



# IOWA ADMINISTRATIVE BULLETIN

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Pages 549 to 648

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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 and rules adopted by state agencies.

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [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.

KATHLEEN K. WEST, Administrative Code Editor

Telephone: (515)281-3355

STEPHANIE A. HOFF, Deputy Editor

(515)281-8157

Fax: (515)281-5534

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COMMERCE DEPARTMENT[181]"umbrella"

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**WORKERS' COMPENSATION DIVISION[876]**

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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).

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

## Schedule for Rule Making 2007

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
<b>*Dec. 27 '06*</b>	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	<b>***May 16***</b>	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	<b>***June 27***</b>	July 18	Aug. 22	Nov. 19
<b>***May 16***</b>	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
<b>***June 27***</b>	July 18	Aug. 7	Aug. 22	<b>***Aug. 22***</b>	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
<b>***Aug. 22***</b>	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	<b>***Nov. 14***</b>	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	<b>***Dec. 12***</b>	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	<b>***Dec. 26***</b>	Jan. 16 '08	Feb. 20 '08	May 19 '08
<b>***Nov. 14***</b>	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
<b>***Dec. 12***</b>	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
<b>***Dec. 26***</b>	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
<b>9</b>	<b>Friday, October 5, 2007</b>	<b>October 24, 2007</b>
<b>10</b>	<b>Friday, October 19, 2007</b>	<b>November 7, 2007</b>
<b>11</b>	<b>Friday, November 2, 2007</b>	<b>November 21, 2007</b>

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\*\*\***

## SUBSCRIPTION INFORMATION

In 2008, mail subscriptions to the Iowa Administrative Bulletin and the Iowa Administrative Code will be discontinued, and Internet updating and printing options will be instituted through the Iowa General Assembly's Internet home page: [www.legis.state.ia.us](http://www.legis.state.ia.us).

### Iowa Administrative Bulletin

July 2007 through December 2007 ..... \$169

### Iowa Administrative Code Supplement

\*July 2007 through December 2007 ..... \$263

**\*Please note that if the Internet updating and printing options are not operational in January 2008, the above six-month subscriptions (July 2007 – December 2007) will be continued at no cost to the subscriber until the Internet updating and printing options become operational.**

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8 ½" x 11" Iowa Administrative Code binders ..... \$20 each

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 9, 2007, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

#### ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of goods and services of general use, 105.2, 105.3(3), 105.4(2)“a,”  
105.7(1)“a,” 105.7(3), 105.7(4), Filed **ARC 6233B** ..... 9/12/07

#### CAPITAL INVESTMENT BOARD, IOWA[123]

Correction of cross references; taxpayer identification numbers, 2.1, 2.3, 2.5(1)“d,” 2.5(2)“c,” 3.1,  
Filed **ARC 6245B** ..... 9/12/07

#### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Reorganization of departmental rules, amend chs 1, 53, 57, 59, 60, 61, 68; rescind chs 2, 17, 103, 168; renumber  
ch 102 as ch 34, ch 104 as ch 33, ch 132 as ch 72 and chs 169 to 173 as chs 195 to 199; adopt chs 165,  
171 to 175, 187 to 189, Filed **ARC 6247B** ..... 9/26/07

Workforce training and economic development funds, 9.2, 9.4, 9.5, 9.5(6), 9.6, 9.8(1),  
9.9(2), Filed **ARC 6220B** ..... 9/12/07

Housing fund, 25.2, 25.6(8), 25.9(3), Filed **ARC 6221B** ..... 9/12/07

Regional tourism marketing grant program, ch 35, Notice **ARC 6216B** ..... 9/12/07

Film, television, and video project promotion program, ch 36, Filed **ARC 6218B** ..... 9/12/07

Enterprise zones, 59.2, 59.3(6), Filed **ARC 6219B** ..... 9/12/07

Demonstration fund, ch 105, Notice **ARC 6215B**, also Filed **Emergency ARC 6217B** ..... 9/12/07

#### EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Complaints—who may initiate, 11.4(1), Notice **ARC 6246B** ..... 9/12/07

Administrator license, 14.114, Notice **ARC 6237B** ..... 9/12/07

Fee for extension of coaching authorization renewal, 14.121(1)“b”(10), 19.5(2), Filed **ARC 6234B** ..... 9/12/07

Statement of professional recognition (SPR) for school nurses, 14.140(11)“b,” Filed **ARC 6235B** ..... 9/12/07

Business teaching endorsement, 14.141(3) to 14.141(5), Filed **ARC 6230B** ..... 9/12/07

Mathematics teaching endorsement—coursework in geometry, 14.141(13)“b,” Filed **ARC 6227B** ..... 9/12/07

Renewal of administrator licenses, 17.7(3), Notice **ARC 6238B** ..... 9/12/07

Evaluator license renewal—coursework, 20.58(1), Filed **ARC 6225B** ..... 9/12/07

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or the commission, 2.9, 2.10, Notice **ARC 6226B** ..... 9/12/07

Senior Internship program, ch 10, Notice **ARC 6228B** ..... 9/12/07

Waivers or variances from administrative rules, 11.2, 11.17, Notice **ARC 6229B** ..... 9/12/07

Rules and practices in contested cases, ch 13, Notice **ARC 6231B** ..... 9/12/07

Declaratory orders, ch 18, Notice **ARC 6232B** ..... 9/12/07

#### ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Statewide ambient air quality standards, 28.1, Filed **ARC 6252B** ..... 9/26/07

Recreational use assessment and attainability analysis protocol, 61.3(8), Notice **ARC 6251B** ..... 9/26/07

Regulatory analysis on **ARC 5636B**, animal feeding operations, 65.17(18)“c,” 65.17(20), 65.112(8)“a”(2),  
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#### HUMAN SERVICES DEPARTMENT[441]

Medicaid reimbursement of nursing facilities, 81.1, 81.6(16), 81.6(16)“e”(1)“2,”  
81.6(16)“f”(1)“2,” 81.6(16)“f”(2)“2,” 81.6(16)“f”(3)“2,” 81.6(16)“f”(4)“2,”  
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#### INSPECTIONS AND APPEALS DEPARTMENT[481]

