whether the service results in the production of tangible personal property or specified digital products. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

EXAMPLE 1: Standalone photography service. X operates a photography business where customers can purchase a half-hour photoshoot session for $50 and may purchase physical or electronic copies of any photographs taken during the photoshoot for $10 each. Y purchases a half-hour photoshoot

from X for $50; however, after viewing the images, Y decides not to purchase any copies of any of the photographs. X must collect and remit sales tax and any applicable local option tax on $50, the cost of the photography service, even though Y decided not to purchase any of the resulting photographs.

EXAMPLE 2: Photography service and sale of photographs. Same facts as Example 1, except that Y decides to purchase ten photographs for $10 each. X must collect and remit sales tax and any applicable local option tax on $150, the total cost of the $50 photography service and the $100 cost of the ten photographs. Here, the photography service is taxable and the photographs are taxable as the sale of tangible personal property if they are delivered in hard copy or as the sale of specified digital products if they are delivered electronically.

211.7(3) Tax shall not apply to the sales price of tangible personal property to photographers and photostat producers that becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sales price of materials to photographers or producers that is used in the processing of photographs or photostat copies.

211.7(4) Sourcing. More information about how various aspects of photography services may be sourced is available in 701—subrule 205.2(1).

This rule is intended to implement Iowa Code section 423.2(6)*"bo"* and *"bp."*

701—211.8(423) Household appliance, television, and radio repair.

211.8(1) *In general.* Persons engaged in the business of repairing household appliances, television sets, or radio sets are selling a service subject to sales tax.

211.8(2) *Definition.* For purposes of this rule:

"Household appliances" includes all mechanical devices normally used in the home, whether or not the appliances are actually used in the home.

This rule is intended to implement Iowa Code section 423.2(6)*"y."*

701—211.9(423) Machine operators.

211.9(1) *In general.* Persons engaged in the business of operating machines of all kinds that belong to other persons and charge a fee for operating are selling a service subject to sales tax. Operation of the machine must be the central function of the service being performed and not incidental to the performance of the service the operator was hired to perform.

211.9(2) *Definitions.* For purposes of this rule:

"Machine" includes but is not limited to typewriters, computers, calculators, cash registers, and manufacturing machinery and equipment. "Machine" does not include telephones, automobiles, or airplanes.

"Machine operator" is a person who manages, controls, and conducts a mechanical device or a combination of mechanical powers and devices used to perform a function and produce a certain result or effect.

211.9(3) *Machine operators as employees.* The services of a machine operator are not subject to sales tax if the operation of machinery is by an employee directly for an employer. Rule 701—211.3(423) contains information about services performed by an employee for an employer.

EXAMPLE 1: Employee A is hired to perform data entry on a computer for A's employer. While Employee A is performing the service of a machine operator, because Employee A is performing the service directly for A's employer, A's service is not subject to sales tax.

EXAMPLE 2: Through a temporary employment agency, Worker B performs data entry on a computer for Company Z. Company Z pays a set per-hour fee for data entry services. Worker B is performing the service of a machine operator, not directly for Company Z but for the temporary employment agency. Company Z must pay sales or use tax on the fee imposed by the temporary employment agency. Rule 701—211.23(423) contains information about the service of private employment agencies.

EXAMPLE 3: Through a temporary employment agency, Worker C performs telemarketing services for Company X. Because Worker C is operating a telephone, which is not considered a machine for purposes of this rule, Company X would not pay sales or use tax on the fee imposed by the temporary employment agency.

EXAMPLE 4: Company Y hires Lawyer D through a temporary employment agency. Lawyer D spends most of the work time performing legal research and writing memoranda, both of which are done at a computer. Lawyer D is not a machine operator just because Lawyer D uses a computer. Lawyer D was hired by Company Y to perform legal services. Lawyer D's use of the computer is incidental to the legal services Lawyer D was hired to perform.

EXAMPLE 5: Company X hires Employee A as a purchaser. In this role, Employee A procures materials for Company X, negotiates and manages purchasing agreements, and communicates with vendors. To perform these job duties, Employee A spends the majority of working hours on a computer. Employee A is not a machine operator, because the central function of the job is as a purchaser and the computer use is incidental to the performance of job duties.

This rule is intended to implement Iowa Code section 423.2(6)*"ad."*

701—211.10(423) Machine repair of all kinds.

211.10(1) *In general.* Persons engaged in the business of repairing machines of all kinds are selling a service subject to sales tax.

211.10(2) *Definition.* For purposes of this rule:

"Machine" means a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain result or effect. Machines include devices that have moving parts, are operated by hand, and are powered by a motor, engine, or other form of energy.

211.10(3) *Musical instruments.* For purposes of this rule, a musical instrument does not constitute a machine.

EXAMPLE: Person A owns an electric piano and an acoustic upright piano. Both pianos require repairs; the electric piano needs a new power cord, and the acoustic piano needs keys replaced. The electric piano repair would be taxable under 701—subrule 219.13(6). The repair to the acoustic piano is not taxable.

This rule is intended to implement Iowa Code section 423.2(6)*"ae."*

701—211.11(423) Oilers and lubricators.

211.11(1) *In general.* Persons engaged in the business of oiling, changing oil in, lubricating, or greasing vehicles and machines of all types are selling a service subject to sales tax.

211.11(2) *Definition.* For purposes of this rule:

"Machine" includes those items with moving parts or powered by a motor or engine or other form of energy. "Machine" also includes heavy equipment vehicles or implements, whether such equipment functions in a state of rest or a state of motion.

This rule is intended to implement Iowa Code section 423.2(6)*"ah."*

701—211.12(423) Parking facilities.

211.12(1) *In general.* Persons engaged in the business of operating a parking facility for a fee are selling a service subject to sales tax.

211.12(2) *Definition.* For purposes of this rule:

"Parking facility" means any place that is used for parking a vehicle for consideration. It is irrelevant whether the charge is by the hour, day, month, or any other period of time.

This rule is intended to implement Iowa Code section 423.2(6)*"ak."*

701—211.13(423) Private employment agency, executive search agency.

211.13(1) *In general.* Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment, or aiding another in any way to procure employment are selling a service subject to sales tax, regardless of whether the service is rendered for a prospective employer or prospective employee.

211.13(2) *Principal place of employment outside of Iowa.* Services rendered by private employment agencies that place a person and where the person's principal place of employment is outside of Iowa

are not subject to Iowa sales tax. For purposes of this rule, "principal place of employment" means the primary work location of the employee.

EXAMPLE: Company B, a sales company, contracts with Agency C, an employment agency, to secure a salesperson to travel throughout Iowa, Missouri, and Nebraska. Both Company B and Agency C are located in Iowa. Agency C is successful in finding a salesperson for Company B. Though the salesperson will be traveling throughout the three states, because Company B, the principal place of the salesperson's employment, is located within Iowa, Agency C's service is subject to Iowa sales tax.

211.13(3) *Executive search agencies.* Executive search agencies that are engaged in the business of securing employment for top-level management positions are selling a service subject to sales tax, regardless of whether the executive search agency is licensed under Iowa Code chapter 94A or not. Executive search agencies' services performed in Iowa are subject to Iowa sales tax regardless of whether the principal place of employment for the person the agency placed into employment is located within Iowa.

211.13(4) *Private employment versus executive search agencies.* To determine if an agency is an executive search agency or a private employment agency, the following nonexhaustive lists of elements may be used to distinguish the two.

a. Private employment agency:

(1) All levels of jobs in an organization. All salary levels.

(2) Large number of clients at all times. Both possible employers and employees.

(3) Individual's résumé circulated to many possible employers.

(4) No extensive analysis of the position or the individual.

(5) Normally does not make travel arrangements for interviews, does not conduct salary negotiations, does not perform detailed follow-up studies.

(6) Paid by either the company or the job seeker.

(7) Paid on a contingent-fee basis. Paid only if a referred person is hired.

(8) Does engage in general advertising of available positions.

(9) Overall placement of an individual is not as extensive or sophisticated.

b. Executive search agency:

(1) Top-level management positions.

(2) Serve only a few clients at one time. Employers only.

(3) Send information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.

(4) Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Preparation of detailed professional assessment of strengths and weaknesses of individuals.

(5) Make travel arrangements for interviews, conduct salary negotiations, perform follow-up studies.

(6) Only paid by the company seeking the employee.

(7) Paid on retainer or by an hourly charge or by contract. Paid whether or not an individual is hired.

(8) Does not advertise available positions.

(9) Overall placement of an individual requires extensive and sophisticated analysis of position and individual.

This rule is intended to implement Iowa Code section 423.2(6)*"ap"* and *"aq."*

701—211.14(423) Storage of household goods and mini-storage.

211.14(1) *In general.* The sales price from the sale of the storage of household goods and mini-storage are subject to sales and use tax.

211.14(2) *Definitions.* For purposes of this rule:

"Household goods" means tangible personal property ordinarily located in a person's residence that is not inventory.

"Mini-storage" means a commercial operation that provides individual storage units of various sizes to persons for the purpose of storing tangible personal property. "Mini-storage" includes a

secured area in which vehicles, boats, recreational vehicles, camping trailers and other types of tangible personal property can be stored. "Mini-storage" is taxable, regardless of whether the buyer or the seller provides particular security measures including but not limited to locks, fences, gates, security cameras, or password-protected entrances. "Mini-storage" is taxable regardless of whether the buyer has sole access to the unit. "Mini-storage" does not include storage lockers, storage units, or garages at apartment complexes for the primary convenience of the tenant if such lockers, units, or garages are part of the nonitemized price of an apartment rental. Mini-storage space is not a warehouse. Rule 701—214.21(423) contains provisions on warehousing of raw agricultural products.

This rule is intended to implement Iowa Code section 423.2(6)*"ax."*

701—211.15(423) Test laboratories.

211.15(1) *In general.* Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific, or commercial purpose are selling a service subject to sales tax. "Test laboratories" includes but is not limited to mobile testing laboratories and field testing by test laboratories.

211.15(2) *Exempt testing services.* Test laboratory services performed on humans and animals and environmental testing services are not taxable. "Environmental testing services" includes but is not limited to the physical and chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation.

211.15(3) *Nonprofit blood centers.* Test laboratory services rendered, furnished, or performed for a nonprofit blood center registered by the federal Food and Drug Administration are exempt when the services are directly and primarily used in the processing of human blood.

This rule is intended to implement Iowa Code sections 423.2(6)*"bc,"*423.3(102), and 423.3(26A).

701—211.16(423) Termite, bug, roach, and pest eradicators.

211.16(1) *In general.* Persons engaged in the business of eradicating, controlling, or preventing the infestation by termites, insects, roaches, and all other living pests, by spraying or other means, are selling a service subject to sales tax. This includes persons who eradicate, prevent, or control pest infestations in farmhouses, outbuildings, and other structures, such as grain bins, used in agricultural production.

211.16(2) *Spraying of cropland exempt.* This rule does not include those persons who are engaged in the business of spraying cropland used in agricultural production to eradicate or prevent the infestation by pests of the cropland. The service of spraying cropland is exempt.

This rule is intended to implement Iowa Code sections 423.2(6)*"bd"* and 423.3(5).

701—211.17(423) Turkish baths, massage, and reducing salons.

211.17(1) *In general.* Persons engaged in the business of operating Turkish baths, massage, and reducing salons are selling a service subject to sales tax. This includes persons engaged in the business of operating a health studio which, as a part of its operation, offers any services of Turkish baths, massage, or reducing facilities or programs. The sales price of those services is subject to sales tax.

211.17(2) *Definitions.* For purposes of this rule:

"Massage" means the kneading, rubbing, or manipulation of the body to condition the body. "Massage" does not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts or those provided by massage therapists licensed under Iowa Code chapter 152C.

"Reducing salons" means any type of establishment that offers facilities or a program of activities for the purpose of weight reduction.

"Turkish baths" means any type of facility where an individual is warmed by steam or dry heat.

This rule is intended to implement Iowa Code section 423.2(6)*"bg."*

701—211.18(423) Wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables. Persons engaged in the business of wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables are selling a service subject to sales

tax. A person who provides a service described in this rule incidental to the sale of such items without charging separately for the service does not need to collect or remit tax. 701—Chapter 206 contains additional information on bundled transactions.

This rule is intended to implement Iowa Code section 423.2(6)*"bl."*

701—211.19(423) Wrecking service.

211.19(1) *In general.* Persons engaged in the business of wrecking are selling a service subject to sales tax.

211.19(2) *Definition.* For purposes of this rule:

"Wrecking" includes defacing or demolishing tangible personal or real property or any part thereof.

This rule is intended to implement Iowa Code section 423.2(6)*"bm."*

701—211.20(423) Cable and pay television.

211.20(1) *In general.* Persons engaged in the business of distributing the signals of one or more television broadcasting stations or other television programming to subscribers and using any transmission path, including but not limited to cable, satellite, streaming video, video on-demand, or pay-per-view, for those signals are selling a service subject to sales tax. The sales price for the rental of any device used to decode or receive television broadcasting signals from a communications satellite is also subject to sales tax.

211.20(2) *Signals to exhibitors.* Any person distributing or providing signals to exhibitors on screens in auditoriums or other buildings that show sporting or other events are selling a service subject to sales tax.

211.20(3) *Applicability.* This rule applies to the transmissions of single events and subscriptions and to television services that serve fewer than 50 subscribers or are serving only customers located in one or more multiple unit dwellings that are under common ownership, control, or management.

This rule is intended to implement Iowa Code section 423.2(6)*"al."*

701—211.21(423) Camera repair.

211.21(1) *In general.* Persons engaged in the business of camera repair are selling a service subject to sales tax.

211.21(2) *Definition.* For purposes of this rule:

"Camera repair" includes the repair of any still photograph, motion picture, video, digital, or television camera. "Camera repair" includes the repair of any part of a camera considered to be a part of a camera that may be detached from the camera body but can only be used with a camera. Examples of such accessories include but are not limited to detachable lenses, flash units, and motor drives. "Camera repair" does not include the repair of cameras that are built into a cell phone or computer.

This rule is intended to implement Iowa Code section 423.2(6)*"w."*

701—211.22(423) Gun repair.

211.22(1) *In general.* Persons engaged in the business of repairing guns are selling a service subject to sales tax.

211.22(2) *Definition.* For purposes of this rule:

"Gun repair" means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun.

This rule is intended to implement Iowa Code section 423.2(6)*"w."*

701—211.23(423) Janitorial and building maintenance or cleaning.

211.23(1) *In general.* Persons engaged in the business of performing one or a number of janitorial services and building maintenance or cleaning are selling a service subject to sales tax.

211.23(2) *Definitions.* For purposes of this rule:

"Building maintenance or cleaning" includes but is not limited to the cleaning of exterior walls or windows of any building and any other act performed upon the exterior of a building with the intent to keep it in good condition or upkeep.

"Janitorial services" means the type of cleaning services performed by a janitor in the regular course of duty. These services may be performed individually under a separate contract or included within a general contract to perform a combination of such services. These services may include but are not limited to interior window washing, floor cleaning, vacuuming, waxing, cleaning of interior walls and woodwork, cleaning of restrooms and furnaces, and the movement of furniture or other personal property within a building.

211.23(3) *Exempt services.*

a. Janitorial services performed in a private residence, including apartment or multiple housing units, and paid for by the occupant of the residence are exempt from sales tax.

b. Repairs and any service performed upon the exterior of a building that is a private residence and paid for by an occupant of the building are excluded from the meaning of "building maintenance or cleaning." However, these services may be taxable under a construction-related enumerated service, described in rule 701—219.13(423).

c. Janitorial services and building maintenance or cleaning performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a structure are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6)*"z."*

701—211.24(423) Lawn care, landscaping, and tree trimming and removal.

211.24(1) *Lawn care.*

a. In general. Persons engaged in the business of lawn care are selling a service subject to sales tax. Lawn care is a taxable service regardless of the age of the person performing the service. Lawn care services performed on properties including but not limited to cemetery grounds, golf courses, parks, and residential or commercial properties containing one or more buildings or structures are subject to sales tax.

b. Definitions. For purposes of this rule:

"Landscaping" includes services related to the arrangement and modification of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment.

"Lawn" means an open space between woods or ground that is covered with grass and is generally kept mowed or required to be kept mowed.

"Lawn care" includes but is not limited to services related to mowing, trimming, watering, fertilizing, reseeding, resodding, and the killing of weeds, fungi, vermin, and insects that may threaten a lawn.

c. Not taxable. The mowing of grass within a ditch is not a taxable service.

211.24(2) *Landscaping.*

a. In general. Persons engaged in the business of landscaping are selling a service subject to sales tax.

b. Landscape architects. Services that require licensure as a "landscape architect" pursuant to Iowa Code section 544B.2 are not subject to sales tax under this rule if those services are performed by a licensed landscape architect, are separately stated, and are separately billed as a charge for landscape architecture.

c. Exempt. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of real property are not subject to sales tax. 701—Chapter 219 contains additional information on new construction, reconstruction, alteration, expansion, and the remodeling of real property.

d. Landscaping materials. The gross receipts from the sale of sod, dirt, trees, shrubbery, bulbs, sand, rock, wood chips and other similar landscaping materials, when used for landscaping and sold to final consumers, shall be subject to sales tax. For the purpose of this rule, "final consumer" ordinarily means the owner of the land to which the landscaping materials are applied, or a general building contractor when the landscaping contractor contracts with the general building contractor. When a landscaping contractor uses materials to fulfill a contract, the landscape contractor is considered the retailer of the landscaping materials and shall be obligated to collect sales tax on the selling price from the final consumer.

When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, wood chips and other similar landscaping materials installs these items as a part of a contract for landscaping or improving land for a lump sum, the entire gross receipts shall be subject to tax. Any retailer's charges for "landscaping" shall be taxable. However, a retailer's charges for nontaxable services are not taxable if contracted for separately, or, if no written contract exists, the charges are itemized separately on the invoice.

EXAMPLE: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of $20 per yard. The sodding contractor must charge the customer $20 sales tax (5 percent x $400).

EXAMPLE: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at $25 each, white rock for $5 per bag and wood chips for $4 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of $25 per hour. XYZ Company's hourly fee is taxable if paid for the service of "landscaping" or for some other taxable service, e.g., excavation. If the service is not taxable, the charge is excluded from tax because it was separately contracted for.

The gross receipts from the sale of uncut sod and unexcavated trees, shrubs, and rock shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

This rule does not apply to the gross receipts from the sale of plants and trees that are eligible for purchase with food coupons under rule 701—220.2(422,423).

211.24(3) *Tree trimming and removal.*

a. In general. Persons engaged in the business of tree trimming, tree removal, and stump removal are selling a service subject to sales tax. This includes but is not limited to removal of any portion of a tree, including branches or a trunk.

b. Shrubs with woody stems or trunks. For purposes of this rule, tree trimming and tree removal include the trimming or removal of any shrub that has a woody main stem or trunk with branches.

c. Sale of cut wood. Persons engaged in the business of tree trimming and tree removal who cut wood from the trees that they trim or remove into sizes suitable for sale as firewood and sell the wood as firewood are engaged in the sale of tangible personal property. The tree trimming or removal is not a sale for resale. The sales price from the sale of this wood is subject to sales tax.

This rule is intended to implement Iowa Code sections 422.42, 422.45(12), 423.1, and 423.2(6)*"ab."*

701—211.25(423) Pet grooming.

211.25(1) *In general.* Persons engaged in the business of pet grooming are selling a service subject to sales tax. This includes persons who are not veterinarians and groom dogs.

211.25(2) *Definitions.* For purposes of this rule:

"Pet" means any animal that has been tamed or gentled and is kept by its owner for pleasure or affection, rather than for utility or profit. Service animals or assistance animals as defined in Iowa Code section 216.8B and livestock are not considered pets.

"Pet grooming" includes any act performed to maintain or improve the appearance of a pet. This includes but is not limited to washing, combing, currying, hair cutting, and nail clipping, regardless of whether the person performing the act is a veterinarian.

211.25(3) *Veterinary pet grooming.* 701—Chapter 206 contains more information on bundled transactions to aid in determining the taxability of pet grooming when it is completed for both veterinary and cosmetic reasons.

211.25(4) *Livestock showing.* Services related to the pet grooming of livestock, including but not limited to the preparation of livestock for exhibition at fairs or shows, are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6)*"am."*

701—211.26(423) Reflexology.

211.26(1) *In general.* Persons engaged in the business of reflexology are selling a service subject to sales tax.

211.26(2) *Definition.* For purposes of this rule:

"Reflexology" means the same as defined in Iowa Code section 152C.1.

This rule is intended to implement Iowa Code section 423.2(6)*"ar."*

701—211.27(423) Water conditioning and softening.

211.27(1) *In general.* Persons engaged in the business of water conditioning and softening are selling a service subject to sales tax.

211.27(2) *Definitions.* For purposes of this rule:

"Water conditioning" means any action other than water softening taken with respect to water that renders the water fit for its intended use, more healthful, or enjoyable for human consumption. "Water conditioning" includes but is not limited to water filtration, purification, deionization, and reverse osmosis.

"Water softening" means the removal of minerals from water to render it more suitable for drinking and washing.

211.27(3) *Water purification.* When performed for residential, commercial, industrial, or agricultural users, the service of water purification is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6)*"bh."*

701—211.28(423) Security and detective services.

211.28(1) *In general.* Persons engaged in the business of providing security or detective services are selling a service subject to sales tax.

211.28(2) *Definitions.* For purposes of this rule:

"Detective service" means a service of investigation with the purpose to obtain information regarding any of the following subjects: crimes or wrongs done or threatened; the habits, conduct, movements, location, associations, transactions, reputation, or character of a person; credibility of witnesses or other persons; inquiry or recovery of lost or stolen property; cause, origin, or responsibility of a fire, accident, or damage to property; or veracity or falsity of any statement or representation, or means a service of investigation with the purpose to detect deception or to secure evidence to be used before an authorized investigation committee, before boards of award or arbitration, or in a civil or criminal trial.

"Security service" means a service with the purpose to protect property from theft, vandalism, or destruction or individuals from physical attack or harassment. "Security service" includes but is not limited to the rental of guard dogs; burglar or fire alarms; providing security guards, bodyguards or mobile patrols; or the protection of computer systems against unauthorized access.

211.28(3) *Exempt.* The sales price of the following services or activities are not subject to sales tax under this rule:

a. Peace officer engaged privately in security or detective work with the knowledge and consent of the chief executive officer of the peace officer's law enforcement agency.

b. Person employed full- or part-time by an employer in connection with the affairs of the employer.

c. Attorney licensed to practice law in Iowa while performing duties as an attorney.

d. Person engaged exclusively, either as an employee or independent contractor, in conducting investigations and adjustments for insurance companies.

e. Person serving notice or any other document to a party, witness, or any other individual in connection with any criminal, civil, or administrative litigation.

f. Solicitation of a debtor to pay or collect payment for a debt.

g. Consulting, rendering advice, or providing training with regard to security or detection matters.

h. Charges for mileage, travel expenses, lodging, meal expenses, fees paid for records, and amounts paid for information if those charges are separately identified, separately billed, and reasonable in amount.

This rule is intended to implement Iowa Code section 423.2(6)*"as."*

701—211.29(423) Solid waste collection and disposal services.

211.29(1) *In general.* Persons engaged in the business of solid waste collection and disposal are selling a service subject to sales tax.

211.29(2) *Definitions.* For purposes of this rule:

"Nonresidential commercial operation" means any operation that is an industrial, commercial, agricultural, or mining operation, whether for profit or not. "Commercial" refers to those involved in the buying and selling of goods and services, rather than just meaning a for-profit operation.

1. "Nonresidential commercial operation" includes but is not limited to hotels, motels, restaurants, realtors, professional firms (doctors, lawyers, accountants, or dentists), repair persons, persons selling and renting all sorts of tangible personal property, persons selling insurance of any kind, appraisers, skilled trades (e.g., plumbers, carpenters, and electricians), construction contractors, banks, savings and loans, barbers and beauticians, day care centers, counseling services, employment agencies, janitorial services, landscapers, painters, pest control, photography, printing, and storage services. Also included within the meaning of nonresidential commercial operation are the United Way, the American Cancer Society, the Elks, Masons, houses of worship (e.g., churches, synagogues, and mosques), and not-for-profit hospitals that are not licensed under Iowa Code chapter 135B.

2. "Nonresidential commercial operation" does not include apartment complexes, mobile home parks, manufactured home communities, and single-family or multifamily dwellings. Also excluded from the meaning are nonprofit hospitals licensed pursuant to Iowa Code chapter 135B.

"Recyclable material" includes but is not limited to used motor oil, paper, glass, metals (e.g., copper, aluminum, and iron), and batteries, as long as the recycled materials are separated from the solid waste for the purpose of recycling the materials.

"Recycling facilities" means facilities where recyclable materials are separated or processed for the purpose of reusing a material in its original form or using it in a manufacturing process that will not cause the destruction of the recyclable material to preclude its further use. A facility that produces insulation from used glass would qualify as a recycling facility under this rule, while a facility that separates or processes recyclable materials for use as fuel would not qualify as a recycling facility under this rule.

"Solid waste" means the same as defined in Iowa Code section 423.2(7).

211.29(3) *Nonresidential commercial operations.* Counties, municipalities, and cities that provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect and remit the tax from these services. Additionally, any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect and remit the tax from those services provided to nonresidential commercial operations located within that city or municipality. If the solid waste collection and disposal service is rendered to multiple businesses or organizations, tax must be collected and remitted only on those portions that meet the definition of nonresidential commercial operations.

211.29(4) *Bundled transaction of solid waste collections and disposal services.* 701—Chapter 206 contains more information on bundled transactions regarding when both taxable and nontaxable solid waste collection and services are provided to a customer.

211.29(5) *Disposal or tipping charges.*

a. Taxable. Charges for disposal or tipping of solid waste are also subject to sales tax. Persons or businesses who transport their own solid waste and persons who transport, without compensation, solid waste generated by another must pay the required tax upon the disposal or tipping charge or fee imposed by the collection or disposal facility.

b. Exempt. Charges or fees imposed for the service of collecting and managing recyclable material separated by solid waste by a waste generator are not subject to sales tax.

211.29(6) *Recycling facilities.* The sales price of the service of solid waste collection and disposal provided to recycling facilities that separate or process recyclable materials is not subject to sales tax if, as a result of the separation or processing, the volume of the waste collected is reduced by 85 percent and the waste is collected and disposed of separately from other solid waste.

This rule is intended to implement Iowa Code section 423.2(7).

701—211.30(423) Sewage services.

211.30(1) *In general.* Persons engaged in providing sewage service to nonresidential commercial operations are selling a service subject to sales tax.

211.30(2) *Definitions.* For purposes of this rule:

"Agricultural operation" means any enterprise engaged in the raising of crops or livestock for market on an acreage.

"Industrial operation" means a business that purchases or rents machinery or equipment eligible for the Iowa sales and use tax exemption for industrial machinery and equipment.

"Mining operation" means a business engaged in underground mining, strip mining, or quarrying.

"Nonresidential commercial operation" means the same as defined in rule 701—211.44(423).

"Sewage services" means the services of collecting rainwater, liquid and solid refuse, or excreta for drainage or purification by means of pipes, channels, or conduits usually placed underground.

211.30(3) *Nonresidential commercial operations.* Counties, municipalities, sanitary districts, or any other person providing sewage service to nonresidential commercial operations are obligated to collect and remit the applicable Iowa sales tax. Any person or entity that has contracted to provide sewage services to a county or municipality is obligated to collect and remit the applicable Iowa sales tax performed for the county or city on behalf of the nonresident commercial operations located within that county or city.

This rule is intended to implement Iowa Code section 423.2(6)*"at."*

701—211.31(423) Sign construction and installation.

211.31(1) *In general.* Persons engaged in the business of constructing and installing signs are selling a service subject to sales tax.

211.31(2) *Definition.* For purposes of this rule:

"Sign" means notices erected and maintained for the purpose of providing information, notices, markers, and the advertising of products or services. Signs include but are not limited to billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

This rule is intended to implement Iowa Code section 423.2(6)*"aw."*

701—211.32(423) Dating services.

211.32(1) *In general.* Persons engaged in providing dating services are selling a service subject to sales tax.

211.32(2) *Definition.* For purposes of this rule:

"Dating service" means the service of providing an opportunity for individuals to meet and interact socially with the possibility of forming a relationship. Dating services include but are not limited to the services of those who provide an opportunity for individuals to describe themselves to and meet potential partners through escort services, smartphone applications, online websites and applications, and videotapes. Excluded from the definition are marriage matchmakers, telephone numbers that only provide opportunities for conversation rather than in-person interaction, and advertisements in newspapers or magazines soliciting companionship.

This rule is intended to implement Iowa Code section 423.2(6)*"n."*

701—211.33(423) Personal transportation service.

211.33(1) *Personal transportation service defined.* "Personal transportation service" means the arrangement or provision of transportation of a person or persons for consideration, regardless of whether the person or entity providing such service supplies or uses a vehicle in conjunction with the service. "Personal transportation service" includes but is not limited to the following:

a. Transportation services provided by a human driver, including but not limited to drivers with a Class C, Class D endorsement 3, or Class M license, or by a chauffeur as defined in Iowa Code section 321.1(8). Examples of such services include but are not limited to taxi services, driver services, limousine services, bus services, shuttle services, and rides for hire;

b. Transportation services provided by a nonhuman driver, autonomous vehicle, or driverless vehicle; and

c. Ride sharing services, including but not limited to use of a network to connect transportation network company riders to transportation network company drivers who provide prearranged rides as defined in Iowa Code section 321N.1(4).

EXAMPLE 1: Marketplace X is a transportation network company that operates a network to connect drivers to riders. Driver D provides rides in Iowa exclusively through X's network. A person in Iowa requests a ride through X's network, and D provides the ride in D's car. X is a marketplace facilitator. X must collect Iowa sales tax and applicable local option sales tax on the sales price of the ride. Because D makes all of D's Iowa sales through X, which collects all applicable taxes on all of D's rides, D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. X will report the sales tax on X's Iowa sales tax return.

EXAMPLE 2: D provides rides for X and Y, two different transportation network companies. X is a marketplace facilitator responsible for collecting and remitting Iowa sales tax and applicable local option sales tax on the sales price of the rides D provides through X's network. Y is also a marketplace facilitator responsible for collecting all applicable taxes on the rides D provides through Y's network. D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return.

EXAMPLE 3: D independently provides rides in addition to providing rides through X's network. X must collect all applicable taxes on the rides D provides through its network. X is not responsible for collecting tax on any of the rides D provides independent from X's network. D, a seller of personal transportation service with physical presence in Iowa, must collect and remit Iowa sales tax and applicable local option sales tax on the sales price of the rides D sells independent of X's network.

211.33(2) *Tax imposed; sourcing.* The sales price from the sale of personal transportation service in Iowa is subject to Iowa sales tax. The tax is imposed if the personal transportation service is first used in Iowa and is sourced to the location at which the service is first received.

EXAMPLE: R schedules a personal transportation service while at R's residence in Des Moines. R schedules the transportation service to transport R from Grinnell to Iowa City. R independently travels to Grinnell, where R enters a vehicle owned by the transportation service. The transportation service takes R from Grinnell to Iowa City, where the service ends and R pays for the service. The sale is sourced to Grinnell, the location at which R first received the transportation service. The transportation service must charge sales tax and the applicable local option tax in Grinnell, even though R scheduled the service while in Des Moines and the service concluded and payment was made in Iowa City.

211.33(3) *No tax imposed on interstate motor carrier transportation service.* Where a personal transportation service involves interstate travel by a motor carrier as defined in 49 U.S.C. Section 13102(14), no tax shall be imposed on the transaction to the extent prohibited by 49 U.S.C. Section 14505.

211.33(4) *Exemption for transportation services furnished by a qualified public transit system, medical transportation service, or paratransit service.* The sales price from sales of transportation services by public transit systems, medical transportation services, or paratransit services is exempt from tax. For purposes of the exemption under Iowa Code section 423.3(106), the following definitions shall apply:

"Medical transportation" means a personal transportation service for an individual to travel to a health care provider for the individual's medical care. Medical transportation is not limited to transportation services for immediate life-threatening or serious injuries.

"Paratransit service" means a personal transportation service provided to individuals with disabilities.

"Public transit system" means a public transit system as defined in Iowa Code section 324A.1(4).

This rule is intended to implement Iowa Code sections 423.2(6)*"ac"* and 423.3(106).

701—211.34(423) Information services.

211.34(1) *In general.* Persons engaged in the business of providing access to information services provided through any tangible or electronic medium are selling a service subject to sales tax.

211.34(2) *Definition.* For purposes of this rule:

"Information services" means the same as defined in Iowa Code section 423.1(22A).

211.34(3) *Taxable examples.* Examples of information services include but are not limited to database files, research databases, genealogical information, mailing lists, subscription files, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, price lists or guides, scouting reports, and other similar items of compiled information prepared for a particular customer.

211.34(4) *Nontaxable examples.* "Information services" does not include the furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material or information prepared for general dissemination to the public in the form of books, magazines, newsletters, videotapes or audiotapes, compact discs, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting a private, for-profit business) to its purchaser. These items sold in digital formats may be taxable as a specified digital product.

This rule is intended to implement Iowa Code section 423.2(6)*"br."*

701—211.35(423) Software as a service.

211.35(1) *In general.* Persons engaged in the business of providing software as a service are selling a service subject to sales tax. The content or material accessed by way of software as a service does not impact the taxability of the software itself.

211.35(2) *Definitions.* For purposes of this rule:

"Software as a service" means the sale, storage, use, or other consumption of vendor-hosted computer software, such as but not limited to software accessible on the cloud. "Software as a service" does not include services commonly understood to constitute "infrastructure as a service" but may include what is described as "platform as a service" based on the facts and circumstances relating to that particular service. A relevant declaratory order, *In the Matter of study.com, LLC*, Iowa Dep't of Revenue Declaratory Order No. 2020-310-2-0649 (Apr. 20, 2021), provides further discussion of software as a service.

