



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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(Price includes complete set of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders may be purchased for \$12.00 each plus \$.72 sales tax.)

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Telephone: (515)281-3568**

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CITATION of Administrative Rules

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

- | | |
|-----------------------|----------------|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1(249A) | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)“a” | (Paragraph) |
| 441 IAC 79.1(1)“a”(1) | (Subparagraph) |

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

Schedule for Rule Making 2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 28, 2003	April 16, 2003
22	Friday, April 11, 2003	April 30, 2003
23	Friday, April 25, 2003	May 14, 2003

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

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

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

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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The Administrative Rules Review Committee will hold a special meeting on Monday, April 14, 2003, at 8 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the April 2, 2003, Iowa Administrative Bulletin.

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

IADA loan participation program; Iowa agricultural loan assistance program,
4.3(7), 4.6(1)"b," 4.7, 4.7(1) to 4.7(11); rescind ch 6, Notice **ARC 2359B** 3/19/03

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Entrepreneurial ventures assistance program, 60.2, 60.4, 60.5, 60.7(3)"a"(2),
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EMPLOYMENT APPEAL BOARD[486]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

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4.8(1), 4.70(3), 5.1(1), 11.1(1), Notice **ARC 2350B** 3/19/03

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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Notice **ARC 2356B**, also Filed Without Notice **ARC 2361B** 3/19/03

Beneficial use determinations: solid by-products as resources and alternative cover material,
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Indigent defense—claims for compensation, ch 9, Notice **ARC 2349B** 3/19/03

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Exemption from privacy notice requirements, 90.3(2)"c," 90.4(4), Filed **ARC 2353B** 3/19/03

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NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

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COMMERCE DEPARTMENT[181]“umbrella”

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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.

EDITOR'S NOTE: Terms ending April 30, 2003.

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Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
DENTAL EXAMINERS BOARD[650]		
Services provided by dental hygienist under collaborative agreement, 1.1, 10.3(3) IAB 3/5/03 ARC 2327B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	April 1, 2003 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Entrepreneurial ventures assistance program, 60.2, 60.4, 60.5, 60.7 IAB 3/19/03 ARC 2360B	2nd Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	April 8, 2003 2 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Fee for Title V permit, 22.106(1) IAB 3/19/03 ARC 2356B	Conference Rooms 2-4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	April 8, 2003 1 p.m.
Special waste authorizations, 109.3, 109.4, 109.9, 109.11 IAB 3/19/03 ARC 2357B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 8, 2003 10 a.m.
INSPECTIONS AND APPEALS DEPARTMENT[481]		
Indigent defense claims processing, ch 9 IAB 3/19/03 ARC 2349B	Conference Room 320 Lucas State Office Bldg. Des Moines, Iowa	April 8, 2003 10 a.m.
NATURAL RESOURCE COMMISSION[571]		
Wildlife refuges, 52.1(2) IAB 3/5/03 ARC 2339B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 10, 2003 10 a.m.
Forest land enhancement program, ch 74 IAB 3/5/03 ARC 2346B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 25, 2003 1 p.m.
Waterfowl and coot hunting seasons, 91.1, 91.3, 91.4, 91.6 IAB 3/5/03 ARC 2340B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 10, 2003 10 a.m.
Wild turkey fall hunting by residents, 99.2, 99.3(1), 99.5, 99.8(1), 99.9 IAB 3/5/03 ARC 2344B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 10, 2003 10 a.m.
Deer hunting by residents, 106.1(5), 106.5 to 106.8, 106.10 IAB 3/5/03 ARC 2342B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 10, 2003 1 p.m.

TREASURER OF STATE[781]

Deposit and security of public funds in banks, ch 13 IAB 3/19/03 ARC 2358B	Treasurer's Office, First Floor Capitol Building Des Moines, Iowa	April 8, 2003 1 to 3 p.m.
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UTILITIES DIVISION[199]

Alternate energy production, amendments to ch 15; 20.9(2) IAB 3/5/03 ARC 2329B	Hearing Room 350 Maple St. Des Moines, Iowa	May 16, 2003 10 a.m.
Customer rights and remedies to avoid disconnection, 19.4(15), 20.4(15) IAB 2/5/03 ARC 2285B	Hearing Room 350 Maple St. Des Moines, Iowa	April 8, 2003 10 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer's contributions and charges, amendments to ch 23 IAB 3/19/03 ARC 2351B	1000 E. Grand Ave. Des Moines, Iowa	April 8, 2003 9:30 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“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 which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

CITIZENS' AIDE[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 Division[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]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[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]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INFORMATION TECHNOLOGY DEPARTMENT[471]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
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 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
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]

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	NOTICE OF INTEREST DUE DATE (NOI)
Iowa Emergency Management Division	Pre-Disaster Mitigation (PDM) Grant (FY 2003)	Statewide	<ul style="list-style-type: none"> • State and Local Governments • Private Non-Profit (PNP) Organizations or Institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221(e) • Indian Tribes or authorized tribal organizations, and Alaska Native Villages or organizations, but not Alaska Native Corporations with ownership vested in private individuals. 	<ul style="list-style-type: none"> • Local Hazard Mitigation Planning in accordance with State and Federal requirements. <p>The development or amendment of such plans in preparation for federal funding under the:</p> <ul style="list-style-type: none"> • Stafford Act as amended by the Disaster Mitigation Act (DMA) 2000 or • National Flood Insurance Reform Act (NFIRA), Flood Mitigation Assistance (FMA) Program 	May 7, 2003

Application and guidance may be obtained by contacting:

Dennis Harper

State Hazard Mitigation Officer

or

Bonnie Rieder

Grants Fiscal Specialist

Iowa Emergency Management Division

Des Moines, Iowa 50319-0113

(515)281-3231

ARC 2359B**AGRICULTURAL DEVELOPMENT
AUTHORITY[25]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 175.6, the Agricultural Development Authority hereby proposes to amend Chapter 4, “IADA Loan Participation Program,” and to rescind Chapter 6, “Iowa Agricultural Loan Assistance Program,” Iowa Administrative Code.

These proposed amendments increase the net worth limitations for participation in the loan participation program to better reflect the current prices for real estate. The proposed amendments increase the maximum net worth to \$300,000 to match the Beginning Farmer Loan Program and increase the maximum participation amount to \$100,000.

The amendments also eliminate rules for a defunct loan guarantee program and eliminate some provisions which merely pertain to clerical and office procedures. The removal of these provisions will not materially affect the program rules or producer eligibility.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on April 9, 2003. Such written materials should be directed to Jeff Ward, Executive Director, Agricultural Development Authority, 505 Fifth Avenue, Suite 327, Des Moines, Iowa 50319; or faxed to (515)281-8618. E-mail may be sent to Jeff.Ward@iada.state.ia.us.

No waiver provision is included in these proposed amendments because an existing rule allows for waivers in appropriate cases. The waiver rule applies to the proposed amendments.

These amendments are intended to implement Iowa Code chapter 175.

The following amendments are proposed.

ITEM 1. Amend subrule 4.3(7) as follows:

4.3(7) Net worth.

a. For an individual, an aggregate net worth of the individual and the individual’s spouse and minor children (if any) shall be less than ~~\$200,000~~ *\$300,000*.

b. For a partnership, an aggregate net worth of all partners, including each partner’s net capital in the partnership, together with each partner’s spouse and minor children, shall be less than ~~\$400,000~~ *\$600,000*. However, the aggregate net worth of each partner, including the partner’s net capital in the partnership together with that of the partner’s spouse and minor children, shall not exceed ~~\$200,000~~ *\$300,000*.

c. For a corporation, an aggregate net worth of all corporate shareholders, including each shareholder’s net capital in the corporation plus the net capital of the corporation, ~~all of which~~ shall not exceed ~~\$400,000~~ *\$600,000*. The aggregate net worth of each shareholder, including the shareholder’s net capital in the corporation together with that of the shareholder’s spouse and minor children (if any), shall not exceed ~~\$200,000~~ *\$300,000*.

d. For a limited liability company, an aggregate net worth of all members, including each member’s ownership

interest in the limited liability company, together with *that of* each member’s spouse and minor children, shall be less than ~~\$400,000~~ *\$600,000*. However, the aggregate net worth of each member, including the member’s ownership interest in the limited liability company together with that of *the* member’s spouse and minor children, shall not exceed ~~\$200,000~~ *\$300,000*.

ITEM 2. Amend subrule **4.6(1)**, paragraph “b,” as follows:

b. ~~Fifty~~ *One hundred* thousand dollars.

ITEM 3. Amend rule 25—4.7(175), introductory paragraph, as follows:

~~25—4.7(175) Loan application procedures. If an application is received in the IADA office by the tenth of the month it will be reviewed at the next board meeting. Lender and borrower are to submit a completed application and \$100 application fee along with the items covered below.~~

ITEM 4. Amend rule 25—4.7(175) by rescinding subrules **4.7(1)**, **4.7(5)** and **4.7(11)** and renumbering subrules **4.7(2)** through **4.7(10)** as **4.7(1)** through **4.7(8)**.

ITEM 5. Amend renumbered subrule 4.7(8) as follows:

4.7(8) Fees. The lender or borrower must submit to the authority a nonrefundable application fee in the amount of \$100 when the application is submitted. A participation closing fee equal to ~~± 1.25~~ percent of the IADA participation will be deducted from the participation proceeds by the IADA. A minimum participation closing fee of ~~\$200~~ *\$300* will be charged.

ITEM 6. Rescind and reserve **25—Chapter 6**.

ARC 2360B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 60, “Entrepreneurial Ventures Assistance Program,” Iowa Administrative Code.

Item 1 of the proposed amendments adds a new definition of an “eligible business.” Start-up companies, early-stage companies and existing companies that are developing a new product or new technology would be eligible to apply for funding.

Item 2 increases the amount of financial assistance available for start-up or early-stage growth activities from \$50,000 to \$250,000.

Item 3 increases the total award for technical assistance activities from \$10,000 to \$25,000.

Item 4 prohibits funding for businesses engaged in personal services, consulting and franchises.

Item 5 is a minor reformatting of the rule.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on April 8, 2003. Interested persons may submit written or oral comments by contacting Paul Stueckradt, Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4897.

A public hearing to receive comments about the proposed amendments will be held on April 8, 2003, at 2 p.m. at the above address in the Second Floor Northwest Conference Room.

These amendments are intended to implement Iowa Code sections 15.338 and 15.339.

The following amendments are proposed.

ITEM 1. Amend rule **261—60.2(15)** by adding the following **new** definition in alphabetical order:

“Eligible business” means a start-up company, an early-stage company, or an existing company that is developing a new product or technology.

ITEM 2. Amend rule 261—60.4(15) as follows:

261—60.4(15) Financial assistance. Applicants may apply to IDED for financial assistance to assist with their business startup or early-stage growth. The applicant may request up to ~~\$50,000~~ *\$250,000 for start-up or early-stage growth activities* to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. *Assistance will generally be made in staged investments with amounts to be determined by company development, growth, and defined milestones.* The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, or software, or for working capital needs, or other business expenses deemed reasonable and appropriate by IDED. *Awards will be in the form of an equitylike investment (e.g., royalty agreement, deferred loan). A single recipient is limited to \$250,000 in total financial assistance.*

ITEM 3. Amend rule 261—60.5(15) as follows:

261—60.5(15) Technical assistance. Applicants may also apply for assistance in paying for consulting, or technical assistance, either in conjunction with the request for financial assistance, or after a period of time that the business has been in operation. ~~Assistance~~ *Technical assistance* of this nature is limited to no more than ~~\$10,000~~ *\$25,000* per applicant.

ITEM 4. Amend subparagraph **60.7(3)“a”(2)** as follows:

(2) Assistance may be provided to industries other than those listed in “1” through “6” above; however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa’s economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry’s benefit to Iowa’s economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry’s benefit to Iowa’s economic base will include:

1. The majority of the products or services produced by the industry are exported out of Iowa;
2. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
3. The goods or services produced by this industry diversify Iowa’s economy;

4. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;

5. The industry shows potential for future growth;

6. The functions of the industry do not produce harmful effects for Iowa’s natural environment; and

7. Whether the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales, *personal services, consulting, franchises*, the provision of health care or other professional services, and distributors of products or services will not be considered targeted industries and are not eligible for this program.

ITEM 5. Amend paragraph **60.7(3)“d”** as follows:

d. Strength of business plan. Factors considered here would be the quality of the business plan and how well it addresses all elements of the business, such as:

1. ~~A~~ *A* description of the company and the overall industry;
2. ~~The~~ *The* product and production plan;
3. ~~The~~ *The* market, competition, and the marketing strategy;
4. ~~The~~ *The* management team and business operations;
5. ~~Patent~~ *Patent* issues (if applicable), critical risks and problems; and
6. ~~financial~~ *Financial* information and plan.

The strength of the business plan will be the most important factor in the evaluation and rating of applications. Rating factors in paragraphs “a,” “b,” and “c” above will be evaluated as either satisfactory or not satisfactory. However, the business plan will be rated on an actual numerical or comparative scale. Those applications which are satisfactory on factors in paragraphs “a,” “b,” and “c” above and which rate highest on strength of business plan will be funded first.

ARC 2350B

EMPLOYMENT APPEAL BOARD[486]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 10A.601(6), the Employment Appeal Board hereby gives Notice of Intended Action to amend Chapter 1, “Organization,” Chapter 3, “Unemployment Insurance Appeals,” Chapter 4, “Rules of Procedure for OSHA Appeals,” Chapter 5, “Personnel Appeals,” and Chapter 11, “Boilers and Un-fired Steam Pressure Vessels Appeals,” Iowa Administrative Code.

The proposed amendments are intended to implement Executive Order Number 8 and make changes to correct the mailing address of the Employment Appeal Board.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 8, 2003. Such written materials should be directed to Chairman, Employment Appeal Board, Lucas State Office Build-

EMPLOYMENT APPEAL BOARD[486](cont'd)

ing, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319; or faxed to (515)281-7191. E-mail should be sent to rramsey@dia.state.ia.us.

These amendments are intended to implement Iowa Code section 10A.601(6) and Executive Order Number 8.

The following amendments are proposed.

ITEM 1. Amend subrule 1.1(2) as follows:

1.1(2) The employment appeal board's offices are located in the Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa. The office hours are 8 a.m. to 4:30 p.m. Monday through Friday. The office is closed on all state holidays.

ITEM 2. Amend subrule 1.2(3) as follows:

1.2(3) In all instances, appeals may be filed by mailing the appeal, filing the appeal in person, or faxing the appeal to the employment appeal board at (515)281-7191. The address for the employment appeal board is Employment Appeal Board, Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319.

ITEM 3. Amend subrule 3.1(2) as follows:

3.1(2) Form and time of appeal. A party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board within 15 days from the date of the decision. The appeal shall state the grounds for the appeal. The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319. The appeal may also be filed in any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board. The date of the appeal is the date of the fax transmission.

ITEM 4. Amend subrule **4.7(7)**, second unnumbered paragraph, as follows:

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before an administrative law judge designated by the employment appeal board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the employment appeal board in its rules of procedure. Notice of intent to participate should be sent at the earliest opportunity to: Employment Appeal Board, ~~State Capitol Complex,~~ Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near the workplace).

ITEM 5. Amend subrule 4.8(1) as follows:

4.8(1) All papers shall be filed with the Employment Appeal Board, Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319.

ITEM 6. Amend subrule 4.70(3) as follows:

4.70(3) The officer shall immediately deliver the transcript, together with a certificate in person, or by registered mail to the Employment Appeal Board, Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319.

ITEM 7. Amend subrule **5.1(1)**, first unnumbered paragraph, as follows:

The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319.

ITEM 8. Amend subrule **11.1(1)**, first unnumbered paragraph, as follows:

The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, ~~Second~~ Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319.

ARC 2356B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to increase from the current fixed dollar amount of \$29 per ton to \$39 per ton the maximum annual Title V Operating Permit fee that the Environmental Protection Commission can establish on the first 4,000 tons of actual emissions of each regulated pollutant emitted annually from a major source. Budget projections and estimates of actual emissions indicate that the annual fee will have to be increased above \$29 per ton to maintain the current level of service in state fiscal years 2004, 2005, and 2006.

The increase from \$29 per ton to \$39 per ton is based on budget projections for the next three state fiscal years and estimates of the actual emissions during this period. Basing the fee level cap on budget projections for the next three state fiscal years should prevent the need for the Commission to change the fee level cap provision in subrule 22.106(1) again for at least this period of time. The need to increase the fee level cap to maintain the current level of services is the result of the combination of increases in staff salaries due to negotiated contract increases and projected decreases in actual emissions over this period. The \$39 per ton fee level cap includes an additional 20 percent that was added to the resulting dollar per ton estimates for each of the three state fiscal years to account for estimated increases in other nonsalary expenditures, such as indirect costs and increases in the costs of operating an ambient air monitoring network.

The data, assumptions, and methodology used to arrive at the \$39 per ton fee level cap were reviewed and discussed in detail at a meeting on January 9, 2003, with a representative group of companies that pay Title V fees and the Association of Business and Industry. The data, assumptions, and methodology were determined to be reasonable based on past budget information, available salary contract information, and past actual emissions trends. The Department will continue to work with Title V fee payers and the Association of Business and Industry to reduce and control the Department's costs of service and to investigate alternate funding mechanisms.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Any person may make written suggestions or comments on the proposed amendment on or before April 8, 2003. Written comments should be directed to Jim McGraw, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. Comments may be sent by fax to (515)242-5094 or by electronic mail to jim.mcgraw@dnr.state.ia.us.

An informational meeting and public hearing will be held on April 8, 2003, at 1 p.m. in Conference Rooms 2-4 at the Department's Air Quality Bureau offices located at 7900 Hickman Road, Urbandale, Iowa. At the informational meeting, DNR staff will be available to answer questions about the proposed rule revision. Comments may be submitted orally or in writing during the public hearing. All comments must be received no later than April 8, 2003.

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

Subrule 22.106(1) requires that the Environmental Protection Commission set the annual fee for the coming fiscal year based on the reasonable cost to run the program and the proposed budget no later than the May Commission meeting. For the fee level cap rule change to become effective prior to the May Commission meeting, this amendment was also Adopted and Filed Without Notice and is published herein as **ARC 2361B**.

This amendment is intended to implement Iowa Code section 455B.133.

The following amendment is proposed.

Amend subrule 22.106(1) as follows:

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The 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 department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than \$29.539 per ton without adopting the change pursuant to formal rule making.

ARC 2357B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 109, "Special Waste Authorizations," Iowa Administrative Code.

These proposed amendments add stabilized grit, bar screenings and grease skimmings to the category of general special wastes. Adding these wastes to the category of general special wastes will eliminate the need for a special waste authorization for the delivery of these common wastes from a wastewater facility to a permitted sanitary landfill.

These amendments also add conditions and requirements that shall be met by the sanitary landfill and the generator for the disposal of petroleum-contaminated soil, the disposal of asbestos-containing waste, and the disposal of stabilized grit, bar screenings and grease skimmings. The conditions and requirements for the disposal of petroleum-contaminated soil and for the disposal of asbestos-containing waste were previously part of a sanitary landfill's permit language. Adding the conditions and requirements for the disposal of these three general special wastes will shorten a landfill's permit language and place the requirements in Chapter 109 where they can be specifically addressed.

These amendments correct an omission in 567—109.9(455B,455D), which addresses infectious waste. This correction is needed to clarify an important part of that rule.

A public hearing will be held on April 8, 2003, at 10 a.m. in the Fourth Floor Conference Room of the Wallace State Office Building, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their comments to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special needs such as those related to hearing or mobility impairments should contact the Department of Natural Resources at (515)281-4968 and advise of specific needs.

Written comments will be received by the Department through the end of the business day on April 8, 2003. Comments may be sent to Jim Thayer, Planning, Permitting and Engineering Services, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; or by fax to Jim Thayer at (515)281-8895; or by E-mail at jim.thayer@dnr.state.ia.us.

These amendments are intended to implement Iowa Code section 455B.304.

The following amendments are proposed.

ITEM 1. Amend rule **567—109.3(455B,455D)**, definition of "general special waste," as follows:

"General special waste" means petroleum contaminated soil, asbestos containing waste, and other wastes that are explicitly listed in a landfill's permit and included in a landfill's

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~~special waste acceptance criteria (SWAC)~~ *special wastes that are commonly accepted by landfills and have specific handling requirements for disposal that are explicitly listed in rule 567—109.11(455B,455D). General special wastes are required to be included in the landfill's special waste acceptance criteria (SWAC), but do not require a special waste authorization (SWA). The following wastes are approved as general special wastes: asbestos-containing material; petroleum-contaminated soil; and stabilized grit, bar screenings and grease skimmings.*

ITEM 2. Rescind and reserve rule **567—109.4(455B, 455D)**.