Game nights, 100.31, 100.60 to 100.63, ch 107, Filed **ARC 6263B** ..... 9/26/07

Card game tournaments by veterans organizations, ch 106, Filed **ARC 6236B** ..... 9/12/07

**INTERIOR DESIGN EXAMINING BOARD[193G]**Professional Licensing and Regulation Bureau[193]  
COMMERCE DEPARTMENT[181]"umbrella"

- Continuing education, ch 3, Filed **ARC 6259B** ..... 9/26/07  
 Registration renewal and reinstatement, ch 8, Filed **ARC 6258B** ..... 9/26/07

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Cosmetology arts and sciences, 60.1, 60.3(4) to 60.3(7), 60.4, 60.5(4), 60.5(5), 60.6, 60.7, 60.8(1),  
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 Cosmetology arts and sciences—requirements for licensure, 60.2, Filed Without Notice **ARC 6239B** ..... 9/12/07  
 Massage therapy licensure, 131.2(7), 131.5(1)"d," 131.5(3), 131.14(3)"b"(3), Notice **ARC 6262B** ..... 9/26/07  
 Massage therapy, 131.8(3)"c," ch 132, 135.1(10) Filed **ARC 6257B** ..... 9/26/07  
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**PUBLIC SAFETY DEPARTMENT[661]**

- Sheriff and deputy sheriff uniforms, rescind ch 3; adopt ch 125, Notice **ARC 6222B** ..... 9/12/07  
 Flammable and combustible liquids, 51.200 to 51.203, 51.205, 51.206, 51.250, 51.300,  
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 Aboveground petroleum storage tanks, 51.204, ch 224, Notice **ARC 6255B** ..... 9/26/07  
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 Motor fuel and undyed special fuel tax rates, 68.2(1), Filed **ARC 6244B** ..... 9/12/07  
 Property tax, 70.22(1)"e" to "j," 71.5(2)"a," 71.20(4)"a," 75.8, 78.8, 80.26, Notice **ARC 6242B** ..... 9/12/07

**SECRETARY OF STATE[721]**

- Use of voting equipment; paper record, 21.1(10), 21.25, 22.1, 22.5(8), 22.5(10) 22.9(1),  
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 26.2(4), 26.4(1), 26.4(3), 26.12, 26.62, 26.104(1)"d," 26.105(2), 26.105(3),  
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 Absentee voting; electioneering at satellite absentee voting station, 21.300, 21.300(8)"c," 21.303, 21.350 to 21.355,  
 21.359(4), 21.361(2), 21.361(8), 21.370 to 21.376, Filed Emergency After Notice **ARC 6266B** ..... 9/26/07  
 Testing of voting equipment, 22.39, 22.41 to 22.43, Filed **ARC 6265B** ..... 9/26/07

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

- Incident and outage reporting requirements for natural gas, electric, and water utilities, communications providers,  
 and owners and operators of electric facilities, 19.1(3), 19.2(5)"b," 19.2(5)"i," 19.7(7)"a," 19.17, 20.2(5)"k,"  
 20.18(6), 20.19, 21.9, 22.2(6)"a," 22.2(8), 25.5, Notice **ARC 6267B** ..... 9/26/07

**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

- Retired and senior volunteer program (RSVP), ch 7, Filed **ARC 6261B** ..... 9/26/07  
 Iowa youth mentoring program certification, ch 8, Filed **ARC 6260B** ..... 9/26/07

**WORKERS' COMPENSATION DIVISION[876]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Use of voice or video technology in contested case hearings, 4.49, Filed **ARC 6249B** ..... 9/26/07

**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, 2011.**

Senator Jeff Angelo  
P.O. Box 604  
Creston, Iowa 50801

Senator Michael Connolly  
2600 Renaissance Drive, #3  
Dubuque, Iowa 52001

Senator Thomas Courtney  
2200 Summer Street  
Burlington, Iowa 52601

Senator John P. Kibbie  
P.O. Box 190  
Emmetsburg, Iowa 50536

Senator James Seymour  
901 White Street  
Woodbine, Iowa 51579

Joseph A. Royce  
**Legal Counsel**  
Capitol  
Des Moines, Iowa 50319  
Telephone (515)281-3084  
Fax (515)281-8451

Representative Marcella R. Frevert  
P.O. Box 324  
Emmetsburg, Iowa 50536

Representative David Heaton  
510 East Washington  
Mt. Pleasant, Iowa 52641

Representative David Jacoby  
2308 North Ridge Drive  
Coralville, Iowa 52241

Representative Linda Upmeyer  
2175 Pine Avenue  
Garner, Iowa 50438

Representative Philip Wise  
503 Grand Avenue  
Keokuk, Iowa 52632

James Larew  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 11  
Des Moines, Iowa 50319  
Telephone (515)281-0208

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Regional tourism marketing grant program, ch 35 IAB 9/12/07 <b>ARC 6216B</b>	Main Conference Rm., Second Floor 200 East Grand Ave. Des Moines, Iowa	October 8, 2007 3 to 4:30 p.m.
Demonstration fund, ch 105 IAB 9/12/07 <b>ARC 6215B</b> (See also <b>ARC 6217B</b> )	Main Conference Rm., Second Floor 200 East Grand Ave. Des Moines, Iowa	October 8, 2007 3 to 4:30 p.m.
<b>EDUCATIONAL EXAMINERS BOARD[282]</b>		
Initiation of complaints; duties of executive director, 11.4(1) IAB 9/12/07 <b>ARC 6246B</b>	Rm 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	October 3, 2007 1 p.m.
Initial administrator license, 14.114 IAB 9/12/07 <b>ARC 6237B</b>	Rm 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	October 3, 2007 1 p.m.
Renewal of administrator license, 17.7(3) IAB 9/12/07 <b>ARC 6238B</b>	Rm 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	October 3, 2007 1 p.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Air quality regulations for grain elevators, 20.2, 22.1(1), 22.10, 22.100, 23.4(7) IAB 8/29/07 <b>ARC 6186B</b>	Amana Room Kirkwood Community College Cedar Rapids, Iowa	September 26, 2007 1 p.m.
	Clay County Regional Events Ctr. 800 W. 18th St. Spencer, Iowa	October 2, 2007 1 p.m.
Recreational use assessment and attainability analysis protocol, 61.3(8) IAB 9/26/07 <b>ARC 6251B</b>	Fourth Floor West Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	October 23, 2007 2 p.m.
Regulatory analysis on <b>ARC 5636B</b> , animal feeding operations, 65.17, 65.112 IAB 9/26/07 <b>ARC 6250B</b>	Fifth Floor Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	October 16, 2007 11 a.m.
<b>NATURAL RESOURCE COMMISSION[571]</b>		
REAP selection criteria, 33.30(4), 33.40(5), 33.50(5) IAB 8/29/07 <b>ARC 6200B</b>	4th Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 28, 2007 10:30 a.m.
<b>PROFESSIONAL LICENSURE DIVISION[645]</b>		
Cosmetology, amendments to chs 59 to 65 IAB 9/12/07 <b>ARC 6224B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 2, 2007 9 to 9:30 a.m.