"Vendor-hosted computer software" means computer software that is accessed through the Internet or a vendor-hosted server whether the access is permanent or temporary, whether any downloading occurs, or whether the software is hosted by the retailer of the software or by a third party.

211.35(3) *Exemptions.* Software as a service may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6)*"bu."*

701—211.36(423) Video game services and tournaments.

211.36(1) *In general.* Persons engaged in the business of providing video game services and tournaments are selling a service subject to sales tax. Taxable services relating to video game tournaments include fees paid for participating in such tournaments and related services as well as observing a video game tournament. Participation in or observation of such tournaments is taxable regardless of whether or not a prize is provided to any participants.

211.36(2) *Definitions.* For purposes of this rule:

"Video games" means any virtual, digital, or electronic game in which a user interacts with a user interface to generate visual feedback on a video device such as a computer monitor, television screen, or mobile device. Video games may be transferred through any physical or electronic medium, including by cartridge, disc, or electronic file, or through access to any server or network of servers.

"Video game services" means providing access to video games, support and account services, in-game currency exchanges, payment processing services, and any other service related to the hosting or provision of video games.

REVENUE DEPARTMENT[701](cont'd)

"Video game tournament" means an event where participants compete in the playing of video games. Participants may be playing video games by being physically present in the same location or playing remotely.

This rule is intended to implement Iowa Code section 423.2(6)*"bt."*

701—211.37(423) Services related to specified digital products or software sold as tangible personal property.

211.37(1) *In general.* Persons engaged in the business of providing services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible personal property are selling a service subject to sales tax.

211.37(2) *Definition.*

"Specified digital products" means the same as defined in Iowa Code section 423.1.

211.37(3) *Exemption.* Services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible personal property may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6)*"bs."*

701—211.38(423) Storage of tangible or electronic files, documents, or other records.

211.38(1) *In general.* Persons engaged in the business of providing storage of tangible or electronic files, documents, or other records are selling a service subject to sales tax.

211.38(2) *Exemption.* Storage of tangible or electronic files, documents, or other records may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6)*"bq."*

ARC 7199C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to exempt and taxable sales, sales involving government entities and nonprofits, and types of sales based on the type and method of transaction and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 212, "Governments and Nonprofits," Iowa Administrative Code, and to adopt a new chapter with the same title; to rescind Chapter 284, "Exempt Sales," Iowa Administrative Code; to rescind Chapter 285, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3, 423.14 and 423.14A.

Purpose and Summary

The purpose of the proposed rulemaking is to readopt Chapters 212 and 285 and rescind and reserve Chapter 284. The Department proposes revisions to Chapters 212 and 285 to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. These

chapters describe the Department's interpretation of Iowa Code chapter 423 as it applies to certain types of exempt and taxable sales. Chapter 212 provides guidance on sales involving government entities and nonprofits. Chapter 285 provides guidance on certain types of sales based on the type and method of transaction. After review, the Department determined there is no benefit to retaining Chapter 284 and proposes to rescind and reserve the chapter; however, the Department also determined that several rules from Chapter 284 will be repromulgated into Chapters 210, 212, and 219. Chapters 210 (**ARC 7197C**, IAB 12/27/23) and 219 (**ARC 7201C**, IAB 12/27/23) are not included in this Notice but are covered herein.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

REVENUE DEPARTMENT[701](cont'd)

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 212 and adopt the following **new** chapter in lieu thereof:

CHAPTER 212
GOVERNMENTS AND NONPROFITS

701—212.1(423) Taxability of profits used by or donated to an educational, charitable, or religious entity. For purposes of the exemption provided in Iowa Code section 423.3(78), the following definitions apply:

212.1(1) *Educational.* An activity has an "educational purpose" if the activity has as its primary objective to give instruction. The term "educational purpose" includes recreational or cultural activities. Activities that are directly related to the educational process such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of this exemption. Municipal or public or nonprofit science centers and libraries are also considered educational for purposes of the exemption.

EXAMPLE 1: A local nonprofit preschool that is exempt from federal tax under Internal Revenue Code (IRC) Section 501(c)(3) has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The sales transactions from the supper are exempt from sales tax because the total amount of the profits from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as a private nonprofit educational institution. Rule 701—212.5(423) contains additional information regarding the sale of tangible personal property and performance of services to certain nonprofit corporations.

EXAMPLE 2: A local nonprofit ballet company, which is exempt from federal income tax under IRC Section 501(c)(3), promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All profits are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The sales from this gift shop are exempt from Iowa sales tax to the extent that the profits therefrom are utilized to pay for the stated educational activities.

212.1(2) *Religious.* "Religious purpose" includes all forms of belief in the existence of superior beings or things capable of exercising power over the human race. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church, which is exempt from federal income tax under IRC Section 501(c)(3), has a bake sale. All of the bake sale profits are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for "on-premises consumption" (rule 701—220.5(423) contains more information on the sale of prepared food), but the bake sale profits are exempt from tax in any event because they are to be used for religious purposes. However, generally, any purchases made by the church that are not for resale are subject to sales tax. Iowa Code section 423.3(2) contains the exemption for the sales price of sales for resale.

EXAMPLE 2: Another local church, exempt from federal income tax under IRC Section 501(c)(3), conducts bingo games every Thursday. The profits from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the profits are going to be used.

212.1(3) *Charitable.* A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

EXAMPLE 1: A local, nonprofit animal shelter that is exempt from federal income tax under IRC Section 501(c)(3) provides shelter, medical care, socialization, and adoption services for homeless animals and, as a fundraiser, sells T-shirts and sweatshirts depicting rescued animals. All of the profits from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the profits from the sales would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: A nonprofit hospital, which has received exemption from federal income tax under IRC Section 501(c)(3), operates a gift shop. All of the profits are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the profits from the gift shop are used for a charitable purpose, the sales price would be exempt from sales tax.

a. Profits. The sales price from sales at issue in this exemption is exempt from sales tax to the extent that the profits are used by or donated to a qualifying organization and used for a qualifying activity. For purposes of this rule, "profits" means proceeds remaining after direct expenses have been deducted from the sales price derived from the activity or event. The expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity.

Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 423.3(78), it can still be held responsible for sales tax on gross receipts sales price if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

At the time of the selling event, a presumption is made that sales tax will not be charged to and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the profits from the sale are expended, which follows the selling event. If after the event a portion of the profits is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the sales price in the tax period in which that portion was expended.

EXAMPLE 1: The cost of food for a fundraising meal would be a direct expense. However, the cost of a victory celebration because the fundraising dinner was a success would not be a direct expense.

EXAMPLE 2: An educational institution hosts an art show. It invests profits from the art show into income-producing property and uses the remainder of the profits to purchase books for the library.

EXAMPLE 3: A nonprofit organization hosts a concert to raise money for neighborhood improvements. The cost of entertainment, if the entertainment is the principal source of proceeds for the activity or event, is a direct expense of the concert.

Unless a specific exemption applies to the entity, purchases by qualifying organizations that are not for resale cannot be purchased free of sales tax.

b. General information. The following is general information that is important to organizations involved in educational, religious, or charitable activities:

(1) There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

(2) Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep for three years financial records that meet acceptable accounting procedures.

(3) Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

(4) Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code that requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue. However, if such organizations are making sales that are subject to tax, then a sales tax permit must be obtained.

(5) The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious, or charitable activity.

(6) When profits from an activity are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the profits are not considered to be expended for educational purposes, and the gross receipts sales price from the car show are subject to tax.

(7) Activities to raise funds to send members of qualifying educational, religious, or charitable organizations to conventions and other similar events that are directly related to the purposes of the qualifying educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 423.3.

(8) An organization whose function is to promote by advertising the use of a particular product that can be purchased at retail does not qualify for the exemption provided by Iowa Code section 423.3(78), even though promotion by advertising may educate the public.

(9) Sales of tangible personal property or specified digital products by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt to the extent the profits are expended for educational, religious, or charitable purposes.

(10) All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended, except that those games operated by a county or a city are exempt from collecting the sales tax. When organizations operate such games, they are required to have a sales tax permit and a gambling license.

This rule is intended to implement Iowa Code section 423.3(78).

701—212.2(423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. Receipts from the sale of tangible personal property or specified digital products or from rendering, furnishing, or providing taxable services to the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. shall be exempt from sales tax.

Purchases made by the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, or U.S.O. outside of Iowa for use in Iowa shall be exempt from use tax.

This rule is intended to implement Iowa Code section 423.3(107).

701—212.3(423) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property or services are exempt as described in Iowa Code section 423.3(43), sales tax does not apply.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. Company A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to Company B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

212.3(1) *Proof of transportation.* The most acceptable proof of transportation outside the state is:

a. A waybill or bill of lading made out to the retailer's order calling for transport; or

b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or

c. A trip sheet signed by the retailer's transport agency, which shows the signature and address of the person outside the state who received the transported goods.

212.3(2) *Certificate of out-of-state delivery.* Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

212.3(3) *Exemption not applicable.* Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 423.3(43).

701—212.4(423) Educational institution. Tangible personal property, specified digital products, or enumerated services purchased by any private nonprofit educational institution, as defined in Iowa Code section 423.3(17), in the state and used for educational purposes is exempt from sales tax. When purchases are made by any private nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, the sales are taxable if the proceeds from the sale are not used for educational purposes.

212.4(1) *Taxable sales.* Examples of taxable sales include:

a. Sales of prepared food or other taxable food (rules 701—220.3(423) to 701—220.6(423) contain more information), whether sold at snack bars, grills, cafeterias, restaurants, or cafes and whether or not sold to students.

b. Sales from vending machines.

c. Special event billings to colleges for meals for guests not connected with the college or at events not connected with the college.

d. Sales to fraternities or sororities for events not billed to the college.

e. Special event meals by commercial or social clubs, such as chambers of commerce, Rotarians, Kiwanis, alumni, advertising clubs, or political groups, whether or not billed through the college.

212.4(2) *Exempt sales.* Examples of exempt sales include:

a. The sales of yearbooks to schools that have executed contracts with yearbook companies to purchase yearbooks. These are considered sales for resale and are exempt from tax.

b. The sales of yearbooks from the school to the students and others. These are considered an educational activity and are exempt to the extent the profits therefrom are expended for educational purposes.

c. Student board billing to include freshman days and student orientation when billed to the college and included in tuition.

d. Students and faculty casual board when billed to the college.

e. Events, when given by faculty for students and billed to the college.

f. Events sponsored by colleges for visiting dignitaries, or functions related to education and billed to the college.

g. Meals for students on education field trips and billed to the college.

EXAMPLE 1: A child care center (ABC) is a private nonprofit organization that provides the service of caring for children newborn to six years of age. In addition, ABC teaches children basic learning skills such as shapes, numbers, colors and the alphabet. ABC's primary purpose is to provide child care. The education of the children is a secondary activity. Consequently, ABC is not a private educational institution and would not qualify for exemption from sales tax under Iowa Code section 423.3(17).

EXAMPLE 2: A Preschool (XYZ) is a nonprofit private organization that teaches children from the ages of three to six years old. XYZ Preschool teaches the children basic learning skills such as shapes, numbers, colors and the alphabet by using certified faculty and accredited curriculum. XYZ Preschool is a private nonprofit educational institution and is eligible to claim the exemption to the extent purchases otherwise meet the requirements of Iowa Code section 423.3(17).

This rule is intended to implement Iowa Code section 423.3(17).

701—212.5(423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

212.5(1) Unless a specific exemption applies, the sales price of tangible personal property, taxable services, and specified digital products sold to nonprofit corporations is subject to tax. Sales price from the sale or rental of tangible personal property, specified digital products, or from services performed, rendered or furnished to certain nonprofit corporations are exempt from tax. Such organizations can be found in Iowa Code section 423.3(18).

212.5(2) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in this rule.

This rule is intended to implement Iowa Code section 423.3(18).

701—212.6(423) Nonprofit private museums. Iowa Code section 423.3(21) provides a sales tax exemption for certain purchases by nonprofit private museums.

212.6(1) Definitions and examples. A "museum" is all of the following:

a. An institution organized for educational, scientific, historical preservation, or aesthetic purposes.

b. Predominantly devoted to the care and exhibition of a collection of objects in a room, building, or locale.

c. The collection must be open to the public periodically or at fixed intervals.

d. Have staff available to answer questions regarding the collection.

212.6(2) Exclusions from definition of "museum."

a. An institution is not a "museum" unless it can be included in the ordinary and usual public concept of a museum.

b. Examples of institutions that are not designated as "museums" include aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos.

701—212.7(423) State fair and fair societies. The sales price from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district or fair society organized under Iowa Code chapter 174 are exempt from sales tax. This exemption does not apply to individuals, entities, or others that sell or provide services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174.

This rule is intended to implement Iowa Code sections 423.3(23) and 423.3(35).

701—212.8(423) Sales to hospices. Iowa Code section 423.3(28) provides an exemption for freestanding nonprofit hospice facilities. "Hospice" and "hospice care" are defined in 42 CFR 418.3. A "freestanding hospice facility" is any hospice program housed in a building that is dedicated only to the hospice program and that is not attached to any other building or complex of buildings. An individual is "terminally ill" if that individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 423.3(28).

701—212.9(423) Art centers.

212.9(1) Iowa Code section 423.3(22) provides an exemption from tax for certain purchases made by private nonprofit art centers.

212.9(2) To qualify for the exemption, the organization will be all of the following:

a. An art center, which is defined as a structure that displays aesthetic objects that are the product of the conscious use of skill and creative imagination.

b. Housed in a structure open to the public periodically or at fixed intervals with regular hours and with staff available to answer visitors' questions.

c. Located in Iowa.

This rule is intended to implement Iowa Code section 423.3(22).

701—212.10(423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the federal governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 423.5(1)*"c"* shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code section 423.3.

701—212.11(423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the sales price from taxable retail sales of tangible personal property, specified digital products, and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa that are specifically exempted from collecting tax by Iowa Code section 423.3(32).

This rule is intended to implement Iowa Code chapter 423.

701—212.12(423) Sales to federal, state, municipal, and tribal governments and instrumentalities.

212.12(1) *Exempt sales.* Sales are exempt from tax under Iowa Code section 423.3(31) if the tangible personal property, taxable services, and specified digital products are:

a. Sold directly to an exempt government entity described in Iowa Code section 423.3(31);

b. Used for a public purpose; and

c. Not one of the types of the products listed in Iowa Code section 423.3(31)*"a"*(1) through 423.3(31)*"a"*(3) that remain taxable even when sold to certain government entities.

212.12(2) *Direct, legal incidence of the tax.*

a. Sale to exempt government entities. A sale to an exempt government entity occurs only if the government entity, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. Rule 701—219.23(423) contains additional information on construction contracts with designated exempt entities.

b. Government contractors. Iowa Code section 423.3(31) does not apply to independent contractors who contract with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services that a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

c. Examples.

EXAMPLE 1: Patient A purchases a hospital bed. A percentage of patient A's bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale. Patient A is the direct purchaser of the bed. The exemption in Iowa Code section 423.3(31) does not apply.

EXAMPLE 2: A is a federal government employee. A travels in Iowa while on government business and purchases prepared meals from restaurants in Iowa. A pays for the meals. The federal government later reimburses A the entire cost of the meals, including the sales tax A paid on the prepared meals. A has purchased meals, and Iowa sales tax should be charged accordingly. The federal government is not the direct purchaser of the prepared meals so the exemption under Iowa Code section 423.3(31) does not apply and neither A nor the federal government qualifies for a tax refund.

212.12(3) *Government instrumentalities.*

a. Express statute. An entity can be an instrumentality of government under Iowa Code section 423.3(31) if a state or federal statute expressly designates the entity as a government instrumentality that is exempt from paying sales tax on its direct purchases.

EXAMPLE 1: Iowa Code section 231.32(5) provides that after the commission on aging designates an area agency on aging, the area agency "shall be considered an instrumentality of the state and shall adhere to all state and federal mandates applicable to an instrumentality of the state." Thus, a designated area agency on aging is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

EXAMPLE 2: Iowa Code section 12E.3(1) provides the tobacco settlement authority is "a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential government functions." Thus, the tobacco settlement authority is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

b. Lack of express statute defining an entity as a government instrumentality. If there is no statute that expressly defines an entity as a government instrumentality exempt from tax, the entity may qualify as a government instrumentality if it satisfies all of the following requirements:

(1) Government controls the detailed physical performance of the entity;

(2) The entity's day-to-day operations are supervised by government; and

(3) The entity is created for the purpose of, and is primarily engaged in, the performance of essential government functions.

212.12(4) *Certain corporations organized under federal statutes.* The sale of tangible personal property, specified digital products, or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

a. Federal savings and loan associations.

b. Federal savings and trust companies.

c. National banks.

d. Other organizations of like character.

701—212.13(423) Fees paid to cities and counties for the privilege of participating in any athletic sport. A "sport" is any activity or experience that involves some movement of the human body and gives enjoyment or recreation. An "athletic" sport is any sport that requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

212.13(1) The following is a list of various fees that would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

a. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

b. Fees paid to enter any tournament or league that involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

212.13(2) Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

a. Fees paid for lesson or instruction in how to play or to improve one's ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

b. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

c. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport that can be played within the facility.

d. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee that the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

e. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code section 423.3(32).

701—212.14(423) Property used by a lending organization. The sales price from the sale of tangible personal property or specified digital products to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services or specified digital products. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) that the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 423.3(19).

701—212.15(423) Urban transit systems. A privately owned urban transit system that is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases that are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

ITEM 2. Rescind and reserve **701—Chapter 284**.

ITEM 3. Rescind 701—Chapter 285 and adopt the following **new** chapter in lieu thereof:

CHAPTER 285
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE

701—285.1(423) Auctioneers as agents.

285.1(1) An auctioneer in making a sale, whether of tangible personal property, specified digital products, or realty, is by virtue of this employment making the sale as the agent of the principal.

285.1(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 423.3(39), the sales price from the sale is exempt from sales tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3(39).

701—285.2(423) Florists.

285.2(1) Florists are engaged in the business of selling tangible personal property and specified digital products at retail. The sales price from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property and specified digital products are subject to sales tax.

285.2(2) When florists conduct transactions through a florists' telephonic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telephoned to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, based on sales price from the total amount collected from the customer, except the cost of a telegram if separately stated on a bill or invoice.

b. In cases where an Iowa florist receives an order pursuant to which the Iowa florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, Iowa sales tax is not due.

c. In cases where Iowa florists receive telephonic instructions from other florists located either within or outside of Iowa for the delivery of flowers, the receiving florist will not be held liable for Iowa sales tax with respect to the transaction.

This rule is intended to implement Iowa Code section 423.2.

701—285.3(423) Student fraternities and sororities.

285.3(1) Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods and beverages to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax if the food purchases would be exempt under rule 701—220.5(423).

285.3(2) Student fraternities or sororities engaged in the business of selling meals or other tangible personal property to persons other than members for which separate charges are made are making taxable sales.

285.3(3) Sales by other food preparers. When student fraternities or sororities do not provide their own meals but meals instead are provided to members by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of sales tax on the sales price from meals furnished.

This rule is intended to implement Iowa Code sections 423.1, 423.1(39), 423.2, and 423.5.

701—285.4(423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling tangible personal property, specified digital products, and funeral services. Examples of the tangible personal property sold by a funeral director include but are not limited to caskets, other burial containers, flowers, and burial clothing. "Funeral services" includes but is not limited to cremation, transportation by hearse and embalming. Tax is due only on the sales price from the sale of tangible personal property, specified digital products, and taxable services, and not on the sales price from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, specified digital products, taxable services and nontaxable services, tax is due only upon the sales price from the sales of tangible personal property and taxable services.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, burial clothing, and other items sold to customers for resale, and may purchase these items from suppliers without payment of sales tax.

For purposes of this rule, the terms of morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code section 423.2.

701—285.5(423) Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians are not liable for sales tax on services rendered, including but not limited to examinations, consultations, diagnosis, and surgery.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual's own use. For example, the purchase of prescription drugs would not be subject to sales tax if purchased for use in the practice of the physician, dentist, surgeon, ophthalmologist, optometrist, or optician. Sales of tangible personal property and specified digital products to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from sales tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property and specified digital products to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property and specified digital products to ophthalmologists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of equipment that is utilized directly in the

care of an illness, injury or disease, which would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—285.6(423) Warranties and maintenance contracts.

285.6(1) Mandatory warranties. A warranty is a mandatory warranty when the buyer, as a condition of the sale, is required to purchase the warranty from the seller. When the sale of tangible personal property, specified digital products, or services includes the furnishing or replacement of parts or materials that are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty that is in connection with an enumerated taxable service is also exempt from tax.

285.6(2) Optional warranties. A warranty is an optional warranty when the buyer is not required to purchase the warranty from the seller.

a. The sale of optional service or warranty contracts that provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 423.2 is considered a sale of tangible personal property the sales price of which is subject to tax at the time of sale except as described below.

b. The sale of a residential service contract regulated under Iowa Code chapter 523C is not the sale of tangible personal property, and the sales price from the sales of these service contracts is not subject to tax, and the sales price from taxable services performed for the providers of residential service contracts are now subject to tax. "Residential service contract" is defined in Iowa Code section 523C.1(8).

c. If an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only, then no tax is imposed on the furnishing of those services. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no separate fee is stated for either the performance of the service or the transfer of the property, then sales tax shall be imposed on the sales price from the sale of the contract.

285.6(3) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract that are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code section 423.2.

701—285.7(423) Casual sales.

285.7(1) *Casual sales by persons not retailers or by retailers outside the regular course of business.*

a. Exemptions. Casual sales are exempt from Iowa sales and use taxes except for the casual sale of vehicles subject to registration, aircraft, and other vehicles listed in Iowa Code section 423.3(39)*"b."* In order for a casual sale to qualify for exemption under this subrule, two conditions must be present:

(1) The sale of tangible personal property, specified digital products, or taxable services must be of a nonrecurring nature, and

(2) The seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale must be outside the regular course of the seller's business.

b. Nonrecurring events. Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year.

c. Sales of capital assets. Sales of capital assets such as equipment, machinery, and furnishings that are not sold as inventory shall be deemed outside the regular course of business (including sales of capital assets during a retailer's liquidation) and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under Section 351 of the Internal Revenue Code.

EXAMPLE: Corporation A sells the company copy machine at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the copy machine constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A's business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible personal property, specified digital products, or services for a profit, since the sales are recurring, there is no casual sale.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in the performance of any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. See rule 701—285.1(423).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets that it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at the sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J's trade or business consisting of a copy machine, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the copy machine and the computer are casual and exempt.

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liquidation auction sale. The auction sales are exempt casual sales under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation.

EXAMPLE: L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, but only because of the exemption set out in subrule 285.7(2) infra, since the transfer involves a liquidation of L's business and the sale of L's inventory to another person (the corporation), which will continue to engage in a similar trade or business.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations that can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(2) *Special rules for casual sales involving the liquidation of a trade or business.* When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. One effect of this is that a retailer who is closing as opposed to transferring a business and is selling inventory in the process of this closing is not entitled to claim the casual sale exemption under this subrule, but see subrule 285.7(1), and the resale exemption is always potentially applicable to sales of inventory. The examples below contain further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, but see subrule 285.7(1) for criteria that determine whether the casual sales exemption applies to the equipment and fixtures.

EXAMPLE: The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an exempt casual sale of the type described in subrule 285.7(2) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company-owned service stations that were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e., operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant business all or substantially all of the tangible personal property held or used in the business for which R was required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible personal property, under these circumstances, the casual sales exemption applies. The tangible personal property held or used in the trade or business need not be sold to the same person to whom the trade or business is sold for the exemption to apply.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. This subrule's casual sales exemption will not apply, but see subrule 285.7(1) for the criteria of a casual sale exemption that could apply.

The above examples are not the only ones pertaining to the question of whether a casual sale did or did not occur. However, because of the myriad of factual situations that can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(3) *Casual sales of services.* The "casual sale" of an enumerated service has occurred if the following circumstances exist:

a. The service was rendered, furnished, or performed on a nonrecurring basis by a seller who, at the time of the sale of the service, is not engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale was outside the regular course of the seller's business; or

b. The sales of all, or substantially all of the services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit, if the retailer sells or otherwise transfers the trade or business to another person who engages in a similar trade or business.

EXAMPLE: V ordinarily engages in janitorial and building maintenance or cleaning, which are taxable services. Once, as a favor to customer W, V cut customer W's lawn and otherwise performed the taxable service of "lawn care" for customer W. Since this performance of lawn care was not "within V's regular course of business" and was not "recurring," the sales price from the lawn care is not subject to tax.

EXAMPLE: Corporation X rents a piece of equipment from Y. Y does not otherwise rent equipment and does not engage in the business for profit of selling tangible personal property, specified digital products, or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code section 423.3(39).

701—285.8(423) Taxation of Native Americans.

285.8(1) *Definitions.*

"Native Americans" means all persons who are descendants of and who are members of any recognized tribe.

"Settlement" means all lands recognized as a tribal government settlement or reservation within the boundaries of the state of Iowa.

285.8(2) *Retail sales tax—tangible personal property.* Retail sales of tangible personal property made on a recognized settlement to Native Americans who are members of the tribe located on that settlement, where delivery occurs on the settlement, are exempt from tax. Retail sales of tangible personal property made on a recognized settlement to Native Americans where delivery occurs off the settlement are subject to tax. Retail sales of tangible personal property made to non-Native Americans on a recognized settlement are subject to tax regardless of where the delivery occurs. Sales made to non-Native Americans are taxable even though the seller may be a member of a recognized settlement.

285.8(3) *Retail sales tax—services.* Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans who are members of the tribe located on the recognized settlement where delivery of the service occurs are exempt from tax. Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans where delivery of the services occurs off a recognized settlement are subject to tax.

285.8(4) *Off-settlement purchases.* Purchases made by Native Americans off a recognized settlement are subject to tax if delivery occurs off the settlement. Purchases made by Native Americans off a recognized settlement are not subject to tax if delivery is made on the settlement to Native Americans who are members of the tribe located on that settlement.

This rule is intended to implement Iowa Code section 423.3.

701—285.9(423) Computer software.

285.9(1) *In general.*

a. Applicability of tax. For the purposes of this rule, the sales price of the tangible personal property, specified digital products, and services found within Iowa Code section 423.2 is subject to tax.

b. Definitions.

"Program" is interchangeable with the term "software" for purposes of this rule.

"Rental or lease" means the same as defined in Iowa Code section 423.1(24).

285.9(2) *Taxable sales, rentals or leases, and services.*

a. Sales of equipment. Tax applies to sales of automatic data processing equipment and related equipment.

b. Rental or leasing of equipment. Where a lease includes a contract for the use of equipment, the rental or lease payments are subject to tax.

c. Training materials. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

d. Services a part of the sale or lease of equipment. Where services, such as programming, or training are provided to those who purchase or lease software on a mandatory basis as an inseparable part of the sale or taxable lease of the equipment, charges for the furnishing of the services are includable in the measure of tax from the sale or lease of the equipment whether or not the charges are separately stated. (Where the purchaser or lessee has the option to acquire the equipment either with the services or without the services, charges for the services may not be excluded from the measure of tax if they are taxable enumerated services.)

e. Mailing services. Addressing (including labels) for mailing. Where a service provider addresses, through the use of its software or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for addressing. Similarly, where the service provider prepares, through the use of its software or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service provider itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service provider. Mailing lists that are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

This rule is intended to implement Iowa Code section 423.3.

701—285.10(423) Envelopes for advertising. Some envelopes that contain advertising are exempt from tax. Envelopes that are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt.

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item that is sold at retail. The envelope used to package these materials is exempt from tax since it is primarily used to contain advertising materials.

EXAMPLE 2: XYZ mails a monthly billing statement to its charge account customers. In addition to the billing statement, XYZ encloses an advertisement in the envelope. The envelope has a dual purpose: (1) the collection of accounts receivable and (2) the distribution of advertising. However, the envelope is not primarily used for advertising but for billing the customer, therefore, the exemption does not apply.

This rule is intended to implement Iowa Code section 423.3(42).

701—285.11(423) Newspapers, free newspapers and shoppers' guides.

285.11(1) *Sales price of newspapers.* The sales price from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The sales price from the sales of magazines, newsletters, and other periodicals that are not newspapers are taxable.

285.11(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material.

285.11(3) *Characteristics of newspaper publishing companies.* Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle

editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

285.11(4) *Characteristics that distinguish a newsletter from a newspaper.* A "newsletter" is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets that are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 423.3(55).

701—285.12(423) Maintenance or repair of fabric or clothing.

285.12(1) Sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See rule 701—200.1(423) for definitions of the terms "chemical," "solvent," "sorbent" or "reagent." This subrule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances that do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethylene "perch" or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

285.12(2) The sale of property that is a container, label, or similar article or receptacle for transfer in association with the maintenance or repair of fabric or clothing is exempt from tax. In general, the sale of any article that protects dry-cleaned or laundered clothing from dirt or helps the dry-cleaned or laundered clothing to maintain its proper shape or form in the same fashion as a container does would be exempt from tax under this subrule. By way of nonexclusive example, the sale of plastic garment bags, which protect clothing from dirt, is exempt from tax. The sale of "shirt boards" and garment hangers, both of which help clothing to maintain its proper shape, would also be exempt.

A container, label, or similar article's sale is exempt from tax only if the item is transferred to the customer of a commercial laundry, dry cleaner, or other retailer. Thus, "bundle bags" and "Meese carts," used to transfer or transport clothing within a dry-cleaning establishment, are not subject to the exemption because these bags and carts remain with the dry cleaner and are not transferred to a customer.

Concerning labels, the sale of which would be exempt from tax, these labels must be affixed to the dry-cleaned or laundered clothing and transferred to the customer of the dry-cleaning or laundering establishment. By way of nonexclusive example, the sale to dry cleaners, of "special attention," "invoice" and "sorry" tags would be exempt from tax.

The sale of safety pins and other types of clips used to hang skirts and other garments from hangers would not be exempt from tax. These items do not sufficiently resemble containers or labels to the extent that their sale is exempt from tax.

This rule is intended to implement Iowa Code sections 423.3(45) and 423.3(51).

REVENUE DEPARTMENT[701](cont'd)

701—285.13(423) Drop shipment sales. A "drop shipment" generally involves two transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. A drop shipment sale occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer's order is placed. The retailer then purchases the property from the supplier. The supplier ships the property directly to the consumer in Iowa. The supplier in a drop shipment sale is not required to collect sales or use tax from the consumer, even if the requisite nexus to require collection exists.

If delivery of goods under a contract for sale occurs outside of Iowa, sale of the goods occurs outside of Iowa. If delivery of the goods under the contract for sale occurs within Iowa, the sale occurs in Iowa. If the sale occurs in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa sales tax, the retailer is obligated to collect Iowa sales tax upon the sales price from its sale of the goods to the consumer. If the sale occurs in Iowa but the retailer does not have nexus sufficient to require it to collect Iowa sales or use tax, or if the retailer fails to collect sales tax, the consumer is obligated to pay use tax directly to the department.

EXAMPLE A: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minneapolis retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has nexus with Iowa, and delivery under the contract for sale has occurred in this state. In this case, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE B: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minnesota retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has no nexus with Iowa. Delivery under the contract of sale is in Iowa. Under these circumstances, the consumer is obligated to pay use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with this state; delivery under the contract for sale is in Minnesota. Under the circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa use tax. The supplier is not obligated to collect or pay any Iowa tax.

This rule is intended to implement Iowa Code sections 423.1, 423.14, and 423.14A.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to miscellaneous taxable sales and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 213, "Miscellaneous Taxable Sales," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3 and 423.5.

Purpose and Summary

REVENUE DEPARTMENT[701](cont'd)

The purpose of this proposed rulemaking is to rescind Chapter 213 and adopt a new Chapter 213. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statute to help the public understand the taxability of miscellaneous types of sales. These proposed rules reduce uncertainty about what is subject to tax and what is exempt.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 16, 2024, to facilitate an orderly hearing. A video link or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 213 and adopt the following **new** chapter in lieu thereof:

CHAPTER 213
MISCELLANEOUS TAXABLE SALES

701—213.1(423) Conditional sales contracts.

213.1(1) *Definition.* A "conditional sale" is a sale in which the vendee receives the right to the use of the goods that are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

213.1(2) *Factors used to determine a conditional sale.* Conditional sales are evidenced by the facts supporting the nature of the vendor's business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee.

A conditional sales contract would exist where:

a. The vendee/lessee has total control over the property and is responsible for all losses or damages;

b. The transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's "lease" agreements, except in cases of default; and

c. The vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale.

In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

213.1(3) *Taxability of conditional sales.* When a conditional sale exists, the seller bills the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property that is the subject of the contract. No further tax is due on the periodic payments. Interest and finance charges are not considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax.

This rule is intended to implement Iowa Code sections 423.1(50) and 423.2(1).

701—213.2(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes are taxable.

213.2(1) When gas of this type is sold and motor vehicle fuel tax is collected by the seller, sales or use tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, sales or use tax shall be collected and remitted to the department, unless the sale is specifically exempt.

213.2(2) If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes an application for a refund of the motor vehicle fuel tax.

213.2(3) The sales price from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. The sales price of gas converter equipment that might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.3(423) Antiques, curios, old coins, collector's postage stamps, and currency exchanged for greater than face value. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales prices are subject to tax.

213.3(1) The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors is subject to tax.

213.3(2) Stamps that are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government are not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price is not subject to either sales or use tax.

213.3(3) The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency is subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale is subject to tax for the face value alone.

EXAMPLE 1: Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2: Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

701—213.4(423) Consignment sales.

213.4(1) When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

213.4(2) The sales price of sales of tangible personal property by an agent or consignee for another person is exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.5(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions. The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions is subject to tax when sold to users or consumers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

701—213.6(423) Sales on layaway.

