

567—43.8(455B) Viability assessment.**43.8(1) Definitions specific to viability assessment.**

“New system” for viability assessment purposes includes public water supply systems which are newly constructed after the effective date of this rule, as well as systems which do not currently meet the definition of a PWS, but which expand their infrastructure and thereby grow to become a PWS. Systems not currently meeting the definition of a PWS and which add additional users and thereby become a PWS without constructing any additional infrastructure are not “new systems” for the purposes of this subrule.

“Nonviable system” for viability assessment purposes means a system lacking the technical, financial, and managerial ability to comply with 567—Chapters 40 through 43 and 81.

“Significant noncompliance (SNC)” for viability assessment purposes means the failure to comply with any drinking water standard as adopted by the state of Iowa as designated by the department.

“Viability” for viability assessment purposes is the ability to remain in compliance insofar as the requirements of the federal Safe Drinking Water Act and 567—Chapters 40 through 43 and 81.

“Viable system” for viability assessment purposes means a system with the technical, financial, and managerial ability to comply with applicable drinking water standards adopted by the state of Iowa.

43.8(2) Applicability and purpose. These rules apply to all new and existing public water supplies, including the following: new systems commencing operation after October 1, 1999; systems deemed to be in significant noncompliance with the primary drinking water standards; DWSRF applicants; and existing systems. The purpose of the viability assessment program is to ensure the safety of the public drinking water supplies and ensure the viability of new public water supply systems upon commencement of operation. The department may assess public notification requirements and administrative penalties to any public water supply system which fails to fulfill the requirements of this rule.

43.8(3) Contents of a viability assessment. The viability assessment must address the areas of technical, financial, and managerial viability for a public water supply system. The assessment must include evaluation of the following areas at a minimum, and the public water supply system may be required to include additional information as directed by the department. The viability of a system should be forecast for a 20-year period.

a. Technical viability.

- (1) Supply sources and facilities
- (2) Treatment
- (3) Infrastructure (examples: pumping, storage, distribution)

b. Financial viability.

- (1) Capital and operating costs
- (2) Revenue sources
- (3) Contingency plans

c. Managerial viability.

- (1) Operation
- (2) Maintenance
- (3) Management
- (4) Administration

43.8(4) New systems.

a. Submission of system viability assessment. New public water supply systems (including community, nontransient noncommunity systems, and transient noncommunity systems) commencing operation after the effective date of this rule are required to submit a completed system viability assessment for review by the department, prior to obtaining a construction permit. The viability assessment may be submitted with the application for a construction permit. The department may reject receipt or delay review of the construction plans and specifications until an adequate viability assessment is provided. If the department finds, upon review and approval of the viability assessment, that the PWS will be viable, a construction permit will be issued in accordance with 567—Chapters 40 and 43. Prior to beginning operation, a public water supply operation permit must be obtained in accordance with 43.2(455B) and 567—40.5(455B).

b. Review of the viability assessment. If the department declines to approve the viability assessment as submitted by the applicant, or if the department finds that the PWS is not viable, approval of construction and operation permit applications will be denied. If the viability assessment is conditionally approved, construction and operation permits will be issued, with conditions and a schedule to achieve compliance specified in the operation permit.

43.8(5) Existing systems.

a. Submission of system viability assessment. Any community, nontransient noncommunity, or transient noncommunity water system which operated prior to October 1, 1999, and was regulated as a public water system by the department shall be considered an existing system. Any system which does not currently meet the definition of a PWS, but which expands their infrastructure and thereby grows to become a PWS is considered a new system. Systems not currently meeting the definition of a PWS and which add additional users and thereby become a PWS without constructing any additional infrastructure are considered existing systems for the purposes of this subrule. All PWSs should complete a viability assessment. However, only those existing PWSs which meet one or more of the following criteria are required to complete a viability assessment for the department's review and approval.