**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

Massage therapy, 131.2(7), 131.5, 131.14(3) IAB 9/26/07 <b>ARC 6262B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 16, 2007 9:30 to 10 a.m.
Physical therapy, amendments to chs 199, 200, 202, 203, 205 to 207, 209 IAB 9/26/07 <b>ARC 6248B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 16, 2007 9 to 9:30 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Sheriff and deputy sheriff uniforms, rescind ch 3; adopt ch 125 IAB 9/12/07 <b>ARC 6222B</b>	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 18, 2007 8:30 a.m.
Flammable and combustible liquids, 51.200 to 51.203, 51.205, 51.206, 51.250, 51.300, 51.350, ch 221 IAB 9/26/07 <b>ARC 6256B</b>	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 17, 2007 9 a.m.
Aboveground petroleum storage tanks, 51.204, ch 224 IAB 9/26/07 <b>ARC 6255B</b>	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 17, 2007 9:30 a.m.
Liquified petroleum gas piping—damage reporting and repair, 226.5(1), 226.6 IAB 9/12/07 <b>ARC 6223B</b>	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 17, 2007 8:30 a.m.
State building code, 300.4, 300.5, 301.3, 303.1, 303.4, 303.5 IAB 9/12/07 <b>ARC 6214B</b>	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 9, 2007 10 a.m.

**UTILITIES DIVISION[199]**

Incident and outage reporting, amendments to chs 19 to 22, 25 IAB 9/26/07 <b>ARC 6267B</b>	350 Maple St. Des Moines, Iowa	October 30, 2007 9 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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 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 Bureau[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
     Interior Design Examining Board[193G]  
   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]  
   Grow Iowa Values Board[264]  
 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]  
 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]

INSPECTIONS AND APPEALS DEPARTMENT[481]  
  Employment Appeal Board[486]  
  Foster Care Review Board[489]  
  Racing and Gaming Commission[491]  
  State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
  Appeal Board, State[543]  
  City Finance Committee[545]  
  County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
  Energy and Geological Resources Division[565]  
  Environmental Protection Commission[567]  
  Natural Resource Commission[571]  
  Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
  BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
  Homeland Security and Emergency Management Division[605]  
  Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
  Professional Licensure Division[645]  
  Dental Examiners Board[650]  
  Medicine Board[653]  
  Nursing Board[655]  
  Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
  Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
  Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
  Labor Services Division[875]  
  Workers' Compensation Division[876]  
  Workforce Development Board and  
  Workforce Development Center Administration Division[877]

## ARC 6251B

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 sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

Pursuant to Iowa Code section 455B.176A(6), the Commission is required to adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. The Commission has previously adopted the “Cold Water Use Designation Assessment Protocol” by reference at subrule 61.3(6) and the “Warm Water Stream Use Assessment and Attainability Analysis Protocol” by reference at subrule 61.3(7). Proposed subrule 61.3(8) will fulfill the Commission’s requirements pursuant to Iowa Code section 455B.176A(6).

Any person may submit written suggestions or comments on the proposed amendment through October 23, 2007. Such written material should be submitted to Jon Tack, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or by E-mail to [jon.tack@dnr.iowa.gov](mailto:jon.tack@dnr.iowa.gov). Persons who have questions may contact Jon Tack at (515) 281-8889.

A public hearing will be held Tuesday, October 23, 2007, at 2 p.m. in the Fourth Floor West Conference Room of the Wallace 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 amendment.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources to advise of any specific needs.

This amendment is intended to implement Iowa Code chapter 455B.176A(6).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend 567—Chapter 61 by adopting the following **new** subrule:

**61.3(8)** Recreational use assessment and attainability analysis protocol. The department hereby incorporates by reference “Recreational Use Assessment and Attainability Analysis Protocol,” effective [insert effective date of this amendment]. This document may be obtained on the department’s Web site.

## ARC 6250B

ENVIRONMENTAL PROTECTION  
COMMISSION[567]

## Regulatory Analysis

The Environmental Protection Commission hereby gives public notice of the completion and publication of a regulatory analysis and of a public hearing concerning rules proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5636B**.

**ARC 5636B** contained proposed amendments to Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code, regarding confinement feeding operations or open feedlot operations that are required to submit manure/nutrient management plans. The proposed amendments would limit the application of liquid manure, process wastewater or settled open feedlot effluent to 100 pounds of available nitrogen per acre to land that is planted to soybeans or that will be planted to soybeans the next crop season. Effective five years after the proposed amendments become effective, the application of liquid manure, process wastewater or settled open feedlot effluent to such land would be prohibited unless the Commission determines that available scientific evidence justifies alternative action.

On or about February 2, 2007, the Iowa Commercial Nutrient Applicators Association requested a regulatory analysis regarding impact of the proposed amendments on small business.

Any interested person may make written suggestions or comments on the regulatory analysis on or before October 16, 2007. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail [gene.tinker@dnr.state.ia.us](mailto:gene.tinker@dnr.state.ia.us).

Also, there will be a public hearing on October 16, 2007, at 11 a.m. in the Fifth Floor Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the regulatory analysis.