213.6(1) The sales price from a layaway sale is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside "on layaway" and is not available for sale to the general public. This option to purchase is exercised

by the customer's making one or more "layaway payments." The customer exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

213.6(2) A sale on layaway should not be confused with a "conditional sale." The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sale situation, physical possession passes first; then after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both possession and title pass at the same time after all payments are made.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.7(423) Memorial stones.

213.7(1) The sales price of memorial stones is subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from the sale is taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

213.7(2) The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.8(423) Creditors and trustees.

213.8(1) Pursuant to the provisions of any piece of chattel paper or any other document evidencing a creditor's interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

213.8(2) The tax applies to the sales price of inventory and noninventory goods, provided the owner is in the business of making retail sales of tangible personal property or taxable services.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.9(423) Sale of pets. Sales of pets are tangible personal property subject to tax. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

701—213.10(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.11(423) Repossessed goods.

213.11(1) *Sale subject to tax.* When tangible personal property that has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

213.11(2) *Bad debts.* A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price that ultimately constitutes a bad debt.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.12(423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for

materials that have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.13(423) Used or secondhand tangible personal property. The sales price on the sale of used or secondhand tangible personal property is subject to tax in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.14(423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

213.14(1) The sales price of floor coverings other than carpeting that are shaped to fit a particular room or area and that are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials that are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

213.14(2) The sale of carpeting is not to be treated as the sale of a "building material." The sales price of rugs, mats, linoleum, and other types of floor coverings that are not attached but that are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

213.14(3) The sale of "carpeting" to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. "Carpeting" is any floor covering made of fabric, usually of wool or synthetic fibers. For purposes of this rule, "carpeting" also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

213.14(4) The sales price of carpeting, with installation, is taxable in the following manner:

a. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.

b. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.

c. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

213.14(5) In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C's home. Whether or not A will purchase the carpeting from B for A's own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A: A contracts with C to install carpeting in C's home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A's resale of the carpet to C, but not upon A's charges for carpet installation, a nontaxable service.

EXAMPLE B: A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales

price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C: A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1)*"b."*

701—213.15(423) Goods damaged in transit.

213.15(1) If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed.

213.15(2) If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

This rule is intended to implement Iowa Code section 423.2.

701—213.16(423) Sales of engraved, bound, printed, and vulcanized materials.

213.16(1) *Engraving.* Engraving includes the business of engraving on wood, metal, stone, or any other material. The engraved material is tangible personal property, the sales price of which is subject to tax.

213.16(2) *Binding.* Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of tangible personal property, the sales price of which is subject to tax.

213.16(3) *Printing.* Printing includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of printed tangible personal property that are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

213.16(4) *Vulcanizing.* "Vulcanizing" means the act or process of treating crude rubber, synthetic rubber, or other rubberlike material with a chemical and subjecting it to heat in order to increase its strength and elasticity. The item produced after vulcanizing is tangible personal property, the sales price of which is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(1)*"a."*

701—213.17(423) Premiums and gifts. A person who gives away or donates tangible personal property, specified digital products, or taxable services is deemed to be a consumer of such property, products, or services for tax purposes. The sales price from the sale of tangible personal property, specified digital products, or taxable services to such persons for such purposes is subject to tax.

213.17(1) When a retailer purchases tangible personal property, a specified digital product, or a taxable service, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property, product, or service at the retailer's cost price.

213.17(2) When a retailer sells tangible personal property, specified digital products, or taxable services and furnishes a premium with the property, product, or service sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.18(423) Webinars.

213.18(1) *In general.* Webinars are generally taxable as specified digital products. Specifically, webinars fall into the "other digital products" category as a news or information product. Purchasing

access to a live or pre-recorded webinar, even if the webinar's purpose is educational or otherwise, is not treated as purchase of a service.

213.18(2) *Nontaxable live webinars with virtual participation.* Purchases of access to a live webinar, meaning access to viewing a presentation occurring in real time, are not always subject to sales tax. Attending a presentation in person, if it is not an admission to an amusement, is generally not taxable under Iowa law. Similarly, purchasing access to a live webinar is not taxable if the live webinar allows for a level of participation that is substantially similar to an in-person presentation.

213.18(3) *Exemptions.* Since purchases of webinars are taxable as specified digital products, any sales tax exemptions that apply to specified digital products may also apply to webinars.

EXAMPLE 1: A person purchases access to a live webinar to view on the person's computer or mobile device. The in-person presentation, which can be viewed by people with access to the live webinar, allows for in-person attendees to ask questions throughout the presentation. Persons viewing the presentation through the live webinar on their computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is not substantially similar. The purchase of access to view this live webinar is subject to sales tax.

EXAMPLE 2: A person purchases access to a live webinar to view on the person's computer or mobile device. The in-person presentation, which is viewable by people with access to the live webinar, does not allow in-person attendees to ask questions throughout the presentation. The person viewing the presentation through the live webinar on the person's computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is substantially similar. The purchase of access to view this live webinar is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.1(55B).

ARC 7377C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to events and amusements and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 216, "Events, Amusements, and Other Related Activities," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99F.10, 423.2(1), 423.2(3)"m," 423.2(3)"v," 423.2(3)"j" and 423.3(63).

Purpose and Summary

The purpose of the proposed rulemaking is to rescind Chapter 216 and adopt a new Chapter 216. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also proposes additional rules to be included in this chapter that were previously found in other chapters, because the Department has determined that the subject matter of those rules more closely aligns with the subject matter of this chapter. The purpose of the chapter is to provide guidance on the Department's

interpretation of the underlying statute to help the public understand exemptions relating to events and amusements.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 a.m. to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 4:30 p.m. on January 16, 2024, to facilitate an orderly hearing. A video link or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 216 and adopt the following **new** chapter in lieu thereof:

CHAPTER 216
EVENTS, AMUSEMENTS, AND OTHER RELATED ACTIVITIES

701—216.1(423) Athletic events. The sales price from the sale of tickets or admissions to athletic events occurring in the state of Iowa and sponsored by educational institutions, without regard to the use of the proceeds from such sales, is subject to tax, except when the events are sponsored by elementary and secondary educational institutions.

This rule is intended to implement Iowa Code section 423.2(3).

701—216.2(423) Dance schools and dance studios.

216.2(1) *In general.* The sales price from the services sold by dance schools or dance studios is subject to sales tax. This includes all activities, such as acrobatics, exercise, baton-twirling, tumbling, or modeling taught in dance schools or dance studios.

216.2(2) *Definitions.* For purposes of this rule:

"Dance school" means any institution established primarily for the purpose of teaching one or more types of dancing.

"Dance studio" means any room or groups of rooms in which any one or more types of dancing are taught.

This rule is intended to implement Iowa Code section 423.2(6)*"m."*

701—216.3(423) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. "Country clubs" include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the sales price of which is subject to tax. "Recreation" includes all activities pursued for pleasure, including sports, games and activities that promote physical fitness, but does not include admissions otherwise taxed under Iowa Code section 423.2.

216.3(1) Dance schools are the only schools the services of which are taxable under Iowa Code section 423.2(6). Rule 701—216.2(423) contains information on dance schools and dance studios. The sales price from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

216.3(2) If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

a. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink's facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink's facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

b. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be "instruction" are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a "class" with a fixed time and place for meeting. The instruction need not be received in what would ordinarily be thought of as a "classroom," but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE 1: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE 2: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come, first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

c. The "instruction" must impart to the learner a level of knowledge or skill in the recreational activity that would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person's instruction are to be exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6)*"v."*

701—216.4(423) Campgrounds.

216.4(1) *In general.* Persons engaged in the business of renting campground sites are selling a service subject to sales tax, regardless of the duration of the rental. This includes the sales price for the operation of a campground and the use of a campground site.

216.4(2) *Definition.* For purposes of this rule:

"Campground" is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer, or motorhome. "Campground" does not include any hunting, fishing, or other type of camp where accommodations are provided, though such camps are likely subject to sales tax as commercial recreation under rule 701—216.3(423).

216.4(3) *Related charges.* The sale price of charges, whether mandatory or optional, imposed on persons using a campground site that are subject to sales tax include but are not limited to entry fees, utility (electric, water, sewer) fees, fees for the use of swimming pools or showers, and fees for extra persons or vehicles.

216.4(4) *Public parks.*

a. The sales price for the use of a state park as a campground is subject to sales tax; however, the sales price for the use of a county or municipal park as a campground is not subject to sales tax.

b. The sales price of vehicle entry fees into any state, county, or municipal park, commonly called "park user fees," is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6)*"j."*

701—216.5(423) Rental of personal property in connection with the operation of amusements. The sales price from rental of tangible personal property in connection with the operation of amusements is taxable. Such rentals include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately.

This rule is intended to implement Iowa Code section 423.2(1).

REVENUE DEPARTMENT[701](cont'd)

701—216.6(423) Exempt sales by excursion boat licensees.

216.6(1) The sales price of the following sales by licensees authorized to operate excursion gambling boats is exempt from Iowa sales and use tax:

a. Charges for admission to excursion gambling boats, and

b. The sales price from gambling games authorized by the state racing and gaming commission and conducted on excursion gambling boats.

216.6(2) The sales price from charges other than those for admissions or authorized gambling games would ordinarily be taxable. The following is a nonexclusive list of taxable licensee sales: parking fees, sales of souvenirs, vending machine sales, prepared meals, liquor and other beverage sales, and the sales price from nongambling video games and other types of games that do not involve gambling.

This rule is intended to implement Iowa Code section 99F.10.

701—216.7(423) Tangible personal property, specified digital products, or services given away as prizes.

216.7(1) *In general.* The sales price from the sale of tangible personal property, specified digital products, or services that will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. The rules issued by the Department of Inspections, Appeals, and Licensing in 481—Chapters 100 through 106 further describe the games of skill, games of chance, raffles, and bingo games that are lawful and may be lawfully awarded.

216.7(2) *Gift certificates.* A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code section 423.3(63).

ARC 7200C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to services related to vehicles and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 218, "Services Related to Vehicles," and to adopt a new Chapter 218, "Sales and Services Related to Vehicles," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1(6), 423.2(6), 423.2(7), 423.3(56) and 423.4(10).

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt a new Chapter 218. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. This chapter also contains rules that previously existed in other chapters that the Department determined fit better with the subject matter contained in this chapter. This chapter describes the Department's interpretation of the underlying statutes to help the public understand the taxability of sales and services relating to vehicles.

REVENUE DEPARTMENT[701](cont'd)

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 218 and adopt the following **new** chapter in lieu thereof:

CHAPTER 218
SALES AND SERVICES RELATED TO VEHICLES

701—218.1(423) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are selling a service subject to sales tax. For purposes of this rule, "armored car" means a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance.

This rule is intended to implement Iowa Code section 423.2(6)*"b."*

701—218.2(423) Vehicle repair.

218.2(1) *In general.* Persons engaged in the business of repairing vehicles are selling a service subject to sales tax. Rule 701—225.4(423) contains more information on purchases made by auto body shops.

218.2(2) *Definitions.* For purposes of this rule:

"Repair" includes any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body, or interior of a vehicle. "Repair" does not include the installation of new parts or accessories, which are not replacements, added to a vehicle.

"Vehicle" means the same as defined in Iowa Code section 321.1(90).

218.2(3) *Disposal fees.* Fees charged with the disposal of any item in connection with the performance of this service are subject to sales tax if the disposal fee of the item is not separately contracted for or itemized in the billing of the repair service. If the disposal fee is itemized or separately contracted for, the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, batteries, oil, or tires.

This rule is intended to implement Iowa Code section 423.2(6)*"c."*

701—218.3(423) Motorcycle, scooter, and bicycle repair.

218.3(1) *In general.* Persons engaged in the business of repairing motorcycles, scooters, and bicycles are selling a service subject to sales tax.

218.3(2) *Definitions.* For purposes of this rule:

"Bicycle" includes human-powered bicycles and electric bicycles.

"Motorcycle" includes autocycles.

"Repair" means the same as defined in rule 701—211.1(423).

This rule is intended to implement Iowa Code section 423.2(6)*"ag."*

701—218.4(423) Battery, tire, and allied.

218.4(1) *Batteries in general.* Persons engaged in the business of installing, repairing, maintaining, restoring, or recharging batteries and any services related to or connected therewith are selling a service subject to sales tax.

218.4(2) *Tires in general.* Persons engaged in the business of installing, repairing, or maintaining tires and any services related to or connected therewith are selling a service subject to sales tax.

218.4(3) *Disposal fees.* Disposal fees charged in connection with the performance of the services identified in this rule are subject to sales tax if the disposal fee is not itemized or separately contracted for in the billing for the charge of the service. If the disposal fee charged in connection with the performance of the services identified in this rule are itemized or separately contracted for, then the disposal fee is not subject to sales tax. Items that may be subject to disposal fee include but are not limited to air filters, oil, tires, and batteries.

This rule is intended to implement Iowa Code sections 423.2(6)*"d"* and 423.2(7)*"a"*(1).

701—218.5(423) Boat repair.

218.5(1) *In general.* Persons engaged in the business of repairing watercraft are selling a service subject to sales tax.

218.5(2) *Definitions.* For purposes of this rule:

"Repair" means the same as defined in rule 701—211.1(423).

"Watercraft" means the same as defined in Iowa Code section 462A.2.

This rule is intended to implement Iowa Code section 423.2(6)*"h."*

701—218.6(423) Vehicle wash and wax.

218.6(1) *In general.* Persons engaged in the business of vehicle washing and waxing are selling a service subject to sales tax, whether performed by hand, machine, or coin-operated device. Rule 701—225.7(423) contains more information on purchases of inputs in vehicle wash and wax services.

218.6(2) *Definition.* For purposes of this rule:

"Vehicle" means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code section 423.2(6)*"i."*

701—218.7(423) Wrecker and towing.

218.7(1) *In general.* Persons engaged in the business of towing any vehicle are selling a service subject to sales tax. Included in this are services charges for a person to travel to any place to lift, extricate, tow, or salvage a vehicle.

218.7(2) *Definitions.* For purposes of this rule:

"Towing" includes any means of pushing, pulling, carrying, or freeing any vehicle from mud, snow, or any other impediment, including any incidental hoisting. "Towing" does not include transporting operable vehicles from one location to another when no operative aspect of the vehicle is integral to the transporting.

"Vehicle" means the same as defined in Iowa Code section 321.1(90).

This rule is intended to implement Iowa Code sections 423.1(7) and 423.2(6)*"bn."*

701—218.8(423) Flying service.

218.8(1) *In general.* Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an airplane, or any other related service are selling a service subject to sales tax.

218.8(2) *Not included.* Flying services do not include those relating to agricultural aerial application, those relating to aerial commercial and chartered transportation services, and those services exempted by rule 701—211.2(423).

218.8(3) *Flight instruction charges.* Charges relating to flight instruction can be taxable or nontaxable. Taxable charges include but are not limited to the sales price for the following:

a. Instructors' services, ground instruction, and ground school.

b. Students learning to fly with an instructor and dual flying.

c. Rental of a plane. Rule 701—218.9(423) contains more information.

This rule is intended to implement Iowa Code section 423.2(6)*"s."*

701—218.9(423) Aircraft rental.

218.9(1) *In general.* Persons engaged in the business of renting aircraft for 60 days or less are selling a service subject to sales tax.

218.9(2) *Definition.* For purposes of this rule:

"Aircraft" means the same as defined in Iowa Code section 328.1. "Aircraft" also includes any drone aircraft or any aircraft transporting only the pilot.

This rule is intended to implement Iowa Code section 423.2(6)*"bf."*

701—218.10(423) Snowmobiles, motorboats, and certain other vehicles. The sales price of snowmobiles, all-terrain vehicles, dirt bikes, race karts or go-carts, and motorboats is taxable when purchased and not classified as vehicles subject to registration.

This rule is intended to implement Iowa Code chapter 423.

REVENUE DEPARTMENT[701](cont'd)

701—218.11(423) Motor fuel, special fuel, electric fuel, aviation fuels and gasoline.

218.11(1) *In general.* The sales price from the sale of motor fuel, including ethanol, special fuel, and electric fuel is exempt from sales tax if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.

218.11(2) *Refunds or credits of motor fuel and special fuel.* Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax-paid and used for purposes other than to propel a motor vehicle or used in watercraft.

218.11(3) *Refunds of tax on fuel purchased in Iowa and consumed outside of Iowa.* Even though fuel is purchased in Iowa, fuel tax is paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of the fuel tax does not subject the purchase of the fuel to sales tax.

218.11(4) *Tax base.* The basis for computing the Iowa sales tax will be the retail sales price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the sales price in determining the proper sales tax due. Rule 701—288.12(423) contains more information.

This rule is intended to implement Iowa Code section 423.3(56).

701—218.12(423) Ships, barges, and other waterborne vessels. Tax will not be imposed upon the use, within Iowa, of any ship, barge, or other waterborne vessel if that use is primarily for the transportation of property or cargo for hire on the rivers bordering this state. This exemption is also applicable to tangible personal property used as material in the construction of or as a part for the repair of any such ship, barge, or waterborne vessel. The use must be on a river or rivers bordering Iowa, not on any river or rivers bounded on both banks by Iowa territory.

This rule is intended to implement Iowa Code section 423.4(10).

ARC 7201C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to sales and use tax on construction activities and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 219, "Sales and Use Tax on Construction Activities," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.2(1)"b" and "c," 423.2(6), 423.3, 423.3(31), 423.3(37), 423.3(45), 423.3(64), 423.3(80), 423.3(85), 423.4(1), 423.5, 423.5(1)"b," 423.5(2), 423.6(9) and 423.6(10).

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and readopt Chapter 219, which describes the Department's interpretation of the underlying statutes to aid the public in understanding the application of sales and use tax statutes that are primarily applicable to taxpayers engaged in construction activity.

REVENUE DEPARTMENT[701](cont'd)

The Department proposes revisions to the rules to provide clarification and to remove language that is obsolete, unnecessary, and duplicative of statute. Included within the revisions is an addition to rule 701—219.7(423) from rule 701—281.3(423). The Department determined that Chapter 281 was no longer necessary and should be rescinded since many of the rules in that chapter were unnecessary, obsolete, or duplicative of statutory language. The Department determined that it would retain and repromulgate rule 701—281.3(423) on mobile homes and manufactured housing and add that to rule 701—219.7(423) with revisions since the subject matters of these rules are similar and would allow the public an easier means to find the information. The Notice on Chapter 281 is also published herein (**ARC 7204C**, IAB 12/27/23). The Department also renumbered some rules due to other edits and for organizational reasons.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 219 and adopt the following **new** chapter in lieu thereof:

CHAPTER 219
SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

701—219.1(423) General information and definitions.

219.1(1) *Definitions.* For purposes of this chapter, terms mean the same as defined in Iowa Code section 423.1 and as defined here.

"Building equipment" means any vehicle, machine, tool, implement, or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding, or remodeling property of others, which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work.

"Building materials" means materials used in construction work, and is not limited to materials used in a construction contract. The term may also include any type of materials used for reconstruction, alteration, expansion, or remodeling of the premises or anything essential to the completion of a building or other structure for the use intended. Building materials generally consist of items that are incorporated into real property, lose their identity as tangible personal property, and cannot be removed without altering the realty, or that are consumed by the contractor during the performance of the construction contract.

"Building supplies" means anything that is furnished for and used directly in the carrying on of the work of an owner, contractor, subcontractor, or builder and which is used or consumed in the course of completing the project. Such items do not have to enter into and become a physical part of the structure like building materials, but they do become as much a part of the structure as the labor that is performed on it.

"Construction contract" means an agreement between a contractor and a sponsor under the terms of which the contractor agrees to provide labor, materials, supplies, and equipment to build a structure for the sponsor.

"Fabricated cost" means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site.

"Prefabricated structure" means any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor.

"Repair" means the same as mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property that has become imperfect and constitutes the restoration to a good and sound condition.

"Structure" means that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds.

219.1(2) *Classification and obligations.* The classification of persons and business determines their obligations to pay or collect sales or use tax or claim an exemption on the sales price from sales of building materials, supplies, equipment, other tangible personal property, and labor.

a. Classification types. Persons and businesses can be classified as an owner, contractor, contractor-retailer, retailer, or repairperson.

b. Classification. A specific classification must be chosen and once chosen should not be changed unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be.

c. Assessment for new businesses. It can be difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair; however, any reasonable assessment of a new business's status will be honored by the department.

d. Prohibited. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

e. Example. A business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive. If, after two years' operation, half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status.

This rule is intended to implement Iowa Code chapter 423.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute.

219.2(1) *Inapplicability of resale exemption.* A contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes material and labor charges for construction contracts or contracts for reconstruction, alteration, expansion, or remodeling.

219.2(2) *Bidding considerations.* When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity. The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

This rule is intended to implement Iowa Code section 423.2(1)*"b."*

701—219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders, or owners. Suppliers or dealers that sell materials, and supplies, and equipment to contractors, subcontractors, builders, or owners are required to collect Iowa sales tax from those persons based upon the sales price from such sales. Reference 701—subrule 219.23(4), which deals with construction contracts with designated exempt entities, for an explanation of one of the few exceptions to this requirement. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies, and equipment without paying sales tax to the vendor, unless the building materials, supplies, or equipment are purchased for resale. Materials purchased out of state for use in Iowa are subject to the Iowa use tax, which is payable in the quarter that the materials are delivered into the state.

219.3(1) *Examples of building materials and supplies.* The following is a nonexhaustive list of typical items that are building materials and supplies:

Asphalt
Bricks
Builders' hardware
Caulking material
Cement
Central air-conditioning

REVENUE DEPARTMENT[701](cont'd)

Cleaning compounds
Conduit
Doors
Ducts
Electric wiring, connections, and switching devices
Fencing materials
Flooring[1]
Glass
Gravel
Insulation
Lath
Lead
Lighting fixtures
Lime
Linoleum[1]
Lubricants
Lumber
Macadam
Millwork
Modular and mobile homes
Mortar
Oil
Paint
Paper
Piping, valves, and pipe fittings
Plaster
Plates and rods used to anchor masonry foundations
Plumbing supplies
Polyethylene covers
Power poles, towers, and lines
Putty
Reinforcing mesh
Rock salt
Roofing
Rope
Sand
Sheet metal
Steel
Stone
Stucco
Tile
Wallboard
Wall coping
Water conditioners
Weather stripping
Windows
Window screens
Wire netting and screen
Wood preserver

219.3(2) *Examples of building equipment.* Building equipment includes, but is not limited to, such items as:

Compressors

Drill presses
Electric generators
Forms
Hand tools
Lathes
Replacement parts for equipment
Scaffolds
Tools
Vehicles including grading, lifting and excavating vehicles

219.3(3) *Taxability of equipment.* Construction equipment purchased by a contractor that is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment that is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. Rule 701—219.21(423) provides an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

This rule is intended to implement Iowa Code sections 423.2(1)*"b"* and 423.5.

701—219.4(423) Contractors, subcontractors, or builders who are retailers. In some instances, contractors, subcontractors, and builders are in a dual business that includes reselling to the general public on a recurring over-the-counter basis the same type of building materials and supplies that are used by the contractors, subcontractors, and builders in their own construction work. A person operating in such a manner is referred to in this chapter as a contractor-retailer.

219.4(1) *Determination of contractor-retailer or contractor.* Any person who is engaged in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer.

219.4(2) *Taxability of sales by contractor-retailers.* A sale by a contractor-retailer of building materials, supplies, or equipment to owners is a retail sale and subject to sales tax. Contractors, subcontractors, or builders that purchase building materials, supplies, or equipment to be used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling are also retail sales and subject to sales tax. Contractors, subcontractors, or builders who purchase building materials, supplies, or equipment to be used in the performance of a job, which does not rise to the level of a new construction, reconstruction, alteration, expansion, or remodeling, are acting as retailers and not as contractors and must charge and collect from their customers sales tax on the sales price charged for materials, supplies, or equipment used in completing the job and on the sales price charged for any taxable service labor used in completing the job or on the entire charge, if materials and labor are not separately invoiced.

219.4(3) *Withdrawals from inventory.* When a contractor-retailer withdraws from inventory building materials, supplies, or equipment to be used in a construction contract performed by the contractor-retailer or in a contract for reconstruction, alteration, expansion, or remodeling performed by the contractor-retailer, the contractor-retailer must pay use tax on the cost of the materials, supplies, or equipment withdrawn from inventory. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair, which is a taxable service or on the entire charge if materials and labor are not separately invoiced.

219.4(4) *Characteristics of contractor-retailer.* The following is a list of the characteristics of the usual contractor-retailer:

a. A contractor-retailer is a business that makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling of structures. In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not

automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

b. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

c. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule.

d. A contractor-retailer purchasing construction material that will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

e. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

f. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa.

g. The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

219.4(5) *Examples.* The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1: Company A operates a retail outlet that sells lumber and other building materials and supplies. Company A is also a contractor that builds residential and commercial structures. Company A would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items that are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items that are sold over the counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter sales price.

EXAMPLE 2: Company B is a mechanical contractor and has no retail outlets. Company B rarely sells any of its inventory to other persons or to other contractors. Company B would not be considered a contractor-retailer under this rule. However, Company B would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, Company B should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3: Company C is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet, but they frequently make sales of building materials that are in their inventory to local residents. Company C would be a contractor-retailer and could purchase all inventory items for resale. Those items that are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items that are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4: Company D is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Company D would not be considered a contractor-retailer under this rule. Rather, Company D would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Company D should have a sales tax permit. However, Company D can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5: Company E places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Company E also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Company E is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner.

EXAMPLE 6: Company F has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

This rule is intended to implement Iowa Code section 423.2(1)*"b."*

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) *Use by manufacturer.*

a. Outside of Iowa. The use of building materials, supplies, or equipment in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event.

b. Within Iowa. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production.

219.5(2) *Use by contractor-retailer outside of Iowa.* A contractor-retailer's withdrawal of materials from inventory for use in construction contracts or contracts for reconstruction, alteration, expansion, or remodeling outside this state is not a taxable event.

219.5(3) *Use by contractor in and outside of Iowa.* A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract or a contract for reconstruction, alteration, expansion, or remodeling is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) *Purchase by manufacturer.* A manufacturer's purchase of tangible personal property consumed as building materials in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. The purchase of tangible personal property consumed by a manufacturer as building materials in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside Iowa is not subject to tax.

219.5(5) *Purchases from and used outside of Iowa.* Building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside this state is exempt from use tax.

This rule is intended to implement Iowa Code section 423.2(1)*"c."*

701—219.6(423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If equipment, building materials, or supplies are used by a manufacturer in the performance of a construction contract or a contract for

reconstruction, alteration, expansion, or remodeling, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of such contract in Iowa.

This rule is intended to implement Iowa Code section 423.2(1)*"c."*

701—219.7(423) Prefabricated structures.

219.7(1) *Basic concepts.* Prefabricated structures include modular homes, mobile homes, manufactured housing, sectionalized housing, precut housing packages, and panelized construction.

219.7(2) *Taxability.*

a. Sales or use tax on the full purchase price is due when prefabricated structures are sold to or used by owners, contractors, subcontractors, or builders, or delivered under a contract for sale or sold for use in Iowa.

b. Sales of prefabricated structures that have not been erected on a foundation are considered sales of tangible personal property and thus are taxable on the purchase price charged to a consumer or user by the seller at the time of retail sale.

219.7(3) *Exceptions.* The following are exceptions to the general taxability rule described above, applicable to modular and mobile homes and manufactured housing.

a. Modular homes. Modular homes, as defined in Iowa Code section 435.1, cannot be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles. Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. This 60 percent rule is applicable only to structures that meet the definition of "modular home" and not to other types of prefabricated structures that do not meet the definition of the term "modular home" such as sectionalized housing or panelized construction. Also, the 60 percent rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. Mobile homes and manufactured housing.

(1) Use tax. Mobile homes and manufactured housing, as defined in Iowa Code section 321.1, are subject to use tax at the rate of 20 percent of the purchase price. All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park. See Iowa Code section 423.26A on the collection of use tax and certificates of title for manufactured housing.

(2) Exemption. To be eligible for the use tax exemption provided in Iowa Code section 423.6(9), the purchaser of a mobile home or manufactured housing must provide sufficient documentation to the county treasurer that verifies the Iowa use tax under Iowa Code section 423.5 has been previously imposed and paid.

(3) Trade-in allowance. A trade-in allowance will result in a reduction in the price of mobile homes and manufactured housing subject to tax if all the conditions found in Iowa Code section 423.3(59) are met.

1. The property traded for the mobile home or manufactured housing is a type of property normally sold in the regular course of business of the retailer selling the home or housing, and

2. The retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: A manufactured housing dealer receives from the factory a new manufactured home that has a sales price of $20,000. The dealer sells it and takes the purchaser's old manufactured home worth $5,000 in trade. The dealer keeps the traded-in manufactured home as an office. The Iowa use tax is computed as follows:

Sales price	$20,000
Trade-in value	$5,000
Buyer's price (Sales price minus trade-in)	$15,000
Amount subject to tax (Full sales price multiplied by 20%)	$4,000
Use tax due (5%)	$200

Because the manufactured home will not be ultimately sold at retail or used to manufacture a like item, the trade-in value does not result in a reduction of the price subject to tax.

EXAMPLE 2: Same facts as Example 1; however, instead of keeping the traded-in manufactured housing, the dealer intends to and lists the trade-in for sale.

Sales price	$20,000
Trade-in value	$5,000
Buyer's price (Sales price minus trade-in)	$15,000
Amount subject to tax (Full sales price multiplied by 20%)	$3,000
Use tax due (5%)	$150

In this example, the trade-in value does result in a reduction of the price subject to tax because the dealer intends to sell the traded-in manufactured housing at retail.

219.7(4) *Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.*

a. A retailer (dealer) that is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor that is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor's sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of subrule 219.4(5).

c. A dealer that is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 701—219.4(423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the sales price from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 219.7(5) in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than the sales price from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract, and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(5) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. Rule 701—219.6(423) provides a description of the sales tax treatment of this sort of transaction. The 60 percent rule, as described in subrule 219.7(3) above, is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(6) *Examples.* The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement, and whether or not a sale for resale has occurred.

EXAMPLE 1: The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in the manufacturer's factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The

manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to the other state.

EXAMPLE 2: The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on the manufacturer's own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property, so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the sales price to the Iowa builder/dealer.

EXAMPLE 3: The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation, the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4: The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa that will resell the home to the final customer. The manufacturer may deliver the home, or delivery may be made by a common carrier. The manufacturer has no contractual obligation for erection. In this situation, the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5: The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this situation, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 423.2(1)*"b"* exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 6: The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the sales price of the home. The customer also wants a garage. The manufacturer agrees to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail, and the manufacturer should collect tax on the entire sales price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire sales price of the appliances.

EXAMPLE 7: The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer that is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, which transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services that are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer that is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home's invoice price.

This rule is intended to implement Iowa Code sections 423.2(1)*"b,"* 423.3(64), 423.5(1)*"b,"* 423.6(9), and 423.6(10).

701—219.8(423) Types of construction contracts.

219.8(1) *Types of construction contracts.* Construction contracts include lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design-built contracts; and turnkey contracts.

219.8(2) *Scope.* A contract for the installation of one or more of the items listed below does not necessarily transform that contract into a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Thus, for example, hiring a contractor to install a light fixture

in an existing building is not, without more, a construction contract or a contract for reconstruction, alteration, expansion, or remodeling.

219.8(3) *Examples.* The following is a nonexhaustive list of activities and items that could fall within the scope of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure. This list should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual.

Ash removal equipment (installed as distinguished from portable units)
Automatic sprinkler systems (fire protection)
Awnings and venetian blinds that become attached to real property
Boilers (installed as distinguished from portable units)
Brick work
Builder's hardware
Burglar alarm and fire alarm fixtures
Caulking materials work
Cement work
Central air conditioner installation
Coal handling equipment (installed as distinguished from portable units)
Concrete work
Counters, lockers (installed as distinguished from portable units), and prefabricated cabinets
Drapery installation
Electric conduit work and items relating thereto
Electric distribution lines
Electric transmission lines
Floor covering that is permanently installed. Subrule 219.3(3) provides information on an exception to this regarding carpeting
Flooring work
Furnaces, heating boilers and heating units
Glass and glazing work
Gravel work (excluding landscaping)
Installation of modular homes on foundations
Lathing work
Lead work
Lighting fixtures
Lime work
Lumber and carpenter works
Macadam work
Millwork installation
Mortar work
Oil work
Paint booths and spray booths (installed as distinguished from portable units)
Painting work
Paneling work
Papering work
Passenger and freight elevators
Piping valves and pipe fitting work
Plastering work
Plumbing work
Prefabricated cabinets, counters, and lockers (installed as opposed to portable units)
Putty work
Refrigeration units (central plants installation as distinguished from portable units)
Reinforcing mesh work
Road construction (concrete, bituminous, gravel, etc.)

Roofing work
Sheet metal work
Sign installation (other than portable sign installation)
Steel work
Stone work
Stucco work
Tile work—ceiling, floor and walls
Underground gas mains
Underground sewage disposal
Underground water mains
Vault doors and equipment
Wallboard work
Wall coping work
Wallpaper work
Water heater and softener installation
Weather stripping work
Wire net screen work
Wood preserving work

This rule is intended to implement Iowa Code sections 423.2(1)*"c"* and 423.3(37).

701—219.9(423) Machinery and equipment sales contracts with installation.

219.9(1) *Machinery and equipment sales with installation.* Machinery and equipment sales contracts with installation are transactions that are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. This rule should not be confused with subrule 219.3(3) regarding equipment. The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment that remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that "sales tax is included in the contract price."

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

219.9(2) *Taxable services sales with installation.* Certain services that are enumerated in Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment that is not done in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. Examples of enumerated services include electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation that do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE: Company B contracts with Company A to furnish and install a portable conveyor unit in Company A's new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, separately itemized on the billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

This rule is intended to implement Iowa Code sections 423.2(6), 423.3, and 423.5.