- (1) Systems applying for DWSRF loan funds.
- (2) Systems categorized as being in significant noncompliance by the department, due to their history of failure to comply with drinking water standards.
- (3) Systems identified by the department via a sanitary survey as having technical, managerial, or financial problems as evidenced by such conditions as poor operational control, a poor state of repair or maintenance, vulnerability to contamination, or inability to maintain adequate distribution system operating pressures.
- (4) Systems which have been unable to retain a certified operator in accordance with 567—Chapter 81.

b. Review of viability assessments for systems required to submit an assessment. If the assessment is incomplete and does not include all of the required elements, the supply will be notified in writing and will be given an opportunity to modify and resubmit the assessment within the time period specified by the department. If the system fails to resubmit a completed viability assessment as specified by the department, the department may find that the system is not viable. If the submitted assessment is complete, the department will either indicate that the system is viable or not viable after the assessment review process. The system will be notified of the results of the evaluation by the department.

c. Review of voluntarily submitted viability assessments. It is recommended that all existing systems complete the viability assessment and submit it to the department. Voluntarily submitted assessments may be reviewed upon request and will be exempt from any requirements to modify the assessment if it is not approved, or from a determination that the system is not viable, providing the system does not meet any of the criteria for mandatory completion of a viability assessment as set forth in 43.8(4) "a" above.

43.8(6) Systems which are determined to be not viable.

a. Applicability. The following applies to community, nontransient noncommunity, and transient noncommunity systems:

- (1) Systems applying for DWSRF loan funds must be viable, or the loan funds must be used to assist the system in attaining viable status. If a system making a loan application is found to be not viable, and loan funds will not be sufficient or available to ensure viability, then the situation must be corrected to the department's satisfaction prior to qualification to apply for loan funds.
- (2) Systems which meet the department's criteria of significant noncompliance are not considered viable. The viability assessment completed by the public water supply and the most recent sanitary survey results will be evaluated by the department to assist the system in returning to and remaining in compliance, which would achieve viability. Required corrective actions will be specified in the system's operation permit and will include a compliance schedule. Field office inspections will be conducted on an as-needed basis to assist the system in implementing the required system improvements.
- (3) Systems experiencing technical, managerial, or financial problems as noted by department in the sanitary survey will be considered not viable. The viability assessment completed by the public water

supply will be evaluated by the department to assist the system in attaining viability, and any required corrective actions will be specified in the system's operation permit.

(4) Systems unable to retain a certified operator will be considered not viable. All community and nontransient noncommunity water systems, and transient noncommunity water systems as denoted by the department, are required to have a certified operator who meets the requirements of 567—Chapter 81. The viability assessment completed by the public water supply will be used to determine the source of the problem, and required corrective actions will be specified in the system's operation permit.

b. Reserved.

43.8(7) *Revocation or denial of operation or construction permit.*

a. Revocation or denial of an operation permit. Failure to correct the deficiencies regarding viability, as identified in accordance with a compliance schedule set by the department, may result in revocation or denial of the system's operation permit. If the department revokes or denies the operation permit, the owner of the system must negotiate an alternative arrangement with the department for providing treatment or water supply services within 30 days of receipt of the notification by the department unless the owner of the supply appeals the decision to the department. The public water supply is required to provide water that continually meets all health-based standards during the appeal process.

b. Denial of new construction permits for an existing system. In addition to the criteria provided in 567—Chapters 40 through 44, new construction permits for water system improvements may be denied until the system makes the required corrections and attains viable status unless the proposed project is necessary to attain viability.

c. Failure to conform to approved construction plans and specifications, or to comply with the requirements of 567—Chapters 40 to 44. Failure of a project to conform to approved construction plans and specifications, or failure to comply with the requirements of 567—Chapters 40 to 44, constitutes grounds for the director to withhold the applicable construction and operation permits. The system is then responsible for ensuring that the identified problem with the project is rectified so that permits may be issued. Once an agreement for correcting the problem is reached between the department and the system, the department will issue the appropriate permits according to the provisions of the agreement. If an agreement cannot be reached within a reasonable time period, the permit shall be denied.

d. Contents of the notification denying the permit. The notification of denial or withholding approval of the operation or construction permit will state the department's reasons for withholding or denying permit approval.

43.8(8) *Appeals.*

a. Request for formal review of determination of viability. A person or entity who disagrees with the decision regarding the viability of a public water supply system may request a formal review of the action. A request for review must be submitted in writing to the director by the owner or their designee within 30 days of the date of notification by the department of the viability decision.

b. Appeal of denial of operation or construction permit. A decision to deny an operation or construction permit may be appealed by the applicant to the environmental protection commission pursuant to 567—Chapter 7. The appeal must be made in writing to the director within 30 days of receiving the notice of denial by the owner of the public water supply.