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

The full text of the regulatory analysis may be obtained on the Internet at <http://www.iowadnr.com/afo/newrules.html> or from Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail [gene.tinker@dnr.state.ia.us](mailto:gene.tinker@dnr.state.ia.us).

## CONCISE SUMMARY OF REGULATORY ANALYSIS

## BACKGROUND

The Environmental Protection Commission proposed rules to limit the application of liquid swine manure or settled open feedlot effluent to land that is currently planted or will be planted to soybeans. The proposed rules were approved for public comment by the Commission at its December 12, 2006, meeting.

Previous research has shown that subsurface tile drainage from row-crop, agricultural production systems has been identified as a major source of nitrate entering surface wa-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ters. Nitrate losses are highly related to cropping system, with row crops such as corn and soybeans yielding much greater drainage volumes and nitrate-N concentration in the drainage water than perennial crops such as alfalfa and CRP grass/legume mix. The nitrate-N losses can be 30 to 50 times higher in row crops than perennial crops.

Rhizobium bacteria fix atmospheric nitrogen through a symbiotic relationship with soybeans. The soybean plants can utilize that nitrogen to produce grain. Soybean plants will preferentially use nitrogen already in the soil rather than produce more nitrogen. Soybeans use the greatest amount of nitrogen later in the growing season. But about two-thirds of annual drainage and nitrate loading occur in April, May and June. Since manure would usually be applied to the crop ground prior to planting the soybean crop, the nitrogen in that manure could be more prone to loss through drainage tile.

The result of liquid manure or settled open feedlot effluent application to fields to be planted to soybeans is additional nitrogen (and other nutrients) available in the soil during the months when tile drainage is generally the greatest. This potentially could increase the amount of nitrogen that can enter surface waters through tile drainage systems, having a detrimental effect on the quality of those surface waters.

Commercial nitrogen is not normally applied to a soybean crop since it is an unnecessary expense. If liquid manure or settled open feedlot effluent application is not allowed on fields to be planted to soybeans, that liquid manure or settled open feedlot effluent would be available for application to fields that would otherwise receive commercial nutrient applications. By replacing the commercial nutrients with manure nutrients, less nitrogen is introduced in the cropping system, which could result in less nitrogen being transported to surface waters. This is because there could be less total nitrogen applied to all crop production fields in the state. The net result could be an improvement in surface water quality.

**CLASSES OF PERSONS AFFECTED**

All Iowans could be affected by the proposed rules. Owners and operators of confinement feeding operations required to have a manure management plan (MMP) and owners and operators of open feedlots with a nutrient management plan (NMP) could be affected as there would be limitations on where liquid manure and settled open feedlot effluent from their operations could be land applied. Crop producers who receive the manure nutrients could be affected if they utilize those manure nutrients to provide nutrients to soybean acres. Manure applicators, both confinement site and commercial, could be affected as they may be required to transport manure greater distances to apply manure to fields that will not be planted to soybeans. The applicators may also need to invest in new equipment if they apply manure nutrients to soybean acres at the reduced rate. Iowans traveling on roadways could be impacted as manure application equipment could spend more time on roadways if hauling distances are increased.

The financial costs of the proposed rules will be borne by the entities that must pay to have manure hauled and land applied. If manure must be transported greater distances to land apply, there will be added expense and labor involved with hauling greater distances. New equipment may be required for applicators to be able to apply at a reduced rate. Commercial manure applicators will be able to pass on that expense to the entity that pays for the manure hauling and application. This could be the animal feeding operation owner, the operator of the farm ground that receives the manure nutrients, or some combination of both. Confinement site applicators will bear the cost themselves, although some may receive com-

pensation from neighboring land owners that receive manure. Owners of the feeding operations may be required to develop new MMPs or NMPs. This will require additional time on their part or additional fees from entities they may hire to develop their plans. In the end, the agricultural producers that benefit from manure removal, hauling and application will bear the additional costs resulting from the proposed rules.

All Iowans could benefit from improved water quality that may result from implementation of the proposed rules. In addition, municipalities could benefit through reduced costs to treat water prior to use by the public. An example is the city of Des Moines, which operates a nitrate removal facility to remove nitrate in order to keep nitrate-nitrogen below 10 mg/L.

**COST/BENEFIT COMPARISONS**

The actual increased costs for manure application under the proposed rule is nearly impossible to determine, due to the many variables involved with how much application would change. There will be no impact on state revenues. The benefits are also nearly impossible to determine as it is unknown how much nitrate-nitrogen will be reduced in the state's surface waters.

A restriction of manure application to soybeans could result in decreased soybean yields in some fields. This is a clear conflict between maximum yields (and economic benefit) vs. improved water quality – the standard debate of economy vs. environment. If the yield depression were too great, producers would be able to apply commercial fertilizer to those fields, which would not be in conflict with the proposed rules.

**LESS COSTLY OR INTRUSIVE METHODS TO ACHIEVE PURPOSE**

The overall purpose of the proposed rule is to improve the quality of Iowa's surface water for all Iowans. There are numerous sources of impairment to the state's surface waters and implementation of the proposed rule may result in only a small improvement in water quality.

There is probably no less costly method of trying to reduce nitrates in surface waters than by decreasing the application of nutrients that aren't necessary. An alternative and possibly more cost prohibitive method would be to restrict manure applications to the period of the crop's growth cycle when nutrient demand is the greatest. Most manure is applied to crop ground in the fall after harvest or the spring prior to planting. But the crop's greatest demand for nutrients is later in the growing season. So the nutrients are present in the soil profile waiting for the crop's time of greatest need, sometimes up to 9 months. The nitrogen is susceptible to movement to tile lines during this time. So an alternative could be to limit manure application to the period of the growing season when crops have the greatest demand for nutrients. However, this alternative is probably less appealing due to a more restrictive time frame for manure application and the need to apply between the rows of a growing crop, which can be very challenging.

There were no alternative methods considered for achieving the purpose of the proposed rule. The proposed rule is probably the most acceptable method for attempting to reduce nitrate loss to drainage tile with subsequent impairment to surface waters. However, there is no estimate of how much improvement there could be in surface water quality. The initial proposal was a complete ban on liquid manure and settled open feedlot effluent application to soybeans. However the proposed rules delay the complete ban for five years

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and restrict the application to 100 lbs of nitrogen per acre as recommended by Iowa State University.