701—219.10(423) Contracts with equipment sales (mixed contracts). Construction contracts or contracts for reconstruction, alteration, expansion, or remodeling with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor, as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment.

219.10(1) *Out-of-state supplier.* As a consumer by statute of construction building materials, supplies, and building equipment, a contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier.

219.10(2) *When machinery and equipment do not become real property.* Machinery and equipment must be purchased for resale by the contractor if the machinery and equipment does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the sales price from a sponsor and remitting it to the department.

EXAMPLE: Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies that lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building that maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units that retain their identity as tangible personal property. The installation charges for the units that remain as tangible personal property would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

219.10(3) *Lump-sum amount.* In a mixed contract, the elements of the contract should be separated for sales tax purposes. When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

219.10(4) *Permits.* Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales and use tax permit.

This rule is intended to implement Iowa Code section 423.2(1)*"b."*

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract or a contract for reconstruction, alteration, expansion, or remodeling does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment are tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, does not bear the weight of the structure, and does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment that does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) *Examples of tangible personal property that remains tangible personal property after installation.* Under normal conditions, the following nonexclusive list remains tangible personal property after installation.

a. Furniture, including office furniture and equipment, washers and dryers, portable lamps, home freezers, portable appliances, and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment, and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors, and others performing a processing function with the items.

d. Radio and television sets and antennas, including radio, television, and cable television station equipment, but not broadcasting or telecommunications towers.

e. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens.

Therefore, sales of items that remain tangible personal property after installation are subject to sales tax. If the installation of such items involves the performance of one or more enumerated services, the labor charges are also subject to sales tax, unless an exemption applies.

219.11(2) *Examples of tangible personal property that becomes realty after installation.*

a. Under normal conditions, the following nonexhaustive list becomes a part of realty.

(1) Boilers and furnaces.

(2) Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.

(3) Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air-conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.

(4) Fixed (year-round) wharves and docks.

(5) Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection. Rule 701—214.10(423) provides more information on drainage tile.

(6) Mobile and modular homes installed on foundations.

(7) Planted nursery stock.

(8) Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).

(9) Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).

(10) Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).

(11) Silos and grain storage bins.

(12) Storage tanks constructed on the site.

(13) Swimming pools (wholly or partially underground (except portable pools)).

(14) Truck platform scale foundations.

(15) Walk-in cold storage units that become a component part of a building.

b. Exception for installation of new or replacement items. Sales of items that become a part of a structure to contractors, subcontractors, or builders for use in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure are retail sales subject to sales tax to be paid by the contractor, subcontractor, or builder. However, a contract for installation of new or replacement items in an existing structure is not necessarily a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of that structure.

EXAMPLE: A homeowner hires a contractor to replace the existing garbage disposal in the homeowner's house. This is not a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of the house. Therefore, the contractor must charge the homeowner sales tax on the full sales price of the garbage disposal. Additionally, because the installation of the garbage disposal involves the performance of enumerated services, the installation labor charges are also subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(6) and 423.3(37).

701—219.12(423) Tangible personal property that becomes structures. Items that are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis.

219.12(1) *Criteria to determine if tangible personal property has become a structure.* The following are intended only to be a summation of factors that the department will consider in determining whether or not a project involves construction:

a. The degree of architectural and engineering skills necessary to design and construct the structure.

b. The overall scope of the business and the contractual obligations of the person designing and building the structure.

c. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.

d. The size and weight of the structure.

e. The permanency or degree of annexation of the structure to other real property, which would affect its mobility.

f. The cost of building, moving or dismantling the structure.

219.12(2) *Example.* A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons, which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7,000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of $7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment.

This rule is intended to implement Iowa Code section 423.3(37).

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 423.2 is a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of structures, the services are exempt from tax. Neither the repair nor the rental of machinery on the job site is exempt from tax under this rule. Rule 701—219.21(423) provides an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair and new construction, reconstruction, alteration, expansion, and remodeling activities can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project are factors that determine whether certain enumerated services are exempt. An area of particular difficulty is the distinction between repair and remodeling. Remodeling a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof.

219.13(1) *Repair.* Since retailers, as defined in Iowa Code section 423.1(47), may purchase building materials, supplies, and equipment for resale, persons making taxable repairs are not considered to be owners, contractors, subcontractors, or builders and are not subject to the provisions of Iowa Code section 423.2(1)*"b."* Repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors, or builders who may make repairs are subject to Iowa Code section 423.2(1)*"b"* and must pay tax at the time building materials, supplies, and equipment are purchased from vendors even though the contractors, subcontractors, or builders hold a valid sales tax permit. In determining who is a contractor and who is a retailer of repair services, the department looks to the total business of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they may separately itemize labor and materials charges and collect sales tax on all charges; if the labor and materials charges are billed as one lump sum, the entire amount is subject to sales tax. A contractor's markup on a materials charge is part of any taxable sale. A contractor can take a credit for any tax paid on the purchase of materials that are sold as part of a service transaction.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 423.2, those persons shall collect and remit tax on the sales price. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. Rule 701—225.3(423) provides an explanation of when persons performing services sell the property that the persons use in performing those services to their customers. Nonexclusive examples of repair situations are as follows:

a. Repair of broken or defective glass.

b. Replacement of broken, defective, or rotten windows.

c. Replacing individual or damaged roof shingles.

d. Replacing or repairing a segment of worn-out or broken kitchen cabinets.

e. Repair or replacement of broken or damaged garage doors or garage door openers.

f. Replacing or repairing a part of a broken or worn tub, shower, or faucets.

g. Replacing or repairing a broken water heater, furnace, or central air conditioning compressor.

h. Restoration of original wiring in a house or building.

219.13(2) *New construction, reconstruction, alteration, expansion, and remodeling.* The following are examples of new construction, reconstruction, alteration, expansion, and remodeling activities:

a. The building of a garage or adding a garage to an existing building is considered new construction.

b. Adding a wooden redwood deck to an existing structure is considered new construction.

c. Replacing the entire roof on an existing structure is considered reconstruction.

d. Adding a new room to an existing building is considered new construction.

e. Adding a new room by building interior walls is considered alteration.

f. Replacing kitchen cabinets with some structural modification to the kitchen layout is considered remodeling.

g. Laying a new floor over an existing floor is considered remodeling.

h. Building a new wing to an existing building is considered an expansion.

i. Rearranging the interior physical structure of a building is considered remodeling or alteration.

j. Installing manufactured housing or a modular or mobile home on a foundation is considered new construction. However, rule 701—282.8(423) provides a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.

k. Replacing an entire water heater, water softener, furnace, or central air-conditioning unit.

In all instances of new construction, reconstruction, alteration, expansion, or remodeling, the contractor is the final consumer of the materials, supplies, or equipment used in completing the job and is therefore responsible for paying sales tax to its supplier on the full sales price of the materials, supplies, or equipment used in the project. However, the contractor is not to charge the owner sales tax on any labor charges associated with completing the job.

219.13(3) *"On or connected with."* The term "on or connected with" is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. "On or connected with" does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

219.13(4) *Time and physical relationship.*

a. Time. The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would

be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

b. Physical. A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

c. Incidental relationship. On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a contractor to add a new room to an existing home. The existing home is in need of a number of the repairs described in subrule 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The contractor rewires the home and repairs the window in addition to building the new room. The taxable services that the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

d. Determination of taxability. Facts and motives are important in the determination of the taxability of services relating to construction activities. It should also be noted that taxes on enumerated services are applicable to repair or installation work that is not on or connected with new construction, reconstruction, alteration, expansion, or remodeling.

219.13(5) *Various nontaxable services.* Services associated with new construction or reconstruction, for example, that are not taxable include but are not limited to brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

219.13(6) *Taxable construction-related services.*

a. Carpentry repair or installation. Persons engaged in the business of carpentry, as the trade is known in the usual course of business, are selling a service subject to sales tax, regardless of whether they perform repair or installation. The carpentry services can be conducted on or within real or personal property.

b. Roof, shingle, and glass repair. Persons engaged in the business of repairing, restoring, or renovating roofs or shingles or restoring or replacing glass, whether the glass is personal property or affixed to real property, are selling a service subject to sales tax.

c. Electrical and electronic repair and installation.

(1) In general. Persons engaged in the business of repairing or installing electrical wiring, fixtures, or switches in or on real property, or repairing or installing any article of tangible personal property powered by electric current, are selling a service subject to sales tax. This includes installation of semiconductors, such as vacuum tubes, transistors, or integrated circuits, or installation or repair of machinery or equipment that functions mainly through the use of semiconductors.

(2) New machinery or equipment. The sales price of the electrical or electronic installation is exempt from tax if the sales price is charged for the installation of new machinery or equipment.

(3) Definition. For purposes of this subrule:

"Installation" includes affixing electrical wiring, fixtures or switches to real property; affixing any article of personal property powered by electric current to any other article of personal property; or

making any article of personal property powered by electric current operative with respect to its intended function or purpose.

d. Excavating and grading.

(1) In general. Persons engaged in the business of excavating and grading are selling services subject to sales tax.

(2) Definitions. For purposes of this subrule:

"Excavation" means the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. "Excavation" ordinarily includes not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface.

"Grading" means a physical change of the earth's structure by scraping and filling in the surface to reduce it to a common level. "Grading" includes the reducing of the surface of the earth to a given line fixed as the grade, involving excavating, filling, or both.

e. Painting, papering and interior decorating.

(1) In general. Persons engaged in the business of painting, papering, and interior decorating are selling a service subject to sales tax.

(2) Definitions. For purposes of this subrule:

"Interior decoration" means the designing or decoration of the interior of houses or buildings, counseling with respect to such design or decoration, or the procurement of furniture fixtures or home or building decorations.

"Painting" means the covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on the surface in thin coats for decoration, protection, or preservation purposes. This includes all necessary preparations, including surface preparation. "Painting" does not include automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metal such as but not limited to chromium, bronze, tin, galvanized metal, or platinum.

"Papering" means the application of wallpaper or wall fabric to the interior of a house or building and any necessary preparations, including surface preparation.

(3) Incidental service. When a person provides interior decorating services without charge, incidental to the sale of real or tangible personal property, no sales tax shall be charged in addition to the tax paid on the sales price or any part thereof of the real or tangible personal property.

f. Pipe fitting and plumbing.

(1) In general. Persons engaged in the business of pipe fitting and plumbing are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

"Pipe fitting and plumbing" means the trade of fitting, threading, installing, and repairing pipes, fixtures, or apparatus used for heating, refrigeration, or air conditioning, or concerned with the introduction, distribution, and disposal of a natural or artificial substance.

g. Wood preparation.

(1) In general. Persons engaged in the business of wood preparation or treatment for others are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

"Wood preparation" includes all processes whereby wood is sawed from logs in measured dimensions, planed, sanded, oiled, or treated in any manner before being used to repair an existing structure or create or become a part of a new structure. If such preparation is engaged solely for the purpose of processing lumber or wood products for ultimate sale at retail, such preparation may not be deemed as selling a service subject to sales tax.

h. Well drilling. Persons engaged in the business of well drilling are selling a service subject to sales tax.

i. Landscaping. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of a building or structure are not subject to sales tax. Rule 701—211.24(423) provides more information about landscaping services.

j. *House and building moving.* Persons engaged in the business of moving houses or buildings from one location to another, for any reason, are selling a service subject to sales tax. The sales price from this service is not considered a transportation charge.

This rule is intended to implement Iowa Code section 423.2(6).

701—219.14(423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. More information can be found in rule 701—204.8(423).

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.15(423) Liability of subcontractors. A subcontractor providing materials and labor on the actual construction of a structure has the same status and tax responsibilities as a contractor under Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a contractor or a subcontractor, the individual or firm is considered a materials supplier rather than a subcontractor. This is true even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by materials suppliers to contractors shall be sold for resale, and the contractor must provide the materials supplier with a valid resale certificate.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.16(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies, and equipment by a contractor or subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Likewise, a contractor cannot be held responsible for the tax liability incurred on building materials, supplies, and equipment by a subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—219.17(423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012, which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.
2. Form 35-013, which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.
3. Form 35-001, which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and, therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—219.18(423) Resale certificates. Whenever machinery and equipment that will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier, it should be purchased for resale. Rule 701—219.9(423) provides more information on this topic. Resale purchases are most commonly related to machinery and equipment sales contracts with

installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Rule 701—219.4(423) and subrule 219.13(1) provide more information.

This rule is intended to implement Iowa Code section 423.45.

701—219.19(423) Reporting for use tax. An Iowa contractor can report use tax as consumed goods on a sales and use tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a sales and use tax return, which is available directly from the department of revenue, unless the contractor is registered with the department.

This rule is intended to implement Iowa Code section 423.31.

701—219.20(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.

219.20(1) *Exempt lease or rental of machinery and equipment.* The sales price on the lease or rental only of the following types of machinery and equipment is exempt from tax: all machinery, equipment, and replacement parts directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of structures and all machinery, equipment, and replacement parts that improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable, as would a lessor's purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder.

219.20(2) *Exempt sales, including lease or rental of equipment.* The sales price on the sale in any form, including lease or rental, of the following types of equipment is exempt from the tax imposed by Iowa Code chapter 423: self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments that improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. The sales price from a sale in a form other than that of a lease or rental is not exempt from all excise tax.

This rule is intended to implement Iowa Code sections 423.3(37) and 423.3(85).

701—219.21(423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract provides for the sale and delivery of materials and also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and is liable for sales tax. Tax applies on the sales price of the material.

This rule is intended to implement Iowa Code section 423.3(31).

701—219.22(423) Construction contracts with designated exempt entities. This rule applies to exempt sales of building materials, supplies, equipment, or services to certain persons performing construction contracts for sponsors that are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

219.22(1) *Definitions.*

"Construction contract" means the same as defined in rule 701—219.8(423).

"Designated exempt entity" means the same as defined in Iowa Code section 423.3(80).

"GovConnectIowa" means the e-services portal of the department.

219.22(2) *Registration with the department.* A designated exempt entity seeking to issue exemption certificates to contractors, subcontractors, builders, or manufacturers performing construction contracts shall register with the department through GovConnectIowa. The designated exempt entity shall provide the following information:

a. The name and address of the designated exempt entity.

b. The federal identification number of the designated exempt entity.

c. The name of the construction project or the project number for which exemption is requested.

d. A general description of the construction project.

e. The name and address of all contractors, subcontractors, builders, or manufacturers to which the designated exempt entity shall provide exemption certificates.

f. Additional information as requested by the department if the status of the entity seeking registration as a designated exempt entity is unclear.

219.22(3) *Exemption certificates.* Once a designated exempt entity's registration is completed and approved, the designated exempt entity can obtain exemption certificates to provide to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers may then provide these exemption certificates to retailers when purchasing building materials, supplies, equipment, or services to be used in completion of the construction contract with the designated exempt entity in order to make those purchases exempt from sales tax.

219.22(4) *Exempt purchases, withdrawals from inventory, and manufacturers' fabrication costs.*

a. A contractor, subcontractor, or builder who purchases building materials, supplies, equipment, or services intending to use such property or services in the performance of a construction contract with a designated exempt entity shall purchase the property or services from a retailer exempt from tax if the property or services are subsequently used in the performance of that contract and the contractor, subcontractor, or builder presents an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the designated exempt entity.

c. The fabricated cost, as defined in rule 701—219.6(423), of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if an exemption certificate is received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer's consumption of building materials, supplies, equipment, or services used in the performance of a construction contract for purposes other than incorporation into real property with subsequent loss of identity as tangible personal property are not eligible for the exemption described by this rule.

219.22(5) *Refunds.* A designated exempt entity that does not complete the registration process in order to provide exemption certificates to contractors, subcontractors, builders, or manufacturers in advance of its construction project may request a refund of sales tax the designated exempt entity paid to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers should provide the designated exempt entity with completed Iowa Contractor's Statement forms. The designated exempt entity shall then submit a Construction Contract Claim for Refund form and all accompanying Iowa Contractor's Statement forms to the department.

219.22(6) *Other sales.* 701—Chapter 212 provides more information regarding the taxability of other types of sales to entities that qualify as designated exempt entities.

This rule is intended to implement Iowa Code sections 423.3(80) and 423.4(1).

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to exemptions primarily of benefit to consumers and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 220, "Exemptions Primarily of Benefit to Consumers," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2 and 423.3.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt a new Chapter 220. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statutes to help the public understand exemptions that primarily benefit consumers.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

REVENUE DEPARTMENT[701](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 220 and adopt the following **new** chapter in lieu thereof:

CHAPTER 220
EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

701—220.1(423) Newspapers, free newspapers and shoppers' guides.

220.1(1) *In general.* The sales price from the sale of newspapers, free newspapers, and shoppers' guides is exempt from tax. The sales price from the sale of magazines, newsletters, and other periodicals that are not newspapers is taxable.

220.1(2) *General characteristics of a newspaper.* A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink, and usually contains photographs. The format of a newspaper is that of sheets folded loosely together without stapling. The larger the cross section of the population that reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a "newspaper."

This rule is intended to implement Iowa Code section 423.3(55).

701—220.2(423) Food and food ingredients.

220.2(1) Most substances can easily be classified either as food, food ingredients, or nonfood items in accordance with Iowa Code section 423.3(57). There are, however, certain substances that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods and food ingredients and ineligible nonfood items about which questions may arise. The guidelines and their lists are not to be considered all-inclusive:

a. Foods eligible for purchase with food coupons. Sales of almost all substances that may be purchased with food coupons issued by the United States Department of Agriculture are exempt from

Tax. Sales of certain substances that can be purchased with food stamps but are neither food nor food ingredients are taxable.

These taxable sales include garden seeds and plants sold for use in gardens to produce food for human consumption. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) and seeds and plants used to produce spices for use in cooking foods. Sales of all these substances are taxable. Sales of chewing gum are taxable as sales of "candy."

b. Distilled water and ice. These substances, although having some nonfood uses, are largely used as food or as ingredients in food for human consumption. Unless these substances are specifically labeled for nonfood use or the recipient indicates that they will be used for some purpose other than as food for human consumption or as ingredients in food for human consumption, their sales are exempt from tax.

c. Specialty foods. This category of exempt foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These substances are food products that are substituted for more commonly used food items in the diet, and thus they are purchased for ingestion by humans and are consumed for their taste or nutritional value. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds that are packaged for human consumption, and rose hips powder that is used for preparing tea. It is not possible to formulate a comprehensive list of exempt specialty foods. The guideline to be used to determine the eligibility of a specific product is the ordinary use of the product.

NOTE: If the product is primarily used as a food or as an ingredient in food, then it is an exempt item; if it is primarily used for medicinal purposes as either a therapeutic agent or a deficiency corrector and only occasionally used as a food, the product is not exempt under this provision.

d. Snack foods. These substances are food items and, therefore, are usually eligible for the exemption. Typical examples of snack foods are cheese puffs; corn chips; popcorn; peanuts; potato chips and sticks; packaged cookies, cupcakes, and donuts; and pretzels. Alcoholic beverages, candy, and soft drinks are examples of snack foods the sales of which are not exempt from tax; see subrule 220.3(2).

e. Others. There are certain eligible food substances that are normally consumed only after being incorporated into foods sold for ingestion or chewing by humans. Sales of substances that are ingredients of items identical to those that are eligible for exemption when sold as finished products are sales eligible for exemption. Since these substances are food ingredients, their sales are exempt. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

f. The following general classifications of food products are also exempt from tax unless taxable as prepared food; see rule 701—220.5(423):

Bread and flour products

Bottled water, unless it is a sweetened bottled water and thus taxable as a soft drink

Cereal and cereal products

Cocoa and cocoa products, unless taxable in the form of candy as in rule 701—220.4(423)

Coffee and coffee substitutes, unless taxable as soft drinks; see paragraph 220.3(2)*"f"*

Dietary substitutes, other than dietary supplements; see paragraphs 220.3(1)*"c"* and 220.3(2)*"a"*

Eggs and egg products

Fish and fish products

Frozen foods

Fruits and fruit products including fruit juices, unless taxable as soft drinks; see paragraph 220.3(2)*"f"*

Margarine, butter, and shortening

Meat and meat products

Milk and milk products, including packaged ice cream products

Milk substitutes, such as soy and rice milk substitutes

Spices, condiments, extracts, and artificial food coloring

Sugar and sugar products and substitutes, unless taxable in the form of candy as in rule 701—220.4(423)

Tea, unless taxable as a soft drink; see paragraph 220.3(2)*"f"*

Vegetables and vegetable products

220.2(2) Substances excluded from the term "food and food ingredients." Sales of alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks, and tobacco are not sales of "food" and are not exempt from tax by this rule.

a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of 1 percent or more of alcohol by volume.

b. "Candy." See rule 701—220.4(423).

c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

(1) A vitamin.

(2) A mineral.

(3) An herb or other botanical.

(4) An amino acid.

(5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(6) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraphs (1) through (5) that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label and as required pursuant to 21 Code of Federal Regulations 101.36.

Dietary supplements, as their name indicates, serve as supplements to food or food products rather than as "food," and, therefore, are not included within the definition of that word. Since these substances serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for the food and food ingredients exemption. In addition to vitamin and mineral tablets or capsules, this category includes substances such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items that are primarily used for medicinal purposes or as health aids and that may be stocked by authorized firms.

d. "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment, other than food that would be qualified for exemption if purchased with coupons (commonly known as "food stamps") issued under the federal Food Stamp Act of 1977, 7 United States Code 2011 et seq. Alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, and tobacco sold through vending machines are sold subject to tax in all instances because they are specifically excluded from this rule's definition of "foods"; see subrule 220.3(2) generally. This paragraph *"d"* should be interpreted in such a fashion that if the sale of a substance is exempt from tax because it is a sale of "food" when the substance is sold by means other than a vending machine, then the sale of that same substance through a vending machine will also be exempt from tax. Conversely, if the sale of a substance by any means other than through a vending machine is taxable, then the sale of that same substance through a vending machine will also be taxable.

e. "Prepared food." See rule 701—220.5(423).

f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks may be noncarbonated. "Soft drinks" does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; coffee and tea that are not sweetened; effervescent, noneffervescent, and mineral water sold in containers; beverages that contain greater than 50 percent of vegetable or fruit juice by volume.

Taxable soft drinks are noncarbonated water and soda water if naturally or artificially sweetened; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; bottled and sweetened tea and coffee; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 50 percent by volume.

Beverage mixes and ingredients intended to be made into soft drinks are taxable. Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Sales of beverage mixes to which a sweetener is to be added before drinking are taxable. Concentrates intended to be made into beverages that contain natural fruit or vegetable juice of less than 50 percent by volume are taxable.

Beverages, the sales of which are otherwise exempt, are taxable if sold as prepared food under rule 701—220.5(423).

Nondairy coffee "creamers" in liquid, frozen or powdered form are not beverages. Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients. Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

220.2(3) Other substances that are not food or food ingredients. Various products are not purchased for ingestion or chewing by humans or, if they are, are not consumed for their taste or nutritional value. Therefore, they are not purchased exempt from tax under this rule. They include, but are not limited to, the following:

a. Health aids. Over-the-counter medicines and other products used primarily as health aids or therapeutic agents are not foods since they are consumed for their medicinal value as opposed to their nutritional value or taste. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all over-the-counter medicines or other products used as health aids. In addition to these commonly used health aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent that is used to soothe sore throats.

b. Items not exempt. The following general classifications of products are subject to tax:

Cosmetics
Household supplies
Paper products
Pet foods and supplies
Soaps and detergents
Tobacco products
Toiletry articles
Tonics
Lunch counter foods or foods prepared for consumption on the premises of the retailer

This rule is intended to implement Iowa Code section 423.3(57).

701—220.3(423) Candy.

220.3(1) *Definitions.*

a. Candy. For the purposes of this rule, "candy" is a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration. Any preparation to which flour has been added only for the purpose of excluding the candy's sales from tax and not for any legitimate purpose, culinary or otherwise, shall not be sold exempt from tax under this rule. This definition is intended to be used when a person is trying to determine if a product that is commonly thought of as "candy" is in fact "candy." For example, the definition would be applied in a situation where a person is trying to determine if a product is "candy" as opposed to a cookie. The definition is not intended to be applied to every type of food product sold. Many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables

are not commonly thought of as "candy." The definition of "candy" is not applicable to products such as these since they are not commonly thought of as candy.

b. Preparation. Candy must be a "preparation" that contains certain ingredients, other than flour. A "preparation" is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the definition of "candy." For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.

c. Bars, drops or pieces. Candy must be sold in the form of bars, drops, or pieces.

(1) A "bar" is a product that is sold in the form of a square, oblong, or similar form. For example, if Company A sells one-pound square blocks of chocolate, the blocks of chocolate are "bars."

(2) A "drop" is a product that is sold in a round, oval, pear-shaped, or similar form. For example, if Company B sells chocolate chips in a bag, each individual chocolate chip contains all of the ingredients indicated on the label and the chocolate chips are "drops."

(3) A "piece" is a portion that has the same makeup as the product as a whole. Individual ingredients and loose mixtures of items that make up the product as a whole are not pieces. EXCEPTION: If a loose mixture of different items that make up the product as a whole are all individually considered candy and are sold as one product, that product is also candy.

EXAMPLE 1: Company C sells jellybeans in a bag. Each jellybean is made up of the ingredients indicated on the label. Each jellybean is a "piece" or "drop."

EXAMPLE 2: Company D sells trail mix in a bag. The product being sold (trail mix) is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make up the trail mix are not "pieces," but instead are the ingredients, which, when combined, make up the trail mix. Therefore, the trail mix is not sold in the form of bars, drops, or pieces.

EXAMPLE 3: Company E sells a product called "candy lovers mix." Candy lovers mix is a product that is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The sale of the mixture is the sale of candy since all of the individual items that make up the product are individually considered to be candy.

EXAMPLE 4: Company F sells cotton candy that is packaged and sold in grocery stores. Cotton candy contains sugar, corn syrup, water, coloring, and flavoring; it does not contain flour. Cotton candy is not "candy" because it is not sold in the form of a bar, drop, or piece. Cotton candy is, however, "prepared food" under Iowa Code section 423.3(57)*"f."*

d. Flour. In order for a product to be treated as containing "flour," the product label must specifically list the word "flour" as one of the ingredients. There is no requirement that the "flour" be grain-based, and it does not matter what the flour is made from. Many products that are commonly thought of as "candy" contain flour, as indicated on the ingredient label and therefore are specifically excluded from the definition of "candy." Ingredient labels must be examined to determine which products contain flour and which products do not contain flour. Any preparation to which flour has been added only for the purpose of excluding its sales from tax and not for any legitimate purpose, culinary or otherwise, shall not be sold exempt from tax under this rule. For example, a candy bar that contains flour, for a legitimate purpose, is excluded from the definition of "candy."

EXAMPLE 1: The ingredient list for a breakfast bar lists "flour" as one of the ingredients. This breakfast bar is not "candy" since it contains flour.

EXAMPLE 2: The ingredient list for a breakfast bar lists "peanut flour" as one of the ingredients. This breakfast bar is not "candy" because it contains flour.

EXAMPLE 3: The ingredient list for a breakfast bar that otherwise meets the definition of "candy" lists "whole grain" as one of the ingredients, but does not specifically list "flour" as one of the ingredients. This breakfast bar is "candy" because the word "flour" is not included in the ingredient list.

EXAMPLE 4: Company E sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates identifies flour as one of the ingredients. The box of chocolates is not "candy" since flour is identified as one of the ingredients on the label.

EXAMPLE 5: Company F sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates, which otherwise meets the definition of "candy," does not identify flour as one of the ingredients. The box of chocolates is "candy."

EXAMPLE 6: Company G sells high-end licorice—licorice A and licorice B. Licorice A would otherwise be "candy," but its wrapper lists "flour" as an ingredient. Licorice A is not "candy." Licorice B is the same as licorice A, except it does not contain "flour." Licorice B is "candy."

e. Other ingredients or flavorings. "Other ingredients or flavorings" as used in this rule means other ingredients or flavorings that are similar to chocolate, fruits or nuts. This phrase includes candy coatings such as carob, vanilla and yogurt; flavorings or extracts such as vanilla, maple, mint, and almond; and seeds and other items similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbeque or cheddar flavor, or herbs that are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of "candy."

EXAMPLE 1: Retailer A sells barbeque-flavored peanuts. The ingredient label for the barbeque-flavored peanuts indicates that the product contains peanuts, sugar and various other ingredients, including barbeque flavoring. Since the barbeque-flavored peanuts contain a combination of sweeteners and nuts, and flour is not listed on the label and the nuts do not require refrigeration, barbeque-flavored peanuts are "candy."

EXAMPLE 2: Retailer B sells barbeque potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbeque potato chips are "food and food ingredients" and not "candy." The fact that the ingredient label for the barbeque potato chips indicates that the product contains barbeque seasoning that contains a sweetener does not change the fact that the barbeque potato chips are not commonly thought of as candy.

f. Sweeteners. The term "natural or artificial sweeteners" as used in this rule means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

g. Refrigeration. A product that otherwise meets the definition of "candy" is not "candy" if it requires refrigeration. A product "requires refrigeration" if it must be refrigerated at the time of sale or after being opened. In order for a product to be treated as requiring refrigeration, the product label must indicate that refrigeration is required. If the label on a product that contains multiple servings indicates that it "requires refrigeration," smaller size packages of the same product are also considered to "require refrigeration." A product that otherwise meets the definition of "candy" is "candy" if the product is not required to be refrigerated, but is sold refrigerated for the convenience or preference of the customer, retailer, or manufacturer.

EXAMPLE 1: Company A sells sweetened fruit snacks in a bag that contains multiple servings. The label on the bag indicates that after opening, the sweetened fruit snacks must be refrigerated. The sweetened fruit snacks "require refrigeration."

EXAMPLE 2: Company A sells sweetened fruit snacks in single-serving containers. Other than for packaging, the sweetened fruit snacks are identical to the sweetened fruit snacks in Example 1 above. However, since this container of sweetened fruit snacks only contains one serving, it is presumed that it will be used immediately, and the label does not indicate that after opening, the product must be refrigerated. Even though the label does not contain the statement that after opening the sweetened fruit snacks must be refrigerated, these sweetened fruit snacks are considered to "require refrigeration."

EXAMPLE 3: Company A sells chocolate truffles. The label on the truffles indicates to keep the product cool and dry, but does not indicate that the product must be refrigerated. Since the chocolate truffles are not required to be refrigerated, even though the label indicates to keep them cool, the chocolate truffles do not "require refrigeration."

220.3(2) *Nonexclusive examples.*

a. Taxable candy. Examples of items taxable as candy include, but are not limited to: preparations of fruits, nuts, or other ingredients in combination with sugar, honey, or other natural or artificial sweeteners in the form of bars, drops, or pieces; caramel-coated or other candy-coated apples or other fruit; candy-coated popcorn; hard or soft candies including jellybeans, taffy, licorice not containing

flour, marshmallows, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; candy breath mints; chewing gum; and mixes of candy pieces.

Sales of items that are normally sold for use as ingredients in recipes but that can be eaten as candy are taxable. Examples of these items include, but are not limited to, sweetened baking chocolate in bars or pieces; white and dark chocolate almond bark; toffee bits; M&M's, including those sold for baking; candy primarily intended for decorating baked goods; and sweetened baking chips, including mint chips, peanut butter chips, butterscotch chips, and chocolate chips.

b. Nontaxable items. Sales of the following are generally not taxable as candy: jams, jellies, preserves, or syrups; frostings; dried fruits without added sweetener; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; cotton candy; cakes, cookies, and similar products covered with chocolate or other similar coating; and granola bars. However, these and similar items are taxable if sold as prepared food under rule 701—220.5(423).

220.3(3) *Bundled transaction including candy.*

a. Candy and food. Products that are a combination of items that are defined as "candy" under this rule and items that are defined as "food and food ingredients" under rule 701—231.3(423) are "bundled transactions" when the items are distinct and identifiable and are sold for one nonitemized price, unless the seller's sales price or purchase price of the candy accounts for 50 percent or less of the seller's sales price or purchase price of the bundled transaction as provided under Iowa Code section 423.2(8)*"d"*(4). For example, a bag of multiple types of individually wrapped bars that is sold for one price is two or more distinct and identifiable products sold for one nonitemized price. For purposes of determining whether such a bag of individually wrapped bars is a "bundled transaction," the following criteria apply:

(1) Ingredients listed separately.

1. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have "flour" listed as an ingredient are "food and food ingredients" and those bars, drops, or pieces that do not have "flour" listed as an ingredient are "candy." The determination of whether the package as a whole meets the definition of "bundled transaction" is based on the percentage of bars, drops, or pieces that meet the definition of "food and food ingredient" as compared to the percentage of bars, drops, or pieces that meet the definition of "candy."

2. Determining the percentage. For purposes of determining the percentage of the sales price or purchase price of the bars, drops, or pieces that meet the definition of "candy" as compared to all of the bars, drops, or pieces contained in the package, the retailer may presume that each bar, drop, or piece contained in the package has the same value.

3. Presumption of product amount. A retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

EXAMPLE: Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients are "candy" and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer $3.49/lb. Customer C selects some items that are "candy" and some that are not and puts them in a bag. Since some of the items in the bag are "candy," the retailer shall treat the entire package as a bundled transaction containing primarily "candy," unless the retailer ascertains that the sales price or purchase price of the candy in the bag is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

(2) Ingredients listed together. If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the package are listed together, as opposed to being listed separately by each product included as explained in subparagraph (1) above, and even if the ingredient lists "flour" as an ingredient, the product will be treated as "candy," unless the retailer is able to ascertain that the sales price or purchase price of the candy in the package is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

The retailer may presume that each bar, drop, or piece contained in the package has the same value. The retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

b. Combination of ingredients. Products whose ingredients are a combination of various unwrapped food ingredients that alone are not "candy," along with unwrapped food ingredients that alone are "candy," such as breakfast cereal and trail mix with candy pieces, are considered "food and food ingredients" and are not "candy." Sales of these products are not "bundled transactions" because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product.