ITEM 3. Amend rule 567—109.9(455B,455D) as follows:

567—109.9(455B,455D) Infectious waste. Infectious waste which is generated and treated at a medical clinic, doctor's office, nursing care facility, health care facility, dentist's office or other similar facility may be placed with municipal solid waste and *not* handled in a special way if it is rendered nonpathological, does not contain free liquids, and sharps are shredded, blunted, granulated, incinerated or mechanically destroyed. The generator of the infectious waste must notify the waste hauler and the sanitary landfill that infectious waste is being placed with the regular municipal solid waste and, with the notice, certify that the infectious waste is properly treated in accordance with the requirements of this rule.

ITEM 4. Adopt the following **new** rule 567—109.11(455B,455D):

567—109.11(455B,455D) Conditions and requirements for the disposal of general special wastes.

109.11(1) Asbestos-containing material. The sanitary landfill permit holder shall comply with the following conditions and requirements whenever asbestos-containing waste materials are accepted and disposed of in a sanitary landfill.

a. Asbestos-containing material (ACM) wastes with 1 percent or less asbestos are not regulated and can be disposed of at the working face, the same as any other waste.

b. ACM wastes that contain greater than 1 percent asbestos are regulated under federal asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) and shall be managed in accordance with federal regulations defined in 40 CFR Part 61, Subpart M. Testing to determine asbestos content shall utilize the method specified in 40 CFR Part 763, Section 1, Appendix A of Subpart F.

c. Nonfriable ACM waste is defined as waste containing greater than 1 percent asbestos that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure. Nonfriable ACM waste includes asbestos-containing floor covering and asphalt roofing materials that show no evidence that they contain crumbled, pulverized or powdered ACM residues upon delivery to the landfill.

d. Friable ACM waste is defined as waste containing greater than 1 percent asbestos that when dry can be crumbled, pulverized or reduced to powder by hand pressure. Friable ACM waste includes acoustical, thermal and fire-proofing insulation, as well as numerous building products with incorporated asbestos material. Waste transite siding shall be considered friable ACM waste.

e. ACM waste transporters should be encouraged by the landfill operator to notify the landfill at least 24 hours in advance when ACM waste will be arriving at the landfill. Upon arrival at the sanitary landfill, the transporter shall present to the landfill operator the ACM waste shipment records, which shall include a determination whether the ACM waste is fri-

able or nonfriable, if known. The landfill operator must through visual inspection or testing verify whether the ACM waste is friable or nonfriable. If not verified as nonfriable, the waste must be handled as friable ACM waste.

f. Any federal NESHAP-regulated ACM waste shipments that show evidence of visible dust emissions or that are not properly containerized, wrapped, wetted, and covered shall be rejected upon arrival at the landfill.

g. ACM wastes with greater than 1 percent asbestos content that are nonfriable when received at the landfill may be disposed of at the working face. Care shall be taken when unloading and covering the waste so that it does not become friable at the working face.

h. ACM wastes with greater than 1 percent asbestos content, as determined by laboratory tests, which are confirmed as friable when received at the landfill shall be disposed of in an area separate from the regular working face. The wastes shall be covered carefully with a minimum of six inches of soil cover and compacted by no later than the end of the operating day. Care shall be taken at all times during disposal and covering to prevent rupture of asbestos-containing containers and wrapped waste systems. Covered ACM waste areas shall be protected from erosion at all times.

i. Upon delivery, friable ACM wastes must be wet and contained in labeled, leak-tight containers or wrapping which prevents asbestos from becoming airborne. Bulk demolition wastes with friable ACM need not be placed in leak-tight containers, but must remain wet at all times and be properly labeled and wrapped to prevent asbestos from becoming airborne during transport and disposal and covering at the landfill.

j. Extreme care shall be taken at all times when transporting, depositing, and covering federal NESHAP-regulated ACM waste to control the evolution of dust and airborne asbestos fibers and to not allow the rupture of asbestos containers and wraps.

k. After landfill acceptance, if any federal NESHAP-regulated ACM waste becomes dry prior to disposal, rewetting, or an approved alternative means of dust emissions control, is mandatory. When disposed of, the wet ACM waste must be properly covered before it can dry again.

l. In the event that any visible dust emissions from federal NESHAP-regulated ACM waste occur, protective safety equipment, consistent with federal NESHAP and OSHA regulations, shall be immediately utilized by landfill operating staff.

m. Daily records of the acceptance and disposal of all ACM wastes shall be maintained. Landfill records for each NESHAP-regulated ACM waste shipment shall include the following:

- (1) The date of ACM waste receipt.
- (2) The names, addresses, and telephone numbers of the originating waste generation site, facility owner, agent responsible for performing removal and the waste transporter.
- (3) The description of ACM wastes, quantity in cubic yards, weight and the number and type of containers or systems received.
- (4) The waste shipment record and any accompanying asbestos content laboratory test and friable status documentation.
- (5) The operational log notation relative to the landfill operator's visual confirmation of waste type compared to waste shipment records and the friable or nonfriable status for each federal NESHAP-regulated ACM waste shipment.
- (6) The operational log notation of any rejected ACM waste and the reasons for rejection by landfill staff.

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(7) The site operational area, coordinates location and vertical elevation keyed to site mapping and the quantity of buried waste in cubic yards for each federal NESHAP-regulated waste shipment disposed of within the disposal site.

n. Records for all federal NESHAP-regulated ACM wastes accepted at the landfill in accordance with 40 CFR Part 61, including required federal and state asbestos NESHAP program operational and site closure reports, shall be maintained. All records, except for waste shipment records, shall be maintained through site closure. Waste shipment records shall be retained for at least two years.

o. A copy of an Affidavit Explanatory of Title which has been file stamped by the county recorder shall be submitted to the department within 60 days of site closure. The affidavit shall appear as part of the property deed record and shall indicate that:

(1) The landfill has been used for the disposal of ACM waste.

(2) The survey plot and all records of the location and quantity of regulated ACM wastes have been filed with federal and state NESHAP program officials. Such documentation must be filed with the department, along with the notification.

(3) The site is subject to the regulations under 40 CFR Part 61, Subpart M, and the site closure permit requirements issued by the department.

p. Strict adherence to federal NESHAP asbestos regulations under 40 CFR Part 61 is mandatory for all federal regulated ACM wastes. Questions on federal and state regulations should be addressed to the U.S. Environmental Protection Agency at (913)551-7391 or the department's air quality bureau at (515)281-8443. Questions regarding state asbestos abatement certification requirements should be addressed to the Iowa division of labor services at (515)281-6768.

109.11(2) Petroleum-contaminated soil. The sanitary landfill operator, the generator and the hauler shall comply with the following conditions and requirements whenever petroleum-contaminated soil is disposed of in a sanitary landfill.

a. The waste cannot be a hazardous waste.

b. The waste cannot contain free liquids as determined by the paint filter liquids test.

c. Upon arrival at the landfill, the hauler shall identify the waste to the landfill attendant.

d. The landfill operator shall direct the hauler to the evaporation area. The soil borrow area or an area with intermediate cover may be used.

e. The contaminated soil may be spread up to a depth of 4 inches. The contaminated soil shall be allowed to aerate for at least 14 days and until the hydrocarbon level is less than 100 ppm. Fourteen days is a minimum. Longer times may be needed if weather conditions are unfavorable or if contamination levels are unusually high.

f. The soil shall be turned or disked at least three times per week.

g. Alternative procedures other than those procedures defined in 109.11(2)"e" and 109.11(2)"f" may be used if it can be demonstrated that soil treatment meeting the requirements of 109.11(2)"h" can be consistently achieved and if approved under permit amendment.

h. After the contaminant has evaporated and the total hydrocarbon content is less than 100 ppm, the soil may be used as daily cover material or incorporated into the working face. The soil may not be used for capping or lining.

i. Once every three months, petroleum-contaminated soil that has been treated at the evaporation area shall be

sampled and analyzed for total hydrocarbon content. This sampling can be done at any time during the three-month period depending on the availability of treated soil.

109.11(3) Stabilized grit, bar screenings, and grease skimmings. The sanitary landfill operator, the generator and the hauler shall comply with the following conditions and requirements whenever stabilized grit, bar screenings, or grease skimmings are disposed of in a sanitary landfill.

a. The waste cannot contain any free liquids as determined by the paint filter liquids test.

b. The generator shall stabilize the grit, bar screenings, and grease skimmings prior to their disposal at the landfill in order to destroy any pathogenic organisms. Stabilization can be done by addition of lime to raise the pH to at least 12 for two hours.

c. The generator shall prearrange a delivery schedule with the landfill operator.

d. Upon arrival at the landfill, the hauler shall identify the waste to the landfill attendant.

e. The landfill operator shall direct the hauler to the working face.

f. The waste shall be deposited at the working face, covered with regular refuse or soil and compacted.

ARC 2349B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby gives Notice of Intended Action to rescind Chapter 9, "Indigent Defense—Claims for Compensation," and to adopt new Chapter 9, "Indigent Defense Claims Processing," Iowa Administrative Code.

The proposed amendment is intended to update the Department's administrative rules governing the processing of indigent defense fund claims by prescribing the services eligible for reimbursement and setting forth the reporting and reimbursement requirements for claimants. In addition, the proposed amendment complies with Executive Order Number 8, which requires that outdated, redundant, overly broad, ineffective, unnecessary, or otherwise undesirable rules be eliminated.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 8, 2003. Such written material should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

Also, there will be a public hearing on April 8, 2003, at 10 a.m. in Conference Room 320 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

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

This amendment is intended to implement Iowa Code section 232.141 and chapters 10A and 815.

The following amendment is proposed.

Rescind 481—Chapter 9 and insert in lieu thereof the following **new** chapter:

CHAPTER 9
INDIGENT DEFENSE CLAIMS PROCESSING

481—9.1(232,815) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“Attorney” means an individual licensed to practice law by the Iowa supreme court.

“Claim” means an application or request for payment.

“Claimant” means a person, firm, association, partnership, corporation, or other business entity authorized by law to apply to the indigent defense fund, pursuant to Iowa Code section 815.11, for payments for services provided to, or made on behalf of, an indigent. In juvenile cases, “claimant” may also include a county.

“County base” means the amount of private attorney, witness and mileage fees in juvenile cases for which the county remains liable pursuant to Iowa Code section 232.141.

“Court-appointed attorney” means an attorney appointed by the court to represent an indigent person whether the attorney is a public defender or private attorney.

“Date of service” means “date of service” as defined by the state public defender.

“Department” means the department of inspections and appeals.

“Expert witness” means a person who is retained to render an opinion regarding an issue relevant to a case, whether or not the person actually testifies in court.

“Indigent” means a person entitled to legal representation as defined in Iowa Code section 815.9.

“Private attorney” means an attorney who is not a public defender.

“Public defender” means an attorney who is the state public defender, an assistant state public defender, the state appellate defender, an assistant state appellate defender, a local public defender, or an assistant local public defender.

“State public defender” means the state public defender appointed pursuant to Iowa Code chapter 13B and those other persons authorized to act on behalf of the state public defender.

“Timely claims” means claims processed prior to the close of the state’s fiscal year accounting books for the fiscal year of the date of service.

481—9.2(815) Claims submitted by a public defender. The department shall process and forward for payment claims submitted by a public defender that are approved by the state public defender and comply with requirements of the department of revenue and finance.

The department will notify the state public defender prior to modifying a claim, except for modifications resulting from a mathematical calculation error.

Timely claims will be submitted to the department of revenue and finance for processing and payment. Claims that are not timely claims will be submitted to the state appeal board for processing and payment.

481—9.3(815) Claims submitted by a private attorney.

The department shall process and forward for payment claims submitted by a private attorney for court-appointed attorney fees and costs for legal representation of an indigent if the following conditions are met:

1. The claim has been approved for payment by the state public defender.

2. The claim complies with requirements of the department of revenue and finance.

Claims that do not comply with this rule will be returned by the department to the state public defender.

The department will submit timely claims to the department of revenue and finance for processing and payment. Claims that are not timely claims will be submitted to the state appeal board for processing and payment.

481—9.4(815) Claims submitted by a county. The department shall process and forward for reimbursement claims submitted by a county pursuant to Iowa Code section 232.141(3) if the following conditions are met:

1. The county submits a properly completed Report of Expenditures for Juvenile Justice Program form provided by the department.

2. The report form contains the original signature of the county auditor or another authorized designee.

3. The county submits one original and one copy of the payment order/payment voucher form.

4. The county submits an itemization detailing the amounts for which reimbursement is sought and the manner in which each amount was calculated.

5. The amounts for which reimbursement is sought are statutorily chargeable to the indigent defense fund.

6. The county has timely paid its county base for the current fiscal year to the indigent defense fund.

7. The report form and other required documents are submitted to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083.

8. The claim has been approved for payment by the state public defender.

Claims that do not comply with this rule will be returned to the state public defender.

481—9.5(815) Claims for other professional services. The department shall process claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has an IRS form W-9 on file with the department and the claim conforms to the requirements of this rule.

9.5(1) Claims for investigative services. The department shall process and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

a. The investigator submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant’s name, address, social security number or federal tax identification number, and telephone number.

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b. Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the investigator.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation.

(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing hiring the investigator sets a limit for the claim, the court order approving the amount of the claim is unnecessary.

d. The claim is approved for payment by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(2) Claims for foreign language interpreters. The department shall process and forward for payment claims for necessary and reasonable expenses for foreign language interpreters if the following conditions are met:

a. The interpreter submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the interpreter.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing hiring the interpreter sets a limit for the claim, the court order approving the dollar amount of the claim is unnecessary.

(5) If the interpreter charges a "minimum" amount for services based on a specific time, a certification by the interpreter that no other services have been performed or charges made by the interpreter for any portion of that specific time.

d. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(3) Claims for expert witnesses. The department shall process and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

a. The expert witness submits an original and one copy of a signed claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services.

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing hiring the expert witness sets a limit for the claim, the court order approving the amount of the claim is unnecessary.

(5) If the expert charges a "minimum" amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

d. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(4) Claims for certified shorthand reporters. The department shall process and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters if the following conditions are met:

a. The certified shorthand reporter submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which the deposition/court proceeding commenced.

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- (4) The date on which the transcript was ordered.
- (5) The date on which the transcript was delivered.
- (6) The number of pages and cost per page.
- (7) The total amount of the claim.
- (8) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the certified shorthand reporter was obtained before any expenses for the certified shorthand reporter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the certified shorthand reporter.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) An itemization of any additional services or charges based on some criterion other than cost per page.

(4) If the certified shorthand reporter charges a "sitting fee" or "minimum" amount for services based on a specific time, a certification by the certified shorthand reporter that no other services have been performed or charges made by the certified shorthand reporter for any portion of that specific time.

(5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

d. Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment, claims for certified shorthand reporter services will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

e. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(5) Claims for court-ordered evaluations. The department shall process and forward for payment claims for necessary and reasonable evaluations to establish a defense or to determine whether an indigent is competent to stand trial if the following conditions are met:

a. The person performing the evaluation submits a signed original and one copy of a claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is either to establish a defense to a pending charge or to determine whether an indigent is competent to stand trial.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation.

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order approving the dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, the court order approving the amount of the claim is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

d. The claim is approved by the state public defender.

The department will return claims that do not comply with this subrule to the state public defender.

9.5(6) Submission of claims. Claims for payment for professional services provided to a public defender must be submitted to the public defender for whom the services were provided. Other claims for payment for professional services must be submitted to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, Des Moines, Iowa 50319.

9.5(7) Claims from state employees. Claims submitted by state of Iowa employees must be submitted on a state travel voucher form.

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9.5(8) Claim form for other professional services. Claimants other than state of Iowa employees shall use the following form in filing claims for investigative services, foreign language interpreters, expert witnesses, certified shorthand reporters and court-ordered evaluations.

INDIGENT DEFENSE MISCELLANEOUS CLAIM FORM			
1. CHECK THE BOX INDICATING THE TYPE OF CLAIM:			
<input type="checkbox"/> CERTIFIED SHORTHAND REPORTER <input type="checkbox"/> INVESTIGATOR <input type="checkbox"/> EVALUATION <input type="checkbox"/> EXPERT WITNESS <input type="checkbox"/> INTERPRETER _____ (LANGUAGE) <input type="checkbox"/> OTHER (EXPLAIN):			
2. CASE INFORMATION:			
COUNTY:		COURT NUMBER:	
COURT-APPOINTED ATTORNEY:			
TITLE OF CASE:			
CLIENT'S FULL NAME:			
3. CLAIM INFORMATION:			
CERTIFIED SHORTHAND REPORTER:		DATE ORDERED ____/____/____	
		DATE DELIVERED ____/____/____	
ALL OTHER CLAIM TYPES:		DATE SERVICES BEGAN ____/____/____	
		DATE SERVICES ENDED ____/____/____	
CLAIM TOTAL: \$			
4. APPROVAL:		CLAIM TOTAL: \$	

STATE PUBLIC DEFENDER			
5. CLAIMANT INFORMATION:		<input type="checkbox"/> Change of Information	
NAME:		E-MAIL:	
ADDRESS:		PHONE:	
CITY:	STATE:	ZIP:	FAX:
SS # OR FEDERAL ID #		ARE YOU A STATE EMPLOYEE?	
		<input type="checkbox"/> YES <input type="checkbox"/> NO	
6. CERTIFICATION:			
I, THE UNDERSIGNED, CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.			
DATE: ____/____/____		CLAIMANT SIGNATURE:	

481—9.6(10A) Processing and payment. The department will submit timely claims to the department of revenue and finance for processing and payment. The department will submit claims that are not timely to the state appeal board for processing and payment.

481—9.7(10A) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment shall be

mailed to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083. The claimant shall notify the clerk of court of the overpayment or double payment.

481—9.8(10A) Availability of records. Information collected by the state public defender or the department is available for public inspection and copying, unless otherwise prohibited by rule or law. Information will be provided when requested in writing from the Department of Inspections and Appeals, Fiscal Services Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 232.141 and chapters 10A and 815.

PUBLIC SAFETY DEPARTMENT

Public Notice

Pursuant to the authority of Iowa Code sections 123.46 and 321J.5, and in accordance with 661 Iowa Administrative Code subrule 7.5(1), the following devices are approved for use in the State of Iowa in conducting chemical tests for the purpose of establishing whether a person is publicly intoxicated and in preliminary screening tests conducted pursuant to Iowa Code chapter 321J.

Device	Company	Company Location
Alco Sensor	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor II	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor III	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor IV	Intoximeters, Inc.	St. Louis, Missouri
Alcohol Analyzer S-D2	National Patent Analytical Systems	Mansfield, Ohio
Intoxilyzer 300	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer 400	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer S-D5	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer S-D2	CMI, Inc.	Owensboro, Kentucky
Lion Alcolmeter S-D2	CMI, Inc.	Owensboro, Kentucky
Lifeloc FC10/FC10 Plus	Lifeloc Technologies, Inc.	Denver, Colorado

The listed devices are approved for use in Iowa effective March 5, 2003. This list supersedes a previous list of approved devices dated April 26, 2002.

This list represents devices that have been approved by the Commissioner of Public Safety as of the effective date of this notice. This list is published for the convenience of the public. The Commissioner may approve other devices in the future. This list will be updated periodically to show any additional devices that have been approved. You may contact the Iowa Division of Criminal Investigation Criminalistics Laboratory to inquire whether the Commissioner has approved any additional devices.

Any manufacturer of a preliminary breath testing device may apply to have the device approved for use in the State of Iowa. Contact the Iowa Division of Criminal Investigation Criminalistics Laboratory at the following address for instructions:

Iowa Department of Public Safety
 DCI Criminalistics Laboratory
 Wallace State Office Building
 Des Moines, Iowa 50319-0041

PUBLIC SAFETY DEPARTMENT

Public Notice

Pursuant to the authority of Iowa Code sections 321J.4, 321J.4B, 321J.9, 321J.17 and 321J.20, and in accordance with 661 Iowa Administrative Code subrules 7.5(1) and 7.8(2), the following devices are approved for use in the State of Iowa as ignition interlock devices.

Device	Company	Company Location
CST Intoxalock	Consumer Safety Technology, Inc.	Clive, Iowa
Lifesaver Interlock	Lifesaver Interlock, Inc.	Cincinnati, Ohio
Autosense Interlock	Autosense International	San Jose, California
Guardian Interlock, Model 4.4	Guardian Interlock Systems	Marietta, Georgia
Draeger Interlock	Draeger Interlock, Inc.	Durango, Colorado

The listed devices are approved for use in Iowa effective March 5, 2003. This list supersedes any previous list of approved devices.