**LESS STRINGENT COMPLIANCE OR REPORTING**

Reporting requirements for small businesses would be the same as without adoption of the proposed rule. Performance standards are not known, since the benefit that will be attained is difficult to measure, and therefore a performance based standard is not feasible. Exempting small businesses from the proposed rule would defeat the purpose of the rule.

There is no data on the actual impact the proposed rule could have on the quality of the state's surface waters. Although studies show a connection between nitrogen nutrient applications and nitrogen losses through drainage tile lines, there have not been studies conducted to examine the practices to be limited by the proposed rule.

**SHORT- AND LONG-TERM CONSEQUENCES**

The short-term and long-term consequences of the proposed rule would be increased manure application costs for some livestock and crop operations with an unknown improvement in quality of the state's surface waters.

**ARC 6268B****HUMAN SERVICES  
DEPARTMENT[441]****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 249A.4 and 2007 Iowa Acts, House File 911, section 39, the Department of Human Services proposes to amend Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments provide two methods of increasing Medicaid reimbursement to nursing facilities related to the cost of renovation or construction for the purpose of rectifying a violation of life safety code requirements or developing home- and community-based waiver program services.

Currently, nursing facilities are reimbursed based on a modified price-based system with quarterly adjustments to reflect changes in case mix of Medicaid members within the facility. Nursing facility rates are rebased on a biennial basis to reflect more current cost information, with an effective date for new rates of July 1 of each odd-numbered year. Based on the timing of the facility's fiscal year reporting, this methodology may result in a delay of two to three years before capital costs that a facility incurs are reflected in its reimbursement rate.

These amendments allow a qualifying facility to apply for a capital cost per diem instant relief add-on to the facility's per patient day amount or to request an enhanced non-direct care rate component limit. Either option allows additional costs associated with specific renovation or construction to be recognized in the facility's Medicaid reimbursement rate before the next rebasing.

The capital cost per diem instant relief add-on provides reimbursement to facilities for property costs, such as depreciation and interest expense, that are associated with a complete replacement, major renovations, or new construction and are not included in the nursing facility's base-year cost

report. The add-on allows a facility to begin receiving reimbursement for incurred property costs as soon as the assets are put into place, without having to wait until the costs are reported on a base-year cost report. The capital cost per diem instant relief add-on is limited to two years. When the property costs associated with a project are included in the base-year cost report, the add-on is no longer needed and is terminated.

The enhanced non-direct care rate component limit increases the limit on the non-direct care component of a facility's reimbursement rate from 110 percent to 120 percent of the non-direct care patient-day-weighted median. Without this provision, the effect of the capital cost per diem instant relief add-on would be eliminated if it put the facility's non-direct care costs over 110 percent of the statewide median. The enhanced limit may be granted for up to two years per request, but a facility may request renewal of the enhanced limit up to a total of ten years.

A facility may request both the capital cost per diem instant relief add-on and the enhanced non-direct care rate component limit. As directed in the authorizing statute, facilities must meet several other criteria to participate, including a substantial Medicaid population, satisfactory ratings in licensing surveys, and commitment to quality care and improved or expanded services.

Implementation of these amendments is contingent upon approval from the federal Centers for Medicare and Medicaid Services. The Department is requesting an effective date of October 1, 2007. Additional reimbursement may be awarded only to the extent that funding is appropriated by the Iowa General Assembly. The appropriation for state fiscal year 2008 is \$1 million.

These amendments do not provide for waivers in specified situations. A facility may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217). However, the Department has no authority to waive statutory provisions.

Any interested person may make written comments on the proposed amendments on or before October 17, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 249A.4 and 2007 Iowa Acts, House File 911, sections 35 through 39.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **441—81.1(249A)** by adopting the following **new** definitions in alphabetical order:

“Complete replacement” means completed construction on a new nursing facility to replace an existing licensed and certified nursing facility. The replacement facility shall have no more licensed beds than the facility being replaced and shall be located either in the same county as the facility being replaced or within 30 miles from the facility being replaced.

“Major renovations” means new construction or facility improvements to an existing licensed and certified nursing facility in which the total depreciable asset value of the new construction or facility improvements exceeds \$1.5 million.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The \$1.5 million threshold shall be calculated based on the total depreciable asset value of new construction or facility improvements placed into service during a two-year period ending on the date the last asset was placed into service. When the property costs of an asset have been included in a facility's financial and statistical report that has already been used in a biennial rebasing, the costs of that asset shall not be considered in determining whether the facility meets the \$1.5 million threshold.

"New construction" means the construction of a new nursing facility that does not replace an existing licensed and certified facility and that requires the provider to obtain a certificate of need pursuant to Iowa Code chapter 135, division VI.

"Rate determination letter" means the letter that is distributed quarterly by the Iowa Medicaid enterprise to each nursing facility notifying the facility of the facility's Medicaid reimbursement rate calculated in accordance with this rule and of the effective date of the reimbursement rate.

## ITEM 2. Amend subrule 81.6(16) as follows:

Amend the introductory paragraph and the first unnumbered paragraph as follows:

**81.6(16)** Establishment of the direct care and non-direct care patient-day-weighted medians and modified price-based reimbursement rate. This subrule provides for the establishment of the modified price-based reimbursement rate. ~~Paragraphs "a" through "g" describe the calculations presented in sequential order.~~ The first step in the rate calculation (paragraph "a") determines the per diem direct care and non-direct care component costs. The second step (paragraph "b") normalizes the per diem direct care component costs to remove cost variations associated with different levels of resident case mix. The third step (paragraph "c") calculates the patient-day-weighted medians for the direct care and non-direct care components that are used in subsequent steps to establish rate component limits and excess payment allowances, if any. The fourth step (paragraph "d") calculates the potential excess payment allowance. The fifth step (paragraph "e") calculates the reimbursement rate, *including any applicable capital cost per diem instant relief add-on described in paragraph "h,"* that is further subjected to the rate component limits, *including any applicable enhanced non-direct care rate component limit described in paragraph "h,"* in step six (paragraph "f"). The seventh step (paragraph "g") calculates the additional reimbursement based on accountability measures available beginning July 1, 2002.