This rule is intended to implement Iowa Code sections 423.2(8) and 423.3(57).

701—220.4(423) Prepared food. Sales of "prepared food" are subject to tax.

220.4(1) *Prepared food.* "Prepared food" means any of the following:

a. Food sold in a heated state or heated by the seller, including food sold by a caterer.

b. Two or more food ingredients mixed or combined by the seller for sale as a single item.

c. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

The types of retailers who are generally considered to be offering prepared food for sale include restaurants, coffee shops, cafeterias, convenience stores, snack shops, and concession stands including those at recreation and entertainment facilities. Other retailers that often offer prepared food include vending machine retailers, mobile vendors, and concessionaires operating facilities for such activities as education, office work, or manufacturing.

If food is sold for consumption on the premises of a retailer, the food is rebuttably presumed to be prepared food. "Premises of a retailer" means the total space and facilities under control of the retailer or available to the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer. Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax as sales of prepared food.

The following examples are intended to show some of the situations in which sales are taxable as sales of prepared food and drink.

EXAMPLE A: A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable.

EXAMPLE B: As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable.

EXAMPLE C: Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable.

EXAMPLE D: An insurance company hires a caterer to run a cafeteria that provides food, at a low cost, to its employees. The insurance company also pays the caterer an amount, per month, which varies with the number of meals the caterer serves to provide this food service. The caterer does not lease the cafeteria premises; thus the premises remains under the control of the insurance company. In this case, the caterer sells the food in a space made "available to the retailer [caterer]," and the amount that the insurance company pays, on a monthly basis, to the caterer is presumed to be the taxable sales price from the sale of prepared food, as well as the amount paid by the employees to the caterer.

220.4(2) *Examples.* The following are additional examples of foods that either are or are not "prepared foods," the sales price of which is taxable.

EXAMPLE A: A supermarket retailer cuts Bibb and romaine lettuce, mixes them together, and places them in a bag for sale. This is food that is only cut and repackaged. Its sale is not the sale of prepared food; thus its sale is exempt from tax.

EXAMPLE B: The same factual situation as Example A above applies, except that the lettuce is mixed with a salad dressing, placed in a container, and sold as a salad that is ready to eat. Sale of the salad is a taxable sale of "prepared food."

EXAMPLE C: A supermarket retailer slices a roll of cotto salami and a roll of regular salami. The retailer places ten slices of each in the same container and sells the combination as an Italian luncheon meat variety pack. This is, again, the sale of food that is only cut and repackaged. The sale of the salami is exempt from tax.

EXAMPLE D: The same factual circumstances as in Example C apply, except that the retailer takes the sliced salami, places it between two slices of bread, adds some condiments, surrounds the meat, bread, and condiments with plastic, and sells the result as a ready-to-eat sandwich. This is prepared food, "two or more food ingredients . . . combined by the seller for sale as a single item," and more is done to the ingredients than cutting and repackaging. Sales of the sandwiches are taxable.

This rule is intended to implement Iowa Code section 423.3(57).

701—220.5(423) Prescription drugs. The sales price from the sale of prescription drugs dispensed for human use or consumption in accordance with subrules 220.6(3) and 220.6(4) shall be exempt from tax. The sales price from the sale of oxygen or insulin purchased for human use or consumption (whether or not the oxygen or insulin is prescribed) is exempt from tax as a prescription drug.

220.5(1) *Ultimate user.* The term "ultimate user" means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The term is limited to natural persons, and does not include any legal persons such as corporations.

220.5(2) *Tax exemption.* The sale of a prescription drug is exempt from tax only if the drug is intended to be prescribed or dispensed to an ultimate user. A drug is intended to be prescribed or dispensed to an ultimate user only if the drug is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user's body.

EXAMPLE A: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption shall be deemed a drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE B: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE C: A federal law permits but does not require the painkiller mentioned in Example B to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

220.5(3) *Persons authorized to dispense prescription drugs.* In order for a prescription drug or device to qualify for an exemption, it must be dispensed by anyone authorized under Iowa law to dispense prescription drugs or devices in this state or by anyone licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

220.5(4) *Disposition of prescription drugs.* Prescription drugs may be dispensed either directly from one of the persons licensed in subrule 220.6(3) who may also prescribe drugs or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in subrule 220.6(3) who may also prescribe drugs

shall be sufficient evidence that a drug is exempt from tax. When a person who prescribes a drug is also the dispenser, the drug will not require a prescription by such person, but the drug must be recorded as if a prescription would have been issued or required. If this condition is met, the sales price from the sale of the drug is exempt from tax.

220.5(5) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under subrule 220.6(3) is required to collect sales tax on any prescription drugs.

220.5(6) *Prescription drugs purchased by hospitals for resale.* This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug is actually transferred to the patient; (2) the drug is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug.

A hospital's purchase of a prescription drug for purposes other than resale will still be exempt from tax if a drug is intended to be prescribed to an ultimate user and the hospital's use of the drug is otherwise exempt under subrule 220.6(1).

This rule is intended to implement Iowa Code section 423.3(60).

701—220.6(423) Other medical devices. The sales price from the sale of other medical devices is exempt from tax. The term "other medical devices" means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user. The term "other medical devices" does not include prosthetic devices, durable medical equipment, or mobility enhancing equipment. For purposes of this rule, the term "ultimate user" has the same meaning as in subrule 220.6(1).

220.6(1) Definitions.

"Anesthesia trays" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"Biopsy" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

"Biopsy needles" includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, Rosenthal-type needles, and "J" Jamshidi needles are all examples of biopsy needles.

"Cannula" means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and abelson cricothyrotomy cannulas.

"Catheter" means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: Robinson/nelaton catheters, all types of Foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

"Catheter trays." Universal Foley catheter trays, economy Foley trays, urethral catheterization trays and catheter trays with domed covers are nonexclusive examples of these trays.

"Diabetic testing materials" means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

"Drug infusion device" means a device designed for the slow introduction of a drug solution into the human body. The term includes devices that infuse by means of pumps or gravity flow (drip infusion).

"Fistula" means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

"Hypodermic syringe" means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

"Insulin" means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

"Kit" means a combination of medical equipment and supplies used to perform one particular medical procedure that is packaged and sold as a single item.

"Myelogram" means a radiographic picture of the spinal cord. A "radiographic picture" is one taken using radiation other than visible light.

"Nebulizer" means a mechanical device that converts a liquid to a spray or fog.

"Oxygen equipment" means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannulas, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

"Set." See "kit" above.

"Tray." See "kit" above.

220.6(2) The sales price from the sale of the following other medical devices is exempt from tax:

a. Sales of insulin, hypodermic syringes, and diabetic testing materials.

b. Sales and rentals of oxygen equipment.

c. Sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets, all of which are not taxable.

220.6(3) Component parts. The sales price from the sale of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sales price from the sale of the component part, standing alone, is otherwise exempt. For instance, the sales price from the sale of a biopsy needle or an invasive catheter will be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, the sales price from the sale of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles is exempt from tax when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

This rule is intended to implement Iowa Code section 423.3(60).

701—220.7(423) Prosthetic devices, durable medical equipment, and mobility enhancing equipment.

220.7(1) *Prosthetic devices.* The sales price from the sale of prosthetic devices is exempt from tax.

220.7(2) *Durable medical equipment and mobility enhancing equipment.* The sales price from the sale of durable medical equipment and mobility enhancing equipment prescribed for human use that meet the provisions of subrules 220.8(3) and 220.8(4) is exempt from tax. "Prescribed" refers to a prescription issued in any form of oral, written, electronic, or other means of transmission by any of the persons described in paragraphs 220.6(3)*"a"* through *"j."*

220.7(3) *Definitions.*

a. *"Durable medical equipment"* means equipment, including repair and replacement parts, but does not include mobility enhancing equipment, to which all of the following apply:

(1) Can withstand repeated use.

(2) Is primarily and customarily used to serve a medical purpose.

(3) Generally is not useful to a person in the absence of illness or injury.

(4) Is not worn in or on the body.

(5) Is for home use only.

(6) Is prescribed by a practitioner.

b. *"Mobility enhancing equipment"* means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

(1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.

(2) Is not generally used by persons with normal mobility.

(3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(4) Is prescribed by a practitioner.

c. "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:

(1) Artificially replace a missing portion of the body.

(2) Prevent or correct physical deformity or malfunction.

(3) Support a weak or deformed portion of the body.

The term "prosthetic device" includes, but is not limited to, orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.

The following is a nonexclusive list of prosthetic devices:

Artificial arteries	Drainage bags	Prescription eyeglasses
Artificial breasts	Hearing aids	Stoma bags
Artificial ears	Ileostomy devices	Tracheal suction catheters
Artificial eyes	Intraocular lenses	Tracheostomy care and
Artificial heart valves	Karaya paste	cleaning starter kits
Artificial implants	Karaya seals	Tracheostomy cleaning
Artificial larynx	Organ implants	brushes
Artificial limbs	Ostomy belts	Tracheostomy tubes
Artificial noses	Ostomy clamps	Urinary catheters
Artificial teeth	Ostomy cleaners	Urinary drainage bags
Cardiac pacemakers	and deodorizers	Urinary irrigation tubing
Contact lenses	Ostomy pouches	Urinary pouches
Cosmetic gloves	Ostomy stoma caps and paste	
Dental bridges and implants	Penile implants	

d. "Orthotic device" means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

e. "Orthopedic device" means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

Abdominal belts	Clavicle splints	Nerve stimulators
Alternating pressure mattresses	Corrective braces	Orthopedic implants
Alternating pressure pads	Corrective shoes	Orthopedic shoes
Anti-embolism stockings	Crutch cushions	Patient lifts
Arch supports	Crutch handgrips	Plaster (surgical)
Arm slings	Crutch tips	Rib belts
Artificial sheepskin	Crutches	Rupture belts
Bone cement	Decubitus prevention devices	Sacroiliac supports
Bone nails	Dorsolumbar belts	Sacrolumbar belts
Bone pins	Dorsolumbar supports	Sacrolumbar supports
Bone plates	Elastic bandages	Shoulder immobilizers
Bone screws	Elastic supports	Space shoes
Bone wax	Exercise devices	Splints
Braces	Head halters	Traction equipment

REVENUE DEPARTMENT[701](cont'd)

Canes	Hernia belts	Transcutaneous electrical nerve stimulators (tens units)
Casts	Iliac belts	Trapezes
Cast heels	Invalid rings	Trusses
Cervical braces	Knee immobilizers	Walkers
Cervical collars	Lumbosacral supports	Wheelchairs
Cervical pillows	Muscle stimulators	

f. "Related devices." The sales price from the sale of devices that are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices is exempt from tax.

g. "Medical equipment and supplies." The scope of the term "medical equipment and supplies" is broader than the terms "prescription drugs," "prosthetic devices," "durable medical equipment," "mobility enhancing equipment," and "other medical devices." While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items that are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 220.6(1), 220.8(1), and 220.8(2) and rule 701—220.7(423). The sales price from the sale of the following items is generally taxable.

Adhesive bandages	Contact lens solution	Hot water bottles
Aneurysm clips	Convoluted pads	Ice bags
Arterial bloodsets	Corrective pessaries	Ident-a-bands
Aspirators	Cotton balls	Incontinent garments
Athletic supporters	Diagnostic kits	Incubators
Atomizers	Dialysis chairs	Infrared lamps
Autolit	Dialysis supplies	Inhalators
Back cushions	Dietetic scales	Iron lungs
Bathing aids	Disposable diapers	Irrigation apparatus
Bathing caps	Disposable gloves	IV connectors
Bedpans	Disposable underpads	Laminar flow equipment
Bedside rails	Donor chairs	Latex gloves
Bedside tables	Dressings	Leukopheresis pumps
Bedside trays	Dry aid kits for ears	Lymphedema pumps
Bedwetting prevention devices	EKG paper	Manometer trays
Belt vibrators	Ear molds	Massagers
Blood cell washing equipment	Electrodes (other than tens units)	Maternity belts
Blood pack holders	Emesis basins	Medigrade tubing
Blood pack trays	Enema units	Modulung oxygenators
Blood pack units	First-aid kits	Moist heat pads
Blood pressure meters	Foam slant pillows	Myringotomy tubes
Blood processing supplies	Gauze bandages	Nebulizers (hypodermic)
Blood tubing	Gauze packings	Overbed tables
Blood warmers	Gavage containers	Page turning devices
Breast pumps	Geriatric chairs	Pap smear kits
Breathing machines	Grooming aids	Paraffin baths
Cardiac electrodes	Hand sealers	Physicians' instruments
Cardiopulmonary equipment	Hearing aid carriers	Pigskin
Chair lifts	Hearing aid repair kits	Plasma extractors

Clamps	Heart stimulators	Plasma pheresis units
Clip-on ashtrays	Heat lamps	Plastic heat sealers
Commode chairs	Heat pads	Prescribed device repair kits and batteries
Connectors	Hemolators	Respirators
Contact lens cases	Hospital beds	Resuscitators
Sauna baths	Steri-peel	Transfer boards
Security pouches	Stools	Tube sealers
Servipak dialysis supplies	Suction equipment	Underpads
Shelf trays	Sunlamps	Urinals
Shower chairs	Surgical bandages	Vacutainers
Side rails	Surgical equipment	Vacuum units
Sitz bath kit	Suspensories	Vaporizers
Specimen containers	Sutures	Vibrators
Sponges (surgical)	Thermometers	Whirlpools
Stairway elevators	Toilet aids	X-ray film
Staples	Tourniquets	

220.7(4) *Power devices.* The sales price from the sale of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries that can be used to operate a number of devices, but batteries designed solely for use in hearing aids are exempt.

This rule is intended to implement Iowa Code section 423.3(60).

701—220.8(423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than $100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2004, this period began at 12:01 a.m. on Friday, August 6, and ended at 12 midnight on Saturday, August 7. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

220.8(1) *Definitions.* The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

"Accessories" includes, but is not limited to, jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

"Clothing or footwear" means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

"Eligible property" means an item of a type, such as clothing, that qualifies for Iowa's sales tax holiday.

"Special clothing or footwear" is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

220.8(2) *Exempt sales.*

a. Required price. The exemption applies to each article of clothing or footwear selling for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, both items qualify for the exemption even though the customer's total purchase price ($160) exceeds $99.99. The exemption does not apply to the first $99.99

of an article of clothing or footwear selling for more than $99.99. For example, if a customer purchases a pair of pants costing $110, sales tax is due on the entire $110.

b. Order date and back orders. For the purpose of the sales tax holiday, eligible property qualifies for exemption if: the item is both delivered to and paid for by the customer during the exemption period; or the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

220.8(3) *Taxable sales.* This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, the $90 charge for the pants is exempt, but tax is due on the $15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

220.8(4) *Special situations.*

a. Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

b. Sales of exempt clothing combined with gifts of taxable merchandise. When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than $100 during the exemption period.

c. Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. A sale of eligible property under a layaway sale qualifies for exemption if: final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

d. Returns. For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

e. Different time zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

220.8(5) *Calculating taxable and exempt sales price—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (it is over $99.99), and the blouse is exempt (it is less than $99.99).

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount if the retailer is not reimbursed for the coupon amount by a third party. Therefore, a retailer's coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20 off, the final sales price of the shoes is $90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item.

c. Buy one, get one free or for a reduced price or "two for the price of one" sales. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the price of one" cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1: A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50 percent off, selling each pair of $120 pants for $60, each pair of pants qualifies for the exemption.

EXAMPLE 2: A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25 percent off, thereby selling each pair of $100 shoes for $75, each pair of shoes qualifies for the exemption.

EXAMPLE 3: A retailer advertises shirts as "buy two for the price of one" for $140. Tax is due on $140. Each shirt cannot be rung up as costing $70. However, as described in Examples 1 and 2 above, the $140 cost of each shirt can be discounted to bring the price of each shirt within the exemption's limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater. Reference 701—subrule 212.3(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (reference rule 701—288.13(423) for explanation) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the

amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

220.8(6) *Treatment of various transactions associated with sales.*

a. Rain checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for a similar eligible item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE: A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE: A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE: During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE: Before the exemption period, a customer purchases a $60 dress. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

220.8(7) *Nonexclusive list of exempt items.* The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

Adult diapers
Aerobic clothing
Antique clothing
Aprons—household
Athletic socks
Baby bibs
Baby clothes—generally
Baby diapers
Baseball caps
Bathing suits
Belts with buckles attached
Blouses
Boots—general purpose
Bow ties
Bowling shirts
Bras
Formal clothing—sold not rented
Fur coats and stoles
Galoshes
Garters and garter belts
Girdles
Gloves—cloth, dress and leather
Golf clothing—caps, dresses, shirts and skirts
Graduation caps and gowns—sold not rented
Gym suits and uniforms
Hats
Hiking boots
Hooded (sweat) shirts
Hosiery, including support hosiery
Jackets
Raincoats and hats
Religious clothing
Riding pants
Robes
Rubber thongs—"flip-flops"
Running shoes without cleats
Safety shoes (adaptable for street wear)
Sandals
Shawls
Shirts
Shoe inserts and laces
Stockings
Suits
Support hose
Suspenders

REVENUE DEPARTMENT[701](cont'd)

Bridal apparel—sold not rented
Camp clothing
Caps—sports and others
Chefs' uniforms
Children's novelty costumes
Choir robes
Clerical garments
Coats
Corsets
Costumes—Halloween, Santa Claus, etc., sold not rented
Coveralls
Cowboy boots
Diapers—cloth and disposable
Dresses
Dress gloves
Dress shoes
Ear muffs
Employee uniforms other than those primarily designed for athletic activity or protective use
Jeans
Jerseys for other than athletic wear
Jogging apparel
Knitted caps or hats
Lab coats
Leather clothing
Leg warmers
Leotards and tights
Lingerie
Men's formal wear—sold not rented
Neckwear, e.g., scarves
Nightgowns and nightshirts
Overshoes
Pajamas
Pants
Pantyhose
Prom dresses
Ponchos
Sweatshirts
Sweatsuits
Swim trunks
Tennis dresses
Tennis skirts
Ties
Tights
Trousers
Tuxedos (except cufflinks)—sold not rented
Underclothes
Underpants
Undershirts
Uniforms—generally
Veils
Vests—general, for wear with suits
Walking shoes
Windbreakers
Work clothes

220.8(8) *Nonexclusive list of taxable items.* The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

Accessories—generally
Alterations of clothing
Athletic supporters
Backpacks
Ballet shoes
Barrettes
Baseball cleats
Baseball gloves
Belt buckles sold without belts
Belts for weight lifting
Belts needing buckles but sold without them
Bicycle shoes with cleats
Billfolds
Blankets
Boutonnieres
Bowling shoes—rented and sold
Bracelets
Buttons
Chest protectors
Clothing repair
Coin purses
Corsages
Dry cleaning services
Elbow pads
Employee uniforms primarily designed for athletic activities or protective use
Fabric sales
Fishing boots (waders)
Football pads
Football pants
Football shoes
Goggles
Golf gloves
Ice skates
In-line skates
Insoles
Jewelry
Key cases and chains
Knee pads
Laundry services
Life jackets and vests
Luggage
Monogramming services
Pads—elbow, knee and shoulder, football and hockey
Patterns
Protective gloves and masks
Purses
Rental of clothing
Rental of shoes or skates
Repair of clothing
Roller blades
Safety clothing
Safety glasses
Safety shoes—not adaptable for street wear
Shoes with cleats or spikes
Shoulder pads for dresses and jackets
Shower caps
Skates—ice and roller
Ski boots, masks, suits and vests
Special protective clothing or footwear not adaptable for streetwear
Sports helmets
Sunglasses—except prescription
Sweatbands—arm, wrist and head
Swim fins, masks and goggles
Tap dance shoes
Thread
Vests—bulletproof
Weight lifting belts
Wrist bands
Yard goods
Yarn
Zippers

This rule is intended to implement Iowa Code section 423.3(68).

701—220.9(423) Sales of diapers.

220.9(1) *In general.* The sales price of diapers, whether cloth or disposable, is exempt from sales tax. This includes children's diapers and adult diapers.

220.9(2) *Definitions.*

"Adult diapers" means diapers other than children's diapers.

"Children's diapers" means diapers marketed to be worn by children.

"Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

This rule is intended to implement Iowa Code section 423.3(109).

701—220.10(423) Sale of energy to residential customers.

220.10(1) *Generally.* The sales price from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings and units of apartment, and condominium complexes for human occupancy, is exempt from sales and use tax.

220.10(2) *Definitions.* The following definitions are applicable to this rule:

"Energy" means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

"Fuel" means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. "Fuel" includes propane, heating fuel, and kerosene. However, "fuel" does not include blended kerosene used as motor fuel or special fuel.

"Metered gas" means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

"Residential dwelling" means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a dwelling that is used strictly for residential purposes qualifies for the exemption.

"Units of apartment and condominium complexes." A building containing apartment units or individual condominiums is not considered to be qualifying property for purposes of this rule. However, if each unit has a separate meter, the unit qualifies for the exemption if it is classified as a qualifying property by the utility.

220.10(3) *Other nonqualifying structures.* Structures excluded from this exemption include but are not limited to nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, and group homes.

This rule is intended to implement Iowa Code section 423.3(84).

ARC 7203C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to miscellaneous nontaxable transactions and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 221, "Miscellaneous Nontaxable Transactions," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 455C and sections 423.1, 423.3 and 423.5.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and adopt a new Chapter 221. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are

obsolete, unnecessary, or duplicative of statutory language. The Department also moved rules from other chapters that fit with the topic of this chapter. The chapter describes the Department's interpretation of the underlying statute to help the public understand the exemption of miscellaneous nontaxable transactions that do not fit under any other chapter.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 701—Chapter 221 and adopt the following **new** chapter in lieu thereof:

CHAPTER 221
MISCELLANEOUS NONTAXABLE TRANSACTIONS

701—221.1(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards) are not sales of tangible personal property and are not sales the sales price of which is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of $200. Customer A purchases a sweater for $50 from ABC Clothing Company. ABC Clothing Company will debit A's card $52.50 ($50 × 1.05) for the state tax rate of 5 percent or $53 ($50 × 1.06) if one local option tax rate of 1 percent is applicable.

Charges for returning tangible personal property after the agreed-upon date that are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

This rule is intended to implement Iowa Code section 423.1(47).

701—221.2(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date that are true demurrage charges supported by a written agreement do not constitute taxable sales and the charges are exempt from tax.

701—221.3(423) Beverage container deposits. Tax does not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C, including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—221.4(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

221.4(1) *In general.* A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers may act as agents on behalf of their clients in dealing with third persons, or they may act on their own behalf. To the extent advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property.

To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively referred to herein as "agency") shall act as follows:

a. The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

b. The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

c. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property.

Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

221.4(2) *Scope.* The scope of this rule is not confined simply to advertising agencies, commercial artists and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—221.5(422,423) Films and other media, exempt rental and sale.

221.5(1) *Exempt rental.* The sales price from the rental of films, video and audio tapes or discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard or read shall not be taxable if the lessee either:

a. Imposes a charge for the viewing or rental of the media and that charge will be subject to Iowa sales or use tax, or

b. Broadcasts the contents of the media for public viewing or listening.

The sales price from lessees who are film exhibitors or who rent video tapes and discs would ordinarily be exempt from tax under this rule. The rental of media for reproduction of images into newspapers or periodicals will not be exempt from tax under this rule since neither of criteria *"a"* or *"b"* above will occur. The rental of films, video tapes and video discs for home viewing is not exempt from tax.

221.5(2) *Exempt sale.* Sales price from the sale to persons regularly engaged in the business of leasing or renting media of motion picture films, video and audio tapes or discs, and records, or any other media that can be seen, heard, or read are exempt from tax if the ultimate leasing or renting of the media is subject to Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(41).

ARC 7204C

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to receipts subject to use tax depending on method of transaction and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 280, "Receipts Subject to Use Tax," and Chapter 281, "Receipts Exempt From Use Tax," and to rescind Chapter 282, "Receipts Subject to Use Tax Depending on Method of Transaction," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.5(1), 423.6(3), 423.6(6), 423.6(8), 423.6(10), 423.15(3) and 423.17.

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and reserve Chapters 280 and 281 and to rescind and readopt Chapter 282. Chapters 280 and 281 describe the Department's interpretation of the underlying statutes in order to assist and aid the public's understanding of what is subject to use tax and what is exempt. Chapter 282 describes the Department's interpretation of the underlying statutes and provides clarity on how use tax may be imposed depending on the transaction.

After review, the Department has determined that there is no benefit to retaining Chapters 280 and 281 and proposes to rescind and reserve those chapters. However, the Department determined that two rules from Chapter 280 will be repromulgated as rules 701—282.1(423) and 701—282.2(423). Additionally, two rules from Chapter 281 will be repromulgated as rule 701—218.12(423) and new content in rule 701—219.7(423). These two rules are contained within the Notices of Intended Action for Chapters 218 (**ARC 7200C**, IAB 12/27/23) and 219 (**ARC 7201C**, IAB 12/27/23) and are published herein. The Department proposes further revisions to Chapter 282 to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules in Chapter 282 due to other edits and for other organizational reasons.

A Regulatory Analysis, including the proposed rule text, was published on November 1, 2023. A public hearing was held on November 21, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on December 1, 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, pursuant to rule 701—7.28(17A).

Public Comment

REVENUE DEPARTMENT[701](cont'd)

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024 9 to 11 a.m.	Via video/conference call
January 16, 2024 1 to 3 p.m.	Via video/conference call

Persons who wish to participate in a video/conference call should contact Nick Behlke before 8:30 a.m. on January 16, 2024, to facilitate an orderly hearing. A video link and/or conference call number will be provided to participants prior to the hearing.

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

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **701—Chapter 280**.

ITEM 2. Rescind and reserve **701—Chapter 281**.

ITEM 3. Rescind 701—Chapter 282 and adopt the following **new** chapter in lieu thereof:

CHAPTER 282
RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

701—282.1(423) Transaction consummated outside this state. Iowa use tax applies to purchases of tangible personal property, specified digital products, and services as described in Iowa Code section 423.5 on which sales tax was not collected. This would most commonly occur if the good or service was purchased from a retailer that does not have nexus with Iowa.

This rule is intended to implement Iowa Code section 423.5(1).

701—282.2(423) Sales by federal government or agencies to consumers. A consumer purchasing tangible personal property, specified digital products, or a taxable enumerated service for use in Iowa

from the federal government or any of its agencies is liable for the payment of Iowa use tax and shall report and remit the tax due on a sales and use tax return furnished by the department.

This rule is intended to implement Iowa Code section 423.5(1)*"c."*

701—282.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail is exempt from sales and use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used is subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property that is to be used for processing and is, therefore, exempt. The certificate shall also show the cost of the property that is not to be used in processing and, therefore, taxable in order that the registered seller may properly bill the amount of use tax due.

This rule is intended to implement Iowa Code section 423.6(3)*"b."*

701—282.4(423) Taxation of Native Americans.

282.4(1) *Definitions.*

"Native Americans" means all persons who are descendants of and who are members of any recognized tribe.

"Settlement" means all lands recognized as a tribal government settlement or reservation within the boundaries of the state of Iowa.

282.4(2) *Use tax.* Out-of-state purchases made by Native Americans that are purchased for use on a recognized settlement where delivery occurs on a settlement to Native Americans who are members of the tribe located on that settlement are exempt from tax. Out-of-state purchases made by Native Americans where delivery occurs off a recognized settlement are subject to tax even though purchased for use on a recognized settlement.

More information on purchases that may be subject to sales tax is found in rule 701—285.8(423).

This rule is intended to implement Iowa Code section 423.6(6).

701—282.5(423) Property used to manufacture certain vehicles to be leased. Tangible personal property that becomes an integral part of a vehicle as described in Iowa Code section 423.6(8) is exempt from use tax, subject to the limitations provided in Iowa Code section 423.6(8). However, this rule does not exempt the sale of the tangible personal property used from the imposition of sales tax under Iowa Code section 423.2 if that property is otherwise subject to sales tax.

This rule is intended to implement Iowa Code section 423.6(8).

701—282.6(423) Out-of-state rental of vehicles subject to registration subsequently used in Iowa. The rental of vehicles, which do not meet the definition of transportation equipment as defined in Iowa Code section 423.15(3), will be sourced for tax purposes as described in Iowa Code section 423.17.

This rule is intended to implement Iowa Code sections 423.15(3) and 423.17.

701—282.7(423) Sales of mobile homes, manufactured housing, and related property and services.

282.7(1) *Sales of mobile homes, manufactured housing, and related property and services for one package price.* This rule is applicable only to mobile homes and manufactured housing sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home or manufactured housing is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section 435.26, and then sells the mobile home to a consumer, the sale of that mobile

home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by rule 701—Chapter 219, which deals with building contracts and building contractors. Sales of manufactured housing in the form of real estate are governed by rule 701—282.8(423).

When a customer purchases a mobile home or manufactured housing from a dealer, the customer often wants the dealer to prepare the mobile home or manufactured housing so that it is ready for the customer to move into it. To render a mobile home or manufactured housing "ready to move into" a dealer may sell, with the home or housing, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home or manufactured house that a dealer may sell, a dealer may provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the home or house:

a. Connect the electricity.

b. Connect the water.

c. Connect sewer system lines.

d. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home or manufactured house and the ground. It gives the home or house an appearance more like a conventional home because it covers up this space.

e. Build and install steps for a door.

f. Build a deck.

g. Do minor repairs.

h. Install and sell a foundation upon which to place the mobile home or manufactured housing.

i. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home or manufactured housing. Install the appliance (e.g., an air conditioner) if necessary.

A dealer selling a mobile home or manufactured housing on a "ready-to-move-into" basis usually sells that home or housing and the services and additional property necessary to render them livable for one "package price." The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the mobile home or manufactured house and appliances) or the services (e.g., electrical installation) that are part of this package price; nor is the dealer's package price broken down to indicate any of the expenses that are components of the package price either in the dealer's sales contract or on any sales invoice.

The package price of any one particular mobile home or manufactured house will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the home or house. In many cases, a dealer will contract with a third party to perform the services promised in the dealer's contract to a customer. For example, the dealer will contract with a third party to hook up the home or house purchaser's electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home or manufactured house.

In the situation described above, the "purchase price" of a mobile home or manufactured house is the entire package price charged for the home or house, additional personal property for use in and around the home or house, and services performed to render the home or house livable. The entire amount of the package price, reduced by 80 percent, as explained in rule 701—219.7 (423), is used to calculate the amount of use tax due resulting from the sale of the mobile home or manufactured house. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

282.7(2) *Sales of property and rendition of service under separate contract.* If the personal property and services listed in subrule 282.7(1) are purchased under separate contract and not as part of one package price with a mobile home or manufactured house, either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the home or house. Because the price of the property or services is not part of the "purchase price" of a home or house, that price will not be reduced by 80 percent as required under rule 701—219.7(423), in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the sales price of the following services sold are subject to Iowa sales tax under Iowa Code section 423.2(6):

a. Electrical hookup and air conditioning installation (electrical installation).

b. Water and sewer system hookup (plumbing).

c. Skirting installation and building and installation of steps and decks (carpentry).

d. Nearly all "minor repairs" would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes or manufactured housing would be sales of tangible personal property, the sales price is subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home or manufactured housing would not be a service taxable to the home or housing owner since this installation involves "new construction" and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab. More information is contained in rule 701—Chapter 219.

282.7(3) *Dealer purchases of tangible personal property and services for resale.* Regardless of whether the tangible personal property and services connected with the purchase of a mobile home or manufactured housing have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer's or other retailer's purchase of the tangible personal property or service for subsequent resale to a mobile home or manufactured housing purchaser is a purchase "for resale" and thus exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.6(10).

701—282.8(423) Tax imposed on the use of manufactured housing as tangible personal property and as real estate. Tax is imposed on the use of "manufactured housing" in Iowa.

282.8(1) *Definition.*

"Manufactured housing" means the same as defined in Iowa Code section 321.1.

282.8(2) *Tax treatment of manufactured housing that is similar to the tax treatment of mobile homes:*

a. Manufactured housing is subject to Iowa use tax to the extent provided in Iowa Code section 423.6(10) and shall be paid as provided in Iowa Code section 423.26A.

b. The use of manufactured housing previously subject to tax and upon which the tax has been paid is exempt from further tax.

c. The taxation of manufactured housing that is sold in the form of tangible personal property is similar to the taxation of mobile homes that are sold in the form of tangible personal property. More information is contained in rule 701—282.7(423).

282.8(3) *Taxable use of manufactured housing in the form of real estate.* Unlike mobile homes, the use of which can be taxed only when the homes are in the form of tangible personal property, under certain conditions, the use of manufactured housing in the form of real estate can be subject to tax. If a developer has placed a manufactured home on a foundation in a lot in Iowa and hooked up the necessary utilities and completed the necessary landscaping to convert the home from tangible personal property to realty, the sale of the manufactured home to a user is a taxable use of the home on the user's part.

EXAMPLE: Company A buys land with enough space for 100 lots for manufactured housing and for the streets necessary to provide access to the lots. Company A then buys 100 manufactured houses. It lawfully buys these houses exempt from use tax based on the assertion that they have been purchased for subsequent resale. Company A then develops the land, installing water, sewer and electric lines, placing the manufactured homes on foundations, and otherwise taking steps to convert the homes from tangible personal property to real estate.

Company A then sells the homes on the lots to various customers. Each purchase of a home by a customer is a taxable use of the home on that customer's part, and the customer is obligated to pay the appropriate county treasurer the amount of Iowa use tax due.

a. Installed purchase price. When tax is due on the use of manufactured housing in the form of real estate, the basis for computing the tax is the "installed purchase price" of the manufactured housing.