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 Des Moines, Iowa 50319-0041

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for March is 6.00%.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

- 74A.2 Unpaid Warrants Maximum 6.0%
- 74A.4 Special Assessments Maximum 9.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

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 March 11, 2003, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

- 7-31 days Minimum 0.70%
- 32-89 days Minimum 0.70%
- 90-179 days Minimum 0.80%
- 180-364 days Minimum 0.80%
- One year to 397 days Minimum 0.90%
- More than 397 days Minimum 1.20%

These are minimum rates only. The one year and less 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 Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 2358B

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 12C.22(5), the Treasurer of State gives Notice of Intended Action to rescind Chapter 13, “Deposit and Security of Public Funds in Banks,” Iowa Administrative Code, and to adopt a new Chapter 13 with the same title.

New Chapter 13 provides for the implementation of a new system for securing deposits of public funds in banks and savings and loans through the pledge of eligible collateral.

Any interested person may make written suggestions or comments on the proposed rules prior to April 9, 2003. Such written materials should be directed to Lynn Muehlenthaler Bedford, Treasury Investment Officer, Pledging for Public Funds, Ola Babcock Miller Building, Ground Floor, Des Moines, Iowa 50319; fax (515)281-6962.

There will be a public hearing on April 8, 2003, from 1 to 3 p.m. in the State Treasurer’s Office, Capitol Building, First Floor, Des Moines, Iowa 50319, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements should contact the Treasurer of State and advise of specific needs.

These rules are intended to implement Iowa Code chapter 12C.

The following amendment is proposed.

Rescind 781—Chapter 13 and adopt the following new chapter in lieu thereof:

CHAPTER 13
DEPOSIT AND SECURITY OF
PUBLIC FUNDS IN BANKS

781—13.1(12C) Scope and transition procedures.

13.1(1) Iowa Code chapter 12C grants authority to the treasurer of state to establish administrative rules and procedures to implement a system for securing deposits of public funds in banks, savings and loans, and credit unions through the pledge of eligible collateral. This chapter shall apply to the system for securing certain deposits of public funds in Iowa banks.

13.1(2) Any form, communication, or transaction contemplated by this chapter may be completed and signed by wire transfer or other electronic means authorized by this chapter or as otherwise permitted or accepted by the treasurer. The treasurer may require that communications from an approved custodian to the treasurer be electronic.

781—13.2(12C) Definitions. As used in this chapter:

“Approved custodian” means a financial institution that has facilities for the safekeeping of securities and that has been approved under this chapter by the treasurer of state to serve as the treasurer’s agent in safekeeping collateral pledged to the treasurer of state to secure uninsured deposits of public funds.

“Bank” means “bank” as defined in Iowa Code section 12C.1, subsection (2a).

“Eligible collateral” means any one or any combination of the securities or other forms of collateral as described Iowa Code section 12C.22, subsection 6, and acceptable to the treasurer. Cash shall be considered eligible collateral.

“Excess public funds” means:

1. For a bank, the amount by which the public funds deposited by a public unit having an aggregate market value plus accrued interest that exceeds the total capital of the bank as defined in Iowa Code section 12C.22, subsection 2.

2. For an out-of-state bank that operates a branch in Iowa, the amount by which the public funds deposited by a public unit in an Iowa branch of the out-of-state bank having an aggregate market value plus accrued interest that exceeds the Iowa branch capital of the out-of-state bank as determined under Iowa Code section 12C.22, subsection 3.

“Letter of Credit” means an irrevocable and nontransferable Letter of Credit, upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or in the form prescribed by the treasurer as provided on the treasurer’s Web site at www.

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treasurer.state.ia.us or in the treasurer's office pursuant to rule 781—13.3(12C).

“Market value” means the value of a pledged security calculated by the treasurer or the treasurer's designee using the average of the closing bid and ask price from a nationally recognized pricing source (including but not limited to the Wall Street Journal, Bloomberg Financial Markets, Telerate, Reuter's, or a nationally recognized broker dealer). If no nationally recognized pricing source is available, the market value shall mean pricing in a commercially reasonable manner or manner consistent with standard industry practices. Market value does not include accrued interest.

“Minimum collateral market value amount” means the minimum dollar amount of eligible collateral required to be pledged by a pledging bank to the treasurer to secure all uninsured public funds which shall at all times equal or exceed excess public funds.

“Pledged collateral” or “pledged securities” means eligible collateral pledged by the pledging bank under the Security and Custodial Agreement for the Deposit of Public Funds in Banks and any collateral additions or substitutions thereto evidenced by a joint receipt of custody or other evidence of control acceptable to the treasurer.

“Pledging bank” means a bank that is required to pledge eligible collateral pursuant to Iowa Code section 12C.22 and this chapter.

“Public funds” or “public deposits” means “public funds” or “public deposits” as defined in Iowa Code section 12C.1, subsection (2e).

“Public units” means the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body, an electric power agency, federal and state grant moneys of a quasi-public state entity under Iowa Code section 12C.1, subsection (2e), and this chapter. Public units additionally include, but are not limited to:

1. Transit authorities.
2. Municipal housing programs.
3. Solid waste agencies.
4. Waterworks.
5. City cemeteries.
6. County fair boards.
7. Regional planning agencies.
8. County care facilities.
9. County conservation boards.
10. Sanitary districts.
11. Iowa family farm development authority.
12. Iowa railway finance authority.
13. State board of regents.
14. State fair board.
15. State racing and gaming commission.
16. Iowa college student aid commission.
17. Iowa higher education loan authority.
18. Area education agencies.
19. Community action programs.
20. Community colleges.

Federal agencies, or political subdivisions thereof, are not public units under this chapter. Cooperatives, police and fire pension funds deposited for the benefit of the beneficiaries and fully covered by federal insurance, and bond sinking funds deposited pursuant to a bond covenant and which are fully covered by federal insurance are not public units.

“Rate-setting notice” means the monthly electronic posting of minimum deposit rates to public units by the rate-setting committee.

“Superintendent” means the superintendent of banking of the state of Iowa.

“Treasurer” means the treasurer of the state of Iowa.

“Uninsured public funds” or “uninsured public deposits” means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the Federal Deposit Insurance Corporation.

781—13.3(12C) Forms. The following forms are required for compliance with Iowa Code chapter 12C and this chapter. Current versions of each form utilized by banks, pledging banks and approved custodians are available on the treasurer's Web site at www.treasurer.state.ia.us and in the treasurer's office.

1. Security and Custodial Agreement for the Deposit of Public Funds in Banks and includes Addendum for Name and Charter changes.
2. Letter of Credit.
3. Electronic Mail Protocol.
4. Deposit Account Control Agreement.
5. Deposit Agreement.
6. Statement of Accounts.
7. Public Depositor Claim Form.
8. Release by Public Deposit.

781—13.4(12C) Duties and responsibilities of a pledging bank.

13.4(1) A pledging bank shall complete and submit to the treasurer an executed Security and Custodial Agreement for the Deposit of Public Funds in Banks.

13.4(2) A savings and loan shall calculate and certify to the superintendent of banking the amount of public funds on deposit at the savings and loan on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter. An out-of-state bank that has one or more branches in Iowa shall calculate and certify to the superintendent of banking the amount of public funds on deposit at each such branch of the out-of-state bank on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter.

13.4(3) A pledging bank shall deposit and maintain eligible collateral with the treasurer's approved custodian which at all times has a total market value of not less than the minimum collateral market value amount.

13.4(4) A pledging bank shall at all times be eligible to accept public deposits as required by Iowa Code sections 12C.6A and 12C.23A, subsection 1.

13.4(5) A pledging bank shall grant a perfected security interest to the treasurer in all pledged collateral to secure the repayment of uninsured public funds deposited in a pledging bank and for satisfying any future assessments made against the pledging bank by the treasurer pursuant to Iowa Code chapter 12C. The pledging bank shall take all steps necessary to ensure that the treasurer has a valid, perfected, enforceable, first priority security interest in any pledged collateral. This security interest shall be perfected by entering into a security agreement with the treasurer and by transferring the eligible collateral to the treasurer's approved custodian. By accepting public funds for deposit, a pledging bank is determined to waive any differences if any provisions of the Security and Custodial Agreement for the Deposit of Public Funds in Banks fail to effect a viable, perfected, enforceable, first priority security interest.

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13.4(6) A pledging bank shall promptly and in a timely manner remit to the treasurer's approved custodian payment for fees associated with the treasurer's approved custodian's services as safekeeping agent upon receipt of a statement from the treasurer's approved custodian.

13.4(7) A pledging bank shall not utilize the services of an approved custodian in which the pledging bank or an affiliate owns an interest, directly or indirectly; controls or has the power to exercise a controlling influence over an approved custodian's directors, management or policies; or utilizes an approved custodian which is an office of the pledging bank or an affiliate or a subsidiary of the same bank holding company of which the pledging bank is a subsidiary or affiliate as defined in Iowa Code section 12C.22, subsection 1.

13.4(8) A pledging bank shall not use the safekeeping services of more than one approved custodian for the purposes of meeting the requirements of Iowa Code chapter 12C and this chapter.

13.4(9) A pledging bank shall notify the treasurer and the treasurer's approved custodian, in writing or via the treasurer's Web site, of any change in its name or charter location prior to the effective date of such change.

13.4(10) A pledging bank shall provide the treasurer's approved custodian with proper instructions for the delivery of cash, collateral, and Letters of Credit which the treasurer's approved custodian has authorized for the release of collateral to the pledging bank.

781—13.5(12C) Requirements for becoming an approved custodian.

13.5(1) The treasurer shall appoint not less than four eligible financial institutions as approved custodians. Selection shall be determined by Request for Proposal (RFP) and shall be for a period of three years. A financial institution interested in participating as an approved custodian shall submit its request to be placed on the RFP list.

13.5(2) A financial institution located outside the state of Iowa must also submit with its response to the RFP to become an approved custodian a legal opinion acceptable to the treasurer prepared by counsel licensed to practice in the state in which the financial institution is principally located regarding the compatibility of Iowa Code chapter 554 with the uniform commercial code of the state in which the financial institution is principally located.

13.5(3) To be designated as an approved custodian, a financial institution must be capable of maintaining book-entry accounts with a Federal Reserve Bank and must be capable of safekeeping eligible collateral.

13.5(4) An approved custodian shall not hold collateral for any pledging bank in which it owns an interest, directly or indirectly; in which it controls or has the power to exercise a controlling influence over the pledging bank's directors' management or policies; or if the approved custodian is a subsidiary or affiliate of the same bank holding company of which the pledging bank is a subsidiary or affiliate.

13.5(5) An approved custodian approved under 781—Chapter 3 is automatically approved under these rules provided that the approved custodian signs the Security and Custodial Agreement for the Deposit of Public Funds in Banks with each pledging bank and the treasurer.

781—13.6(12C) Duties and responsibilities of an approved custodian.

13.6(1) An approved custodian shall enter into a Security and Custodial Agreement for the Deposit of Public Funds in Banks with each pledging bank and the treasurer.

13.6(2) An approved custodian shall accept only eligible collateral as defined in Iowa Code section 12C.22. Cash shall be considered eligible collateral.

13.6(3) An approved custodian shall segregate all collateral, maintaining open, notorious, continuous, active and exclusive possession of the collateral for the sole and exclusive benefit of the treasurer as an agent for public units.

13.6(4) An approved custodian shall permit the withdrawal, substitution, and addition of pledged securities and other pledged collateral upon the request of the pledging bank.

13.6(5) An approved custodian will immediately send to the treasurer any Letters of Credit requested by the treasurer or take such other action as may be requested by the treasurer in regard to any Letters of Credit.

13.6(6) An approved custodian shall issue to the treasurer, by regular mail on the same day, a receipt specifically describing and identifying any substituted or additional securities or other collateral pledged to the treasurer.

13.6(7) An approved custodian shall establish a fee schedule for its services and shall annually provide a copy of the schedule to the treasurer. Any and all such fees shall be the sole responsibility of, and be billed directly to, the respective pledging bank. Under no circumstances will the treasurer be responsible or liable for any fees, charges, or expenses of an approved custodian.

13.6(8) In the event that the treasurer notifies an approved custodian of the default of a pledging bank, the approved custodian shall thereafter act only upon the treasurer's instructions with regard to any pledged collateral, cash, and Letters of Credit.

13.6(9) An approved custodian shall, no later than the twentieth day following the end of a calendar quarter, provide a written report to the treasurer. The following items shall be provided for each pledging bank for which it serves as approved custodian:

- a. The pledging bank's name and its location.
- b. An inventory of all pledged collateral, as of the last day of the calendar quarter, which provides the CUSIP (the industry's numerical identification code given to each class and issue of security), par amount, maturity date, coupon, and market value of each security pledged by each pledging bank.
- c. The total par amount and the total market value of all pledged collateral as of the last day of the calendar quarter for each pledging bank.
- d. A history providing the date, description, and par amount of all additions, substitutions and withdrawals of pledged collateral during the calendar quarter for each pledging bank.
- e. The issuer, customer, amount, beneficiary, and expiration date of any and all Letters of Credit held by the approved custodian for the treasurer.
- f. An inventory of all pledged collateral, held by the approved custodian as of the last day of the calendar quarter, which provides the CUSIP, par amount, maturity date, coupon, and market value. Said inventory shall include the total par amount and total market value of all pledged collateral held by the custodian as of the last day of the calendar quarter.

The approved custodian shall also provide such additional information and reports to the treasurer and the superintendent as they or either of them shall request at any time.

781—13.7(12C) Withdrawals, substitutions, and additions of pledged collateral.

13.7(1) A pledging bank shall pledge and maintain eligible collateral with the treasurer's approved custodian by

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which the market value at all times equals or exceeds the amount by which the public funds deposits in the pledging bank exceed the total capital of the pledging bank.

13.7(2) Any request by a pledging bank for the withdrawal of pledged collateral, or the substitution of unpledged collateral for different pledged collateral, or the addition of pledged collateral shall be made directly to the approved custodian.

13.7(3) The approved custodian will issue its joint receipt of custody to the treasurer and to the pledging bank evidencing the substitution for or the addition of pledged collateral under the security agreement between the treasurer and the pledging bank and the approved custodian.

13.7(4) If a pledged security matures, then the principal amount of the cash shall be held in trust by the approved custodian for the treasurer until the approved custodian receives a request for release from the pledging bank to release the cash.

13.7(5) Any request by a pledging bank to an approved custodian for the withdrawal or substitution of pledged collateral is conditional upon the approved custodian's receiving proper delivery instructions from the pledging bank for the pledged collateral being released. Furthermore, the release of pledged collateral in a transaction in which substituted collateral is to be pledged in lieu of pledged collateral which is being withdrawn is conditional upon the approved custodian's receiving the substituted collateral before releasing the pledged collateral.

13.7(6) Under no circumstance shall the treasurer be liable for any loss incurred to a pledging bank for failing to release pledged collateral. The treasurer is not liable for any loss incurred by a pledging bank as a result of the pledging bank's failure to substitute new collateral for any pledged collateral which matures.

781—13.8(12C) Eligible collateral provisions.

13.8(1) Pledged collateral shall be one or more of those securities or other items of collateral specified in 781—13.2(12C), definition of "eligible collateral," and shall be acceptable to the treasurer.

13.8(2) The acceptance of a security or other items as collateral by the approved custodian does not prevent the treasurer from requiring substitution of such security or other items at a later time as a result of statutory amendment or other changes or circumstances which affect the valuation, marketability, liquidity, ownership, or perfectibility.

781—13.9(12C) Suspension or termination of approved custodian designation.

13.9(1) An approved custodian may request in writing that the treasurer remove the designation as an approved custodian. Following such a written request, all Security and Custodial Agreements for the Deposit of Public Funds in Banks shall terminate pursuant to the terms of those agreements provided; however, no such agreement shall terminate until the pledging bank(s) has entered into a Security and Custodial Agreement for the Deposit of Public Funds in Banks with another approved custodian and all pledged collateral has been properly withdrawn and placed in safekeeping with another approved custodian.

13.9(2) If the treasurer determines that an approved custodian has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Security and Custodial Agreement for the Deposit of Public Funds in Banks, the treasurer may immediately suspend or terminate an approved custodian's designation as an approved custodian. The trea-

surer shall provide the suspended or terminated approved custodian with written notice of its suspension or termination. Upon suspension or termination, all collateral held by the suspended or terminated custodian shall be immediately transferred to a successor custodian so designated by the pledging bank(s) entering into a Security and Custodial Agreement for the Deposit of Public Funds in Banks with another approved custodian.

781—13.10(12C) Sale or merger of an approved custodian.

13.10(1) The responsibilities and duties of an approved custodian pursuant to the Security and Custodial Agreement for the Deposit of Public Funds in Banks, applicable laws and these rules shall not be altered automatically by a portion of law if the approved custodian is not the survivor of any merger, takeover or acquisition, except to the extent that such duties are, with the written consent of the treasurer, assumed by the successor entity.

13.10(2) If a pledging bank acquires direct or indirect ownership of its custodian, which has been approved by the treasurer, or the approved custodian acquires direct or indirect control of a pledging bank for which it is holding collateral, or if a holding company will become owner of both the approved custodian and the pledging bank, the approved custodian shall immediately notify the treasurer and, upon written direction of the treasurer, the approved custodian shall transfer all pledged collateral to a successor approved custodian.

781—13.11(12C) Suspension or termination.

13.11(1) If the treasurer determines that a pledging bank has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Security and Custodial Agreement for the Deposit of Public Funds in Banks or the Deposit Account Control Agreement, or applicable federal deposit insurance coverage is suspended or terminated, the treasurer may immediately suspend or terminate a pledging bank's ability to accept uninsured public funds. The treasurer shall provide the suspended or terminated bank and the superintendent with written notice of its suspension or termination. Upon suspension or termination, all uninsured public funds held by the suspended or terminated pledging bank in excess of federal deposit insurance coverage shall be immediately remitted, with interest, to the applicable public unit(s).

13.11(2) Public units having public funds on deposit at a terminated or suspended pledging bank shall be notified of the termination or suspension of a pledging bank by notices included in the monthly rate-setting notice posted on the treasurer's Web site.

781—13.12(12C) Sale or merger of a pledging bank.

13.12(1) The responsibility of a pledging bank to pledge collateral for the security of the uninsured public funds in banks shall not be altered by any merger, takeover, or acquisition, except to the extent that such duty is assumed by the successor entity. No assets shall be released to the successor entity until collateral of an equal value is substituted or all excess public funds are withdrawn from the successor entity.

13.12(2) A pledging bank shall notify the treasurer and the approved custodian, in writing, of its merger, takeover or acquisition by a successor entity prior to the effective date of such an event.

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781—13.13(12C) Procedures upon default or closing of a bank.

13.13(1) The acceptance of public funds by a bank constitutes agreement by the bank to pledge collateral as required by Iowa Code section 12C.22, consent by the bank to the disposition of the collateral, consent by the bank to assessments by the treasurer, and agreement by the bank to provide accurate information and to otherwise comply with the requirements of Iowa Code chapter 12C and this chapter.

13.13(2) The treasurer may liquidate the eligible collateral pledged by a pledging bank, including, without hesitation, drawing on any Letter of Credit pledged as collateral to the treasurer by a pledging bank, if the treasurer verifies that any of the following have occurred:

a. A public unit notifies the treasurer, or the treasurer determines that said pledging bank has failed to pay a check, draft or warrant drawn by a public officer.

b. A pledging bank has acted contrary to or otherwise breached a term or condition of any agreement which it has entered into with a public unit, the treasurer or an approved custodian.

c. The pledging bank has failed to pay an assessment ordered by the treasurer as required in Iowa Code chapter 12C, or has, as determined by the treasurer, otherwise violated these rules or Iowa Code chapter 12C.

13.13(3) In the event that a pledging bank is closed by any state or federal regulatory officials, the treasurer may proceed to liquidate the collateral pledged by the closed pledging bank, including drawing on any Letters of Credit pledged to the treasurer by the closed pledging bank, notwithstanding the purchase and assumption of the closed pledging bank, and without the necessity of notice to the closed pledging bank, a successor receiver or an assuming entity. When a pledging bank accepts public funds, the pledging bank acknowledges and agrees that in the event of its closure or default, any eligible collateral is subject to unconditional sale or liquidation by the treasurer, with this condition and covenant inuring to and binding any receiver or successor in interest to the closed pledging bank.