~~The Medicaid payment rate for services rendered from July 1, 2001, through June 30, 2003, includes a portion of the modified price-based reimbursement rate plus a portion of the Medicaid rate effective June 30, 2001, more fully described in paragraph 81.6(4)"a."~~ Payment rates for services rendered from July 1, 2003, and thereafter will be 100 percent of the modified price-based rate pursuant to subparagraph 81.6(4)"a"(3).

Amend paragraph "e," subparagraph (1), numbered paragraph "2," as follows:

2. The non-direct care component is equal to the provider's allowable per patient day costs, plus the allowable excess payment allowance as determined by the methodology in paragraph "d," *and the allowable capital cost per diem instant relief add-on as determined by the methodology in paragraph "h."*

Amend paragraph "f" as follows:

Amend subparagraph (1), numbered paragraph "2," as follows:

2. The non-direct care rate component limit is the non-direct care non-state-operated nursing facility patient-day-

weighted median ~~times multiplied~~ by the percentage of the median specified in 441—subrule 79.1(2); *or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph "h."*

Amend subparagraph (2), numbered paragraph "2," as follows:

2. The non-direct care rate component limit is the non-direct care non-state-operated nursing facility patient-day-weighted median ~~times multiplied~~ by the percentage of the median specified in 441—subrule 79.1(2); *or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph "h."*

Amend subparagraph (3), numbered paragraph "2," as follows:

2. The non-direct care rate component limit is the non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median ~~times multiplied~~ by the percentage of the median specified in 441—subrule 79.1(2); *or is 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph "h."*

Amend subparagraph (4), numbered paragraph "2," as follows:

2. The non-direct care Medicare-certified hospital-based nursing facility patient-day-weighted median ~~times multiplied~~ by the percentage of the median specified in 441—subrule 79.1(2); *or 120 percent of the median if the facility qualifies for the enhanced non-direct care rate component limit pursuant to paragraph "h."*

Adopt ~~new~~ paragraph "h" as follows:

h. Capital cost per diem instant relief add-on and enhanced non-direct care rate component limit. Contingent upon approval from the Centers for Medicare and Medicaid Services (CMS) and to the extent that funding is appropriated by the Iowa general assembly, additional reimbursement is available for nursing facilities that have completed a complete replacement, new construction, or major renovations. Additional reimbursement under this paragraph is available for services rendered beginning on October 1, 2007, or beginning on the effective date of CMS approval if CMS approval is effective on a later date.

(1) Types of additional reimbursement. Two types of additional reimbursement are available:

1. The capital cost per diem instant relief add-on is an amount per patient day to be added to the non-direct care component of the reimbursement rate and is subject to the non-direct care rate component limit as determined in paragraph "f."

2. The enhanced non-direct care rate component limit provides an increase in the percentage of the median that is applied when calculating the non-direct care rate component limit as defined in paragraph "f." The percentage of the median is increased to 120 percent when the enhanced non-direct care rate component limit is granted.

(2) Eligible projects. To qualify for either the capital cost per diem instant relief add-on or the enhanced non-direct care rate component limit, a facility must have undertaken a complete replacement, new construction, or major renovations for the purpose of:

1. Rectification of a violation of life safety code requirements; or

2. Development of home- and community-based waiver program services.

(3) Additional requirements for all requests. To qualify for additional reimbursement, a facility with an eligible project must also meet the following requirements:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

1. The facility has Medicaid utilization at or above 40 percent for the two-month period before the request for additional reimbursement is submitted. Medicaid utilization for this purpose is calculated as total nursing facility Medicaid patient days divided by total licensed bed capacity as reported on the facility's most current financial and statistical report.

2. The facility meets the accountability measure criteria set forth in paragraph "g," subparagraph (1), deficiency-free survey, or subparagraph (2), regulatory compliance with survey, based on the most current information available when the request for additional reimbursement is submitted.

3. The facility has documented active participation in a quality of care program.

4. The facility has documented plans to facilitate person-directed care, dementia units, or specialty post-acute services.

(4) Additional requirements for waiver services. To qualify for additional reimbursement for the development of home- and community-based waiver services, the facility shall also meet the following requirements:

1. Services shall be provided in an underserved area, which may include a rural area.

2. Services shall be provided on the direct site of the facility but not as a nursing facility service.

3. Services shall meet all federal and state requirements for Medicaid reimbursement.

4. Services shall include one or more of the following: adult day care as defined by 441—subrule 78.37(1), consumer directed attendant care as defined by 441—subrule 78.37(15) provided in an assisted living setting, day habilitation as defined by 441—subrule 78.41(14), home-delivered meals as defined by 441—subrule 78.37(8), emergency response system as defined by 441—subrule 78.37(2), and respite care as defined by 441—subrule 78.37(6).

(5) Submission of request. A facility shall submit a written request for the capital cost per diem instant relief add-on, the enhanced non-direct care rate component limit, or a preliminary evaluation of whether a project may qualify for additional reimbursement to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315. A qualifying facility may request one or both types of additional reimbursement.

1. A request for the capital cost per diem instant relief add-on may be submitted no earlier than 30 days before the complete replacement, new construction, or major renovations are placed in service.

2. A request for the enhanced non-direct care rate component limit may be submitted with a request for a capital cost per diem instant relief add-on or within 60 days after the release of a rate determination letter reflecting a change in the non-direct care rate component limit.

3. A request for a preliminary evaluation may be submitted when a facility is preparing a feasibility projection for a construction or renovation project. A preliminary evaluation does not guarantee approval of the capital cost per diem instant relief add-on or enhanced non-direct care rate component limit upon submission of a formal request.

(6) Content of request for add-on. A facility's request for the capital cost per diem instant relief add-on shall include:

1. A description of the project for which the add-on is requested, including a list of goals for the project and a timeline of the project that spans the life of the project.

2. Documentation that the facility meets the qualifications in subparagraphs (2) and (3) and, if applicable, in subparagraph (4).