Installed purchase price means the same as defined in Iowa Code section 423.1(23). Use tax is due on 20 percent of the amount of the installed purchase price.

(1) Included in the installed purchase price. Included within the meaning of "installed purchase price" are amounts charged to a buyer of a manufactured home to build and install a foundation on which to place a home; amounts charged to hook up electric, water, gas, sewer system, and other lines for necessary utilities; amounts charged to sell and install "skirting" as described in subrule 282.7(1); amounts charged to build and install any steps for a door; and amounts separately charged for any appliances or other items that become a part of the housing after installation, e.g., dishwashers and whirlpool tubs.

(2) Exclusions from installed purchase price. Excluded from the meaning of "installed purchase price" is any amount charged for the purchase of land on which to place a manufactured house; any amount charged for landscaping in connection with the installation of a manufactured house; any amount charged to build and install any deck or similar appurtenance to a manufactured home; and any amounts charged for the sale of furniture or appliances that remain tangible personal property after installation, e.g., furniture, room air conditioners, and refrigerators. This list of inclusions and exclusions is not exclusive. Furthermore, the purchase of furniture or appliances that remain tangible personal property is subject to Iowa sales or use tax.

b. The exemption in favor of taxable services performed on or in connection with new construction as described in Iowa Code section 423.3(37) is not applicable when calculating the amount of any installed purchase price.

This rule is intended to implement Iowa Code section 423.6(10).

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Roby Smith, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for December is 6.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective December 9, 2023, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE[781](cont'd)

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum 1.85%
180-364 days	Minimum 1.45%
One year to 397 days	Minimum 1.75%
More than 397 days	Minimum 1.25%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Roby Smith, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

January 1, 2023 — January 31, 2023	6.00%
February 1, 2023 — February 28, 2023	5.50%
March 1, 2023 — March 31, 2023	5.50%
April 1, 2023 — April 30, 2023	5.75%
May 1, 2023 — May 31, 2023	5.75%
June 1, 2023 — June 30, 2023	5.50%
July 1, 2023 — July 31, 2023	5.50%
August 1, 2023 — August 31, 2023	5.75%
September 1, 2023 — September 30, 2023	6.00%
October 1, 2023 — October 31, 2023	6.25%
November 1, 2023 — November 30, 2023	6.50%
December 1, 2023 — December 31, 2023	6.75%
January 1, 2024 — January 31, 2024	6.50%

ARC 7418C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to organization and operation

The State Board of Education hereby rescinds Chapter 1, "Organization and Operation," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.3, 256.1, and 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 256.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified several instances where the previous Chapter 1 duplicated statutory language and contained a dated organizational structure. This rulemaking removes the duplicative text.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7082C**. A public hearing was held on October 24, 2023, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received.

Two changes from the Notice have been made. New subrule 1.1(4) acknowledges other boards in the Department with independent rulemaking authority, and rule 281—1.4(17A,256) now specifically names the Innovation Division established by 2023 Iowa Acts, Senate File 514.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
GENERAL INFORMATION—
DEPARTMENT OPERATIONS

CHAPTER 1
ORGANIZATION AND OPERATION

281—1.1(17A,256) State board of education. The state board of education, authorized by Iowa Code chapter 256, is the governing and policy-forming body for the department of education.

1.1(1) *Membership.* The state board's membership is governed by Iowa Code sections 256.3 and 256.4.

1.1(2) *Meetings.* The board's meetings are governed by Iowa Code section 256.6. The majority of the board's meetings are held in the State Board Room, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319. By notice of the regularly published meeting agenda, the board may hold meetings in other areas of the state. The board may hold special meetings as provided in Iowa Code section 256.6.

1.1(3) *Compensation.* All voting members will receive compensation and reimbursement as provided in Iowa Code section 256.5. A student member will receive compensation pursuant to Iowa Code section 256.5A(6). If a student member's parent or guardian provides supervision pursuant to subrule 1.2(4), the parent or guardian will receive necessary expenses but not a per diem.

1.1(4) *Other boards.* The Iowa board of educational examiners and the Iowa college student aid commission have rulemaking authority, the rules of which are codified under agency numbers 282 and 283, respectively.

281—1.2(17A,256) Student member of the state board of education. The governor will appoint a public high school student to serve as a nonvoting member of the state board of education pursuant to Iowa Code section 256.5A.

1.2(1) *Term.* The nonvoting student member will serve a term from May 1 to April 30. The student member may serve a second year as the nonvoting student member without having to reapply for the position if the student has another year of high school eligibility remaining before graduation. A vacancy in the membership of the nonvoting student member will not be filled until the expiration of the term.

1.2(2) *Qualifications.* At the time of making application, a qualified nonvoting student member is to meet all of the following criteria:

a. The student is a full-time, regularly enrolled tenth or eleventh grade student in an Iowa school district.

b. The student has been regularly enrolled as a full-time student in the district of present enrollment for at least two consecutive semesters or the equivalent thereof.

c. The student has a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale (3.75 on a 5.0 scale).

d. The student demonstrates participation in extracurricular and community activities, as well as an interest in serving on the state board.

e. The student has the consent of the student's parent or guardian, as well as the approval of the student's district.

1.2(3) *Application process.* The application process for the nonvoting student member is as follows:

a. The department will, on behalf of the state board, prepare and disseminate application forms to all school districts in Iowa. In addition to the application itself, the student will submit all of the following:

(1) A consent form signed by the student's parent or guardian.

(2) An approval of the application signed by the superintendent of the student's district of enrollment or the superintendent's designee.

(3) A letter of recommendation from a high school teacher from whom the student received instruction.

(4) A letter of recommendation from a person in the community familiar with the student's community activities.

b. The number of applicants in a year from any one district is limited as follows:

(1) If district enrollment for grades 10 through 12 is less than 400 students, there may be no more than one applicant from the district.

(2) If district enrollment for grades 10 through 12 is between 400 and 1,199 students, there may be no more than two applicants from the district.

(3) If district enrollment for grades 10 through 12 is 1,200 students or more, there may be no more than three applicants from the district.

c. All applications are to be submitted on or before February 1 of the year in which the term is to begin. Applications may be hand-delivered or postmarked on or before February 1 to the Iowa department of education.

d. All applications will be initially screened by a committee to be appointed by the director of the department. The initial screening committee will select not more than 20 semifinalists. If fewer than a total of 20 applications are received, the initial screening process may be omitted at the discretion of the director of the department.

e. The applications of the semifinalists will be reviewed by a committee appointed by the president of the state board. The committee will submit a list of two to five finalists to the governor, who will appoint the student member from the list submitted.

1.2(4) *Participation of student member in official board activities.*

a. Upon appointment to the board, the student member is to, at a minimum, fulfill the following qualifications to remain eligible to serve:

(1) Maintain enrollment as a full-time student in an Iowa public school district (if the student moves or transfers from the district of application, the student will obtain the approval of the superintendent or the superintendent's designee in the student's new district of enrollment).

(2) Maintain a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale or 3.75 on a 5.0 scale.

(3) Attend regularly scheduled board meetings as required of voting board members. As a nonvoting member, the student will not participate in any closed session of the board.

b. The student member's absences from school to participate in official state board activities will be excused absences. The student member's participation in board activities outside the regularly scheduled meetings of the state board will be approved by the president of the board and the student's superintendent or the superintendent's designee.

c. If the student member is a minor, the student's parent or guardian will accompany the student while the student is participating in official state board activities at a location other than the student's resident community, unless the parent or guardian submits to the state board a signed release indicating that the parent or guardian has determined that such supervision is unnecessary.

d. The nonvoting student member is not considered for purposes of constituting the board's necessary quorum.

281—1.3(17A,256) Director of the department of education. The director is appointed pursuant to Iowa Code section 256.8 and performs such duties as assigned by the Iowa Code or the Iowa Administrative Code, including Iowa Code section 256.9.

281—1.4(17A,256) Department of education. The department of education is established by Iowa Code section 256.1 to perform the functions and duties set forth in that section, in other Iowa Code provisions, and in the Iowa Administrative Code. The department is organized into such divisions as established by statute, including the innovation division established by 2023 Iowa Acts, Senate File 514, or the director. The mailing address for the state board of education, the director, and all divisions of the department is Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146.

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

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7425C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to agency procedure for rulemaking

The State Board of Education hereby rescinds Chapter 2, "Agency Procedure for Rule Making and Petitions for Rule Making," and adopts a new Chapter 2, "Agency Procedure for Rulemaking and Petitions for Rulemaking," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 256.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified several instances where the current chapter duplicates statutory language. This text is removed in the rulemaking.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7083C**. A public hearing was held on October 24, 2023, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
AGENCY PROCEDURE FOR RULEMAKING
AND PETITIONS FOR RULEMAKING

281—2.1(17A) Incorporation by reference. The Iowa department of education (department) and the Iowa state board of education incorporate by this reference all such matters in Iowa Code chapter 17A that deal with rulemaking or petitions for rulemaking.

281—2.2(17A) Contact information.

2.2(1) *General.* Petitions for rulemaking and inquiries about department rules and the rulemaking process may be directed to Legal Consultant, Iowa Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146.

2.2(2) *Comments on proposed rules.* Any public comment on a Notice of Intended Action or similar document may be directed to Legal Consultant, Iowa Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146, or as directed in the Notice of Intended Action or similar document.

2.2(3) *Petitions for rulemaking.* A petition for rulemaking that substantially conforms to the following form will be considered by the department:

DEPARTMENT OF EDUCATION

Petition by (Name of Petitioner) for the Adoption/Amendment/Repeal of (Cite rule involved).	PETITION FOR RULEMAKING

281—2.3(17A) Electronic submissions. The department encourages electronic submissions of documents under this chapter, including documents bearing electronic signatures. More information is available in the administrative rules content on the department's website (educateiowa.gov).

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7432C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to declaratory orders

The State Board of Education hereby rescinds Chapter 3, "Declaratory Orders," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 17A.9.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined nearly the entirety of this chapter is duplicative of the Uniform Rules on Agency Procedure chapter on declaratory orders, which is therefore incorporated by reference.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7084C**. A public hearing was held on October 24, 2023, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
DECLARATORY ORDERS

The Iowa department of education adopts, with the exceptions and amendments noted in rule 281—3.13(17A), the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

281—3.13(17A) Additional information concerning declaratory orders. For purposes of the Uniform Rules on Agency Procedure relating to declaratory orders, the following amendments and exceptions apply:

1. In lieu of "(designate agency)" insert "Iowa department of education".
2. In lieu of "(designate office)" insert "Grimes State Office Building, Second Floor, 400 East 14th Street, Des Moines, Iowa 50319-0146".
3. In lieu of "_____days (15 or less)" insert "15 days".
4. In lieu of "_____ days" insert "15 days".
5. In lieu of "(designate official by full title and address)" insert "General Counsel, Iowa Department of Education, Grimes State Office Building, Second Floor, 400 East 14th Street, Des Moines, Iowa 50319-0146".
6. In lieu of "(specify office and address)" insert "General Counsel, Iowa Department of Education, Grimes State Office Building, Second Floor, 400 East 14th Street, Des Moines, Iowa 50319-0146".
7. Method of service, time of filing, proof of mailing, the date of issuance of an order, or a refusal to issue an order are governed by 281—Chapter 6.

These rules are intended to implement Iowa Code section 17A.9.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7420C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to waivers from administrative rules

The State Board of Education hereby rescinds Chapter 4, "Waivers From Administrative Rules," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 17A.9A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that a large portion of this chapter recites statutory text or is aspirational in nature. That text is removed and the chapter simplified.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7085C**. A public hearing was held on October 24, 2023, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
WAIVERS FROM ADMINISTRATIVE RULES

281—4.1(17A) Definitions. For purposes of this chapter:

"Board" means the state board of education.

"Department" means the department of education.

"Director" means the director of the department of education.

"Person" means an individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

"Waiver" means the same as defined in Iowa Code section 17A.9A(5).

281—4.2(17A) General. The director may grant a waiver of any administrative rule, if the waiver is consistent with Iowa Code section 17A.9A.

281—4.3(17A) Criteria for waiver. In response to a petition filed pursuant to this chapter, the director may in the director's sole discretion issue an order waiving in whole or in part the obligations of a rule if the director finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A(2) and that any waiver from the obligations of the rule in the specific case would not have a negative impact on the student achievement of any person affected by the waiver.

281—4.4(17A) Filing of petition. All petitions for waiver are submitted in writing to the Director, Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, the petition is filed in the contested case proceeding, using the caption of the contested case.

281—4.5(17A) Content of petition. A petition for waiver includes the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under the criteria described in Iowa Code section 17A.9A(2). This statement includes a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board, the department and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
6. A detailed statement of the impact on student achievement for any person affected by the granting of a waiver.
7. Any information known to the requester regarding the board's or department's treatment of similar cases.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

281—4.6(17A) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department.

281—4.7(17A) Notice. The department will acknowledge receiving the petition and ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is necessary by any provision of law. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may obligate the petitioner to serve the notice on all persons to whom notice is necessary by any provision of law and provide a written statement to the department attesting that notice has been provided.

281—4.8(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply in three situations: (1) to any petition for a waiver filed within a contested case, (2) when provided by rule or order, or (3) when required to do so by statute.

281—4.9(17A) Ruling. An order granting or denying a waiver will be in writing and will contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of any waiver issued.

4.9(1) *General.* The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the director, based on the unique, individual circumstances set out in the petition.

4.9(2) *Compliance with Iowa Code standards.* The department applies the standards and burdens in Iowa Code section 17A.9A(3).

4.9(3) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the director will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.9(4) *Time for ruling.* The director will grant or deny a petition for a waiver as soon as practicable but, in any event, within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director will grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the director to grant or deny a petition within the time period is deemed a denial of that petition by the director. However, the director remains responsible for issuing an order denying a waiver.

4.9(5) *Service of order.* Within seven days of its issuance, any order issued under this chapter is transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

281—4.10(17A) Public availability. The department will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

281—4.11(17A) After issuance of a waiver.

4.11(1) *Cancellation.* A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the director issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

4.11(2) *Violations.* A violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

4.11(3) *Defense.* After the director issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

4.11(4) *Judicial review.* Judicial review of the director's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

281—4.12(17A) Exception. This chapter does not apply to 281—Chapters 36 and 37 or to specific waiver provisions adopted in other chapters.

These rules are intended to implement Iowa Code section 17A.9A.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7427C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to appeal procedures

The State Board of Education hereby rescinds Chapter 6, "Appeal Procedures," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 290.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that several of the rules recite statutory text, recite text from the Uniform Rules on Agency Procedure on contested cases (which could be incorporated by reference), or are obsolete. This rulemaking removes that language and simplifies this chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7088C**. A public hearing was held on October 24, 2023, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
APPEAL PROCEDURES

281—6.1(290) Scope of chapter. This chapter applies to all hearing requests seeking appellate review by the state board of education, the director of education, or the department of education.

281—6.2(256,290,17A) Definitions. The definitions contained in rule X.2 of the Uniform Rules on Agency Procedure for contested cases, effective on July 1, 1999, which are published on the general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf, are incorporated by reference. The following additional definitions apply to this chapter:

"Appellant" refers to a party bringing an appeal to the state board of education, the director of education, or the department of education.

"Appellee" refers to the party in a matter against whom an appeal is taken or the party whose interest is adverse to the reversal of a prior decision now on appeal to the state board of education, the director of education, or the department of education.

"Board" means the state board of education.

"Department" means the department of education.

"Designated office" means the Iowa Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319, or as ordered by the presiding officer.

"Director" refers to the director of education.

"Presiding officer" means the director of the department of education or the designated administrative law judge.

281—6.3(290,17A) Incorporation by reference. The following rules from the Uniform Rules on Agency Procedure for contested cases, effective on July 1, 1999, are incorporated by reference:

1. X.7(17A) Waiver of procedures.
2. X.9(17A) Disqualification.
3. X.10(17A) Consolidation—severance.
4. X.12(17A) Service and filing of pleadings and other papers.
5. X.13(17A) Discovery.
6. X.14(17A) Subpoenas, with the following addition: Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. The witness's fees and mileage are considered costs of any appeal filed under Iowa Code chapter 290, and costs are assigned to the nonprevailing party. The witness's fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.
7. X.15(17A) Motions.
8. X.16(17A) Prehearing conference.
9. X.17(17A) Continuances.
10. X.19(17A) Intervention.

11. X.20(17A) Hearing procedures.
12. X.21(17A) Evidence.
13. X.22(17A) Default, with the following correction: The reference to Iowa Rule of Civil Procedure 236 is corrected to Rule 1.977.
14. X.23(17A) Ex parte communication.
15. X.24(17A) Recording costs.
16. X.28(17A) Applications for rehearing.
17. X.29(17A) Stays of agency actions.
18. X.30(17A) No factual dispute contested cases.
19. X.31(17A) Emergency adjudicative proceedings.

281—6.4(290,17A) Manner of appeal.

6.4(1) An appeal under this chapter is started by filing an affidavit, unless an affidavit is not obligated by the statute establishing the right of appeal. The affidavit is to set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner and be signed by the appellant. The affidavit is to be delivered to the office of the director by United States Postal Service, facsimile (fax), electronic mail, or personal service. The affidavit is considered filed with the agency on the date of the United States Postal Service postmark, the date of arrival of the facsimile, the date of arrival of the electronic mail message, or the date personal service is made. Time will be computed as provided in Iowa Code section 4.1(34).

6.4(2) The director or designee, within five days after the filing of such affidavit, will notify the proper officer in writing of the taking of an appeal. The officer, within ten days, will file with the board a complete certified transcript of the record and proceedings related to the decision appealed. A certified copy of the minutes of the meeting of the governmental body making the decision appealed will satisfy this rule.

6.4(3) The director or designee will send written notice by certified mail, return receipt requested, at least ten days prior to the hearing, unless the ten-day period is waived by all parties, to all persons known to be interested. Such notice includes the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. A copy of the appeal hearing rules will be included with the notice.

The notice of hearing will contain the following information: identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known; reference to the procedural rules governing conduct of the contested case proceeding; reference to the procedural rules governing informal settlement; and identification of the presiding officer, if known (if not known, a description of who will serve as presiding officer (e.g., director of the department or administrative law judge from the department of inspections, appeals, and licensing)).

6.4(4) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

281—6.5(17A) Record. The record of a contested case or appeal is described in Iowa Code section 17A.12(6).

281—6.6(290,17A) Decision and appeal.

6.6(1) The presiding officer, after due consideration of the record and the arguments presented, will make a decision on the appeal. The proposed decision will be mailed to the parties or their representatives by regular mail. The parties may elect to receive the proposed decision by other means, such as electronic mail or electronic filing.

6.6(2) The decision may only be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and in the best interest of education.

6.6(3) A proposed decision of the presiding officer, if there is no appeal under subrule 6.6(4), is placed on the consent agenda of the next regular board meeting for summary adoption, unless the decision is within the province of the director to make.

6.6(4) Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision by filing a notice of appeal with the office of the director. The notice of appeal will be signed by the appealing party or a representative of that party, contain a certificate of service (or other evidence of service), and specify:

a. The names and addresses of the parties initiating the appeal;

b. The proposed decision to be appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision;

d. The relief sought; and

e. The grounds for relief.

6.6(5) Unless otherwise ordered, within 15 days of a party's filing of the notice of appeal, each appealing party may file exceptions and briefs. Within ten days after the filing of exceptions and briefs by the appealing party, any party may file a responsive brief. Briefs shall cite any applicable legal authority, specify relevant portions of the record in the proceeding below, and be limited to a maximum length of 25 pages. An opportunity for oral arguments may be given with the consent of the board. To be granted oral argument, a party must file a request to present oral arguments with the party's briefs. With or without oral argument, the appeal of the proposed decision will be placed on the next regular board agenda.

6.6(6) The board may affirm, modify, or vacate the decision or may direct a rehearing before the director or the director's designee.

6.6(7) Copies of the final decision will be sent to the parties or their representatives by regular mail within five days after state board action, if mandated, on the proposed decision.

6.6(8) No individual who participates in the making of any decision may have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor may any individual who participates in the making of any proposed decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

281—6.7(256,17A) Specific programs.

6.7(1) *General rule.* If a specific federal program's statutes or regulations impose criteria for appeals to the state board of education, the director of education, or the department of education, those specific criteria govern and are incorporated by reference.

6.7(2) *Specific programs.* The following is a nonexhaustive list to which this rule applies:

a. Appeals under the Child and Adult Care Food Program (CACFP) are governed by the criteria contained in 7 CFR Section 226.6 as of May 1, 2023.

b. Due process complaints under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1411 et seq., and Iowa Code chapter 256B are governed by 281—Chapter 41.

c. Due process complaints under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 et seq., are governed by 281—Chapter 120.

These rules are intended to implement Iowa Code sections 256.7(6) and 256.9(17) and chapters 17A and 290.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7431C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to criteria for grants

The State Board of Education hereby rescinds Chapter 7, "Criteria for Grants," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified unnecessary and duplicative restrictive language, which this rulemaking rescinds.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7089C**. A public hearing was held on October 24, 2023, at 9 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
CRITERIA FOR GRANTS

281—7.1(256,17A) General. To ensure equal access and objective evaluation of applicants for competitive program grant funds made available by the Iowa department of education (department), grant application materials are to contain, at minimum, specific content. The department develops competitive program grant application packets in accordance with these rules unless in conflict with appropriation language, the Iowa Code, the Iowa Administrative Code, federal regulations, or interagency agreements between the department and other state agencies.

281—7.2(256,17A) Definitions. For the purpose of these rules, the following definitions apply:

"Competitive program grant" means the collective activities of a competitive grant funded through the department.

"Program period" means the period of time that the department intends to support the program without requiring the recompetition for funds. The program period is specified within the grant application.

"Service delivery area" means the defined geographic area for delivery of program services.

281—7.3(256,17A) Grant application contents. All competitive program grant application materials made available by the department are to include the following:

1. Funding source.
2. Program period.
3. Description of eligible applicants.
4. Services to be delivered.
5. Service delivery area.
6. Target population to be served (if applicable).
7. Funding purpose.
8. Funding restrictions.
9. Funding formula (if any).
10. Matching requirement (if any).
11. Reporting requirements.
12. Performance criteria.
13. Need for letters of support or other materials (if applicable).
14. Application due date.
15. Anticipated date of awarding grant.
16. Required components of submitted grant applications.
17. An explanation of the review process and the review criteria to be used by application evaluators, including the number of points allocated per evaluated component.
18. Appeal process in the event an application is denied.

281—7.4(256,17A) Review process. The review process to be followed in determining the amount of funds to be approved for any competitive program grant will be described in the application, including the review criteria and point allocation for each criterion.

7.4(1) The competitive program grant review committee will be determined by the appropriate division administrator. The review committee members will allocate points per review criterion when conducting the review.

7.4(2) In the event competitive program grant applications receive an equal number of points that necessitates a further determination of whether an applicant is to receive a grant, a second review will be conducted by the division administrator or the division administrator's designee.

281—7.5(290,17A) Appeal of grant denial or termination. Any applicant may appeal the denial of a properly submitted competitive program grant application or the unilateral termination of a competitive program grant to the director of the department.

7.5(1) Appeals are to be:

a. In writing,

b. Received within ten working days of the date of the notice of decision, and

c. Based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members.

7.5(2) The hearing and appeal procedures found in 281—Chapter 6 that govern the director's decisions apply to any appeal of denial or termination.

7.5(3) In the notice of appeal, the grantee will give a short and plain statement of the reasons for the appeal.

7.5(4) The director will issue a decision within a reasonable time, not to exceed 60 days from the date of the hearing.

These rules are intended to implement Iowa Code section 256.9(7).

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7421C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to statewide voluntary preschool program

The State Board of Education hereby rescinds Chapter 16, "Statewide Voluntary Preschool Program," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256C.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256C.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified several rules in Chapter 16 that recite statutory text, are obsolete, or are aspirational in nature. They are removed in this rulemaking.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7090C**. A public hearing was held on October 24, 2023, at 9:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. A date certain was added to the definition of "program standards" and to subrule 16.2(5). No other changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 16 and adopt the following **new** chapter in lieu thereof:

CHAPTER 16
STATEWIDE VOLUNTARY PRESCHOOL PROGRAM

281—16.1(256C) Definitions.

"Applicant" means a school district applying to become an approved local program. Only public school districts in Iowa may apply for state funds under this chapter.

"Approved local program" means the same as defined in Iowa Code section 256C.1.

"Assessment" means a systematic ongoing procedure for obtaining information from observations, interviews, portfolios, and tests that can be used to make judgments about the strengths and needs of individual children and plan appropriate instruction.

"Comprehensive services" means the provision of quality, developmentally appropriate early learning experiences consistent with age-relevant abilities or milestones; extended day child care services; developmental screenings, including health, hearing, and vision screenings; transportation; and family education and support services.

"Curriculum" means a research-based or evidence-based written framework that is comprehensive, addresses the needs of the whole child, and provides a guide for decision making about content, instructional methods, and assessment.

"Department" means the same as defined in Iowa Code section 256C.1.

"Developmentally appropriate" means practices that are based upon knowledge of how children develop and learn and that are responsive to the individual child's learning strengths, interests, and needs.

"Director" means the same as defined in Iowa Code section 256C.1.

"Eligible child" means the same as defined in Iowa Code section 256C.3(1).

"Family education and support" means any developmentally appropriate activity or information, provided either formally or informally to parents, that supports the success of children and their families to reach desired results.

"Paraeducator" means a certified educational assistant as defined in Iowa Code section 272.1(7) and licensed under 282—Chapter 24.

"Prekindergarten program" means an education program offered by a school district or by an accredited nonpublic school as defined in 281—Chapter 12.

"Preschool budget enrollment" means the same as defined in Iowa Code section 256C.5.

"Preschool foundation aid" means the same as defined in Iowa Code section 256C.5.

"Preschool program" means the statewide voluntary preschool program for four-year-old children created in Iowa Code chapter 256C.

"Program standards" means the expectations for the characteristics or quality of early childhood settings, centers, and schools approved by the department, on or before January 31, 2024. Approved program standards include National Association for the Education of Young Children (NAEYC) Program Standards and Accreditation Criteria, Head Start Program Performance Standards, the Iowa Quality Preschool Program Standards (QPPS) and Criteria, or other approved program standards as determined by the department.

"School district" means the same as defined in Iowa Code section 257.2.

"Staff member" means an individual who implements preschool activities under the direct supervision of a teacher. Staff members include paraeducators, teacher aides and teacher associates. All staff members are to meet the program standards defined herein.

"Teacher" means an individual who holds a valid practitioner's license issued by the board of educational examiners under Iowa Code chapter 272 and holds an endorsement from the board of educational examiners that includes prekindergarten or kindergarten. There is no obligation that the teacher be an employee of the applicant district; the teacher may be employed by a private provider or other public agency with which the district has entered into an agreement or contract under Iowa Code chapter 28E.

281—16.2(256C) Preschool program standards. Approved program standards include Head Start Program Performance Standards, Iowa Quality Preschool Program Standards and Criteria, or the NAEYC Program Standards and Accreditation Criteria. All approved local preschool programs adopt preschool program standards and meet the following criteria:

16.2(1) *Personnel.* A minimum of one teacher is present with eligible children during the voluntary preschool program instructional time.

16.2(2) *Ratio of staff to children.* At least one teacher is present in a classroom during the instructional time described in subrule 16.2(4). A minimum of one staff member and one teacher are present when 11 to 20 children are present. Staff members and teachers have reasonable line-of-sight supervision of all children.

16.2(3) *Maximum class size.* There are no more than 20 children per classroom.

16.2(4) *Instructional time.* Eligible children receive instructional time as established by Iowa Code section 256C.3(3)*"f"* that meets the needs of the child and is directly related to the program's curriculum, such time to be exclusive of recess.

16.2(5) *Child learning standards.* The preschool program demonstrates how the curriculum, assessment, staff development, and instructional strategies are aligned to the Iowa Early Learning Standards, adopted on or before January 31, 2024. The teacher provides instruction on the skills and knowledge included in the Iowa Early Learning Standards.

16.2(6) *Curriculum.* The preschool program adopts a research-based or evidence-based curriculum.

16.2(7) *Assessment.* The preschool program adopts a research-based or evidence-based assessment to provide information on children's learning and development.

16.2(8) *Staff development.* The school district complies with Iowa Code section 256C.3(4)*"d."* The district makes available to any teacher of a statewide voluntary preschool program who is not employed by the district staff development that the district offers to the district's personnel to maintain the skills appropriate to the teacher's role. The school district ensures that staff members for the program are provided appropriate staff development in early childhood education.

16.2(9) *Space.* The preschool program provides adequate and appropriate space and facilities in accordance with program standards.

16.2(10) *Materials.* The preschool program provides instructional materials and supplies consistent with the program standards and Iowa Early Learning Standards.

16.2(11) *Meals.* The preschool program provides adequate and appropriate meals or snacks in accordance with program standards.

16.2(12) *Parent involvement.* The preschool program involves families through at least one home visit by the licensed teacher of the child, one family night, and at least two family-teacher conferences per year. Family involvement may include volunteering in the classroom, orientation to the preschool program, parent education, general communications, or other activities.

16.2(13) *Integration of other preschool programs.* The preschool program complies with Iowa Code section 256C.3(3)*"d."*

16.2(14) *Comprehensive services.* The preschool program may collaborate with other agencies for the provision of the following:

a. Quality, developmentally appropriate early learning experiences;

b. Extended day child care;

c. Transportation;

d. Developmental screening, including health, hearing, and vision screening;

e. Referral to other agencies providing health insurance, health care, immunizations, nutrition services, and mental health and oral health services; and

f. Family education and support.

281—16.3(256C) Collaboration.

16.3(1) *Teachers.* The teacher complies with Iowa Code section 256C.3(2)*"b."*

16.3(2) *Programs.* The program complies with Iowa Code section 256C.3(3)*"e."* In doing so, the program makes available resources, including those described in subrule 16.2(14), necessary to meet the needs of the child. Preschool programs collaborate to ensure that children receiving care from other approved child care arrangements can participate in the voluntary preschool program with minimal disruptions to the child.

16.3(3) *Districts.* The school district complies with Iowa Code section 256C.3(4)*"a"* and *"b."*

281—16.4(256C) Applications for funding. All applications are submitted in a manner directed by the department; address the standards found in rules 281—16.2(256C), 281—16.3(256C), and 281—16.9(256C); and contain a plan describing how they will fully meet the program standards within one year of the funding award. Points are awarded based on the applicant's provision of the following information:

1. Preschool program summary;
2. Research documentation;
3. Identification and documentation of local population;
4. Needs assessment of local programs providing services;
5. Evidence of collaboration with local agencies to provide comprehensive services; and
6. Letters of community support.

281—16.5(256C) Application process.

16.5(1) *Request for applications.*

a. The department announces the commencement of the application period through public notice on the department's website and the department's relevant regular electronic publications.

b. Applications for preschool program funding are available on the department's website and otherwise distributed by the department upon request.

c. All applications are to be submitted to the department in accordance with instructions accompanying the applications.

16.5(2) *Application process.*

a. Applications that do not contain the specified information or that are not received by the specified date will not be considered.

b. The department has the final discretion to award funds.

16.5(3) *Notification of applicants.* The department notifies all applicants within 45 days following the due date for receipt of applications whether their requests are funded. The department is to provide to each successful applicant a contract to be signed by an official with authority to bind the applicant and to be returned to the department prior to the distribution of any funds under this program.

281—16.6(256C) Removal of approval.

16.6(1) *Removal by agreement.* 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 applicant does not incur new obligations for the terminated portion after the effective date and will cancel as many outstanding obligations as possible.

16.6(2) *Department removal for cause.*

a. The department may remove approval in whole or in part at any time before the date of completion whenever it is determined by the department that the applicant has failed to comply substantially with the conditions of the contract. The applicant will be notified in writing by the department of the reasons for the removal of approval and the effective date. The applicant does not incur new obligations for the portion for which approval is removed after the effective date of removal and will cancel as many outstanding obligations as possible.

b. The department may remove approval in whole or in part by June 30 of the current fiscal year in the event that the applicant has not attained the program standards.

16.6(3) *Responsibility of applicant after removal of approval.* Within 45 days of the removal of approval, the applicant will supply the department with a financial statement detailing all costs incurred up to the effective date of the removal. If the applicant expends moneys for other than specified budget items approved by the department, the applicant will return moneys for unapproved expenditures.

281—16.7(256C) Appeal of application denial, termination, or removal of approval. Any applicant may appeal to the director of the department the denial of a properly submitted preschool program funding application or the unilateral termination or removal of an approval. The jurisdictional criteria and procedures found in 281—Chapter 7 apply to any appeal of denial.

281—16.8(256C) Finance.

16.8(1) *General.* The department implements Iowa Code sections 256C.4 and 256C.5.

16.8(2) *Aid payments.* Preschool foundation aid is paid as part of the state aid payments made to school districts in accordance with Iowa Code section 257.16, except that it is not necessary that an eligible child be a resident of the district in which the child is enrolled voluntarily in the approved local program.

16.8(3) *Separate accounting.* All state funding received under this program is accounted for by the applicant district separately from other state aid payments.

16.8(4) *Restriction on supplanting.* State funding received under this program is used to supplement, not supplant, other public funding received by the applicant district as the result of the participation of any eligible children in other state or federal funded preschool programs. This restriction is applicable only for costs related to instructional time as described in subrule 16.2(4).

16.8(5) *Transportation.* Children participating in preschool in an approved local program under Iowa Code chapter 256C may be provided transportation services. However, transportation services provided to such children are not eligible for reimbursement under this chapter.

16.8(6) *Open enrollment not applicable.* Iowa's open enrollment statute (Iowa Code section 282.18) is not applicable for the parent or guardian of an eligible child who desires to access an approved program in a school district not of the child's residence. Approved programs are open to all eligible Iowa children,

regardless of a child's district of residence. Accordingly, it is neither necessary for a parent or guardian to file an open enrollment application, nor will open enrollment applications for approved preschool programs be allowed. Participation in an approved program in a school district not of the child's residence does not create an entitlement to continuous open enrollment under Iowa Code section 282.18.