13.13(4) In the event the deposits of a closed bank are not purchased and assumed by another bank, the public units with uninsured deposits in the pledging bank shall notify the treasurer of the amount of any claim within 30 days of the closing. The treasurer shall implement the following procedures:

a. The treasurer shall take such steps as necessary to ensure that the approved custodian acts only upon the treasurer's instructions with regard to any pledged collateral.

b. The treasurer shall provide each public unit which has contacted the treasurer with a Statement of Accounts, a Public Depositor Claim Form, and a Release by Public Depositor. Included with these forms shall be instructions for completing and filing them and the estimated date when the treasurer will pay claims.

c. It shall be the duty and responsibility of each public unit with a potential claim to complete the above forms in cooperation with regulatory officials handling the closing of the pledging bank and to receive the signed confirmation of such officials as to the amount of the claim. The Statement of Accounts shall include the balances of all accounts on the date of closing, any amounts reimbursed by federal insurance coverage, and all interest accrued, at the applicable rate, on unreimbursed balances to the date of payment of claims and the amount of uninsured public funds on deposit. The Statement of Accounts and the Public Depositor Claim Form must be returned to the treasurer within 30 days of the date of the

closing of the bank or from the date of receipt from the treasurer.

d. In cooperation with the responsible regulatory officials for the closed bank and the receipt of all Statements of Accounts and Public Depositor Claim Forms, the treasurer shall validate the amount of public funds deposit insurance coverage applicable to the public funds deposits of the closed bank. The treasurer may request that warrants be drawn on the state sinking fund for public funds deposits in banks to reimburse each public unit that has a verified claim.

e. Upon the specified date of payment of claims, warrants for the amounts of verified claims shall be delivered to the public units to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses. The public unit shall sign and deliver the Release by Public Depositor to the treasurer prior to receiving a warrant.

13.13(5) If the applicable deposit insurance, the liquidation of pledged collateral, or the funds received from drawing on any Letters of Credit, and the assets of the bank which are liquidated within 30 days of the closing of the bank are not sufficient to satisfy the loss to public units, then the treasurer shall obtain the additional amount needed to satisfy all remaining claims from the state sinking fund for public deposits in banks to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses.

13.13(6) If the funds in the sinking fund for public deposits in banks are inadequate to cover the remaining loss, the treasurer shall make assessments against all remaining banks whose public funds deposits exceed federal deposit insurance coverage to satisfy the remaining loss. The assessment against each bank shall be calculated pursuant to Iowa Code chapter 12C and shall be paid by each bank to the treasurer within three business days of the bank's receipt of the treasurer's written assessment notice. If a pledging bank refuses or fails to pay its assessment when due, the treasurer shall satisfy the assessment in whole or in part by liquidating the collateral pledged by any pledging bank or drawing on any Letters of Credit which were pledged as collateral by that pledging bank.

13.13(7) If a pledging bank refuses or fails to pay any assessment and the liquidation of collateral pledged by that pledging bank or the funds received from drawing upon any Letters of Credit pledged as collateral by the pledging bank are not sufficient to satisfy the assessment, the treasurer shall make additional assessments as necessary against other banks which hold uninsured public funds deposits to satisfy any unpaid assessment. Additional assessments shall be determined, collected and satisfied in the same manner as the first assessment.

781—13.14(12C) Fees of the treasurer. The treasurer shall be entitled to reimbursement of all of the treasurer's actual and necessary costs and expenses incurred in the administration of Iowa Code chapter 12C and these rules including, but not limited to, legal expenses and administrative expenses. Such costs and expenses shall be reimbursed by withdrawal from the state sinking fund for public deposits in banks wherein a balance, acceptable to the treasurer and sufficient to meet legal and administrative expenses, shall be maintained. In the event at any time funds in the state sinking fund for public deposits in banks are not sufficient to pay any such reimbursement, the treasurer may make an assessment in the manner provided by Iowa Code section 12C.23A, subsection (3d),

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provided that no such assessment shall exceed the anticipated costs and expenses in the administration of Iowa Code chapter 12C and these rules for a period greater than one year after the assessment is made.

These rules are intended to implement Iowa Code chapter 12C.

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WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 23, "Employer's Contributions and Charges," Iowa Administrative Code.

The amendments to this chapter make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., on April 8, 2003, to Larry Venenga, Workforce Development Department, Unemployment Insurance Services Division, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m. on April 8, 2003, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who wish to convey their views orally should contact Larry Venenga at (515)281-5526 or at the above address.

These amendments are intended to implement Iowa Code sections 96.5(5)"a," 96.7, 96.7(2), 96.7(2)"c," 96.7(2)"c"(3), 96.7(2)"d," 96.7(3), 96.7(7)"b," 96.7(11), 96.7(12), 96.8, 96.8(4)"b," 96.8(5), 96.11(1), 96.19(1), 96.19(6)"a"(1), 96.19(6)"a"(6), 96.19(8), 96.19(13), 96.19(16)"m," 96.19(18)"g"(6), 96.19(37), 96.19(41) and 96.20(2).

The following amendments are proposed.

ITEM 1. Amend rule 871—23.1(96) as follows:

Amend subrule **23.1(1)**, paragraphs "**b**," "**c**" and "**d**," as follows:

b. ~~Experience~~ *Employer rating account.* An account of an employer which is maintained by the department for the purpose of ~~determining the contribution rate of that employer reporting wages and recording contributions or reimbursements for that employer.~~

c. *Clearing account.* An account maintained in the unemployment compensation fund in which are recorded all amounts payable under Iowa Code chapter 96, including those to be transferred to (1) the unemployment trust fund in the United States treasury, (2) the special employment security contingency fund, (3) the administrative contribution surcharge fund, and (4) the temporary emergency surcharge fund. *Employer refunds are issued from this account.*

d. *Balancing account.* An account set up ~~in the employer balance file~~ to receive benefit charges that by law are not chargeable to any employer. The purpose of the balancing account is to enable the department to properly account for all benefits paid out.

Amend subrule 23.1(5) as follows:

~~23.1(5) Contribution~~ *Employer's contribution* and payroll report. An employer's *quarterly* report of the ~~amount~~ *wages paid to individual workers, the total and taxable wages paid and the amount* of contributions due to a state unemployment insurance fund ~~with respect to the employer's payroll.~~

Rescind subrule 23.1(7) and adopt the following **new** subrule in lieu thereof:

23.1(7) Contributor rate. The percent constituting the rate at which the employer's payroll is taxed.

Amend subrule 23.1(8) as follows:

23.1(8) Employer. An employer subject to the employment security law of Iowa who is liable for contributions and subject to the experience rating provisions of the law or is liable for reimbursement payments in lieu of contributions. (See Iowa Code section 96.19(6 16).)

Rescind and reserve subrule **23.1(12)**.

Amend subrule 23.1(14) as follows:

23.1(14) Federal unemployment tax. The ~~excise~~ tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

Rescind and reserve subrule **23.1(17)**.

Amend subrule **23.1(18)** by relettering paragraphs "**a**" to "**c**" as "**b**" to "**d**" and paragraphs "**d**" to "**f**" as "**g**" to "**i**" and adding **new** paragraphs "**a**," "**e**" and "**f**" as follows:

a. *Administrative contribution surcharge fund.* A special fund in the state treasury, established by state law, as a repository for an employer surcharge levied to meet the operational cost of certain state workforce development offices. Referred to in subrule 23.40(2).

e. *Special employment security contingency fund.* A special fund in the state treasury, established by state law, for moneys received from employers in payment of interest and penalties on delinquent contributions and reports.

f. *Temporary emergency surcharge fund.* A special fund in the state treasury, established by state law, for use in the event an employer surcharge is levied to pay interest on a federal government loan to the unemployment compensation fund. Referred to in subrule 23.40(3).

Amend relettered paragraph "**h**" as follows:

h. *Unemployment compensation fund.* A special fund established under an employment security law for the receipt and management of contributions and the payment of unemployment insurance benefits. Included in this fund are moneys in the benefit payment account, clearing account, and unemployment trust fund account. (~~See "Accounts."~~)

Rescind and reserve subrule **23.1(21)**.

Rescind subrule 23.1(24) and adopt the following **new** subrule in lieu thereof:

23.1(24) Liability determination. A determination as to whether an employing unit is a subject employer and whether services performed for it constitute employment as defined under the employment security law.

Amend subrule 23.1(25) as follows:

23.1(25) ~~Status~~ *Liability report.* A report required of all employing units in a state ~~giving~~, *which gives* the information on which the state employment security agency bases its determination as to whether the employing unit is liable ~~for contributions~~ under the state employment security law. ~~Same as liability report.~~

Rescind and reserve subrule **23.1(29)**.

Amend subrules 23.1(30) and 23.1(31) as follows:

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23.1(30) Quarterly Wage report. A report by an employer of the wages of individual workers.

23.1(31) Quarterly Wage listing. A report listing workers and their wages by social security number.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 96.7(2) "c"(3), 96.7(7) "b," 96.11(1) and 96.19(1).

ITEM 2. Amend subrule 23.2(5) as follows:

23.2(5) When a money the cash value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates specially determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

ITEM 3. Amend rule 871—23.2(96) as follows:

Amend subrule 23.2(6), paragraphs "a" and "c," as follows:

a. If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in the Act (as defined in Iowa Code chapter section 96.19(18), the reasonable cash value of same shall be deemed wages subject to contribution.

c. In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph "d" of this subrule.

Full board and room per week	\$126.35	272.00
Meals (without lodging) per week	56.35	92.00
Meals (without lodging) per day	8.05	18.40
Lodging (without meals) per week	70.00	180.00
Lodging (without meals) per day	10.00	36.00
Individual meals:		
Breakfast	2.05	4.00
Lunch	2.60	4.80
Dinner	3.40	9.60
A meal not identifiable as either breakfast, lunch or dinner	2.00	4.00

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code chapter 96 and sections 96.3(3), 96.3(5), 96.19(9), 96.19(9) "b," 96.19(12) and 96.19(20) section 96.19(41).

ITEM 4. Amend rule 871—23.3(96) as follows:

Amend subrule 23.3(2), paragraph "b," as follows:

b. Traveling Travel and other ordinary and necessary expenses. Amounts paid specifically for traveling travel or other ordinary and necessary expenses incurred or reasonably expected to be incurred in the employer's business are not wages. Traveling Travel and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts if both wages and expense allowances are combined in a single payment.

Amend subrule 23.3(2), paragraph "d," subparagraph (1), as follows:

(1) "Wages" shall not include any amounts paid as sick pay if the payments are made by or on behalf of an employer under a plan or system which makes provision for the employee's dependents or classes of employees generally. The plan or system must provide sick pay for the employees of the employer or a class or classes of the employer's employees. The plan may include dependents.

Amend subrule 23.3(2), paragraphs "f" and "g," as follows:

f. Officers of corporation. The term "wages employment" shall not include wages paid to an officer of corporation if such officer is a majority stockholder:

(1) Unless such wage amounts services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) If such wages services are required to be covered under this chapter of the Code as a condition to receiving a full tax credit against the tax imposed by the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3301-3309).

g. Remuneration paid by state or political subdivision. The term "wages" "employment" shall not include, effective January 1, 1978, remuneration wages paid by this state and or any of its political subdivisions or by an Indian tribe to:

- (1) An elected official,
- (2) A member of a legislative body,
- (3) A member of the judiciary of a state or political subdivision,
- (4) A member of the state national guard or air national guard,
- (5) As an An employee serving on a temporary duty basis for fire, storm, snow, earthquake, flood, or similar emergency, or
- (6) A person serving in a nontenured policymaking capacity or advisory capacity pursuant to state law which ordinarily does not require duties of more than eight hours per week.

See rule 871—23.71(96) for further definition of exemptions (1) through (6).

Amend subrule 23.3(2), paragraph "h," by adding new subparagraph (3) as follows:

(3) Remuneration for services which are paid by a limited partnership to a limited partner is reportable. If a limited partner performs the duties of a general partner, remuneration is considered to be exempt.

Amend subrule 23.3(2), paragraph "j," as follows:

j. Remuneration paid to members of limited liability companies based on membership interest. The term "wages" shall not include remuneration paid to a member of a limited liability company based on a membership interest in the company provided that the remuneration based on membership interest is allocated among members, or classes of members, in proportion to their respective investments in the company. The term "wages" shall not include any remuneration for services performed in lieu of a contribution of cash or property to acquire a membership interest in the limited liability company. See Iowa Code sections 96.19(18a)(9) and 96.19(41e). If the amount of remuneration attributable to membership interest or the purchase of a membership interest and the amount attributable to services performed cannot be determined, the entire amount of remuneration shall be considered to be based on the services performed.

Amend subrule 23.3(2) by adding new paragraph "k" as follows:

k. The term "employment" shall not include wages paid for services performed by an inmate of a correctional institution. Persons in work release programs are considered inmates and their wages are not reportable. Remuneration paid to residents of halfway houses is reportable.

Amend subrule 23.3(3), paragraphs "a" and "d," as follows:

a. Small business corporation remuneration. Remuneration paid to officers of "subchapter S" corporations (as defined in 26 U.S.C.A. 1371) for services performed in Iowa shall be deemed to be wages. Any corporate dividends must

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be approved and recorded in the corporate minutes prior to payment of such dividends. ~~Any income~~ *Remuneration* to shareholders shall not be deemed to be dividends if such ~~income remuneration~~ *income remuneration* is paid regularly, either weekly or monthly, and is not in proportion to such shareholder's amount of stock, or in proportion to such shareholder's investment in the corporation. ~~Any income not qualifying for treatment as dividends shall be treated~~ *Corporate dividends are not considered wages. Ordinary income distributions as reported on IRS Form K-1 will not be considered to be wages provided that distributions are made proportionate to stock ownership or shareholder's investment, and provided that corporate officers performing services for the corporation have received appropriate remuneration for services performed as defined by the Internal Revenue Service and the remuneration is reported as wages. See subrule 23.3(2)"f" for possible exclusion of wages paid to corporate officers who are majority stockholders.*

d. Cafeteria plans. *A cafeteria plan is a set of benefit options offered by the employer to employees or to a class of employees. A particular benefit in a cafeteria plan will be considered to be "wages" subject to contributions (tax) for Iowa unemployment insurance purposes if the employee has the option of receiving a cash payment in lieu of the benefit. If the employee does not have the option of receiving a cash payment, the benefit will still be considered "wages" subject to contributions unless the benefit is specifically excluded from the definition of "wages" in Iowa Code subsection 96.19(42 41).*

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 96.5(5)"a," 96.19(6)"a"(1) and (6), and 96.19(42 41).

ITEM 5. Amend rule **871—23.4(96)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 96.7(3) and 96.8(5).

ITEM 6. Amend subrules 23.5(1) and 23.5(2) as follows:

23.5(1) The following criteria shall be applicable in determining whether tips are wages under the contributions provision of the Act: Tips received by an individual from a person or persons other than the individual's employer, and not accounted for to the employer, are not wages *unless required by subrule 23.5(2)*. If the employee makes an accounting to the employer listing the tips received, these tips must be reported to the department as total and taxable wages. Where the customer writes the amount of the tip on a bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages. Where the employer adds a certain percent to the customer's bill for disbursement to the employees, the sums so disbursed are wages.

23.5(2) Tips are considered reportable and taxable as wages when taken into account by the employer in determining the employee's compensation under the federal wage and hour law ~~as amended in 1974~~, or when paid by the customer as a service charge set by the employer, or when pooled and distributed to the employees by the employer. The employer shall keep sufficient detailed records so that it can be ascertained, if necessary, by audit or other authorized inspection which compensation is reportable as taxable tips and which compensation is reportable as compensation other than tips. For reporting purposes to the department, the tips and other reportable and taxable compensation may be submitted in aggregate on Form 65-5300, Employer's Contribution and Payroll Report.

ITEM 7. Amend rule 871—23.6(96) as follows:

Amend subrule 23.6(1) as follows:

23.6(1) Definition.

The term "taxable wages" means the higher of the federal taxable wage base for the Federal Unemployment Tax Act (FUTA) or 66 2/3 percent of the statewide average weekly wage paid to employees in insured employment, multiplied by 52 and rounded to the next highest multiple of \$100 based upon the computation made during the previous calendar year to determine the maximum weekly benefit amounts for unemployment insurance benefits. ~~Provided, however, for calendar years 1984 through 1987, the following amounts will be added to the taxable wage base:~~

a. ~~Calendar year 1984, add \$600 to the taxable wage base.~~

b. ~~Calendar year 1985, add \$1,100 to the taxable wage base.~~

c. ~~Calendar years 1986 and 1987, add \$1,600 to the taxable wage base.~~

Amend subrule **23.6(2)**, paragraphs "a" and "c," as follows:

a. If an individual has more than one employer, each employer must pay contributions (tax) on the employee's wages up to the taxable wage ~~limit base~~.

c. Taxable wages paid in another state by the same employer during the same calendar year prior to an employee being transferred to Iowa may be used in computing the employee's *reportable* taxable wages in Iowa. ~~Provided, however, that the other state will reciprocate by allowing Iowa employers which transfer employees to the other state to use the taxable wages reported to Iowa in computing that state's taxable wages.~~

Amend the implementation clause as follows:

This rule is intended to implement 1987 Iowa Acts, Senate File 507, sections 6 and 8 Iowa Code section 96.19(37).

ITEM 8. Amend subrules 23.7(2) and 23.7(3) as follows:

23.7(2) ~~For all calendar years through 1987, a nonconstruction employer, which has not yet qualified for an experience rate will be assigned the rate specified in rank 9 of the rate table in effect, but not less than 1 8/10 percent. For calendar year 1988, a nonconstruction employer, which has not been chargeable with benefits for 20 calendar quarters immediately preceding the computation date, will be assigned the rate specified in rank 12 of the rate table in effect, but not less than 1 percent. For calendar year 1989 and subsequent calendar years, a~~ A nonconstruction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than 1 percent until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters immediately preceding the computation date.

23.7(3) ~~A construction employer, which has not been chargeable with benefits for 12 calendar quarters immediately preceding the computation date, will be assigned the rate in rank 21 of the table in effect for calendar year 1983, 9 percent for calendar years 1984 through 1987, and the rate specified in rank 21 of the rate table in effect for calendar year 1988. For calendar year 1989 and subsequent calendar years, a~~ A construction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters.

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ITEM 9. Amend rule 871—23.8(96) as follows:

Amend subrule 23.8(1), catchwords and paragraph “a,” as follows:

23.8(1) Receiving date Due date.

a. Contributions shall become due and be payable quarterly on the last day of the month next following the calendar quarter for which the contributions have accrued. ~~Provided that if~~ *If* the department finds that the collection of any contributions from a particular employer will be jeopardized by delay, the department may declare such the contributions due and payable as of the date of the finding.

Amend subrule 23.8(2) as follows:

23.8(2) Regular due date. Each employing unit which is a covered employer subject to Iowa Code section 96.7, shall file with the department quarterly reports on or before the due date, and any employer failing to file a quarterly report when due shall be delinquent. ~~Except as otherwise provided in this rule, quarterly contribution and wage reports are due and contributions are due and payable on or before the last day of the month following the close of each calendar quarter in which the wages were paid. Payments in lieu of contributions are due and payable on or before the thirtieth day after notification of the amount due is mailed to the last known address of the employer. Quarterly notification of the amount of payments in lieu of contributions due from an employer shall be mailed to the last known address following the end of each calendar quarter.~~

ITEM 10. Amend rule 871—23.9(96) as follows:

871—23.9(96) Delinquency notice. Within 20 days from the delinquent date for filing Form 65-5300, Employer’s Quarterly Contribution and Payroll Report, a Delinquency Notice, Form 65-5313, will be sent to all employers from whom no report has been received. Such notice shall state the employer’s name, account number, experience rate, and the quarter for which the report needs to be made. The notice will be sent to the employer’s last-known address or place of business. If the employer has sold or dissolved the business, the employer shall fill out the reverse side of the notice, Form 65-5313 RVS, showing the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall show the name and address of the successor, and the employer’s future mailing address. Such notice shall then be returned to the department for a change of status determination.

ITEM 11. Amend subrule 23.10(1) as follows:

23.10(1) An employer who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved shall pay to the department ~~for the unemployment trust fund~~ an amount equal to the amount of regular or extended benefits paid, including payments benefits which are based on wage credits transferred to this employer from another employer. If extended benefits are in effect, ~~the employer~~ employers shall pay reimburse one-half of the extended benefits paid; ~~with the exception that~~ *except* governmental entities employers and Indian tribes *will* shall pay reimburse all 100 percent of extended benefits paid.

ITEM 12. Amend rule 871—23.11(96) as follows:

Amend subrules 23.11(1) and 23.11(2) as follows:

23.11(1) Each employer shall ascertain the federal social security account number of each worker employed by such employer in employment subject to the Iowa employment security law.

23.11(2) The employer shall report the worker’s federal social security account number in making any report required

by the department of workforce development with respect to the worker.