3. The period during which the add-on is requested (no more than two years).

4. Whether the facility is also requesting the enhanced non-direct care rate component limit. (See subparagraph (7) for requirements.)

5. A copy of the facility's most current depreciation schedule which clearly identifies the cost of the project for which the add-on is requested if assets placed in service by that project are included on the schedule. Any removal of assets shall be clearly identifiable either on the depreciation schedule or on a separate detailed schedule, and that schedule shall include the amount of depreciation expense for removed assets that is included in the current reimbursement rate.

6. If the cost of the project is not reported on the submitted depreciation schedule, a detailed schedule of the assets to be placed in service by the project, including:

- The estimated date the assets will be placed into service;

- The total estimated depreciable value of the assets;

- The estimated useful life of the assets based upon existing Medicaid and Medicare provisions; and

- The estimated annual depreciation expense of the assets using the straight-line method in accordance with generally accepted accounting principles.

7. The facility's estimated annual licensed bed capacity and estimated annual total patient days. If this information is not provided, estimated annual total patient days shall be determined using the most current submitted financial and statistical report.

8. If interest expense has been or will be incurred and is related to the project for which the add-on is requested, a copy of the general terms of the debt service and the estimated annual amount of interest expense shall be submitted.

9. If any debt service has been retired, a copy of the general terms of the debt service and the amount of interest expense for debt service retired that is included in the current reimbursement rate.

(7) Content of request for enhanced limit. A facility's request for the enhanced non-direct care rate component limit shall include:

1. A description of the project for which the enhanced non-direct care rate component limit is requested, including a list of goals for the project and a time line of the project that spans the life of the project.

2. Documentation that the facility meets the qualifications in subparagraphs (2) and (3) and, if applicable, in subparagraph (4).

3. Identification of any period in which the capital cost per diem instant relief add-on was previously granted and the number of times the capital cost per diem instant relief add-on and the enhanced non-direct care rate component limit have previously been granted.

(8) Content of request for preliminary evaluation. A facility's request for a preliminary evaluation of a proposed project shall include:

1. The estimated completion date of the project.

2. The estimated date when a formal request for an add-on or enhanced limit will be submitted.

3. For a preliminary evaluation for a capital cost per diem instant relief add-on, all information required in subparagraph (6).

4. For a preliminary evaluation for the enhanced non-direct care rate component limit, all information required in subparagraph (7).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(9) Calculation of capital cost per diem instant relief add-on. The capital cost per diem instant relief add-on is calculated by dividing the annual estimated property costs for the complete replacement, new construction, or major renovation project for which the add-on is granted by the facility's estimated annual total patient days.

1. Total patient days shall be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days shall be the greater of the estimated annual total patient days or 85 percent of the facility's estimated licensed capacity.

2. The annual estimated property costs for the project are calculated as the estimated annual depreciation expense for the cost of the project, plus estimated annual interest expense for the cost of the project, less the amount of depreciation expense for assets removed that is included in the current reimbursement rate and the amount of interest expense for debt service retired that is included in the current reimbursement rate.

3. A reconciliation between the estimated amounts and actual amounts shall be completed as described in subparagraph (12).

(10) Effective date of capital cost per diem instant relief add-on. Subject to available funding and previously approved requests for capital cost per diem instant relief add-ons and enhanced non-direct care rate component limits, a capital cost per diem instant relief add-on shall be effective the first day of the calendar quarter following the placement in service of the assets associated with the add-on and receipt of all required information. The capital cost per diem instant relief add-on shall be added to the non-direct care component of the reimbursement rate, not to exceed the non-direct care rate component limit as determined in paragraph "f."

(11) Term of capital cost per diem instant relief add-on. The period for which a facility may be granted the capital cost per diem instant relief add-on shall not exceed two years. The capital cost per diem instant relief add-on shall terminate at the time of the subsequent biennial rebasing. If the facility's submitted annual financial and statistical report used in the subsequent biennial rebasing does not include 12 months of property costs for the assets with which the capital cost per diem instant relief add-on is associated, including interest expense, if applicable, the facility may submit a new request for the capital cost per diem instant relief add-on.

(12) Reconciliation of capital cost per diem instant relief add-on. During the period in which the capital cost per diem instant relief add-on is granted, the Iowa Medicaid enterprise shall recalculate the amount of the add-on based on actual allowable costs and patient days reported on the facility's submitted annual financial and statistical report. A separate reconciliation shall be performed for each cost report period in which the capital cost per diem instant relief add-on was paid. The facility shall submit with the annual financial and statistical report a separate schedule reporting total patient days per calendar quarter and a current depreciation schedule identifying the assets related to the add-on.

1. For purposes of recalculating the capital cost per diem instant relief add-on, total patient days shall be based on the greater of the number of actual patient days during the period in which the add-on was paid or 85 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid.

2. The recalculated capital cost per diem instant relief add-on shall be added to the non-direct care component of the reimbursement rate for the relevant period, not to exceed the

non-direct care rate component limit as determined in paragraph "f." The facility's quarterly rates for the relevant period shall be retroactively adjusted to reflect the recalculated non-direct care component of the reimbursement rate. All claims with dates of service during the period the capital cost per diem instant relief add-on is paid shall be repriced to reflect the recalculated capital cost per diem instant relief add-on.

(13) Effective date of enhanced non-direct care rate component limit. Subject to available funding and previously approved requests for capital cost per diem instant relief add-ons and enhanced non-direct care rate component limits, an enhanced non-direct care rate component limit shall be effective:

1. With a capital cost per diem instant relief add-on (if requested at the same time); or

2. Retroactive to the first day of the quarter in which the revised non-direct care rate component limit amount is effective. All claims with dates of service from the effective date shall be repriced.

(14) Term of enhanced non-direct care rate component limit. The period for which a facility may be granted an enhanced non-direct care rate component limit without reapplication shall not exceed two years. The total period for which a facility may be granted enhanced non-direct care rate component limits shall not exceed ten years. If the amount of the non-direct care rate component limit is revised during the period for which a facility is granted the enhanced limit, the approval shall be terminated effective the first day of the quarter in which the revised non-direct care rate component limit is effective. The facility may submit a new request for the enhanced non-direct care rate component limit.