281—16.9(256C) Accountability. An approved local program meets the minimum program specifications in this chapter. The department encourages approved local programs to exceed the minimum standards as programs work toward ongoing improvement. The department monitors each local program's compliance with this rule.

16.9(1) *Annual reports.* Each approved local program provides, on forms provided by the department, an annual report to the department regarding program specifications. Failure to submit an annual report by the date specified therein results in suspension of financial payments to the applicant until such time as the report is received by the department.

16.9(2) *Performance measures.* The approved local program collects data on all of the following:

a. The number of eligible children participating in the preschool program.

b. The number of eligible children participating in a program that meets the criteria of NAEYC, Head Start, or QPPS Standards and Criteria.

c. The curriculum.

d. The assessment as defined in rule 281—16.1(256C).

e. The number of teachers.

f. The kindergarten literacy assessment as defined in Iowa Code section 279.60.

16.9(3) *Noncompliance with program specifications.* If the department determines that a participating district does not meet one or more of the accountability specifications provided in rule 281—16.2(256C), the department informs the school district of appropriate actions to be taken by the school district. The school district submits an action plan that is approved by the department and contains reasonable timelines for coming into compliance. The department will facilitate technical assistance when requested. If the department determines that the school district is not taking the necessary actions in a timely manner, the director removes approval and terminates the school district's contract as provided in subrule 16.6(2). Until such time as the school district's contract is terminated, the school district may continue to participate in the statewide voluntary preschool program.

16.9(4) *Monitoring.* The department develops a monitoring system based on the annual reporting and performance measures described in this rule to be implemented no later than one year after funding is first provided under this chapter. The monitoring system ensures that programs meet the provisions herein requiring a properly licensed teacher and adoption of program standards and is designed to follow the academic progress of children who voluntarily participate in the statewide preschool program as the children progress through elementary and secondary grade levels. If feasible, it is the intent of the department to include postsecondary monitoring of such children.

These rules are intended to implement Iowa Code chapter 256C.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7426C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to school fees

The State Board of Education hereby rescinds Chapter 18, "School Fees," Iowa Administrative Code, and adopts a new chapter with the same title.

EDUCATION DEPARTMENT[281](cont'd)

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(20).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.7(20).

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified several rules that recite statutory text or are aspirational in nature. They are removed in this rulemaking.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7091C**. A public hearing was held on October 24, 2023, at 9:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. The rulemaking maintains the core status quo responsibilities for schools.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 18 and adopt the following **new** chapter in lieu thereof:

CHAPTER 18
SCHOOL FEES

281—18.1(256) Overview. No Iowa student enrolled in a public school may be excluded from participation in or denied the benefits of course offerings and related activities due to the student's or the student's parent's or guardian's financial inability to pay a fee associated with the class, program, or activity.

281—18.2(256) Fee policy. The board of directors (board) of a public school district (district) shall adopt a policy regarding the charging and collecting of fees for course offerings and related activities and for transportation provided to resident students who are not entitled to transportation under Iowa Code section 285.1, apply its policy to any fees charged, and develop procedures to implement its policy.

281—18.3(256) Eligibility for waiver, partial waiver or temporary waiver of student fees. The policy mandated by rule 281—18.2(256) is to include provisions for granting a waiver, partial waiver, or temporary waiver of student fees upon application by the student.

18.3(1) *Waivers.* At minimum, the policy is to include the following provisions relating to eligibility for the waivers:

a. Waiver. A student is granted a waiver of all fees covered by this chapter if the student or the student's family meets the financial eligibility criteria for free meals offered under the child nutrition program, or for the family investment program (FIP), or for transportation assistance under open enrollment provided under 281—Chapter 17, or if the student is in foster care under Iowa Code chapter 232.

b. Partial waiver. A student is granted either a waiver of all student fees or a partial waiver of student fees if the student or the student's family meets the financial eligibility criteria for reduced price meals offered under the child nutrition program, based on a sliding scale related to an ability to pay.

c. Temporary waiver. At the discretion of the district, a student may be granted a temporary waiver of a fee or fees in the event of a temporary financial difficulty in the student's immediate family. A temporary waiver may be applied for and granted at any time during a school year. The maximum length of a temporary waiver is one year.

d. Fees waived not collectable. When an application for any fee waiver is granted, the fee or fees waived under the application are not collectable.

e. Distribution of policy and applications. At the time of registration or enrollment, the district distributes procedures on charging fees, a written notice of fees charged to each student, the waiver and reduction policy and procedures including income guidelines, and the application for waiver. For students or families whose primary language is other than English, the district provides a copy of the materials in the student's native language or arranges for translation of the materials within a reasonable time.

f. Annual application. The request for a fee waiver is made on application forms provided by the department of education. An application can be received at any time but may only be renewed at the beginning of the school year.

18.3(2) *Applications.* The procedures are to include a description of the confidential application process for the waiver and provide that a written decision be issued to the applicant within a reasonable time. If the application is denied, the decision will include the reason for the denial.

18.3(3) *Review and appeals.* The procedures are to include a provision for a confidential review of any denial by a person or persons designated by the board upon request and the manner in which an appeal may be taken. If the decision on review is again to deny the application, the decision maker will notify the applicant in writing that the applicant may appeal the denial to the director of the department of education by filing a notarized statement within 30 days of the applicant's receipt of the district's final decision.

281—18.4(256) Fees covered. Fines assessed for damage or loss to school property are not fees and need not be waived. Nothing in this chapter authorizes the charging of a fee for which there is no authority in law.

These rules are intended to implement Iowa Code section 256.7(20).

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7434C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to educating homeless children and youth

The State Board of Education hereby rescinds Chapter 33, "Educating Homeless Children and Youth," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431).

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified several instances where the rules duplicate language from the Iowa Code or the United States Code, including the definition of "homeless child or youth" and the responsibilities of the local educational agency liaison. In this rulemaking, that language is removed and the rules are simplified.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7087C**. A public hearing was held on October 24, 2023, at 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33
EDUCATING HOMELESS CHILDREN AND YOUTH

281—33.1(256) Definitions.

"District of origin" means the public school district in Iowa in which a child was last enrolled or which a child last attended when permanently housed.

"Guardian" means a person of majority age with whom a homeless child or youth of school age is living or a person of majority age who has accepted responsibility for the homeless child or youth, whether or not the person has legal guardianship over the child or youth.

"Homeless child or youth" means a child or youth from the age of 3 years through 21 years who meets the definition in Iowa Code section 282.1(2)*"a"*(2).

"Preschool child" means a child who is three, four, or five years of age before September 15.

"School of origin" means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. When the child or youth completes the final grade level served by the school of origin, the term "school of origin" includes the designated receiving school at the next grade level for all feeder schools.

"Unaccompanied homeless youth" means a homeless youth not in the physical custody of a parent or guardian.

281—33.2(256) Responsibilities of school districts. A public school district (district) shall do all of the following:

33.2(1) The district will locate and identify homeless children or youth within the district, whether or not they are enrolled in school.

33.2(2) The district will post, at community shelters and other locations in the district where services or assistance is provided to the homeless, information regarding the educational rights of homeless children and youth and encouraging homeless children and youth to enroll in the public school.

33.2(3) The district will examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth, consistent with these rules. Examination and revision include identifying and removing barriers that prevent such children and youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with state, local, and school policies. Examination and revision also include ensuring that homeless children and youth who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the state and local levels. School districts are encouraged to cooperate with agencies and

organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for homeless children and youth when necessary to implement the intent of these rules.

33.2(4) The district will enact a policy prohibiting the segregation of a homeless child or youth from other students enrolled in the public school district.

33.2(5) The district immediately will enroll a homeless child or youth, pending resolution of any dispute regarding in which school the child or youth should be enrolled.

33.2(6) The district will determine school placement based on the best interests of a homeless child or youth. The district, to the extent feasible, will keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parent or guardian. If the child or youth becomes permanently housed during an academic year, enrollment continues in the school of origin for the remainder of that academic year unless the parent or guardian agrees otherwise.

33.2(7) The district will designate as the district's local educational agency liaison for homeless children and youth an appropriate staff person who is able to and has been trained to carry out the duties specified in 42 U.S.C. §11432(g)(6) and coordinates and collaborates with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.

281—33.3(256) School records; student transfers.

33.3(1) The school records of each homeless child or youth will be maintained so that the records are available in a timely fashion when a child or youth enters a new school district and in a manner consistent with federal statutes and regulations related to student records.

33.3(2) Upon notification that a homeless student intends to transfer out of the district, a school district will immediately provide copies of the student's permanent and cumulative records, or other evidence of placement or special needs, to the homeless child or youth or the parent or guardian of a homeless child or youth who may take the copies with them.

33.3(3) Upon the enrollment of a homeless child or youth, a school district will accept copies of records, or other evidence of placement provided by the homeless child, youth, or the parent or guardian of the homeless child or youth, for purposes of immediate placement and delivery of education and support services. Thereafter, the receiving school will request copies of the official records from the sending school. The receiving school shall not dismiss or deny further education to the homeless child or youth solely on the basis that the prior school records are unavailable.

281—33.4(256) Immunization.

33.4(1) Consistent with the provisions of Iowa Code section 139A.8 and rules of the department of health and human services, a public school shall not refuse to enroll or exclude a homeless child or youth for lack of immunization records if any of the following situations exist. The parent or guardian of a homeless child or youth or a homeless child or youth:

a. Offers a statement signed by a doctor licensed by the state board of medical examiners specifying that in the doctor's opinion the immunizations required would be injurious to the health and well-being of the child or youth or to any member of the child's or youth's family or household.

b. Provides an affidavit stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the homeless child or youth is a member or adherent, unless the state board of health has determined and the director of health has declared an emergency or epidemic exists.

c. Offers a statement that the child or youth has begun the required immunizations and is continuing to receive the necessary immunizations as rapidly as is medically feasible.

d. States that the child or youth is a transfer student from any other school, and that school confirms the presence of the immunization record.

33.4(2) The school district will make every effort to locate or verify the official immunization records of a homeless child or youth based upon information supplied by the child, youth, parent, or guardian. In circumstances where it is admitted that the homeless child or youth has not received some or all

of the immunizations required by state law for enrollment and none of the exemptions listed above is applicable, the district will refer the child, youth, and parent or guardian to the local board of health for the purpose of immunization, and the school is to provisionally enroll the child or youth in accordance with paragraph 33.4(1)*"c"* or *"d"* above.

281—33.5(256) Waiver of fees and charges encouraged.

33.5(1) If a child or youth is determined to be homeless as defined by these rules, and is not otherwise eligible for a waiver of fees under 281—Chapter 18, a school district is encouraged, subject to state law, to waive any fees or charges that would present a barrier to the enrollment or transfer of the child or youth, such as fees or charges for textbooks, supplies, or activities.

33.5(2) A homeless child or youth, or the parent or guardian of a homeless child or youth, who believes a school district has denied the child or youth entry to or continuance of an education in the district on the basis that mandatory fees cannot be paid may appeal to the department of education using the dispute resolution mechanism in rule 281—33.8(256).

281—33.6(256) Waiver of enrollment requirements encouraged; placement.

33.6(1) If a homeless child or youth seeks to enroll or to remain enrolled in a public school district, the district is encouraged to waive any requirements, such as mandatory enrollment in a minimum number of courses, which would constitute barriers to the education of the homeless child or youth.

33.6(2) In the event that a school district is unable to determine the appropriate grade or placement for a homeless child or youth because of inadequate, nonexistent, or missing student records, the district will administer tests or utilize otherwise reasonable means to determine the appropriate grade level for the child or youth.

281—33.7(256) Residency of homeless child or youth.

33.7(1) A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of homeless in these rules is entitled to receive a free, appropriate public education and necessary support services in either of the following:

a. The district in which the homeless child or youth is actually residing, or

b. The district of origin.

The deciding factor as to which district has the duty to enroll the homeless child or youth is the best interests of the child or youth. In determining the best interests of the child or youth, the district(s), to the extent feasible, will keep a homeless child or youth in the district of origin, except when doing so is contrary to the wishes of the parent or guardian of the child or youth. In the case of an unaccompanied homeless youth, the local educational agency liaison assists in the placement or enrollment decision, taking into consideration the views of the unaccompanied homeless youth. If the child or youth is placed or enrolled in a school other than within the district of origin or other than a school requested by the parent or guardian or unaccompanied homeless youth, the district will provide a written explanation, including notice of the right to appeal under rule 281—33.8(256), to the parent or guardian or unaccompanied homeless youth.

33.7(2) The choice regarding placement is made regardless of whether the child or youth is living with a homeless parent or has been temporarily placed elsewhere by the parent(s); or, if the child or youth is a runaway or otherwise without benefit of a parent or legal guardian, where the child or youth has elected to reside.

33.7(3) Insofar as possible, a school district will not require a homeless student to change attendance centers within a school district when a homeless student changes places of residence within the district.

33.7(4) If a homeless child or youth is otherwise eligible and has made proper application to utilize the provisions of Iowa Code section 282.18 (open enrollment), the child or youth will not be denied the opportunity for open enrollment on the basis of homelessness.

281—33.8(256) Dispute resolution.

33.8(1) If a homeless child or youth is denied access to a free, appropriate public education in either the district of origin or the district in which the child or youth is actually living, or if the child's or youth's parent or guardian believes that the child's or youth's best interests have not been served by the decision of a school district, an appeal may be made to the department of education as follows:

a. If the child is identified as a special education student under Iowa Code chapter 256B, the manner of appeal is by letter from the homeless child or youth, or the homeless child's or youth's parent or guardian, to the department of education as established in Iowa Code section 256B.6 and 281—Chapter 41 and governed by that chapter and the order of the presiding administrative law judge.

b. If the child is not eligible for special education services, the manner of appeal is by letter from the homeless child or youth or the homeless child's or youth's parent or guardian to the director of the department of education or a designated administrative law judge. The provisions of 281—Chapter 6 apply insofar as possible; however, the hearing shall take place in the district where the homeless child or youth is located or at a location convenient to the appealing party.

c. At any time a school district denies access to a homeless child or youth, the district will notify in writing the child or youth and the child's or youth's parent or guardian, if any, of the right to appeal and manner of appeal to the department of education for resolution of the dispute and shall document the notice given. The notice will contain the name, address, and telephone number of the legal services office in the area.

33.8(2) This chapter will be considered by the presiding officer or administrative law judge assigned to hear the case.

33.8(3) Mediation and settlement of the dispute prior to hearing are permitted and encouraged.

33.8(4) While dispute resolution is pending, the child or youth is enrolled immediately in the school of choice of the child's parent or guardian or the school of choice of the unaccompanied homeless youth. The school of choice is to be an attendance center either within the district of residence or the district of origin of the child or youth.

281—33.9(256) Transportation of homeless children and youth.

33.9(1) *General.* A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of "homeless child or youth" in these rules shall not be denied access to a free, appropriate public education solely on the basis of transportation. The necessity for and feasibility of transportation are to be considered, however, in deciding which of two districts would be in the best interests of the homeless child or youth. The dispute resolution procedures in rule 281—33.8(256) apply to disputes arising over transportation issues.

33.9(2) *Entitlement.* Following the determination of the homeless child's or youth's appropriate school district under rule 281—33.7(256) or 281—33.9(256), transportation will be provided to the child or youth in the following manner:

a. If the appropriate district is determined to be the district in which the child or youth is actually living, transportation for the homeless child or youth is to be provided on the same basis as for any resident child of the district, as established by Iowa Code section 285.1 or local board policy.

b. If the appropriate district is determined to be a district other than the district in which the child or youth is actually living, the district in which the child or youth is actually living (sending district) and the district of origin will agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the receiving district. If these districts are unable to agree upon such method, the responsibility and costs for transportation will be shared equally.

281—33.10(256) School services.

33.10(1) The school district designated for the homeless child's or youth's enrollment will make available to the child or youth all services and assistance, including the following services, on the same basis as those services and assistance are provided to resident pupils:

a. Compensatory education;

b. Special education;

c. English as a second language;

d. Career and technical education courses or programs;
e. Programs for gifted and talented pupils;
f. Health services;
g. Preschool (including Head Start);
h. Before- and after-school child care;
i. Food and nutrition programs;
j. School counseling services to advise homeless students and prepare and improve the readiness of such students for college.

33.10(2) A district must include homeless students in its academic assessment and accountability system under the federal Every Student Succeeds Act, P.L. 114-95, and report disaggregated data regarding the academic achievement and graduation rates for homeless children, as set forth in that Act.

These rules are intended to implement the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431, et seq.), as reauthorized December 10, 2015, by Title IX, Part A, of the Every Student Succeeds Act.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7422C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to veterans' education and training

The State Board of Education hereby rescinds Chapter 51, "Approval of On-the-Job Training Establishments Under the Montgomery G.I. Bill," adopts a new Chapter 51, "Veterans' Education and Training," and rescinds Chapter 52, "Approval of Educational Institutions for the Education and Training of Eligible Veterans Under the Montgomery G.I. Bill," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 38 CFR Part 21.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that all of the rules in Chapters 51 and 52 restate federal regulatory requirements. Some rules, such as approval of high schools, are obsolete. Those duplicative and obsolete rules are removed, and the two chapters are consolidated.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7093C**. A public hearing was held on October 24, 2023, at 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 51 and adopt the following **new** chapter in lieu thereof:

TITLE X
VETERANS' TRAINING

CHAPTER 51
VETERANS' EDUCATION AND TRAINING

281—51.1(256) Apprenticeships and on-the-job training programs for veterans. For approval of apprenticeships and on-the-job training programs, the following provisions of the Code of Federal Regulations, as of October 4, 2023, are incorporated by reference: 38 CFR Sections 21.4001 through 21.4009, 21.4150 through 21.4155, 21.4200 through 21.4206, 21.4209 through 21.4216, 21.4234, 21.4261, and 21.4262.

281—51.2(256) Educational institutions. For approval of educational institutions, the following provisions of the Code of Federal Regulations, as of October 4, 2023, are incorporated by reference: 38 CFR Sections 21.4001 through 21.4009, 21.4150 through 21.4155, 21.4200 through 21.4206, 21.4209 through 21.4216, 21.4232 through 21.4236, 21.4250 through 21.4259, and 21.4263 through 21.4268.

These rules are intended to implement 38 CFR Part 21.

ITEM 2. Rescind and reserve **281—Chapter 52**.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7428C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to school breakfast and lunch program

The State Board of Education hereby rescinds Chapter 58, "School Breakfast and Lunch Program; Nutritional Content Standards for Other Foods and Beverages," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 283A.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that there were several portions of the previous chapter that restated federal regulatory language. The nutritional content standards chart (previous rule 281—58.11(256)) was obsolete based on changes in federal law. The Department removed that language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7094C**. A public hearing was held on October 24, 2023, at 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received.

A change from the Notice has been made to add a date certain to both rules.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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).

EDUCATION DEPARTMENT[281](cont'd)

Effective Date

This rulemaking will become effective on January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 58 and adopt the following **new** chapter in lieu thereof:

TITLE XII
PROGRAMS ADMINISTRATION

CHAPTER 58
SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

281—58.1(256,283A) School breakfast and lunch program. The following regulations from the United States Department of Education's Food and Nutrition Service governing the National School Lunch and School Breakfast programs and effective as of January 31, 2024, are incorporated by reference: 7 CFR Parts 210, 215, 220, 225, 226, 227, 235, 240, 245, and 250, as well as related procurement regulations at 2 CFR Sections 200.317 through 200.326.

281—58.2(256) Nutritional content standards for other foods and beverages. The following regulation, as of January 31, 2024, is incorporated by reference: 7 CFR Section 210.11.

These rules are intended to implement Iowa Code chapter 283A and sections 256.7(29) and 256.9(51).

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7433C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to gifted and talented programs

The State Board of Education hereby rescinds Chapter 59, "Gifted and Talented Programs," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 257.42(4).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 257.42 through 257.49.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department is eliminating several instances where statutory text was reproduced verbatim, reducing a large number of restrictive terms, and resequencing and consolidating certain subrules to improve readability. The Department is also removing certain language from the staff qualifications subrule (the reference to what a program teacher-coordinator is entitled to do) because that matter is within the jurisdiction of the Board of Educational Examiners.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7081C**. A public hearing was held on October 24, 2023, at 9:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. A date certain was added to paragraph 59.4(10)"c." No other changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 59 and adopt the following **new** chapter in lieu thereof:

CHAPTER 59
GIFTED AND TALENTED PROGRAMS

281—59.1(257) General principles. Gifted and talented programs shall be provided by a school district and may be made available to eligible students as a cooperative effort between school districts or through cooperative arrangements between school districts and other educational agencies. It is the responsibility of school districts to ensure that the programs comply with state statute and this chapter.

281—59.2(257) Definitions. For the purposes of this chapter, the following definitions apply:

"Department" means the department of education.

"Gifted and talented students" means the same as "gifted and talented children" as defined in Iowa Code section 257.44. For purposes of that section, the following definitions apply:

1. "Creative thinking" refers to students who have advanced insight, outstanding imagination and innovative reasoning ability. Such students possess outstanding ability to integrate seemingly unrelated information in formulating unique ideas, insights, solutions, or products.

2. "General intellectual ability" refers to students who can learn at a faster pace, master higher levels of content and handle abstract concepts at a significantly higher level than expected, given the student's chronological age and experiences.

3. "Leadership ability" refers to those students who possess outstanding potential or demonstrated ability to exercise influence on decision making. These students may be consistently recognized by their peers, may demonstrate leadership behavior through school and nonschool activities or may evidence personal skills and abilities that are characteristic of effective leaders.

4. "Specific ability aptitude" refers to those students who have exceptionally high achievement or potential and a high degree of interest in a specific field of study.

5. "Visual or performing arts ability" refers to students who demonstrate or indicate potential for outstanding aesthetic production or creativity in areas such as art, dance, music, drama, and media production.

"Program budget" is a budget consisting of a listing of the estimated direct program expenditures, by function and object, that are necessary to accomplish the goals of the program in meeting the needs of identified students, along with a listing of the sources of revenue and, if necessary, the amounts of fund balance to be applied.

281—59.3(257) Program plan. The program plan submitted by school districts will include the elements set forth in Iowa Code section 257.43.

281—59.4(257) Responsibilities of school districts. A school district's program under this chapter shall meet the following criteria:

59.4(1) *Development of goals and objectives.* A school district will establish goals and objectives for the following:

a. Curriculum and instructional strategies.

b. Student outcomes.

c. Program management and administration.

d. Program development.

59.4(2) *Development of curriculum and instructional strategies.* The program of instruction will consist of content and teaching strategies that reflect the accelerative pace, intellectual processes and creative abilities that characterize gifted and talented students. A linkage among the selection of students, the anticipated student outcomes and the special instructional programs will be evident. Learning activities will provide for the development of skills that are beyond the scope of the regular classroom, introduce advanced concepts and contents, and offer students a greater latitude of inquiry than would be possible without the specialized instructional program. Specialized instructional activities are those not ordinarily found in the regular school program and may include the following:

a. A special curriculum supplementing the regular curriculum, using a high level of cognitive and affective concepts and processes.

b. Flexible instructional arrangements, such as special classes, seminars, resource rooms, independent study, student internships, mentorships, research field trips, and research centers.

59.4(3) *Student enrollment.* Students will be involved in a gifted and talented program for a sufficient portion of the regularly scheduled school time to ensure that projected student outcomes are likely to be achieved.

59.4(4) *Personalized education plan.* Best practice dictates that the services provided for each student placed in a gifted and talented program be contained in a written, personalized gifted and talented plan. Personalized education plans should be in writing and reviewed at periodic intervals in accordance with the changing needs of the student. The following items are suggested for inclusion in a student's personalized education plan, but this is neither a mandatory nor an exhaustive list:

a. Relevant background data, assessment of present needs and projections for future needs. Relevant information may include the student's leadership ability, interest inventories, learning characteristics, and learning goals.

b. The nature and extent of the gifted and talented services provided to the student, including indirect services, such as consultative services or other supportive assistance provided to a regular classroom teacher. Other services may include modifications to curriculum and acceleration of the student's curriculum.

c. Personnel responsible for the services provided to the student, as well as those responsible for monitoring and evaluating the student's progress.

59.4(5) *Student identification criteria and procedures.* Students will be placed in a gifted and talented program in accordance with systematic and uniform identification procedures that encompass all grade levels and that are characterized by the following:

a. Identification will be for the purpose of determining the appropriateness of placement in a gifted and talented program, rather than for categorically labeling a student.

b. The decision to provide a student with a gifted and talented program will be based on a comprehensive appraisal of the student, consideration of the nature of the available gifted and talented program and an assessment of actual and potential opportunities within the student's regular school program.

c. Multiple criteria will be used in identifying a student, with no single criteria eliminating a student from participation. Criteria will combine subjective and objective data, including data with direct relevance to program goals, objectives and activities.

d. In the event that the number of eligible students exceeds the available openings, participants will be selected according to the extent to which they can benefit from the program.

e. Each identified student's progress will be reviewed at least annually to consider modifications in program or student placement.

59.4(6) *Evaluation.* The school district will give attention to the following in its evaluation design:

a. Evaluation of gifted and talented programs will be for the purpose of measuring program effects and providing information for program improvement.

b. Evaluation should be conducted for each program level where objectives have been established.

c. Both cognitive and affective components of student development should be evaluated.

d. Evaluation findings should report results based on actual accomplishments by the gifted and talented students or their teachers, which are a direct result of the project, program, or activity.

59.4(7) *Staff utilization plan.* Staff will be deployed to ensure quality gifted and talented programs by employing the following procedures:

a. A designated staff person will be responsible for the overall program coordination throughout the school district.

b. The teaching staff of the gifted and talented program should work with the regular classroom teachers to assess, plan, carry out instruction, and evaluate outcomes.

c. Coordination time will be made available to staff providing gifted and talented programs to allow staff to perform professional responsibilities.

59.4(8) *Staff professional development.* Periodic professional development will be offered for all classroom teachers to maintain and update understandings and skills about individualizing programs for identified gifted and talented students. A staff development plan for personnel responsible for gifted and talented programs will be provided and will be based upon the assessed needs of the gifted and talented instructional and supervisory personnel.

59.4(9) *Qualifications of personnel.* Instructional personnel providing programs for gifted and talented students should have preservice or in-service preparation in gifted and talented education that is commensurate with the extent of their involvement in the gifted and talented program. The gifted and talented program teacher-coordinator will hold an endorsement allowing the holder to serve as a teacher or a coordinator of programs for gifted and talented students from the prekindergarten level through grade 12.

59.4(10) *Fiscal and accountability principles.*

a. When programs are jointly provided by two or more school districts or by a school district in cooperation with another educational agency, the budget will specify how each cooperating school

district or agency will determine the portion of the program costs to be provided by each school district or agency and will provide a budget that specifies the contribution of each school district or agency.

b. Gifted and talented categorical funding will be used only for expenditures directly related to providing the gifted and talented program described in the program plan. Appropriate expenditures, inappropriate expenditures, and financial management provisions are set forth in 281—Chapter 98.

c. School districts will include and identify the detail of financial transactions related to gifted and talented resources, expenditures, and carryforward balances on their certified annual report, using the account coding appropriate to the gifted and talented program as defined by Uniform Financial Accounting for Iowa LEAs and AEAs, as effective on January 31, 2024. Each school district will certify its certified annual report following the close of the fiscal year but no later than September 15.

281—59.5(257) Responsibilities of area education agencies.

59.5(1) When a written request is received from one or more local school boards, an area education agency will establish and operate a gifted and talented children advisory council under Iowa Code sections 257.48 and 257.49.

59.5(2) Staff of the area education agency will cooperate with school districts in the identification and placement of gifted and talented students. Cooperation may include:

a. Assisting local school district personnel in the interpretation of available student data.

b. Assistance in the development of the identification plan.

c. Providing for psychological testing in individual cases when available data contains significant inconsistencies or in other circumstances when additional data may be necessary for determining the appropriateness of the student placement.

281—59.6(257) Responsibilities of the department. The department will review documentation submitted by school districts and area education agencies regarding the school districts' and area education agencies' gifted and talented programs and financial transactions. The department may request that the staff of the auditor of state conduct an independent program audit to verify that the gifted and talented programs conform to a school district's program plans. The department will provide technical assistance to school districts and to area education agencies in the development of gifted and talented programs.

These rules are intended to implement Iowa Code sections 257.42 through 257.49.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7424C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to programs for students who are English learners

The State Board of Education hereby rescinds Chapter 60, "Programs for Students Who Are English Learners," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 280.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 280.4.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department is implementing an overall reduced regulatory footprint by eliminating obsolete language, eliminating unnecessarily restrictive language, updating other language, and providing clearer guidance for nonpublic schools that serve English learners.

Iowa Code section 280.4 requires nonpublic schools to serve English learners; however, current Chapter 60 purports to require nonpublic schools to serve English learners only if those services can be provided by public school districts. This chapter would require nonpublic schools to serve all English learners; however, the standard is to make minor adjustments. This requirement and standard are consistent with other laws under which nonpublic schools are expected to provide services (e.g., Section 504 of the Rehabilitation Act of 1973).

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7086C**. A public hearing was held on October 24, 2023, at 9:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. A date certain was added to subrule 60.5(4). No other changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 60 and adopt the following **new** chapter in lieu thereof:

CHAPTER 60
PROGRAMS FOR STUDENTS WHO ARE ENGLISH LEARNERS

281—60.1(280) Definitions. As used in these rules, the following definitions apply:

"Bilingual instruction" refers to a program of instruction in English and the native language of the student designed to enable students to become proficient in English and in academic content areas at an age- and grade-appropriate level.

"Educational and instructional model" means an instructional model, strategy, method, or skill that provides a framework of instructional approaches to guide decision making about teaching and learning. Based on the needs of particular students, "educational and instructional model" may include a specific set of instructional services or a fully developed curriculum or other supplementary services.

"English as a second language" refers to a structured language acquisition program designed to teach English to students whose native language is other than English, until the student demonstrates a functional ability to speak, read, write, and listen to English language at the age- and grade-appropriate level.

"English learner" means the same as defined in Iowa Code section 280.4(1)*"b."*

"Fully English proficient" means the same as defined in Iowa Code section 280.4(1)*"b."*

"Intensive student" means the same as defined in Iowa Code section 280.4(1)*"b."*

"Intermediate student" means the same as defined in Iowa Code section 280.4(1)*"b."*

"Research-based" means based on a body of research showing that the educational and instructional model, or other educational practice, has a high likelihood of improving teaching and learning. To determine whether research meets this standard for purposes of this chapter, research reports are reviewed for the following:

1. The specific population studied;
2. Research that involves the application of rigorous, systematic, and objective procedures to obtain reliable results and provide a basis for valid inferences relevant to education activities and programs;
3. Whether the research employs systematic, empirical methods that draw on observation or experiment;
4. Reliance on measurement or observational methods that provide reliable and valid data;
5. Inclusion of rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions or inferences drawn;
6. Description of the magnitude of the impact on student learning results; and
7. Inclusion of the level of the review of the study.

281—60.2(280) School district responsibilities.

60.2(1) *Student identification and assessment.* A school district shall use the following criteria in determining a student's eligibility:

a. To determine the necessity of conducting an English language assessment, the district includes a home language survey as part of the registration process. If the answers to the home language survey indicate the prominent use of another language in the home, the student is assessed by the district using the state-approved English language proficiency screener assessment to determine eligibility for language development services. A student scoring proficient is not eligible for services. If a student does not score proficient on the screener assessment, the student is determined to be an English learner.

b. The student is assessed annually on the state's approved summative English language proficiency assessment aligned to the state's English language proficiency standards in order to determine progress and attainment of English. A consistent plan of evaluation that includes ongoing evaluation of student progress will be developed and implemented by the district for each student so identified.

60.2(2) *Staffing.* Teachers in an English as a second language (ESL) program will possess a valid Iowa teaching license and an ESL endorsement.

60.2(3) *English learner placement.* Placement of students identified as English learners will be in accordance with the following:

a. Content classes. Students will be placed in classes with age-appropriate peers. Students will be provided instructional strategies to support content learning at all levels of language proficiency.

b. English learner program placement.

(1) Students enrolled in a program for English learners receive systematic English language instruction designed to allow meaningful access to the district's educational programs.

(2) When students of different age groups or educational levels are combined in the same class, the school ensures that the instruction given is appropriate to each student's level of educational attainment. Programs will be research-based and grounded in sound language acquisition theory.

(3) A program of bilingual instruction may include the participation of students whose native language is English.

(4) A student exits the English language development program upon scoring proficient on the state-approved annual summative English language proficiency assessment.

(5) All district instructional staff and area education agency (AEA) staff responsible for implementing the educational and instructional models defined in rule 281—60.1(280) receive such professional development as may be necessary to implement those educational and instructional models. Such professional development is delivered in accordance with 281—Chapter 83, including qualification of providers. In determining whether providers meet the standards in 281—Chapter 83, the following nonexhaustive factors may be considered, as they are relevant to the particular professional development to be provided:

1. ESL endorsement or equivalent;
2. Five years of ESL teaching experience; or
3. A graduate degree in teaching English to speakers of other languages or in a related field.

60.2(4) *Research-based educational and instructional models.* Districts will utilize research-based educational and instructional models as defined in rule 281—60.1(280) with English learners so that such students may acquire English proficiency and meet high academic standards.

281—60.3(280) Department responsibility. The department of education will provide technical assistance to school districts, including advising and assisting schools in planning, implementation, and evaluation of programs for English learners.

281—60.4(280) Nonpublic school participation.

60.4(1) *General.* A nonpublic school provides services under this chapter; however, the standard for services, if the nonpublic school does not receive services pursuant to subrule 60.4(2), is to make minor adjustments to curriculum and instruction.