Amend subrule 23.11(4), introductory paragraph and paragraph “a,” as follows:

23.11(4) If a worker failed to report to the employer such employee’s correct federal social security account number or fails to show the employer a receipt issued by an office of the social security board acknowledging that ~~such~~ *the* worker has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Internal Revenue Service, United States Treasury Department, under the Federal Insurance Contribution Act provides that:

a. Each worker shall report to every employer for whom the worker is engaged in employment, a federal social security account number with the worker’s name exactly as shown on the ~~account number~~ *social security* card issued to the worker by the social security board.

Amend subrule **23.11(5)**, paragraphs “b” and “c,” as follows:

b. Any worker may have an account a number changed at any time by applying to a field office of the social security board and showing good reason for a change. Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report such change or correction to a field office of the social security board. Copies of Form OAA-7003, Employee’s Request for Change in Records, for making such reports may be obtained from any field office of the social security board ~~(or the central office of the workforce development department or a local workforce development office).~~

c. Any worker who has more than one social security account number shall report all numbers to the field office of the social security board nearest the worker’s place of employment (to a workforce development center).

Amend subrule 23.11(6) as follows:

23.11(6) If the worker fails to comply with the requirements enumerated under subrule 23.11(4), the employer shall execute a Form SS-5, Application for a Social Security account Number, or statement, signed by the employer, setting forth as fully and as clearly as practicable the worker’s full name, present or last-known address, date and place of birth, father’s full name, mother’s full name before marriage, the worker’s sex, and a statement as to whether an application for an account a social security number has previously been filed by the worker, and if so, the date and place of such filing. This statement, or the executed Form SS-5 signed by the employer, shall be attached to any report required by the workforce development department with respect to such a worker.

ITEM 13. Amend rule 871—23.13(96) as follows:

Amend subrule **23.13(2)**, paragraph “f,” as follows:

f. “Total wages paid in covered employment,” as it appears in *Iowa Code* section 96.7(2) for computing the ~~current reserve fund~~ *benefit cost* ratio, means total wages paid in covered employment, subject to contributions, as provided in *Iowa Code* section 96.7, and does not include wages paid by reimbursing employers, whose payments to the unemployment fund, in lieu of contributions, are made in accordance with *Iowa Code* section 96.7.

Amend subrule **23.13(3)**, paragraph “a,” introductory paragraph, as follows:

a. Any employing unit may file an election, on Form ~~309-1040~~ *68-0599*, to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than one participating jurisdiction.

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Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

ITEM 14. Amend rule 871—23.17(96) as follows:

Rescind and reserve subrule **23.17(8)**.

Amend subrule 23.17(9) as follows:

23.17(9) A government group shall not post bond; however, should ~~such a government~~ group or any member(s) thereof default with respect to any payments due the department, the amount of such delinquency shall be deducted from any further moneys due to the members of the group by the state as provided in Iowa Code section 96.14(2).

Amend subrule **23.17(14)**, paragraph “a,” as follows:

a. The agent for a group shall be responsible, on behalf of the group members, for all the duties of an employer as set out in the *Iowa Code* and these rules. Specifically such agent shall be responsible for the pro rata apportioning of benefit charges to each member of the group as set out in Iowa Code section 96.7(~~13~~ 10) or be based on an experience rating system approved by the department and shall accept all legal services and notices on behalf of all members of the group.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 96.7(~~13~~ 10).

ITEM 15. Amend subrules 23.18(2) and 23.18(6) as follows:

23.18(2) Directors and officers of a corporation. Directors who receive a ~~nominal~~ reasonable fee for attending meetings and perform no other services are not employees of the corporation. Officers of associations and corporations are included as employees if they perform services. Officers of a corporation who perform services for the corporation are employees.

23.18(6) Family employment. Family employment includes parents, wife or husband and minor children under the age of 18 years working for an individual proprietor. This exclusion does not apply when the employing unit is a partnership unless an exempt relationship is held to each member of the partnership. This exclusion does not apply to corporations or to limited liability companies.

ITEM 16. Amend rule 871—23.19(96) as follows:

Amend subrule 23.19(1) as follows:

23.19(1) The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an in-

dependent contractor is not as to such services as an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees. *Professional employees who perform services for another individual or legal entity are covered employees.*

Renumber subrules **23.19(3)** to **23.19(7)** as **23.19(4)** to **23.19(8)**, adopt the following new subrule 23.19(3), and amend renumbered subrule 23.19(6) as follows:

23.19(3) *Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.*

23.19(6) *Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will in doubtful cases be determined upon an examination of the particular facts of each case.*

ITEM 17. Amend rule 871—23.20(96) as follows:

871—23.20(96) Employment—student and spouse of student.

Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) ~~cannot be used~~ are not covered wages for claim or benefit purposes.

Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is incidental to the full-time employment, ~~would be used for claim and benefit purposes~~ are covered wages.

Wages earned by the spouse of such a student in employment with the educational institution attended by the student ~~cannot be used~~ are not covered wages for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

This rule is intended to implement Iowa Code section 96.19(18)“g”(6).

ITEM 18. Amend subrule 23.24(1) as follows:

23.24(1) ~~The employment of a person, considered from the standpoint of the place where the~~ *When workers perform services are performed, shall be determined by in more than one state, the department. Each case will be reviewed, and based on its merits, a decision shall be made. The review each case individually and make a determination whether or not wages are reportable to Iowa based on the following guidelines will be followed in sequence:*

a. Services performed in a state are considered localized in that state and contributions are payable to such state. ~~It makes no difference~~ regardless of where the employer is located in this instance. *The wages are reportable to the state where the services are performed.*

b. *When a worker performs services in more than one state and the length of service in any one state is equal to or greater than a reporting period, the worker is reportable to that state. A reporting period is defined as a full calendar*

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quarter. This rule does not apply if work is performed in multiple states during the reporting period.

~~b. c.~~ Where services are performed ~~equally between among two or more states by employees in a reporting period~~, the base of ~~operation operations~~ concept is ~~involved considered~~. The ~~place of more or less permanent nature from which the employee works is a base of operations is the point from which the workers start and finish their work on a regular basis and that is the state where contributions are payable to which the wages are reportable~~. That is to say, the state where the employee starts work and to which the employee customarily returns is the state that collects the contributions. In this type of a case, the department has the right to waive Iowa coverage (if Iowa was the other state) to another jurisdiction (state of the base of ~~operation operations~~) as long as the employee is properly covered by the other state.

~~e. d.~~ When ~~there is no direct relation between workers perform services in more than one state and there is no base of operations in any one state, the state from which the worker is immediately~~ (the place of more or less permanent nature from which the employee works) and the place from which services are directed and controlled, is the state to which the wages are reportable provided that some services are performed by the worker in that state. ~~the state where the employer is located and who controls or has the right to control the employee's services is the state that should be paid the contributions. The place of immediate control and not ultimate control is a significant factor. The place of direction and control is considered only if there is no base of operations. Therefore, if services are not localized and there is no base of operation in any state where services are performed, the place of direction and control governs as though those same services are performed therein.~~

~~e. e.~~ If the services of the ~~employee workers~~ are not localized in a state, the base of ~~operation operations~~ is not involved or the place where services are directed and controlled is not applicable, then the ~~contribution is payable to the state where the employee's residence is located, wages are reportable to the state in which the worker resides~~ provided some services are performed in that state.

ITEM 19. Amend rule 871—23.25(96) as follows:

Amend subrules 23.25(3), 23.25(4) and 23.25(5) as follows:

~~23.25(3) It is the service~~ Services of a general household nature ~~are those, ordinarily and customarily performed as an integral part of the upkeep operation and maintenance of a dwelling, residence or private home. In general, covered services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundry persons, furnace persons, babysitters, gardeners, and chauffeurs of automobiles for family use workers such as cleaning people, cooks, maids, housekeepers, caretakers, yard workers and similar domestic workers. In addition, services performed by guards, gatekeepers, or nurse to babysitters, nannies, health aides and similar workers for members of the household are covered.~~

~~23.25(4) The services above enumerated above are not covered under the term "domestic service" if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, or commercial offices or establishments other commercial enterprises.~~

~~23.25(5) The term "domestic service" does not include the service of a skilled mechanic engaged in recognized independent craft not habitually rendered as a part of ordinary household duties, such as service rendered by carpenters, blacksmiths, electricians, and plumbers. However, a handy~~

person employed on a full-time basis around the employer's private home to care for the furnace, wash windows, lay carpet, mend furniture, and on occasion perform necessary carpentry, plumbing, electrical or painting work would nevertheless be engaged in domestic service. Musicians engaged to render services in and around a private home for the enjoyment of the members of the household and the guests are exempt. Similarly, private secretaries and part-time tutors are within the exemption, even though performing services within the employer's home. In situations where it may be necessary to determine whether or not an employer-employee relationship exists between the householder and the household worker, the guidelines as set forth in 871—23.19(96) will be applied.

Rescind and reserve subrule **23.25(6)**.

Amend subrules 23.25(7) and 23.25(8) as follows:

23.25(7) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For the purpose of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university where the term "school, college, or university" is taken in its commonly or generally accepted sense.

23.25(8) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by service workers which include but are not limited to services rendered by cooks, janitors, laundry persons, furnace persons, handy persons, gardeners and housekeepers.

Rescind and reserve subrule **23.25(10)**.

Amend subrule 23.25(11) as follows:

23.25(11) Where an individual is employed by a domestic service or home health care organization to perform domestic services in a private home, the individual is an employee of the service firm, not the householder. ~~The firm is responsible for paying the worker, for withholding taxes from the wages, and for paying social security taxes, etc.~~

Amend the implementation sentence as follows:

This rule is intended to implement Iowa Code section 96.19(7 13) ~~"a."~~ and 96.19(16) ~~"m."~~

ITEM 20. Amend rule 871—23.26(96) as follows:

Amend subrule 23.26(5), introductory paragraph and paragraph "a," as follows:

23.26(5) The following shall be used to determine whether or not services are defined as agricultural exempt labor.

a. Services performed by an individual on a farm, in the employ of any owner, tenant or operator, in connection with the operation constitutes agricultural labor, if:

(1) ~~Provided the~~ The services are on the farm on which the materials in their raw or natural state were produced, and

(2) ~~If processing~~ Processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operation.

Amend subrules 23.26(7), 23.26(8) and 23.26(10) to 23.26(14) as follows:

23.26(7) Services performed in the handling, or processing, etc., of any agricultural or horticultural commodity are ~~excluded~~ included as agricultural employment if performed in the employ of the owner, tenant, or other farm operator, only if the commodity is in a nonmanufactured state and only

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if the operator produced more than half of the commodity with respect to which the service was performed.

~~23.26(8) Aerial seeding, fertilizing, spraying, dusting, etc. The aerial seeding, fertilizing, spraying, dusting, custom planting, cultivating or combining etc., of farm acres may be properly said to be performed in connection with the cultivation of the soil, the raising of agricultural or horticultural commodities. Services performed on a farm, while in the employ of any person, agricultural enterprise in connection with such operations are agricultural labor within the meaning of the Iowa employment security law. This includes services related to the These include mixing or loading into the airplane the spraying or dust dusting material, as well as service related to the measuring of the swaths and the marking and flagging of the fields, and is considered agricultural labor as long as it is performed on the a farm. However, If any of these services are performed on property other than the a farm, for which they are being performed (such as commercial airport, leased or rented landing strip, etc.), in connection with the mixing and loading of the spray and dusting material, as well as services performed in delivering such material to the mixing or loading point, are they are not agricultural labor and are covered employment under by the other provisions of the Iowa employment security law.~~

23.26(10) Services performed on a farm in the employ of any person in connection with hatching poultry are agricultural labor. A plot of land together with the structures and buildings located off the farm, devoted to the hatching of poultry, is not considered to be a farm. Any service, under any contract of hire, performed off the farm in connection with the hatching of poultry shall not be considered exempt agricultural labor.

23.26(11) Executive, supervisory, administrative, clerical, stenographic, and office work are not exempt as agricultural labor although they may be rendered on a farm and in relation to a farm.

23.26(12) Services performed on a farm incidental to the overall commercial activities which are not incidental to ordinary farming operation or directly related to the farming operation are not exempt as agricultural labor.

23.26(13) Services performed in connection with the processing of agricultural commodities performed on a farm, for a farm operation, are not exempt as agricultural labor unless one-half or more of the commodities processed are produced by the farm operator.

23.26(14) Services performed in exempt agricultural employment as defined in Iowa Code section 96.19(18)"g"(3) or rule 23.26(96) by an agricultural employee one-half or more of any calendar month shall be considered exempt agricultural employment the whole of that calendar month.

ITEM 21. Amend rule 871—23.28(96) as follows:

Amend subrule **23.28(1)**, paragraph "**b**," subparagraph (2), as follows:

(2) An application is made for a transfer of the records of the severable portion transferred within 60 90 days from the date of transfer.

Rescind subrule **23.28(1)**, paragraph "**c**."

Amend subrule 23.28(2) as follows:

23.28(2) An "organization," "trade" or "business" as used in Iowa Code section 96.19(§ 16)"b" is acquired if an employing unit acquires factors of an employer's organization, trade or business sufficient to constitute an entire existing going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The question of whether an organization, trade or business is ac-

quired is determined from all the factors of the particular case. Among the factors to be considered are:

- a. The place of business.
- b. The staff of employees.
- c. The customers.
- d. The good will.
- e. The trade name.
- f. The stock in trade.
- ~~g. The accounts receivable.~~
- ~~h g. The tools and fixtures.~~
- ~~i h. Other assets.~~

Amend subrule 23.28(3) as follows:

23.28(3) Substantially all of the assets as used in Iowa Code section 96.19(§ 16)"b" are acquired if an employing unit acquires substantially all of the assets of any employer which generate substantially all of the employment, except those retained incident to the liquidation of obligations.

Amend subrule 23.28(7), introductory paragraph, and paragraph "**d**," subparagraph (2), as follows:

~~23.28(7) Successor liability will not be found to occur. The department will utilize the following general criteria when establishing successorship in specialized cases:~~

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, ~~there will be no transfer of employment experience. The~~ the account address will be corrected to include the name of the trustee or receiver for mailing purposes. ~~If the trustee or receiver obtains a new federal identification number for this business, a new account number will be established for the trustee or receiver as a successor to the original enterprise or business. If the trustee or receiver sells the enterprise or business as a going enterprise, the successor the new owner will be entitled a successor to the predecessor's experience.~~

ITEM 22. Amend subrule **23.29(1)**, paragraphs "**a**" and "**b**," as follows:

a. Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must be in writing, or on Form 60-0126, Report to Determine Liability, and include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of such the notice when necessary information establishing that the acquisition occurred has been received by the department, the account, actual contribution and benefit experience, and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The predecessor must submit in writing a completed Form 60-0111, Employer Notice of Change, including the account number.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall file change of ownership Forms 60-0111, Employer Notice of Change, and 60-0126, Report to Determine Liability, with the workforce development department within 30 days from the date of the transaction. In addition to Forms 60-0111 and 60-0126, all entities involved in the

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merger shall file with the workforce development department the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired and that all employers involved in the merger are in agreement to the transaction.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate on Form 60-0126, Report to Determine Liability, whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

ITEM 23. Amend subrule **23.29(2)**, paragraphs “b” and “c,” as follows:

b. If the successor had no account prior to the transfer and purchased the business of more than one predecessor on the same day, the *final* rate assigned will be a computed rate based on the combined experience of all the predecessor employers.

c. If the successor had an account prior to the transfer, the rate assigned will be the successor’s existing rate. However, the successor may apply for a ~~computed~~ recomputed rate based on the combined experience of the predecessor or predecessors and the experience of the successor.

ITEM 24. Amend subrule 23.30(2) as follows:

23.30(2) Transfers under the Bulk Sales Act, uniform commercial code of Iowa, shall not be held by the department to be exempted from the provisions of Iowa Code section 96.7, ~~and the~~. The transferee shall be held a successor to the employer account of the transferor and liable for any unpaid contributions, reimbursable benefit payments, interest, penalty, and costs owed to the department by the transferor notwithstanding any agreement between the two parties pursuant to the Bulk Sales Act, *provided the transferee continues to operate the business.*

ITEM 25. Amend rule 871—23.31(96) as follows:

Amend subrule **23.31(1)**, paragraph “a,” subparagraph (1), as follows:

(1) Files with the department a written application, on Form 60-0126, Report to Determine Liability, or in letter form, within ~~60~~ 90 days after the date of purchase;

Amend subrule **23.31(1)**, paragraph “b,” subparagraphs (1), (4) and (5), as follows:

(1) Written agreement to the transfer by the predecessor. The predecessor’s signature on Forms 68-0068 and 68-0065, ~~parts A and B of the report of employer on transfer of one of two or more employing units~~ *The Report of Employer on Transfer of One of Two or More Employing Units*, will be sufficient. (See 23.31(1)“b”(4),(5));

(4) Report showing the names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred. (Form 68-0065, ~~part B of the report of employer on transfer of one of two or more employing units~~ *The Report of Employer on Transfer of One of Two or More Employing Units*.);

(5) Report showing the predecessor and successor name, address, account numbers, information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar quarters including and immediately preceding the date of the acquisition. (Form 68-0068, ~~part A of~~

~~the report of employer on transfer of one of two or more employing units~~ *The Report of Employer on Transfer of One of Two or More Employing Units*.)

Amend subrule 23.31(4), catchwords, as follows:

23.31(4) *Notification of approval or Denial denial* of transfer and appeals.

ITEM 26. Amend rule 871—23.36(96) as follows:

871—23.36(96) Predecessor—contribution rates for winding down a business. In the case where a predecessor has transferred its organization, trade, or business, or substantially all assets, to a successor in interest and the predecessor employer continues to operate a part of the business in order to wind down or close the business after the date of transfer, the predecessor shall be assigned a new account number and the rate of a newly covered employer for the purposes of reporting the wind down wages. For the purposes of this rule, the term “wind down wages” ~~shall not include~~ *may exclude* wages earned before the sale or transfer that were paid *in the four consecutive quarters after the quarter in which the sale or transfer occurred.*

This rule is intended to implement Iowa Code sections 96.8(1) and 96.8(4)“a.”

ITEM 27. Amend rule 871—23.37(96) as follows:

871—23.37(96) Adjustments and refunds of contributions.

23.37(1) Contribution reports, when once submitted, shall not be returned to employers for correction. Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution report submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which ~~such the~~ overpayment was made. ~~Such~~ *The* application (*Employer’s Wage Adjustment Report, Form 68-0061*) shall be ~~on a form prescribed by the department and furnished by the department which, among other things, and shall show the correct corrections to the individual wage amounts, corrections to the report grand totals (total wages, taxable wages and contribution), and a full explanation for the adjustment amount of contributions claimed to be due for the period involved and the alleged overpayment or a letter of explanation signed by the employer will suffice.~~ Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer’s erroneous report.

23.37(2) If the contribution and wage report first submitted by an employer understates the amount of wages paid for a given period, such employer shall file a supplemental report *or Employer’s Wage Adjustment Report, Form 68-0061*, for ~~such the~~ period and make remittance covering all additional contributions due and owing for ~~such the~~ period on the unreported wages and interest.

a. If it is apparent, upon examination of any regular or supplemental contribution report *or Employer’s Wage Adjustment Report, Form 68-0061*, that a greater contribution than is required by law has been paid, the department may, within three years from the date of such overpayment, make an adjustment and issue a credit adjustment memorandum for such overpayment.

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b. If it is not apparent from the examination of any regular or supplemental contribution report or *Employer's Wage Adjustment Report, Form 68-0061*, that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit adjustment shall file with the department a written application for such adjustment within three years from the date on which such overpayment was made. Such credit adjustment shall be granted only after a review of the application which shall set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the department shall issue a credit adjustment memorandum or refund for ~~such the~~ overpayment.

23.37(3) Each credit adjustment memorandum issued shall be mailed to the employer ~~entitled thereto~~ at the last-known address. The employer may attach ~~such the~~ memorandum to the contribution and wage report to the department for a future reporting period following receipt of ~~such the~~ memorandum. The amount of the credit memo will be deducted from the contributions in the employer's account and credited to a credit memo outstanding account until ~~such the~~ credit memo is used or canceled in accordance with these rules. Upon receipt by the department ~~such, the~~ credit memorandum will be applied against contributions due for the period covered by the contribution report to which ~~such the~~ memorandum is attached and the account will be adjusted accordingly. ~~In any case wherein~~ If the employer fails to utilize the credit memorandum issued to it as provided above, the department shall, three years from the date of issuance, cancel ~~said the~~ credit and redeposit the amount of the credit to the employer's reserve balance. ~~If it is impracticable to apply any such credit adjustment memorandums against subsequent contributions, the~~ The department, upon request of the employer or employing unit or upon its own initiative, may issue an order directing refund ~~covering such of the~~ overpayment. The state comptroller ~~upon receipt from the department of an order directing the refund, shall issue a warrant made payable in the amount and to the party named in such order is responsible for the issuance of the warrant.~~

23.37(4) When an employer requests a refund or credit of contributions paid due to an erroneous reporting of wages, ~~such the~~ refund or credit shall be reduced by the amount of benefits paid and charged to the employer ~~on account of such as a result of the erroneous wages.~~

23.37(5) ~~Requisites of claim for refund or credit.~~ All grounds and facts alleged in support of a claim for refunds or credit shall be clearly set forth. The employing unit shall furnish such proof in support of the claim as may be reasonably necessary at the discretion of the department to support the validity and the amount of the claim and the fact that the employing unit making the application for refund or credit is legally entitled ~~thereto~~ to it.

ITEM 28. Rescind and reserve rule **871—23.39(96)**.

ITEM 29. Amend rule 871—23.40(96) as follows:

Amend subrule 23.40(1) as follows:

23.40(1) Experience rating. ~~For calendar year 1988 and subsequent years, an~~ An employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's five-year average annual taxable payroll to arrive at the benefit ratio. This ratio shall be applied to the appropriate rate table, as determined by the department, to determine the employer's contribution rate for the next calendar year. Indian tribal contributory employers shall be

considered private sector employers for the purpose of computing their contribution rate.

Amend subrule 23.40(3), introductory paragraph, as follows:

23.40(3) Temporary emergency surcharge ~~beginning January 1, 1983.~~ If it becomes necessary to implement a temporary emergency surcharge on all employers, except zero rated employers, governmental employers, and 501(c)(3) nonprofit organizations, for any quarter to pay interest on moneys borrowed from the federal government to pay unemployment insurance benefits, the emergency surcharge shall be collected and credited in the following manner:

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8) ~~and 1994 Iowa Acts, chapter 1187.~~

ITEM 30. Amend rule 871—23.41(96) as follows:

871—23.41(96) Computation date defined. The computation date for the succeeding year's contribution rate shall be July 1. The rate computation shall include the *taxable* wages reported for the ~~quarter~~ *quarters prior to and ending on* June 30 immediately preceding the computation date, *and* benefit charges based on benefit warrants issued on or before June 30 immediately preceding the computation date. ~~and contributions paid by Delinquent reports received after September 30 immediately following the computation date shall not be used for the succeeding year's rate computation.~~

ITEM 31. Amend rule 871—23.43(96) as follows:

Amend subrule 23.43(1) as follows:

23.43(1) How charged. Benefits paid to an eligible claimant shall be charged against the base period wage credits in the same inverse chronological order as the wages on which ~~such the~~ wage credits are based were paid to the claimant.

Amend subrule **23.43(4)**, paragraph "b," as follows:

b. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting without good cause the part-time employer. The individual and the part-time employer which was voluntarily quit without good cause shall be notified on the Form 65-5323 or 60-0186, Decision of the ~~Job Service~~ *Workforce Development* Representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer, and benefit charges shall not be assessed against the part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

Amend subrule 23.43(7) as follows:

23.43(7) Department-approved training. A claimant who qualifies and is approved for department-approved training (see rule 871—24.39(96)) shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer who is required by law or election to reimburse the trust fund, and ~~such the~~ employer shall be charged with the benefits paid.

Amend subrule **23.43(9)**, paragraphs "a" and "d," as follows:

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a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state. ~~but no~~ No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and ~~that~~ such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

d. When Iowa is the paying state on an interstate claim ~~wherein~~ and Iowa wage credits are insufficient to have a valid Iowa claim, charges shall not be made against the Iowa employer's account but shall be charged to the balancing account, except for reimbursable employers.

ITEM 32. Amend rule ~~871—23.44(96)~~, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 96.7(3), 96.11(1) and 96.20(2), ~~as interpreted in the recent Iowa Supreme Court case, Robert A. Galvin, et al., vs. Iowa Beef Processors, Inc., et al., filed January 8, 1978.~~

ITEM 33. Amend rule 871—23.46(96) by amending subrule 23.46(2), renumbering subrule ~~23.46(3)~~ as ~~23.46(5)~~ and adopting new subrules 23.46(3) and 23.46(4) as follows:

23.46(2) To end *general* liability, an employer must file an application for termination of coverage with the department. This application must be filed by February 15 of the year for which the employer seeks to terminate liability, and it must show that employment experience in the preceding year was such as to make the employer eligible to terminate liability; that is, it must show that in the preceding calendar year the employer did not have one or more persons in employment within 20 or more calendar weeks, and that there was no calendar quarter in that year in which the gross payroll equaled or exceeded \$1,500. This does not apply to coverage for ~~agricultural, domestic or political subdivisions.~~

23.46(3) *Agricultural employers paying less than \$20,000 in any quarter of an entire calendar year and having fewer than 10 workers in 20 different calendar weeks in that year may follow the procedures in 23.46(2) to terminate their account effective with the beginning of the following year.*

23.46(4) *Domestic employers paying less than \$1,000 in wages in any quarter of an entire calendar year may follow the procedures in 23.46(2) to terminate their account effective with the beginning of the following year.*

ITEM 34. Amend rule 871—23.47(96) as follows:

871—23.47(96) Termination of accounts because of no wage reports.

23.47(1) *If an employer discontinues business or continues business without employment, the employer may request that the employer's account be placed into pending status. The term "pending" refers to an account that is placed in inactive status pending termination as provided in Iowa Code section 96.8(4) "b." Upon determination of pending status,*

the department shall notify the employer on Form 65-5308, Notice of Employer Status and Liability, that the employer's account has been placed in inactive status and that the employer shall no longer receive a quarterly reporting Form 65-5300, Employer's Contribution and Payroll Report. While in pending status, the business is not required to file quarterly reports. However, the employer must notify the department if, at any time, the employer resumes paying Iowa wages.

23.47(1 2) If, at any time, the department finds by employer liability investigation or otherwise that an employer has ~~paid no wages for any four consecutive quarters, discontinued business or is no longer paying wages,~~ the department may on its own motion ~~or by employer request~~ place the account in a pending status. ~~The term "pending" refers to an account that is placed in an inactive status pending termination as provided in Iowa Code section 96.8(4) "b." Upon determination of pending status the department shall notify the employer on Form 65-5308, Notice of Employer Status and Liability, that the employer's account has been placed in an inactive status and that the employer shall no longer receive a quarterly reporting Form 65-5300. However, the employer must notify the department if, at any time, the employer resumes paying Iowa wages.~~

23.47(2 3) No change.

23.47(3 4) If, on the *rate* computation date, the department finds that an employer ~~eligible for an experience rating~~ has not paid wages during the eight consecutive calendar quarters immediately preceding the computation date, the employer's account shall be terminated effective the January 1 following the computation date, ~~and the employer shall be so notified on Form 65-5306, Notice of Contribution Rate.~~ However, if the employer pays wages after the computation date and prior to the following January 1, the employer's account shall not be terminated, and the employer will receive *an assigned rate or an experience rating.*

This rule is intended to implement Iowa Code sections ~~96.7(3) "d"~~ 96.7(2) "c" and "d" and 96.8(4) "b."

ITEM 35. Amend rule 871—23.48(96) as follows:

871—23.48(96) Previously covered employers. If a contributory employer's account has been *properly* terminated ~~for any reason~~ (including an employer who has terminated an election to be contributory and has elected to be reimbursable), and such employer is again determined liable or again elects to be contributory, the employer shall be treated the same as a newly covered employer.

This rule is intended to implement Iowa Code sections 96.7 and 96.8.

ITEM 36. Amend subrules 23.51(1) and 23.51(2) as follows:

23.51(1) ~~That each~~ *Each* nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.

23.51(2) ~~The money~~ payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the department shall be in an amount equal to the regular benefits and one-half of the extended benefits paid and charged to such employer's account. Government and Indian tribal reimbursable employers will be charged all of the extended benefits paid.

ITEM 37. Amend subrules 23.52(1) to 23.52(6) as follows:

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23.52(1) An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge *with the department of inspections and appeals*.

23.52(2) The appeal shall be in writing stating:

- a. The name, address and Iowa employer account number of the employer.
- b. The name and official position of the person filing the appeal.
- c. The decision which is being appealed.
- d. The grounds for the appeal and the relief sought upon which the appeal is based.

23.52(3) The appeal shall be addressed or delivered to: Department of Workforce Development, Tax ~~Section Bureau~~, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage *on appeals filed by mail. Appeals transmitted by facsimile that are received by the tax bureau after 11:59 p.m. central time shall be deemed filed as of the next regular business day.*

23.52(4) Unless otherwise required, all determinations by the tax ~~section bureau~~ will be sent by regular mail to the last-known address of the employer. The determination will be dated and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a ~~notice of reimbursable benefit charges~~ *Notice of Reimbursable Benefit Charges*, Form 65-5324.

23.52(5) If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax ~~section bureau~~ may write to the employer and further explain the decision. If the employer still desires a hearing before a ~~representative of the department~~ *an administrative law judge*, the employer should notify the department within 30 days of the date of the letter from the department.

23.52(6) Upon receipt of a request for hearing, the tax ~~section bureau~~ will ask the ~~administrative law judge~~ *department of inspection and appeals* to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the administrative law judge. Documents that may be sent to the administrative law judge include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.5(17A,96).

ITEM 38. Amend rule 871—23.55(96) by adopting **new** subrule 23.55(3) as follows:

23.55(3) The burden of proof in successorship and partial successorship cases for determinations and appeals shall rest with the employer who is appealing the determination of the department.

ITEM 39. Amend subrule 23.56(2) as follows:

23.56(2) If the parties agree to a settlement, the written statement shall be presented to the ~~chief administrator~~ *division of unemployment insurance services* for review and approval.

ITEM 40. Rescind and reserve rule **871—23.58(96)**.

ITEM 41. Amend rule 871—23.59(96) as follows:

Amend the catchwords as follows:

871—23.59(96) Determination and assessment of estimated contributions and errors in reporting.

Amend subrule **23.59(2)**, paragraph "c," as follows:

c. Such estimates may be made by authorized personnel in the tax ~~section bureau~~ and shall be referred to the collection unit where Form 68-0138, Notice of Jeopardy Assessment, shall be prepared.

ITEM 42. Amend rule 871—23.61(96) as follows:

871—23.61(96) Collection of interest and penalties. ~~The collection of penalties and interest where no~~ *When a report is filed with contributions paid but penalties and interest are due, from the employer shall be done penalties and interest may be assessed and a lien filed in the same manner as when for unpaid contributions are due.*

ITEM 43. Amend rule 871—23.62(96) as follows:

871—23.62(96) Rescission of interest and penalty.

23.62(1) Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department ~~at least~~ *within 15 days prior to the delinquency date following the end of the quarter* for the report(s) or contribution(s) untimely filed or paid, and such contributions are paid in full.

23.62(2) Penalty charges only may be rescinded whenever the employer can show documentary evidence that the wages paid to employees used to determine liability to the department were reported to another state in good faith and the contributions thereon were properly paid to the state to which ~~such~~ *the* wages were reported and that said employees were fully insured during the period of unreported liability to this department.

ITEM 44. Amend rule 871—23.63(96), introductory paragraph, as follows:

871—23.63(96) Cancellation of interest and penalty. The department may, at its discretion and for good cause, cancel interest and penalty upon written, ~~sworn~~ request for the waiver from the employer or an agent for the employer. Requests should be directed to the department at its administrative office. The employer will be advised ~~by decision of the disposition of the request~~ *if the request is denied*.

ITEM 45. Amend rule 871—23.65(96) as follows:

Amend subrule **23.65(1)**, paragraph "c," as follows:

c. ~~Such~~ *The* lien, known as a Form 68-0024, Notice of Lien, shall state the date of assessment, the employer's name, address and account number, and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

Amend subrules 23.65(2), 23.65(6) and 23.65(7), introductory paragraph, as follows:

23.65(2) When the Notice of Lien is duly filed and recorded, the amount ~~therein~~ stated shall be a lien upon the entire interest of the employer, legal or equitable, in any real property, and upon any personal property, tangible or intangible, located in any county where the Notice of Lien or copy ~~thereof~~ is filed.

23.65(6) The department may, at its discretion and in accordance with Iowa Code section 96.14(3), make an assessment and file a lien in the recorder's office in the county or state where the employer resides. Liens shall be recorded in

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accordance with the law governing ~~such~~ liens in the state where filed, and the costs shall be borne by the employer.

23.65(7) No employment security lien(s) shall be released without payment of the contributions ~~and costs~~ secured ~~thereby~~ except as follows:

ITEM 46. Amend subrule 23.66(1) as follows:

23.66(1) If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 23.8(96) for making return and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment ~~shall~~ *may* be made by personal service upon the employer or the employer's agent by a representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by certified mail to the employer's address of record and such mailing shall be a satisfactory service.

ITEM 47. Amend subrules 23.67(1), 23.67(2) and 23.67(3) as follows:

23.67(1) In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding ~~said~~ the sheriff or civil officer to levy upon and sell any real or personal property which may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from ~~such~~ the employer, and to pay the proceeds of ~~such~~ the sale over to the clerk of district court in and for the county in which ~~such~~ the property is found. All costs of ~~such~~ the execution shall be charged to the employer.

23.67(2) ~~Such~~ The sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which ~~such~~ the property was levied upon, in accordance with the Iowa Code and the ~~rules of civil procedure~~ *Iowa Rules of Civil Procedure*.

23.67(3) No property belonging to ~~said~~ the employer shall be exempt from execution.

ITEM 48. Amend subrule **23.69(3)**, paragraph "e," as follows:

e. ~~That the~~ The employer has ten days in which to respond to the department.

ITEM 49. Amend subrules 23.70(1), 23.70(6) and 23.70(13) as follows:

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7. ~~The the~~ election to reimburse the fund ~~shall be filed in duplicate~~ on Form 68-0463, Election to Make Payments in Lieu of Contributions, with the department for its consideration.

23.70(6) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be re-

quired to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. ~~Such~~ The new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due, and any excess shall be refunded to the organization.

23.70(13) In the event that a reimbursable nonprofit organization succeeds to a ~~business entity~~ *contributory employer*, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization's unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

ITEM 50. Amend subrule **23.71(1)**, paragraphs "a" and "c," as follows:

a. An organization or any division, department, agency, commission, or board of a state or political subdivision ~~made~~ *established* by proper authorities ~~thereof~~, authorized and created under constitutional provisions or statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

c. Political subdivisions include counties, cities, municipalities, towns, villages, townships, as well as irrigation, flood control, sanitation, utility, reclamation, drainage, improvement, and public school districts and authorities or any combination of these and similar governmental ~~entity~~ *entities* within the state of Iowa.

ITEM 51. Amend subrule 23.71(3), introductory paragraph, as follows:

23.71(3) ~~Effective January 1, 1978, the~~ The term "employment" does not apply to services performed for this state, a political subdivision of this state, an Indian tribe or an instrumentality of either by an individual who is: an elected official; a member of a legislative body; a member of the judiciary of a state or political subdivision; a member of the state national guard, air national guard, or armed forces reserve; an employee on a temporary-duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency; or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

ITEM 52. Amend subrule 23.72(4) as follows:

23.72(4) An applicant may withdraw an application for elective coverage prior to final approval of the application. ~~The director~~ *department* may, upon written request of the applicant, cancel an elective coverage agreement which has been finally approved if the applicant shows that the application was submitted through justifiable mistake, or error, or

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was submitted by a person not having proper authorization to bind the applicant.

ITEM 53. Amend subrule 23.73(3), introductory paragraph, as follows:

23.73(3) If an amount due from a governmental entity of this state remains due and unpaid for a period of 120 days after the due date, the ~~director~~ *department* shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of revenue *and finance*, or any oth-

er official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the ~~director~~ *department* from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the ~~director~~ *department* for the fund. However, the ~~director~~ *department* shall notify the delinquent entity of the ~~director's~~ *department's* intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

ARC 2361B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to increase from the current fixed dollar amount of \$29 per ton to \$39 per ton the maximum annual Title V Operating Permit fee that the Environmental Protection Commission can establish on the first 4,000 tons of actual emissions of each regulated pollutant emitted annually from a major source. Budget projections and estimates of actual emissions indicate that the annual fee will have to be increased above \$29 per ton to maintain the current level of service in state fiscal years 2004, 2005, and 2006.

The increase from \$29 per ton to \$39 per ton is based on budget projections for the next three state fiscal years and estimates of the actual emissions during this period. Basing the fee level cap on budget projections for the next three state fiscal years should prevent the need for the Commission to change the fee level cap provision in subrule 22.106(1) again for at least this period of time. The need to increase the fee level cap to maintain the current level of services is the result of the combination of increases in staff salaries due to negotiated contract increases and projected decreases in actual emissions over this period. The \$39 per ton fee level cap includes an additional 20 percent that was added to the resulting dollar per ton estimates for each of the three state fiscal years to account for estimated increases in other nonsalary expenditures, such as indirect costs and increases in the costs of operating an ambient air monitoring network.

The data, assumptions, and methodology used to arrive at the \$39 per ton fee level cap were reviewed and discussed in detail at a meeting on January 9, 2003, with a representative group of companies that pay Title V fees and the Association of Business and Industry. The data, assumptions, and methodology were determined to be reasonable based on past budget information, available salary contract information, and past actual emissions trends. The Department will continue to work with Title V fee payers and the Association of Business and Industry to reduce and control the Department's costs of service and to investigate alternate funding mechanisms.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because in order for the Commission to set the annual fee for the coming fiscal year based on the reasonable cost to run the program and the proposed budget no later than the May Commission meeting, pursuant to subrule 22.106(1), the fee cap change must become effective prior to the May Commission meeting.

The Environmental Protection Commission adopted this amendment on February 17, 2003.

This amendment is also published herein under Notice of Intended Action as **ARC 2356B** to allow public comment.

This amendment is intended to implement Iowa Code section 455B.133.

This amendment shall become effective on April 23, 2003.

The following amendment is adopted.

Amend subrule 22.106(1) as follows:

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The 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 department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than ~~\$29~~ \$39 per ton without adopting the change pursuant to formal rule making.

[Filed Without Notice 2/28/03, effective 4/23/03]
[Published 3/19/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/19/03.

ARC 2355B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission hereby rescinds Chapter 108, "Reuse of Solid Waste," and adopts new Chapter 108, "Beneficial Use Determinations: Solid By-Products as Resources and Alternative Cover Material," Iowa Administrative Code.

This rule making updates and expands the rules pertaining to the beneficial reuse to incorporate new beneficial uses for solid by-products and the Department's permitting experiences. Numerous universally approved beneficial uses are authorized in the chapter, and an application process for new beneficial use determinations has been created.

This rule making is warranted for compliance with the Governor's Executive Order Number 8. Furthermore, the rule making acts to encourage the use of solid by-products as resources when such utilization improves, or at a minimum does not adversely affect, human health and the environment. Without this rule making, some solid by-products may be unnecessarily disposed of.

Notice of Intended Action was published on December 11, 2002, in the Iowa Administrative Bulletin as **ARC 2166B**. A public hearing was conducted on January 8, 2003, and written comments were accepted on or before that date as well. The comments received by the Department were primarily to request clarifications or inclusion of new by-products and uses.

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In response to comments received by the Department, the following changes were made to the rules published under Notice.

- Subrule 108.2(3) was reworded to clarify the relationship between this chapter and 567—Chapter 104 for solid waste processing operations.
- Subrule 108.4(1) was reworded to clarify that alumina includes refractory brick.
- Subrule 108.4(2) was updated to include the correct federal reference for an asbestos testing methodology.
- Subrule 108.4(14) was reworded to clarify requirements for fill material and to reference 567—Chapter 120 for petroleum-contaminated soil.
- Rule 567—108.8(455B,455D), introductory paragraph, was reworded to ensure that alternative cover use would be noted in the landfill permit.
- Subrule 108.8(1) was updated to include the correct federal reference for an asbestos testing methodology.
- Subrule 108.8(10) was reworded to clarify requirements for fill material and to reference 567—Chapter 120 for petroleum-contaminated soil.
- Rule 567—108.9(455B,455D), introductory paragraph, was reworded to clarify that sanitary landfills are responsible for submitting an application for alternative cover material.

These rules will become effective April 23, 2003.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.4.

The following amendment is adopted.

Rescind 567—Chapter 108 and adopt the following **new** chapter in lieu thereof:

CHAPTER 108
BENEFICIAL USE DETERMINATIONS:
SOLID BY-PRODUCTS AS RESOURCES AND
ALTERNATIVE COVER MATERIAL

567—108.1(455B,455D) Purpose. The purpose of this chapter is to establish rules for determining when a solid by-product is a resource and not a solid waste. Solid by-products determined by the department not to be a solid waste through a beneficial use determination may not be subject to all sanitary disposal project (SDP) permitting requirements. Furthermore, the purpose of this chapter is to encourage the utilization of solid by-products as resources when such utilization improves, or at a minimum does not adversely affect, human health and the environment.