60.4(2) *Public school services.* English as a second language and transitional bilingual programs offered by a public school district are available to students attending an accredited nonpublic school located within the district. The district obtains funding for such students in accordance with rule 281—60.5(280).

281—60.5(280) Funding.

60.5(1) *Weighting.* Weighting for English learners is set forth in Iowa Code section 280.4(3). A student's eligibility for additional weighting is transferable to another district of residence.

60.5(2) *Supplemental aid or modified supplemental amount.* In addition to weighting, the school budget review committee (SBRC) may grant supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting or for costs in excess of the weighting to provide instruction to English learners above the costs of regular instruction.

a. A school district of residence may apply to the SBRC by the date specified in rule 289—6.3(257) for supplemental aid or a modified supplemental amount for an unusual need for funding beyond the amount generated from weighting for students identified as English learners who are provided instruction beyond the regular instruction. The eligible supplemental aid or modified supplemental amount will be calculated as the total actual English learner program expenditures for the previous year, reduced by the English learner funding generated in the previous budget year based on the English learner count on the certified enrollment in the previous year, and reduced by any other grants, carryover, or other resources provided to the district for this program.

b. A district of residence may apply to the SBRC for supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting no later than December 1 following the date specified in Iowa Code section 257.6(1) for the certified enrollment. The supplemental aid or modified supplemental amount will be calculated by multiplying the number of resident students identified as English learners who are provided instruction beyond the regular instruction, and who are being served beyond the five years of weighting on the certified enrollment, by the weighting provided under subrule 60.5(1), multiplied by the district cost per pupil in the current year.

c. The SBRC will act on the requests described in paragraphs 60.5(2)*"a"* and *"b"* no later than its March regular meeting. If the SBRC grants the district's request for supplemental aid or a modified supplemental amount, the department of management will increase the district's budget authority by that amount.

The SBRC may require the district to appear at a hearing to discuss its request for supplemental aid or a modified supplemental amount.

60.5(3) *Use of funds.* English learner funding is categorical funding and follows the general provisions in 281—Chapter 98. Appropriate expenditures for the English learner program are those that are direct costs of providing instruction that supplement, but do not supplant, the costs of the regular curriculum. Appropriate and inappropriate expenditures are set forth in 281—Chapter 98.

60.5(4) *Annual reporting.* Districts will include and identify the detail of financial transactions related to English learner resources, expenditures, and carryforward balances on their certified annual report, using the account coding appropriate to the English learner program as defined by the Uniform Financial Accounting Manual for Iowa LEAs and AEAs, in effect on January 31, 2024. Each district submits its certified annual report following the close of the fiscal year but no later than September 15.

These rules are intended to implement Iowa Code sections 256.7(31)*"c,"* 257.31(5)*"j"* and 280.4.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7429C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to programs for at-risk early elementary students

The State Board of Education hereby rescinds Chapter 65, "Programs for At-Risk Early Elementary Students," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 279.51.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 279.51.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that the current midyear report does not add value and the current rules contain unnecessarily restrictive language. The Department is removing that language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7095C**. A public hearing was held on October 24, 2023, at 10 a.m. in the State

Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5 p.m. in Room 1070, Des Moines Roosevelt High School, 4419 Center Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received.

Based on discussions before the State Board, the Department made a technical change in paragraph 65.8(2)"a" to note that grantees have a right to notice and an opportunity to be heard before grant termination. No other changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65
PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

281—65.1(279) Definitions.

"At-risk student" means, for purposes of this chapter, a student in early elementary grades who is eligible for free or reduced price meals.

"Awardee" means a public school district designated to receive the at-risk early elementary school award funds for buildings serving early elementary grades with a high percentage of at-risk students.

"Department" means the department of education.

"Early elementary grades" means kindergarten through grade three.

281—65.2(279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the department will grant awards to districts for buildings serving early elementary grades with a high percentage of at-risk students. Using a formula determined by the department and consistent with Iowa Code section 279.51(1)*"c,"* the department will distribute awards based on the number of early elementary students in the identified buildings serving a high percentage of at-risk students.

281—65.3(279) Award acceptance process. The department will notify eligible districts of the opportunity to be granted an award for a three-year cycle. A district will make formal acceptance using forms issued and procedures established by the department, and by an official with vested authority to approve the acceptance.

281—65.4(279) Awardee responsibilities. Each year, the awardee will complete reports on forms provided by the department, including the following:

1. An initial report, including a proposed budget and expected outcomes.
2. An end-of-the-year report, including total expenditures and a statement of impact on expected outcomes.

281—65.5(279) Allowable expenditures. School districts will provide, at a minimum, the activities set forth in Iowa Code section 279.51(1)*"c."* Additional allowable expenditures include salaries and benefits for teachers and paraeducators, and activities and materials to improve academic achievement. These funds are to be used for instruction, activities, and materials that are in addition to the regular school curricula for children participating in these programs, and only to be used in the building for which the award is made. Inappropriate uses of award funding include indirect costs or use charges, operational or maintenance costs, capital expenditures, student transportation other than that which is directly related to the activities and materials described in this rule, or administrative costs. Moneys received are subject to the general provisions described in 281—Chapter 98.

281—65.6(279) Evaluation. The awardee will cooperate with the department and provide requested information to determine how well the outcomes in rule 281—65.4(279) are being met. Statewide leadership teams will review final reports and provide useful feedback about buildings to awardees. This feedback will include information about innovative components to building programs. Buildings demonstrating innovation will be given preference the following grant cycle.

281—65.7(279) Budget revisions. The department may grant approval to an awardee for any revisions in the proposed budget in excess of 10 percent of a line item, provided the revisions do not increase the total amount of the award.

281—65.8(279) Termination.

65.8(1) *Termination for convenience.* The award may be terminated, in whole or in part, upon agreement of both parties, concerning the termination conditions, the effective date, and in the case of partial termination, the portion to be terminated. The awardee shall cancel as many outstanding obligations as possible and not incur new obligations for the terminated portion after the effective date of termination.

65.8(2) *Termination for cause.*

a. The award may be terminated, in whole or in part, at any time before the date of completion, whenever the department determines, after notice and an opportunity to be heard, that the awardee has failed to comply substantially with the conditions of the award. The awardee will be notified in writing by the department of the reasons for the termination and the effective date. The awardee shall cancel as many outstanding obligations as possible and not incur new obligations for the terminated portion after the effective date of termination.

b. The department will administer the at-risk early elementary school awards contingent upon the availability of state funds. If there is a lack of funds necessary to fulfill the fiscal responsibility of the awards, the awards are to be terminated or renegotiated. The department may terminate or renegotiate an award upon 30 days' notice when there is a reduction of funds by executive order.

65.8(3) *Responsibility of awardee at termination.* Within 45 days of the effective date of award termination, the awardee will supply the department with a financial statement detailing all program expenditures up to the effective date of the termination. The awardee will be solely responsible for all expenditures after the effective date of termination.

281—65.9(279) Appeals from terminations. Any awardee aggrieved by a unilateral termination of an award may appeal the decision to the director of the department in writing within 30 days of the decision to terminate.

65.9(1) *Form of appeal.* In the notice of appeal, the awardee will give a short and plain statement of the reason for the appeal.

65.9(2) *Appeal procedures.* The hearing procedures found at 281—Chapter 6 will apply to appeals of terminated awards. The director will issue a decision within a reasonable time, not to exceed 120 days from the date of hearing.

65.9(3) *Grounds for reversal.* Termination of an award under this chapter may be reversed only if the awardee proves the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members.

65.9(4) *Mandatory denial of appeal.* In lieu of a decision on the merits of an appeal, the director of the department will deny an appeal if the director finds any of the following:

a. The appeal is untimely;

b. The appellant lacks standing to appeal;

c. The appeal is not in the necessary form or is based upon frivolous grounds;

d. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties; or

e. The termination of the award was beyond the control of the department due to lack of available funds.

These rules are intended to implement Iowa Code section 279.51.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7419C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to standards for school administration manager (SAM) programs

The State Board of Education hereby rescinds Chapter 82, "Standards for School Administration Manager Programs," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 256.7(5) and 256.7(30)"b."

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.7(30)"b."

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department is eliminating several instances where statutory text was reproduced verbatim, eliminating obsolete language, and providing flexibility on how SAM preparation programs may meet program approval standards.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as ARC 7096C. A public hearing was held on October 24, 2023, at 10:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5:30 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 82 and adopt the following **new** chapter in lieu thereof:

CHAPTER 82
STANDARDS FOR SCHOOL ADMINISTRATION MANAGER PROGRAMS

281—82.1(272) Definitions.

"Coach" means a person who provides regularly scheduled coaching visits to SAM/administrator teams.

"Department" means the department of education.

"Director" means the director of the department of education.

"Organization" means a professional organization offering an approved training program and support for SAMs.

"SAM" or *"school administration manager"* means a person or persons who are authorized to assist a school administrator in performing noninstructional administrative duties.

"School administration manager program" means a program of SAM training and preparation that leads to authorization to practice as a school administration manager.

"State board" means the Iowa state board of education.

"Trainer" means a person with responsibility for providing approved training for school administration managers.

281—82.2(272) Organizations eligible to provide a school administration manager training program. Approved professional organizations engaged in the preparation and training of SAMs that meet the standards contained in this chapter may obtain and maintain state board approval of the organizations' training programs for SAMs. Only approved programs may recommend candidates for SAM authorization.

281—82.3(272) Approval of training programs. The state board's approval of an organization's training program is based on the recommendation of the director after study of the evidence about the program in terms of the standards contained in this chapter. The department will seek maximum flexibility in the design of systems allowed to meet the goals of this program.

82.3(1) Approval, if granted, will be for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

82.3(2) If approval is not granted, the applicant organization will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the organization will be given the opportunity to present factual information concerning its program at a regularly scheduled meeting of the state board, no later than three months following the board's decision.

82.3(3) Programs may be granted conditional approval upon review of appropriate documentation. In such an instance, the program will receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for authorization.

82.3(4) The standards herein apply regardless of delivery mode of the training.

82.3(5) All programs in existence prior to July 31, 2013, are deemed to meet program standards without having to submit an application for review.

281—82.4(272) Governance and resources standard. To be an approvable organization, an organization's governance structure and resources adequately support the training of SAMs to meet professional, state, and organizational standards in accordance with the following provisions:

82.4(1) The organization provides sufficient trainers, coaches, and administrative, clerical, and technical staff to plan and deliver a quality SAM program.

82.4(2) Resources are available to support professional development opportunities for trainers of SAMs.

82.4(3) Resources are available to support technological and instructional needs to enhance trainer and authorized SAM learning.

281—82.5(272) Trainer and coach standard. An approved organization's trainer and coach qualifications and performance facilitate the professional development of SAMs.

281—82.6(272) Assessment system and organization evaluation standard. An organization's assessment system monitors individual candidate performance and uses the performance data in concert with other information to evaluate and improve the organization and its program. The actual annual evaluation of each SAM is performed by the administrator or the administrator's designee, and the evaluation is conducted in accordance with the standards set forth in rule 281—82.7(272). The organization will annually report data to the department, as determined by the department. The department will periodically conduct a survey of schools or facilities that employ authorized SAMs to ensure that the schools' and facilities' needs are adequately met by the programs and the approval process herein.

281—82.7(272) School administration manager knowledge and skills standards and criteria. SAMs will demonstrate the content knowledge and professional knowledge and skills in accordance with the following standards and supporting criteria.

82.7(1) *Standard 1.* Each SAM will demonstrate an understanding of the instructional and management codes and how to best support the SAM's administrator in instructional leadership. If a SAM is also employed as a secretary or administrative assistant, the SAM's job responsibilities will be modified as established by the school district.

82.7(2) *Standard 2.* Each SAM will attend an approved training program at the onset of the SAM's hire. The training for the SAM and administrator will include the following:

a. Background information on SAMs.

b. Understanding of the instructional and management descriptors.

c. Introduction and practice using approved time-tracking software.

d. First responders and delegation responsibilities.

e. Job responsibilities and variations.

f. Daily meeting protocols.

g. Training of office staff on communication with others.

h. Use of reflective questions.

i. Understanding of conflict resolution skills.

j. Action planning for building implementation and timelines.

k. SAM/administrator rubric process.

82.7(3) *Standard 3.* Each SAM will demonstrate competence in technology appropriate to the SAM's position.

82.7(4) *Standard 4.* Each SAM will demonstrate appropriate personal skills. The SAM:

a. Is an effective communicator with all stakeholders, including but not limited to colleagues, community members, parents, and students.

b. Works effectively with employees, students, and other stakeholders.

c. Maintains confidentiality when dealing with student, parent, and staff issues.

d. Clearly understands the administrator's philosophy of behavior expectations and consequences.

e. Maintains an environment of mutual respect, rapport, and fairness.

f. Participates in and contributes to a school culture that focuses on change in teacher practices and improved student learning by supporting the administrator in the administrator's instructional leadership role.

82.7(5) *Standard 5.* Each SAM will fulfill professional responsibilities as established by the SAM's school district.

82.7(6) *Standard 6.* Each SAM will engage in professional growth that continuously improves the SAM's skills of professional inquiry and learning.

281—82.8(272) Monitoring and continued approval. Upon request by the department, programs will make periodic reports, which include basic information necessary to maintain up-to-date data of the SAM program and to carry out research studies relating to SAMs. Every seven years or sooner if deemed necessary by the director, an organization will file a written self-evaluation of its SAM program. Any action for continued approval or denial of approval will be approved by the state board.

281—82.9(272) Approval of program changes and flexibility of programs. Upon application by an organization, the director may approve minor additions to or changes within the organization's approved SAM program. When an organization proposes a revision that exceeds the primary scope of the organization's program, the revision becomes operative only after approval by the state board. Districts may have a variety of programs and job descriptions that meet the standards of a SAM system but must receive permission to make changes to those programs in the manner prescribed. The department will seek maximum flexibility in systems allowed to meet the goals of this program. Essential components of any approved SAM program include readiness, data collection of administrator time, ongoing training of the program administrator, use of time-tracking software and ongoing coaching for participants in the program.

These rules are intended to implement Iowa Code section 256.7(30)*"b."*

[Filed 12/4/23, effective 1/31/24]

[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7423C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to financial incentives for national board certification

The State Board of Education hereby rescinds Chapter 84, "Financial Incentives for National Board Certification," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.44.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.44.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department determined that current subrule 84.3(4) is obsolete because the issue is adequately addressed through the application process, and that the current chapter contains unnecessarily repetitive and restrictive language. Therefore, the Department is removing this language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7097C**. A public hearing was held on October 24, 2023, at 10:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5:30 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 84 and adopt the following **new** chapter in lieu thereof:

CHAPTER 84
FINANCIAL INCENTIVES FOR NATIONAL BOARD CERTIFICATION

281—84.1(256) Definitions. For the purpose of these rules, the following definitions apply:

"A person who receives a salary as a classroom teacher" means a teacher employed by a school district in Iowa who receives any salary compensation from the school district for providing classroom instruction to students in the district.

"Department" means the Iowa department of education.

"Director" means the director of the Iowa department of education.

"Employed by a school district in Iowa" means a teacher employed in a nonadministrative position in an Iowa school district pursuant to a contract issued by a board of directors of a school district under Iowa Code section 279.13 and any full-time permanent substitute teacher who is employed under individual contracts not included under Iowa Code section 279.13 but who is receiving retirement and health benefits as part of the substitute teacher's contract.

"National Board Certification" or *"NBC"* is a nationwide certification program administered by the National Board for Professional Teaching Standards.

"National Board for Professional Teaching Standards" or *"NBPTS"* is a private nonprofit organization whose goal is to develop professional standards for early childhood, elementary and secondary school teaching. NBPTS administers the NBC program.

"School district" means a public school district under Iowa Code chapter 274.

"Teacher" means an Iowa-licensed teacher as defined in Iowa Code section 272.1.

281—84.2(256) Registration fee reimbursement program. The department will administer a registration fee reimbursement program in each year for which the legislature appropriates funds.

84.2(1) *Eligibility.* Teachers seeking reimbursement under this rule will apply to the department within one year of registration with NBPTS and meet all of the following qualifications:

a. The individual has all qualifications required by NBPTS for application for certification.

b. The individual is a teacher employed by a school district in Iowa and receives a salary as a classroom teacher.

c. The individual completes the department's application process, which includes verifying NBC registration.

d. The individual has not received reimbursement from this program at any previous time.

84.2(2) *Reimbursement.* Teachers determined eligible will receive reimbursement in the following manner:

a. Initial registration fee reimbursement. Each eligible teacher will receive an initial reimbursement of one-half of the reimbursement fee charged by NBPTS or, if necessary, a prorated amount upon submission to the department of the NBC registration confirmation form provided to each teacher by NBPTS.

b. Final registration fee reimbursement. The final registration fee reimbursement of one-half of the reimbursement fee charged by NBPTS will be awarded when the eligible teacher notifies the department of the teacher's certification achievement and submits verification of certification. If an eligible teacher fails to receive certification, the teacher can receive the remaining reimbursement if the teacher achieves certification within three years of the initial NBC score notification.

c. Amount of reimbursement. If funds are appropriated by the legislature, each eligible teacher who applies under this rule will receive the registration fee reimbursement. If in any fiscal year the number of eligible teachers who apply for the reimbursement exceeds the funds available, the department will prorate the amount of the registration fee reimbursement among all eligible teachers.

281—84.3(256) NBC annual award. If funds are appropriated by the legislature, each eligible NBC teacher will qualify for an NBC annual award. If in any fiscal year the funds appropriated are insufficient to pay the maximum amount of the annual awards to each eligible teacher or the number of teachers eligible to receive annual awards exceeds 1,100 individuals, the department will prorate funds among all eligible teachers. An eligible teacher who receives NBC certification after May 1, 2000, will receive an annual award of up to $2,500 per year or a prorated amount for a maximum period of ten years. An otherwise-eligible teacher who possesses a teaching contract that is less than full-time will receive an award prorated to reflect the type of contract (half-time, quarter-time, etc.).

84.3(1) *Eligibility.* In addition to having registered with NBPTS and achieving certification within NBPTS-established timelines and policies, individuals eligible for the NBC annual award will meet all of the following qualifications:

a. The individual is a teacher who has attained NBC certification.

b. The individual is employed by a school district in Iowa and receives a salary as a classroom teacher.

c. The individual completes the department's annual application process, in a manner prescribed by the department.

d. The individual has received no more than ten annual awards, including the annual award currently sought.

e. The individual is applying for the award within one year of being eligible for the award.

84.3(2) *Application.* To receive an award under this rule, an NBC teacher will submit an application verifying eligibility for an NBC award to the department by May 1. The department will issue NBC awards to eligible NBC teachers no later than June 1.

281—84.4(256) Appeal of denial of a registration fee reimbursement award or an NBC annual award. Any applicant may appeal the denial of a registration fee reimbursement award or an NBC annual award to the director of the department. Appeals will be in writing, signed, and notarized; will contain a short and plain statement of the reasons for appeal; will be based on a contention that the process was conducted outside statutory authority or violated state or federal law, regulation or rule; and will be received within ten working days of the date of the notice of denial. The hearing and appeal procedures found in 281—Chapter 6 that govern the director's decisions will apply to proceedings under this rule. The director's decision is due within a reasonable time, not to exceed 30 days from the date of the hearing.

These rules are intended to implement Iowa Code section 256.44.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7430C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to equal employment opportunity and affirmative action

The State Board of Education hereby rescinds Chapter 95, "Equal Employment Opportunity and Affirmative Action in Educational Agencies," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 19B.11.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 19B.11.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department identified rules that recite statutory text, contain unnecessary restrictive terms, are obsolete, or are aspirational in nature. One of the subrules raises constitutional concerns, as noted below. The Department is removing this language.

Current paragraph 95.5(9)"h," which provides, in part, that race or ethnic origin may be considered when "selecting applicants for interview, employment and promotion," raises constitutional concerns and concerns under Title VI of the Civil Rights Act of 1964. For that reason, this provision will not be readopted. If an employer wishes to consider race or national origin when making employment decisions, the employer is advised to consult with counsel.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7098C**. A public hearing was held on October 24, 2023, at 10:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and October 24, 2023, at 5:30 p.m. in the Jim Hester Board Room, Second Floor, Achievement Service Center, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 95 and adopt the following **new** chapter in lieu thereof:

CHAPTER 95
EQUAL EMPLOYMENT OPPORTUNITY
AND AFFIRMATIVE ACTION IN EDUCATIONAL AGENCIES

281—95.1(19B) Definitions. The following definitions will be applied to the rules in this chapter:

"Affirmative action" means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

"Agency" means a local school district, an area education agency or a community college.

"Availability" means the extent to which members of a racial/ethnic group, women, men or persons with disabilities are present within the relevant labor market.

"Department" means the Iowa department of education.

"Director of education" means the director of the Iowa department of education.

"Equal employment opportunity" means equal access to employment, training and advancement, or employment benefits regardless of race, creed, color, religion, sex, age, national origin and disability.

"Metropolitan statistical area" means a large population nucleus (over 50,000 persons) and nearby communities which have a high degree of economic and social integration with that nucleus. Each area consists of one or more entire counties.

"Person with a disability" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment, as defined in Iowa Code section 216.2.

"Racial/ethnic minority person" means any person who is African American, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native.

"Relevant labor market" means the geographic area in which an agency can reasonably be expected to recruit for a particular job category.

"Underrepresentation" means having fewer members of a racial/ethnic group, women, men or persons with disabilities in a particular job category than would be reasonably expected based on their availability in the relevant labor market.

"Work force" means an agency's full-time and part-time employees.

281—95.2(19B) Equal employment opportunity standards. An agency's employment policies and practices shall provide equal employment opportunity to all persons. No person may be denied equal access to agency employment opportunities because of race, creed, color, religion, national origin, gender, age or disability.

281—95.3(19B) Duties of boards of directors. Each agency's board of directors will adopt policy statements and develop plans for implementation of equal employment opportunity standards and affirmative action programs, which contain the following elements:

1. A policy statement outlining the board of directors' commitment to the principles of equal employment opportunity and affirmative action, which contain procedures for employees and applicants for employment to redress complaints of discrimination.
2. A written equal employment opportunity and affirmative action plan, to be evaluated and updated on a biennial basis.
3. Assignment of responsibility to an employee for coordinating the development and ongoing implementation of the plans. This employee may be the same employee who has been assigned to coordinate the agency's efforts to comply with federal laws requiring nondiscrimination in educational programs and employment.
4. Systematic input from diverse racial/ethnic groups, women, men and persons with disabilities into the development and implementation of the plans, which may include using existing advisory committees or public hearing procedures.
5. Periodic training for all staff who hire or supervise personnel on the principles of equal employment opportunity and the implementation of its affirmative action plan.
6. Maintenance of necessary records to document its affirmative action progress. An agency will report employment data to the department by racial/ethnic category, gender and disability.

281—95.4(19B) Plan components. In addition to the board policy statement, each agency's equal employment opportunity and affirmative action plan will include, at a minimum, the following components:

95.4(1) *General.*

a. The name, job title, address and phone number of the employee responsible for coordinating the development and implementation of the equal employment opportunity and affirmative action plans.

b. An administrative statement on how the agency's equal employment opportunity and affirmative action policies and plans are to be implemented, including the internal system for auditing and reporting progress, to be signed and dated by the chief executive officer of the agency.

c. A work force analysis showing the numerical and percentage breakdown of the agency's full-time and part-time employees within each major job category (consistent with the E.E.O. 5 and E.E.O. 6 occupational categories reported to the United States Equal Employment Opportunity Commission) by racial/ethnic group, gender, and disability. For the purpose of confidentiality, disability data may be based on total agency figures, rather than those of major job categories.

d. A quantitative analysis comparing work force analysis figures with the availability of qualified or qualifiable members of racial/ethnic groups, women, men and persons with disabilities within the relevant labor market.

e. When underrepresentation is identified in one or more major job category, the agency will conduct a qualitative analysis to be included in the agency's affirmative action plan. The qualitative analysis is a review of employment policies and practices to determine if and where those policies and practices tend to exclude, disadvantage, restrict or result in adverse impact on the basis of racial/ethnic origin, gender, or disability. The analysis may include, but is not limited to the review of:

(1) Recruitment practices and policies;

(2) A demographic study of the applicant pool and flow;

(3) The rate and composition of turnover in major job categories;

(4) Trends in enrollment that will affect the size of the work force;

(5) Application and application screening policies and practices;

(6) Interview, selection, and placement policies and practices;

(7) Transfer and promotion policies and practices;

(8) Discipline, demotion, termination, and reduction in force policies and practices;

(9) Employee assistance, training selection, and mentoring policies and practices;

(10) The impact of any collective bargaining agreement on equal employment opportunity and the affirmative action process;

(11) Law, policies or practices external to the agency that may hinder success in equal employment opportunity and affirmative action.

95.4(2) *Quantitative goals.* The agency will develop numerical goals and timetables for reduction of underrepresentation in each major job category where it has been identified. These goals are not rigid and inflexible quotas, but reasonable aspirations toward correcting imbalance in the agency's work force. A goal shall not cause any group of applicants to be excluded from the hiring process. When setting numerical goals, agencies will take into consideration the following:

a. The numbers and percentages from the work force analysis conducted pursuant to subrule 95.4(1);

b. The number of short- and long-term projected vacancies in the job category, considering turnover, layoffs, lateral transfers, new job openings, and retirements;

c. The availability of qualified or qualifiable persons from underrepresented racial/ethnic, gender and disability categories within the relevant labor market;

d. The makeup of the student population served by racial/ethnic origin, gender and disability;

e. The makeup of the population served by racial/ethnic origin, gender and disability;

f. The makeup of the population of the metropolitan statistical area, when applicable, by racial/ethnic origin, gender, and disability.

95.4(3) *Qualitative goals.* The agency will develop qualitative goals, activities and timetables which specify the appropriate actions and time frames in which problem areas identified during the qualitative

analysis are targeted and remedied. In setting qualitative goals and planning actions, the agency may consider, but need not be limited to, the following:

a. Broadening or targeting recruitment efforts;

b. Evaluating and validating criteria and instruments used in selecting applicants for interviews, employment, and promotion;

c. Providing equal employment opportunity, affirmative action, and intergroup relations training for employees of the agency;

d. Developing a system of accountability for implementing the agency's plan;

e. Developing and implementing an employee assistance and mentoring program;

f. Establishing a work climate that is sensitive to diverse racial/ethnic groups, both women and men and persons with disabilities;

g. Negotiating the revision of collective bargaining agreements to facilitate equal employment opportunity and affirmative action.

95.4(4) *Absence of minority base.* Agencies with no minority students enrolled or no minority employees shall develop goals and timetables for recruiting and hiring persons of minority racial/ethnic origin when those persons are available within the relevant labor market.

95.4(5) *Consolidation.* An agency may consolidate racial/ethnic minorities and job categories into broader groupings in conducting analyses under this chapter when its size or number of employees makes more specific categories impractical.

281—95.5(19B) Dissemination. Each agency will adopt an internal and external system for disseminating its equal employment opportunity and affirmative action policies and plans.

95.5(1) *Plan distribution.* An agency will annually distribute its policies and plans to agency employees involved in the hiring or management of personnel, and the agency will make the policies and plans available to other agency employees, the public and the director of education upon request.

95.5(2) *Policy statement distribution.* An agency will distribute its policy statement to all applicants for employment, and the agency will distribute the policy statement annually to employees, students, parents, and recruitment sources.

281—95.6(19B) Reports. Each agency will submit an annual progress report on equal employment opportunity and affirmative action to its local board of directors. Each agency will submit its annual progress report under this chapter to the department by December 31 of each year. The report is a part of the basic educational data collection system administered by the department.

These rules are intended to implement Iowa Code section 19B.11.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.

ARC 7417C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rulemaking related to business procedures and deadlines

The State Board of Education hereby rescinds Chapter 99, "Business Procedures and Deadlines," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7 and chapters 24, 257, 285, and 291.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 24, 256, 257, 285 and 291.

Purpose and Summary

As part of the Department of Education's review of rules under Executive Order 10, the Department is replacing restrictive words as unnecessary in this chapter's context. The Department is also adding dates certain to external sources that are incorporated by reference (e.g., generally accepted accounting principles (GAAP)).

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as ARC 7099C. A public hearing was held on October 24, 2023, at 10:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa, and on October 24, 2023, at 5:30 p.m. in the Jim Hester Board Room, Achievement Service Center, Second Floor, Davenport Schools, 1702 North Main Street, Davenport, Iowa. No one attended the public hearings.

The Department received one written public comment. The commenter questioned whether the phrase "affecting very few school districts or AEAs" is statutorily required in the definition of "unusual" in rule 281—99.1(257). The Department removed this clause because it adds no value to the definition of "unusual" and removed a similar clause from the definition of "usual."

The commenter also questioned why the clause "as defined by GASB" was removed from the first sentence of rule 281—99.4(24,256,257,291), which requires GAAP basis of budgeting. As the commenter correctly surmised, this language was removed as unnecessary because the Governmental Accounting Standards Board (GASB) defines this method of budgeting. No change has been made based on this comment.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on December 4, 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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 99 and adopt the following **new** chapter in lieu thereof:

CHAPTER 99
BUSINESS PROCEDURES AND DEADLINES

281—99.1(257) Definitions.

"Area education agency" or *"AEA"* means a school corporation organized under Iowa Code chapter 273.

"Basis of accounting" means the accrual/modified accrual accounting basis under generally accepted accounting principles (GAAP) as defined by the governmental accounting standards board (GASB) as of October 4, 2023.

"Basis of budgeting" means the accrual/modified accrual budgeting basis under GAAP as defined by the GASB as of October 4, 2023.

"SBRC" means the school budget review committee appointed pursuant to Iowa Code section 257.30.

"School district" means a school corporation organized under Iowa Code chapter 274.

"Unique" means highly unusual, extraordinary; unparalleled.

"Unusual" means not usual or common; rare; constituting or occurring as an exception; not ordinary or average.

"Usual" means that which past experience has shown to be normal or common or is anticipated to become normal or common, hence an expected or predictable event.

281—99.2(256,257,285,291) Submission deadlines. It is the responsibility of the administrative officials and board members to submit information and materials as requested by the department of education, department of management, any other state agency, or any federal agency. Reports shall be filed electronically if an electronic format is available.

99.2(1) All school districts will submit program plans, reports, or data collections in the manner, by the procedures, and on the dates set by statute or by the department of education. Plans, reports, and data collections will include the following:

Vehicle Information System	September 1
Annual Transportation Report	September 15
Certified Annual Report (CAR-COA)	September 15
Special Education Supplement	September 15
Facilities, Elections & Save Report	September 30
Certified Enrollment Report/PEACE	October 15
Certified Supplementary Weighting Report	October 15
School Board Officers Report	November 1
Annual Audit Report	March 31
Certified Budget	April 15

99.2(2) All AEAs will submit program plans, reports, or data collections in the manner, by the procedures, and on the dates set by statute or by the department of education. Plans, reports, and data collections will include the following:

Certified Annual Report (CAR-COA)	September 15
Facilities Report	September 30
Certified Supplementary Weighting Report	October 15
School Board Officers Report	November 1
Proposed Budget	March 15
Annual Audit Report	March 31

99.2(3) If any plan, report, or data collection has not been received by the due date of the form or by the due date of a valid extension granted by the department of education, the following procedure will apply:

a. The superintendent of the school district or the administrator of the area education agency, and the president of the applicable board, will be notified of the unfiled report and the number of days it is past due.

b. The state board of education, the SBRC, or the Iowa board of educational examiners may be notified of the school districts or AEAs that were not timely in filing one or more reports.

c. The SBRC may implement the procedures described in 289—subrule 6.3(5).

281—99.3(257) Good cause for late submission.

99.3(1) The department of education may, upon request, allow a school district or AEA to submit reports, data collections, or program plans after the due dates listed in rule 281—99.2(256,257,285,291) for good cause.

a. Good cause includes illness or death of a school district or AEA staff member involved in developing the program plan or submitting the report or data collection; acts of God; technological problems at the department lasting at least seven days within the final two weeks prior to the deadline that prevent access necessary for the plan, report, or data collection submission; or unforeseeable unusual or unique circumstances, which, in the opinion of the director of the department, constitute sufficient cause for allowing submission of program plans, reports, or data collections after the published due date.

b. Good cause does not include consequences of local time management or administrative decisions or when districts and AEAs have timed out or have encountered system overloads within the final three days before the due date.

99.3(2) A school district or AEA requesting permission to submit a program plan, report, or data collection after the published due date will notify the department staff member responsible for receiving the plan, report, or data collection as soon as possible upon determining that the district or AEA will not be able to meet the deadline, but no sooner than two weeks prior to the due date and no later than two days prior to the due date. When an extension of the submission deadline is allowed, the department will establish a date by which the school district or AEA will submit the plan, report, or data collection. Permission to submit a program plan, report, or data collection after the published due date expires upon receipt of the submission by the department and does not carry over into subsequent application or reporting cycles.

281—99.4(24,256,257,291) Budgets, accounting, and reporting. The school district or AEA will budget on the GAAP basis of budgeting. School districts and AEAs will use the chart of accounts defined in the Uniform Financial Accounting Manual for Iowa LEAs and AEAs (UFA manual). The school district or AEA will maintain its financial records and prepare financial reports, including the Certified Annual Report, in the manner and by the procedures set by the departments of education and management in the UFA manual and GAAP. School districts and AEAs will use the chart of accounts defined in the UFA manual. The UFA manual is based on the Financial Accounting for Local and State School Systems published by the United States Department of Education, as of October 4, 2023. If GAAP permits a choice of reporting methods for transactions, or if GAAP conflicts with the UFA

manual, the department of education staff will determine a uniform method of reporting to be used by all school districts and AEAs.

These rules are intended to implement Iowa Code chapters 24, 256, 257, 285 and 291.

[Filed 12/4/23, effective 1/31/24]
[Published 12/27/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/27/23.