567—108.2(455B,455D) Applicability and compliance.

108.2(1) These rules apply to industrial, commercial, and institutional generators and users or proposed users of solid by-products and to sanitary landfills utilizing or desiring to utilize alternative cover material. These rules apply to solid by-products that before receiving a beneficial use determination by the department were being disposed of as solid waste. These rules do not apply to solid by-products that have already been disposed of as solid waste by the generator.

108.2(2) These rules do not pertain to the land application of solid waste. For rules pertaining to the land application of solid waste, see 567—Chapter 121. However, for solid by-products that are land-applied pursuant to 567—Chapter 121, a variance from some or all of the requirements of 567—Chapter 121 may be gained through receipt of a beneficial use determination from the department.

108.2(3) These rules do not pertain to solid waste processing operations pursuant to 567—Chapter 104. However,

for solid by-products that are processed pursuant to 567—Chapter 104, a variance from some or all of the requirements of 567—Chapter 104 may be gained through receipt of a beneficial use determination from the department.

108.2(4) These rules do not pertain to solid waste composting pursuant to 567—Chapter 105. However, for solid by-products that are composted pursuant to 567—Chapter 105, a variance from some or all of the requirements of 567—Chapter 105 may be gained through receipt of a beneficial use determination from the department.

108.2(5) Beneficial use determinations granted by the department before April 23, 2003, shall remain in effect unless specifically addressed by these rules or by written notification pursuant to 567—108.11(455B,455D).

108.2(6) The issuance of a beneficial use determination by the department relieves the generator and user(s) of all Iowa solid waste requirements specifically noted in the written determination. Requirements that may be relieved by a beneficial use determination may include rules, SDP permits, and permit conditions and variances. Solid by-products that have not received a beneficial use determination by the department are subject to all of Iowa's regulations pertaining to solid waste. The issuance of a beneficial use determination by the department in no way relieves the generator or user of the responsibility of complying with all other local, state, and federal statutes, ordinances, and rules or other applicable requirements.

567—108.3(455B,455D) Definitions. For the purposes of this chapter, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 455B.301 shall be considered to be incorporated verbatim in these rules.

“Alternative cover material” means a substitute material or mix of materials that can be utilized in lieu of soil as cover material at a sanitary landfill.

“Beneficial use” means a specific utilization of a solid by-product as a resource, that constitutes reuse rather than disposal, does not adversely affect human health or the environment, and is approved by the department.

“Beneficial use determination” means a written formal decision or rule issued by the department as approval for a solid by-product to be utilized in a specific manner as a beneficial use.

“Coal combustion by-product” means any solid by-product produced by the burning of coal, by itself or in conjunction with natural gas or other fossil fuel, which is suitable for disposal as solid waste in a sanitary landfill. Examples include boiler slag, bottom ash, fly ash, and flue gas desulfurization by-products from pollution control equipment. Coal combustion by-products are also referred to as coal combustion residue.

“Cover material” means soil placed as daily, intermediate, or final cover at a sanitary landfill.

“Fill material” means material that is used to raise the elevation of, take up space in, or build up the level of the land. For the purposes of this chapter, fill material is not considered subbase for hard-surface road construction.

“Foundry sand” means a solid by-product from the foundry industry that is derived from molding, core-making, and casting cleaning processes that primarily contain sand, olivine, or clay and that is suitable for disposal as solid waste in a sanitary landfill.

“High water table” is the position of the water table which occurs in the spring in years of normal or above-normal precipitation.

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“Resource” means a solid by-product that can provide greater benefit to the environment or human welfare in its beneficial use as a safe and effective substitute for a raw material, fuel or energy source, or natural resource, rather than being disposed of as a solid waste in a sanitary landfill.

“Solid by-product” means a secondary material or residual, produced or created by an industrial, commercial or institutional process or activity, that has been source separated by the generating entity and that would otherwise be disposed of as solid waste. Solid by-products are composed of materials suitable for disposal as solid waste in a sanitary landfill.

“Subbase for hard-surface road construction” means material that is used in subsurface applications for the construction of roads, including their shoulders, and parking lots that have hard surfaces such as concrete or asphalt. For the purposes of this chapter, subbase for hard-surface road construction is not considered fill material.

“Suitable for disposal as solid waste in a sanitary landfill” means that the material is in compliance with all state and federal rules and regulations pertaining to what may be disposed of in an Iowa sanitary landfill. Such materials are at a minimum nonhazardous and nonradioactive, are solid or semisolid, and do not contain free liquids pursuant to the Paint Filter Liquids Test (Reference: 40 CFR 258.28).

“Vector” means a carrier organism that is capable of transmitting a pathogen from one organism to another. Vectors include, but are not limited to, birds, rats and other rodents, and insects.

“Water table” means the water surface below the ground at which the unsaturated zone ends and the saturated zone begins.

567—108.4(455B,455D) Universally approved beneficial use determinations. The following solid by-products may be utilized as resources in the specific manners listed provided that such utilization is in compliance with 567—108.6(455B,455D) and 567—108.7(455B,455D). Unless a user is otherwise notified by the department pursuant to 567—108.11(455B,455D), such utilization does not require further approval from the department.

108.4(1) Alumina. Alumina may be used as a raw material in the manufacture of cement or concrete products. Alumina includes refractory brick for the purpose of this subrule.

108.4(2) Asphalt shingles. Asphalt shingles that are certified, consistent with federal regulations (Reference: Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy), as not containing more than 1 percent asbestos may be used as follows:

- a. Raw material in the manufacture of asphalt products.
- b. Subbase for hard-surface road construction.
- c. Road surfacing granular material.
- d. Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

108.4(3) Cement kiln dust. Cement kiln dust may be used as follows:

- a. Raw material in the manufacture of absorbents.
- b. Raw material in the manufacture of cement or concrete products.
- c. Subbase for hard-surface road construction.
- d. A soil amendment pursuant to 567—Chapter 121 and the rules of the Iowa department of agriculture and land stewardship or a compost amendment.
- e. A stabilizer for manure and waste sludge.
- f. A soil stabilizer for construction purposes.
- g. Fill material pursuant to 108.6(1).

108.4(4) Coal combustion by-products.

a. Coal combustion fly ash and flue gas desulfurization by-products may be used as follows:

- (1) Raw material in manufactured gypsum, wallboard, plaster, or similar product.
- (2) Raw material in manufactured calcium chloride.
- (3) Raw material in the manufacture of absorbents.
- (4) Fill material pursuant to 108.6(1).
- (5) Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

b. Coal combustion fly ash or bottom ash or boiler slag may be used as follows:

- (1) Raw material in the manufacture of cement or concrete products.
- (2) Raw material to be used in mineral recovery.
- (3) Raw material in the manufacture of asphalt products.
- (4) Raw material in plastic products.
- (5) Subbase for hard-surface road construction.
- (6) Soil stabilization for construction purposes.
- (7) Fill material pursuant to 108.6(1).
- (8) Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

c. Coal combustion bottom ash may also be used as follows:

- (1) Traction agent for surfaces used by vehicles.
- (2) Sandblasting abrasive.

108.4(5) Compost. Cured or finished compost, as defined in 567—Chapter 105, is not solid waste and may be used for any purpose recognized by the U.S. Composting Council or the department.

108.4(6) Foundry sand. Foundry sand may be used as follows:

- a. Raw material in the manufacture of asphalt products.
- b. Raw material in the manufacture of cement or concrete products.
- c. Leachate control drainage material at a sanitary landfill.
- d. Subbase for hard-surface road construction.
- e. Fill material pursuant to 108.6(1).
- f. Emergency flood control use for sandbags.
- g. Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

108.4(7) Glass. Uncontaminated, unleaded glass may be used as follows:

- a. Raw material in the manufacture of asphalt products.
- b. Fill material pursuant to 108.6(1).
- c. Sandblasting or other abrasive.
- d. Leachate control drainage material at a sanitary landfill.
- e. Filter media.
- f. Subbase for hard-surface road construction.
- g. Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

108.4(8) Gypsum and gypsum wallboard.

a. All gypsum and gypsum wallboard may be used as follows:

- (1) Raw material in the manufacture of absorbents.
 - (2) Raw material in the manufacture of other gypsum products, wallboard, plaster, or similar products.
 - (3) Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).
- b. Gypsum and gypsum wallboard that have not been treated to be water-resistant or flame-retardant may be used as a calcium additive for agricultural use or soil amendment pursuant to 567—Chapter 121 or a compost amendment.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

108.4(9) Lime. Lime produced as a by-product of public water supplies may be used as follows:

a. A soil amendment pursuant to 567—Chapter 121 and the rules of the Iowa department of agriculture and land stewardship or a compost amendment.

b. Raw material in the manufacture of calcium carbonate or similar substance.

108.4(10) Lime kiln dust. Lime kiln dust may be used as follows:

a. Raw material in the manufacture of absorbents.

b. Raw material in the manufacture of cement or concrete products.

c. Subbase for hard-surface road construction.

d. A soil amendment pursuant to 567—Chapter 121 and the rules of the Iowa department of agriculture and land stewardship or a compost amendment.

e. A stabilizer for manure and waste sludge.

f. A soil stabilizer for construction purposes.

g. Fill material pursuant to 108.6(1).

108.4(11) Paper mill sludge. Uncontaminated, dewatered paper mill sludge may be used as follows:

a. A fuel or energy source.

b. Bulking agent or carbon source for composting.

c. Animal bedding.

d. Raw material in the manufacture of absorbents.

e. Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

108.4(12) Rubble. Uncontaminated rubble such as concrete, brick, asphalt pavement, soil and rock may be used for fill, landscaping, excavation or grading or as a substitute for conventional aggregate. Asphalt, however, shall not be used for any of the aforementioned uses if the use will cause the asphalt to be placed in a waterway or wetland or any waters of the state or within the high water table.

108.4(13) Sandblasting abrasives. Sandblasting abrasives that do not contain lead-based paint may be used as follows:

a. Raw material in the manufacture of cement or concrete products.

b. Raw material in the manufacture of asphalt products.

c. Subbase for hard-surface road construction.

d. Raw material in the manufacture of abrasive products.

e. Fill material pursuant to 108.6(1).

f. Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

108.4(14) Soil, including petroleum-contaminated soil.

a. Uncontaminated soil may be used for fill, landscaping, excavation or grading, or other suitable purpose.

b. Petroleum-contaminated soils that have been decontaminated to the satisfaction of the department pursuant to 567—Chapter 120 may be used as follows:

(1) Fill material at the original excavation site pursuant to 108.6(1).

(2) Alternative cover material at a sanitary landfill pursuant to 567—108.8(455B,455D).

108.4(15) Tires. This chapter does not pertain to tires other than those used as alternative cover material pursuant to 567—108.8(455B,455D). Refer to 567—Chapter 117 for rules regarding the beneficial use of tires.

108.4(16) Wastewater filter sand. Wastewater filter sand may be used as follows:

a. Fill material pursuant to 108.6(1).

b. Subbase for hard-surface road construction.

108.4(17) Wood. Uncontaminated, untreated or raw wood may be used as follows:

a. A fuel or energy source.

b. Bulking agent for composting.

c. Mulch.

d. Animal bedding.

e. Raw material in the manufacture of paper products, particle board, or similar materials.

108.4(18) Wood ash. Ash from the combustion of uncontaminated, untreated or raw wood may be used as follows:

a. A soil amendment pursuant to 567—Chapter 121.

b. A carbon source for composting.

c. Raw material in the manufacture of cement or concrete products.

d. Fill material pursuant to 108.6(1).

567—108.5(455B,455D) Application requirements for beneficial use determinations other than alternative cover material. Unless the beneficial use is approved pursuant to 567—108.4(455B,455D), the applicant shall submit the following application information to the department. The department may request that additional information be submitted in order to make a beneficial use determination. The department may also require specific conditions on a beneficial use determination and issue a temporary beneficial use determination on a trial basis.

The generator of a solid by-product may apply to the department in writing for a beneficial use determination. If the department finds the application information to be incomplete, then it shall notify the applicant in writing of that fact and of the specific deficiencies and return the application materials to the applicant within 30 days of such notification. The applicant may reapply without prejudice.

108.5(1) The name, address, and telephone number of:

a. Owner of the site where the project will be located.

b. Applicant for the beneficial use determination.

c. Official responsible for the operation of the project.

d. Professional engineer (P.E.) licensed by the state of Iowa and retained for the project, if any. The department may, at its sole discretion, require the applicant to retain a professional engineer for the project or specific parts thereof.

e. Agency to be served by the project, if any.

f. Responsible official of agency to be served.

108.5(2) A description of the solid by-product under review and its proposed use.

108.5(3) The chemical and physical characteristics of the solid by-product under review and of each type of proposed product.

108.5(4) A demonstration that there is a known or reasonably probable market for the intended use of the solid by-product under review by providing one or more of the following:

a. A contract to purchase or utilize the solid by-product for the use proposed.

b. A description of how the solid by-product will be used.

c. A demonstration that the solid by-product complies with industry standards and specifications for that product.

d. Other documentation that a market for the solid by-product exists.

108.5(5) A demonstration that the proposed use of the solid by-product will not adversely affect human health or the environment. The demonstration may include, but is not limited to, a toxicity characteristics leaching procedure (TCLP, EPA Method 1311) analysis and total metals testing of a representative sample of the solid by-product.

108.5(6) A solid by-product management plan pursuant to 108.6(2).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

567—108.6(455B,455D) Requirements for beneficial uses other than alternative cover material.

108.6(1) Solid by-products beneficially used as fill material. All beneficial uses, including those listed in 567—108.4(455B,455D) other than rubble and soil, shall meet the following requirements, unless a variance is granted in writing by the department for a specific location, if the beneficial use entails the solid by-product's being used as fill material:

a. Leachate characteristics of the solid by-product shall be measured by the synthetic precipitation leaching procedure (SPLP, EPA Method 1312) and shall be less than or equal to ten times the maximum contaminant levels (MCL) for drinking water. Foundry sand and coal combustion by-products may limit the SPLP analytes to total metals for drinking water.

b. Total metals testing results, which shall include thallium, shall be consistent with the department's statewide standards for soil pursuant to 567—Chapter 137. Arsenic levels shall be consistent with the statewide standards for soil or the naturally occurring (i.e., background) arsenic levels of the soil, whichever are greater.

c. The solid by-product shall produce a fill that has a pH:

(1) Greater than or equal to 5 and less than or equal to 8 if the fill may be used as growing media either now or in the future.

(2) Greater than or equal to 5 and less than 12 if the fill is specifically intended not to be used as growing media either now or in the future. In this category of fill, materials with a pH equal to or greater than 10 but less than 12 shall be used only in areas where direct physical contact by humans for long periods of time is not expected to occur.

(3) For deep fills where only the surface may serve as growing media either now or in the future, then at a minimum the top three feet shall have a pH greater than or equal to 5 and less than or equal to 8. Fill material below the top three feet shall have a pH greater than or equal to 5 and less than or equal to 12.

d. The by-product shall not be placed in a waterway or wetland or any waters of the state or extend below or within five feet of the high water table.

e. The by-product shall not be placed within the 100-year flood plain unless in accordance with all local and department regulations including rule 567—71.5(455B).

f. The by-product shall not be placed closer than 200 feet to a sinkhole or to a well that is being used or could be used for human or livestock water consumption.

g. The by-product shall not be putrescible.

108.6(2) Solid by-product management plans. All recipients of beneficial use determinations granted pursuant to 567—108.5(455B,455D) and coal combustion by-product and foundry sand beneficial uses listed in 567—108.4(455B, 455D) shall develop and maintain a solid by-product management plan that satisfies the following requirements:

a. Lists the source(s) of the solid by-product.

b. Lists procedures for periodic testing of the solid by-product to ensure that the chemical and physical composition has not changed significantly.

c. Provides a description of storage procedures including:

(1) Storage location(s).

(2) Maximum anticipated inventory, including dimensions of any stockpiles.

(3) Run-on and run-off controls, which may include a storm water National Pollutant Discharge Elimination System (NPDES) permit.

(4) Management practices to minimize uncontrolled dispersion of the solid by-product.

(5) Maximum storage time, not to exceed six months unless authorized in writing by the department.

567—108.7(455B,455D) Record-keeping and reporting requirements for beneficial use projects other than alternative cover material.

108.7(1) Any entity that engages in the beneficial use of a solid by-product, other than for alternative cover material, and that satisfies at least one of the following criteria shall comply with record-keeping and reporting requirements set forth in this rule:

a. The entity has been granted a beneficial use determination pursuant to 567—108.5(455B,455D).

b. The solid by-product is not rubble or soil and is being beneficially used as fill material.

c. The solid by-product is a coal combustion by-product or foundry sand.

108.7(2) Record keeping. Generators shall maintain all records related to the solid by-product management plan for a minimum duration of five years.

108.7(3) Reporting. Reports shall be filed with the department's central office and the field office with jurisdiction over the generator as follows:

a. Unless otherwise directed by the department, generators shall submit to the department a copy of the solid by-product management plan whenever that plan is revised or within 60 days of the end of the calendar year, whichever is earlier.

b. Generators whose solid by-products are being beneficially used as fill material shall submit to the department within 60 days of the end of the calendar year the following information for each beneficial use project or activity:

(1) The location of the project.

(2) The tons of solid by-product utilized for the project.

567—108.8(455B,455D) Universally approved beneficial use determinations for alternative cover material.

Unless the landfill is otherwise notified pursuant to 567—108.11(455B,455D), the following alternative cover materials may be beneficially used as daily cover material at sanitary landfills in the manner and volume specified by sanitary landfill rules. However, sanitary landfills shall amend their sanitary landfill permits by notifying the department, and the department field office with jurisdiction over the facility, of their intent to utilize solid by-products pursuant to this rule at least 30 days prior to actual utilization of the by-products as alternative cover material.

108.8(1) Asphalt shingles. Asphalt shingles that are certified, consistent with federal regulations (Reference: Appendix E, Subpart E, 40 CFR Part 763, Section 1, Polarized Light Microscopy), as not containing more than 1 percent asbestos and are ground to an average size of 3 inches or less in any dimension may be mixed with soil in a 50/50 volume.

108.8(2) Coal combustion by-products. Coal combustion by-products may be mixed with soil in a 50/50 volume.

108.8(3) Compost. One hundred percent cured or finished compost, and compost rejects, may be used.

108.8(4) Diatomaceous earth. Diatomaceous earth may be mixed with soil in a 50/50 volume.

108.8(5) Foundry sand. Foundry sand may be mixed with soil in a 50/50 volume.

108.8(6) Glass. Glass that has been ground to an average size of ½ inch or less in any dimension may be mixed with soil in a 10 percent glass and 90 percent soil by volume mixture.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

108.8(7) Gypsum and gypsum wallboard. Gypsum and gypsum wallboard that have been ground to an average size of 3 inches or less in any dimension may be mixed with soil in a 50/50 volume.

108.8(8) Paper mill sludge. Uncontaminated, dewatered paper mill sludge may be mixed with soil in a 50/50 volume.

108.8(9) Sandblasting abrasive. Sandblasting abrasive and residuals may be mixed with soil in a 50/50 volume.

108.8(10) Soil, including petroleum-contaminated soil. Petroleum-contaminated soils that have been decontaminated to the satisfaction of the department pursuant to 567—Chapter 120 may be utilized.

108.8(11) Tire chips. Tire chips that are an average size of 3 inches or less in any dimension may be mixed with soil in a 50/50 volume.

567—108.9(455B,455D) Beneficial use determination application requirements for alternative cover material.

Unless the alternative cover material beneficial use is approved pursuant to 567—108.8(455B,455D), the applicant shall submit the following application information to the department to amend the sanitary landfill permit. The department may request that additional information be submitted in order to make a beneficial use determination. The department may also require specific beneficial use determination conditions and issue a temporary beneficial use determination on a trial basis.

If the department finds the application information to be incomplete, then it shall notify the applicant in writing of that fact and of the specific deficiencies and return the application materials to the applicant within 30 days of such notification. The applicant may reapply without prejudice.

108.9(1) The name, address, and telephone number of:

- a. Owner of the site where the project will be located.
- b. Applicant for the beneficial use determination.
- c. Official responsible for the operation of the project.
- d. Professional engineer (P.E.) licensed by the state of Iowa and retained for the project, if any. The department may, at its sole discretion, require the applicant to retain a professional engineer for the project or specific parts thereof.
- e. Agency to be served by the project, if any.
- f. Responsible official of agency to be served.

108.9(2) A description of the proposed alternative cover material and whether it is to be used as daily, intermediate, or final cover.

108.9(3) The chemical and physical characteristics of the alternative cover material.

108.9(4) The proposed volume ratio of the alternative cover material(s) to soil or other alternative cover material(s).

108.9(5) A demonstration that there is a known or reasonably probable suitability of the alternative cover material as cover material by providing previous case studies of the alternative cover material's being utilized as cover material or the following information:

- a. Information on the ability of the alternative cover material to reduce or maintain current odor levels.
- b. Information on the ability of the alternative cover material to reduce or deter vectors.
- c. Information on the ability of the alternative cover material to reduce or maintain the current risk of fire.
- d. Information on the ability of the alternative cover material to control litter and dust.
- e. Information on the ability of the alternative cover material to impede the infiltration of liquids and precipitation.
- f. Information on the ability of the alternative cover material to control landfill gas migration.

g. Information on the ability of the alternative cover material to provide a safe and effective working surface.

h. Information on the ability of the alternative cover material to provide effective growing media.

i. Other documentation that the alternative cover material is suitable for cover material.

108.9(6) A demonstration that the proposed use of the alternative cover material will not adversely affect human health or the environment. The demonstration may include, but is not limited to, a toxicity characteristics leaching procedure (TCLP, EPA Method 1311) analysis of a representative sample of the alternative cover material.

567—108.10(455B,455D) Beneficial use of alternative cover material and state goal progress. Alternative cover material placed at no more than the thickness required by sanitary landfill rules shall be exempt from landfill tonnage measurements used for state goal progress and waste diversion calculations.

567—108.11(455B,455D) Revocation of beneficial use determinations. The department may revoke any beneficial use determination given pursuant to this chapter if it finds one or more of the following:

1. The matters serving as the basis for the department's determination were incomplete or incorrect or are no longer valid.
2. The department finds that there has been a violation of any law, rule, permit or other authorization in its jurisdiction.
3. The department has reasonable cause to suspect a significant risk to or adverse affect on human health or the environment.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.4.

[Filed 2/28/03, effective 4/23/03]

[Published 3/19/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/19/03.

ARC 2353B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, subsection 6, the Insurance Division hereby amends Chapter 90, "Financial and Health Information Regulation," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 22, 2003, as **ARC 2245B**. A public hearing was held on February 11, 2003. No one appeared at the hearing. The Division received one comment letter. No changes were made to the amendments as proposed in the Notice.

The amendments provide guidance to licensees and allow them to assist their customers in the replacement of existing coverage. The amendments exempt a licensee from the privacy notice if there is a customer relationship and the licensee is searching for insurance coverage to replace existing coverage or the agent lists or contracts are canceled and the licensee is required to move the existing coverage to a new carrier.

The Commissioner adopted the amendments on February 26, 2003.

INSURANCE DIVISION[191](cont'd)

These amendments are intended to implement Iowa Code section 505.8, subsection 6.

These amendments will become effective April 23, 2003. The following amendments are adopted.

ITEM 1. Amend subrule **90.3(2)** by adding the following **new** paragraph "**c**":

c. The licensee has a customer relationship with the consumer and the consumer consents to the licensee's searching for insurance coverage to replace existing coverage or the licensee is selling the agency expiration lists or the agency contract is canceled and the licensee is required to move the existing coverage to a new carrier.

ITEM 2. Amend rule 191—90.4(505) by adding the following **new** subrule:

90.4(4) A licensee is only required to provide the initial privacy notice unless the content of the notice is changed or amended.

[Filed 2/28/03, effective 4/23/03]

[Published 3/19/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/19/03.

ARC 2354B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80A.15, the Department of Public Safety hereby amends Chapter 2, "Bail Enforcement, Private Investigation and Private Security Businesses," Iowa Administrative Code.

These amendments clarify a number of existing provisions and update procedural information regarding the licensure of bail enforcement, private investigation and private security agencies. In addition, this rule making incorporates the amendments to Chapter 2 that were Adopted and Filed Emergency and published in the June 26, 2002, Iowa Administrative Bulletin as **ARC 1762B**. The amendments published as **ARC 1762B** became effective July 1, 2002, and were intended to implement 2002 Iowa Acts, House File 2249.

These amendments were proposed in a Notice of Intended Action, which was published in the Iowa Administrative Bulletin on August 21, 2002, as **ARC 1895B**. A public hearing regarding these amendments was held on September 26, 2002. Four oral comments and two written comments were received. Three of the comments objected to the removal of the irrevocable letter of credit as proof of financial responsibility. One of the comments objected to the removal of any of the means of proof of financial responsibility. One of the comments questioned the need for fingerprint submission as part of license renewals, and one comment questioned why there was an expansion of the insurance investigation exemption.

Proof of financial responsibility as shown by an annual net worth statement or by other proof as accepted by the Commissioner may not be accurate throughout the required time period because the licensee may dispose of assets without the knowledge or assent of the Department. Licensees using ei-

ther of these methods will be given until January 1, 2004, to secure insurance as proof of financial responsibility.

Proof of financial responsibility as shown by an irrevocable letter of credit is more reliable than a net worth statement. However, the requirement of \$5,000 is quite low. Rather than raise that dollar amount, the department will allow licensees who use this method to continue to do so until they secure insurance or as long as their licenses remain valid.

Fingerprint submission by licensees at the time of their biennial license renewal enables the Department to review for any disqualifying criminal activity during the previous two years. This is a resumption of past practice when the Department made computerized inquiries to both the state and national criminal history data bases.

Regarding the comment questioning the expansion of the insurance investigation exemption, the rule revision only reflects the current application of this exemption; there is no expansion.

Additionally, one comment was received during the meeting of the Administrative Rules Review Committee on September 10, 2002, regarding the authority of the Commissioner of Public Safety to review the approval previously given for any badge, uniform, insignia, patch or hat of a private security company and to rescind or modify that approval subsequent to a written complaint. That proposed amendment has been withdrawn from the adopted amendments; the issue will be reviewed and addressed at a later time.

The amendments adopted here include those previously Adopted and Filed Emergency and contain the following changes from the Notice of Intended Action: the extension of the amount of time that will be allowed for licensees using net worth statements and other means of proof to obtain insurance (subrule 2.4(6)), the allowance of current users of irrevocable letters of credit to continue using them for as long as they remain continuously in effect (subrule 2.4(6)), and the removal of the proposed amendment regarding the Commissioner's ability to review and rescind or modify the approval previously given for any badge, uniform, insignia, patch or hat of a private security company (rule 2.12(80A)).

Subrule 2.4(6) now reads as follows:

"**2.4(6)** Proof of financial responsibility. Proof of financial responsibility shall be given by filing a certificate of insurance from a licensed insurance company demonstrating coverage for general liability, completed operations and personal injury. Personal injury insurance shall include coverage for the following groups of offenses:

"a. False arrest, detention, or imprisonment, or malicious prosecution.

"b. Libel, slander, defamation or violation of rights of privacy.

"c. Wrongful entry or eviction or other invasion of rights of private occupancy.

"The certificate shall provide that the insurance shall not be modified or canceled unless 30 days' prior notice is given to the department. Licensees shall have no more than 30 days following any specified expiration dates to comply with insurance requirements. The department may grant a temporary license if the licensee has not complied with the certificate of insurance requirement. However, the license shall be automatically suspended if the licensee has not complied with the certificate of insurance requirement within 30 days of the granting of the temporary license.

"EXCEPTION 1: Current licensees who have provided proof of financial responsibility by filing an annual net worth statement or by offering other proof of assets as accepted by the commissioner as of May 1, 2003, shall be allowed to continue

PUBLIC SAFETY DEPARTMENT[661](cont'd)

using that means of providing proof of financial responsibility until January 1, 2004.

“EXCEPTION 2: Current licensees who have provided proof of financial responsibility by filing an irrevocable letter of credit as of May 1, 2003, shall be allowed to continue using that means of providing proof of financial responsibility as long as their license remains continuously valid or until such proof is replaced by liability insurance.

“NOTE: Licensees who provide proof of financial responsibility pursuant to exception 1 or 2 shall continue to meet the applicable requirements established in subrule 2.4(5) prior to May 1, 2003.”

The last unnumbered paragraph in rule 2.12(80A) was not adopted; the rule now reads as follows:

“661—2.12(80A) Badges, uniforms, insignia, patches and hats. No badges, uniforms, insignia, patches, or hats will be approved for private investigative or bail enforcement agents. No holder of a license or ID card while performing the duties of a private security guard shall wear any uniform, or wear, display, or likewise use any badge, insignia, patch, shield, or the like, without the prior written approval of the commissioner. Any person wearing an approved uniform shall carry a valid ID card issued by the department.

“The commissioner will not approve any item subject to this rule if in the commissioner’s opinion it would cause a person to confuse the operation of the licensed business with that of a law enforcement agency. The commissioner may consider the appearance of the badge, uniform, insignia, patch or hat of the requesting agency, as well as the appearance of badges, uniforms, insignias, patches or hats of law enforcement agencies in or near the area in which the requesting agency performs services. The commissioner may also consider any other information when making a decision regarding the approval of any item subject to this rule.

“Badges, insignia and patches will be approved only for private security as a part of an approved uniform. No badge, insignia, patch or hat will be approved which contains the word or words ‘police,’ ‘officer,’ ‘policeman,’ or ‘enforcement,’ or the Great Seal of the State of Iowa. The words ‘security’ and ‘officer’ may be used when they appear as the single term ‘security officer.’”

These amendments are intended to implement Iowa Code chapter 80A.

These amendments will become effective May 1, 2003.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 2] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 1895B**, IAB 8/21/02.

[Filed 2/28/03, effective 5/1/03]
[Published 3/19/03]

[For replacement pages for IAC, see IAC Supplement 3/19/03.]

ARC 2352B

STATUS OF WOMEN DIVISION[435]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 216A.54, the Commission on the Status of Women hereby amends Chapter 1, “Description,” Chapter 2, “Duties,” Chapter 3, “Iowa Women’s Hall of Fame,” and Chapter 5, “Iowans in Transition,” Iowa Administrative Code.

The Commission on the Status of Women recommended these amendments as a result of its complete review of administrative rules in accordance with Executive Order Number 8. Each is a clarification of an existing rule.

Notice of Intended Action was published in the November 27, 2002, Iowa Administrative Bulletin as **ARC 2127B**. No public comment was received on these amendments. The adopted amendments are identical to those published under Notice.

These amendments were approved during the February 20, 2003, meeting of the Commission on the Status of Women.

These amendments will become effective April 23, 2003.

These amendments are intended to implement Executive Order Number 8 and Iowa Code section 216A.57.

The following amendments are adopted.

ITEM 1. Amend rule 435—1.1(216A), introductory paragraph, as follows:

435—1.1(216A) Composition. The commission on the status of women consists of nine voting members appointed by the governor subject to confirmation by the senate; and five members serving as ex officio nonvoting members: one to be appointed by the speaker of the house from the membership of the house, one to be appointed by the minority leader of the house from the membership of the house, one to be appointed by the majority leader of the senate from the membership of the senate, one to be appointed by the minority leader of the senate from the membership of the senate, and one to be the director of the department of human rights. *Commissioners are appointed to comply with Iowa Code section 69.16 regarding political affiliation and section 69.16A regarding gender balance.*

ITEM 2. Amend rule 435—2.2(216A), introductory paragraph, as follows:

435—2.2(216A) Authority. The administrator carries out the program and policies as determined by the commission. The commission holds hearings, *adopts rules*, enters into contracts, accepts grants, and seeks advice and counsel outside its membership in the performance of its duties which are to:

ITEM 3. Amend **435—Chapter 2** by adding the following **new** implementation clause:

These rules are intended to implement Iowa Code section 216A.54.

ITEM 4. Amend rule 435—3.1(216A) as follows:

435—3.1(216A) Purpose. The purpose of the Iowa Women’s Hall of Fame shall be to recognize significant achievements of Iowa women and to educate the public by identifying those whose efforts have enhanced and improved the quality of life for women in Iowa, *the community, state, nation or world, or a particular profession or discipline.*

ITEM 5. Rescind rule 435—3.2(216A) and adopt the following **new** rule in lieu thereof:

STATUS OF WOMEN DIVISION[435](cont'd)

435—3.2(216A) Committee. The Iowa Women's Hall of Fame committee shall consist of three commissioners, one serving as the committee chair; two public members appointed by the committee chair; and the commission chair ex officio.

ITEM 6. Amend rule 435—3.3(216A) as follows:

435—3.3(216A) Selections procedure. The committee shall solicit nominations for the *Iowa Women's Hall of Fame*. The committee shall recommend to the commission for its approval ~~those no more than four~~ individuals to be inducted into the *Iowa Women's Hall of Fame*. The committee shall plan the ceremony and reception each year for the *Iowa Women's Hall of Fame*.

ITEM 7. Amend rule 435—3.4(216A) as follows:

435—3.4(216A) Cristine Wilson Medal for Equality and Justice. The Cristine Wilson Medal for Equality and Justice

shall ~~recognize~~ *memorialize* the efforts and accomplishments of the commission's first chairperson. The medal is awarded on an intermittent basis to persons whose work is deemed outstanding and a significant contribution to Iowa's recognition as a state characterized by equality and justice. The *Iowa Women's Hall of Fame* committee shall ~~seek nominations from the commission and~~ make recommendations to the commission for persons to receive this award.

ITEM 8. Amend **435—Chapter 5**, implementation clause, as follows:

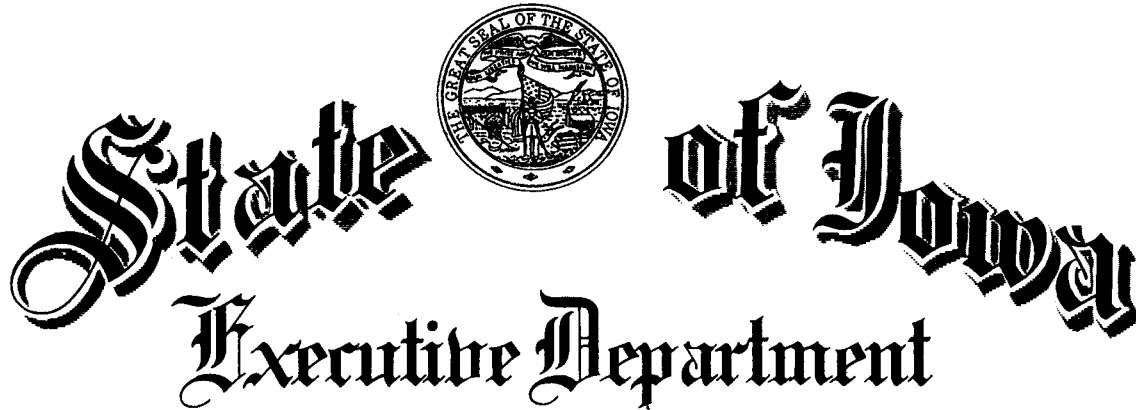
These rules are intended to implement Iowa Code ~~section 216A.52~~ *sections 216A.57 and 216A.58*.

[Filed 2/25/03, effective 4/23/03]

[Published 3/19/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/19/03.

AGENCY	RULE	DELAY
Human Services Department[441]	77.37(14)“e”(2), 77.39(13)“e,” 78.41(1)“c”(3), 78.41(1)“d,” 78.43(2)“c,” 78.43(2)“c”(3), 78.43(2)“d” [IAB 12/11/02, ARC 2161B]	Effective date of December 15, 2002, delayed 70 days by the Administrative Rules Review Committee at its meeting held December 10, 2002. [Pursuant to §17A.4(5)] At its meeting held February 21, 2003, the Committee voted to delay the effective date until adjournment of the 2003 Session of the General Assembly. [Pursuant to §17A.8(9)]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** EXECUTIVE ORDER NUMBER TWENTY-SEVEN**

- WHEREAS,** the State of Iowa enjoys a proud history of nurturing independence, encouraging education and productivity, and welcoming individuals of diverse backgrounds, abilities, and needs into our communities to share in our exemplary quality of life; and
- WHEREAS,** the State of Iowa is committed to ensuring that inclusive, community-based living alternatives are available to individuals with disabilities and long-term illnesses; and
- WHEREAS,** the State of Iowa recognizes that such services advance the best interests of all Iowans by fostering independence, productivity, and participation in community life for Iowans with disabilities and long-term illnesses; and
- WHEREAS,** the unnecessary and unjustified segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. §§ 12101 *et seq.*, which requires that states and localities administer their programs, services, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities; and
- WHEREAS,** in *Olmstead v. L.C.*, 527 U.S. 581 (1999) (the “*Olmstead* decision”), the United States Supreme Court interpreted Title II of the ADA to require States to place qualified individuals with disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities; and
- WHEREAS,** the State of Iowa has taken affirmative steps in response to the *Olmstead* decision, including: (1) designating the Iowa Department of Human Services as the State’s lead agency in developing and implementing an *Olmstead* plan for Iowa; (2) compiling a report on the service delivery system in Iowa prior to the *Olmstead* decision; (3) convening twenty public meetings to gather input from consumers

and other stakeholders for the development of a comprehensive, effectively working plan to provide services to qualified individuals with disabilities in Iowa; (4) establishing a statewide steering committee to oversee plan development; (5) distributing the resulting Iowa Plan for Community Development; (6) convening the *Olmstead* Real Choices Consumer Task Force to oversee plan implementation; and (7) and applying for and receiving federal funding through the Real Choices System Change Grant to aid in the development of community living alternatives in Iowa; and

WHEREAS, barriers to community living still exist for individuals with disabilities and long term illnesses in Iowa; and

WHEREAS, the State of Iowa must continue to move purposefully to swiftly implement the *Olmstead* decision through the coordinated efforts of designated State agencies, so as to help ensure that all Iowans have the opportunity to live close to their family and friends, to live more independently, to engage in productive employment, and to participate in community life; and

WHEREAS, a comprehensive and coordinated effort by designated State agencies is called for to develop strategies for re-shaping the structure and nature of community-based services for individuals with disabilities within the State of Iowa:

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and the Constitution of the State of Iowa, do hereby order and direct the heads of the following state agencies to undertake steps to identify and address barriers to community living for individuals with disabilities and long term illnesses in Iowa:


Board of Regents
Department for the Blind
Department of Civil Rights
Department of Corrections
Department of Economic Development
Department of Education
Department of Elder Affairs
Department of General Services
Department of Human Rights
Department of Human Services
Department of Inspections and Appeals
Department of Management
Department of Personnel
Department of Public Health
Department of Public Safety
Department of Transportation
Department of Veterans Affairs
Department of Workforce Development
Iowa Finance Authority
Iowa Veterans Home

- I. Each agency head shall designate a representative to evaluate policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities. This workgroup of agency representatives shall work together and with the Governor’s Office to seek input from consumers, advocacy organizations, providers, and relevant agency representatives while conducting this review. Together, this group shall develop a state plan to address the barriers identified. An initial plan shall be developed within 120 days.

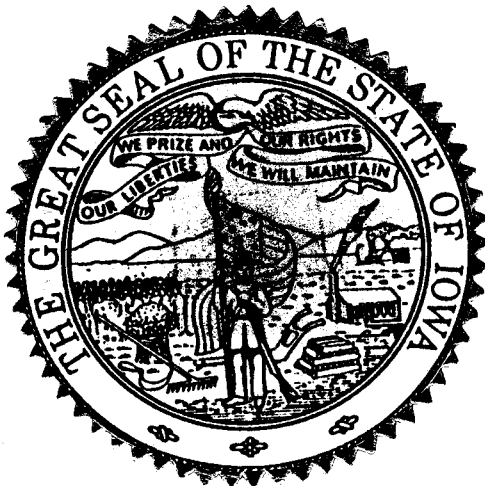
- II. State agency heads shall (1) draw upon existing resources, including the Iowa Plan for Community Development and the *Olmstead* Real Choices Consumer Task Force, to identify and prioritize the existing barriers to community living for individuals with disabilities in Iowa; (2) engage in planning activities to ensure that the resources of each State agency are utilized in the most efficient and effective manner to support the goals of the ADA; (3) identify and utilize federal funding opportunities for the support of *Olmstead*-related activities within the State of Iowa.

- III. The *Olmstead* Real Choices Consumer Task Force and the Department of Human Services shall advise the Governor’s Office on workable strategies for addressing barriers to community integration for individuals with disabilities and for developing a well-coordinated and seamless service delivery system, wherein State agencies, counties, and localities work together in a more cohesive manner to deliver needed services, including the identification of specific state law, administrative rules, or policy changes that could eliminate existing barriers, and recommended strategies for on-going communication and coordination of efforts between agencies.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 4th day of February, in the year of our Lord two thousand three.



 THOMAS J. VILSACK
 GOVERNOR



ATTEST:



 CHESTER J. CULVER
 SECRETARY OF STATE

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