(15) Ongoing conditions. Any capital cost per diem instant relief add-on or enhanced non-direct care rate component limit granted by the Iowa Medicaid enterprise is temporary. Additional reimbursement shall be immediately terminated if:

1. The facility does not continue to meet all of the initial qualifications for additional reimbursement; or

2. The facility does not make reasonable progress on any plans required for initial qualification; or

3. The facility's medical assistance program or Medicare certification is revoked. A facility whose certification is revoked is not eligible to submit a subsequent request for a capital cost per diem instant relief add-on or the enhanced non-direct care rate component limit.

(16) Change of ownership. Following a change in nursing facility ownership, any capital cost per diem instant relief add-on or enhanced non-direct care rate component limit that was granted before the change in ownership shall continue under the new owner. Future reimbursement rates shall be determined pursuant to subrules 81.6(15) and 81.6(16).

**ARC 6262B****PROFESSIONAL LICENSURE  
DIVISION[645]****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 147.76, the Board of Massage Therapy hereby gives Notice of Intended Action to amend Chapter 131, “Licensure of Massage Therapists,” Iowa Administrative Code.

These proposed amendments include the Massage and Bodywork Licensing Examination (MBLEx) as an examination option for licensure applicants and a two-year active practice option in lieu of examination that must occur immediately prior to application for reactivation of licensure.

Any interested person may make written comments on the proposed amendments no later than October 16, 2007, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on October 16, 2007, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, 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 proposed amendments.

These amendments are intended to implement Iowa Code chapters 17A, 147, 152C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 131.2(7) as follows:

**131.2(7)** The applicant shall provide proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination *or the Massage and Bodywork Licensing Examination (MBLEx)*. Proof of passing shall be sent directly from the testing service to the board of massage therapy. The applicant may submit a copy of the official notification from the testing service of the applicant’s passing the ~~NCBTMB written~~ *a board-approved* examination. The copy of the applicant’s official notification may be used by the board as proof of passage of the ~~NCBTMB a board-approved~~ examination until the official proof of passage is received directly from the ~~NCBTMB testing service~~. Submission of the applicant’s copy of the official notification from the testing service shall not be allowed in lieu of the applicant’s arranging for and the board’s receiving the official record of proof of passage sent directly from the ~~NCBTMB testing service~~. The examination score must be received from the ~~NCBTMB testing service~~ within 60 days of issuance of the license. The passing score on the written examination shall be the passing point criterion established by

the national testing authority at the time the test was administered.

ITEM 2. Amend subrule **131.5(1)**, paragraph “d,” as follows:

d. Provide proof of passing any NCBTMB examination *or the Massage and Bodywork Licensing Examination (MBLEx)*, to be sent directly from the ~~NCBTMB testing service~~ to the board office, if applicable;

ITEM 3. Amend subrule 131.5(3) as follows:

**131.5(3)** The applicant shall be issued a permanent license upon receipt of a transcript of completion from a board-approved school sent directly from the school, and proof of passing any ~~NCBTMB board-approved~~ examination sent directly from the ~~NCBTMB testing service~~ to the board office.

ITEM 4. Amend subparagraph **131.14(3)“b”(3)** as follows:

(3) Verification of passing one of the following examinations offered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) *or the Federation of State Massage Therapy Boards (FSMTB) within two years immediately prior to the submission of the completed reactivation application. If the applicant can provide proof of two years of active practice in another state as a licensed massage therapist, the applicant is not required to provide proof of passing one of these examinations. The two years of active practice must have occurred immediately prior to the submission of the completed reactivation application.*

1. The National Certification Examination for Therapeutic Massage (NCETM); or

2. The National Certification Examination for Therapeutic Massage and Bodywork (NCETMB); or

3. The National Examination for States Licensing (NELS) option; or

4. *The Massage and Bodywork Licensing Examination (MBLEx).*

**ARC 6248B****PROFESSIONAL LICENSURE  
DIVISION[645]****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 147.76, the Board of Physical and Occupational Therapy hereby gives Notice of Intended Action to amend Chapter 199, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Physical Therapy Examiners,” Chapter 200, “Licensure of Physical Therapists and Physical Therapist Assistants,” Chapter 202, “Discipline for Physical Therapists and Physical Therapist Assistants,” Chapter 203, “Continuing Education for Physical Therapists and Physical Therapist Assistants,” Chapter 205, “Administrative and Regulatory Authority for the Board of Physical and Occupational Therapy Examiners—Occupational Therapy Examiners,” Chapter 206, “Licensure of Occupational

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Therapists and Occupational Therapy Assistants,” Chapter 207, “Continuing Education for Occupational Therapists and Occupational Therapy Assistants,” and Chapter 209, “Discipline for Occupational Therapists and Occupational Therapy Assistants,” Iowa Administrative Code.

These proposed amendments would update requirements for foreign-trained applicants for licensure as physical therapists and physical therapy assistants; add clarity regarding supervisory requirements for physical therapy assistants; stipulate that a physical therapy assistant must list on every patient chart the name of the physical therapy assistant’s supervisor for each treatment session; and update standards for physical therapists regarding direct client contact based upon the status of the patient being treated. Additionally, the proposed amendments would change the name of the Board of Physical and Occupational Therapy in response to 2007 Iowa Acts, Senate File 74, which renamed health-related examining boards as licensing boards.

Any interested person may make written comments on the proposed amendments no later than October 16, 2007, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on October 16, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, 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 proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148A and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend **645—Chapters 199, 200, 202, 203, 205, 206, 207** and **209** by striking the term “board of physical and occupational therapy examiners” wherever it appears and inserting the term “board of physical and occupational therapy” in lieu thereof; by striking the term “Physical Therapy Examiners” in 645—Chapter 199, title, and inserting “Physical Therapy” in lieu thereof; and by striking the term “Occupational Therapy Examiners” in 645—Chapter 205, title, and inserting “Occupational Therapy” in lieu thereof.

ITEM 2. Rescind and reserve rule **645—200.3(147)**.

ITEM 3. Amend subrule 200.5(2) as follows:

**200.5(2)** Foreign-trained applicants shall:

a. Submit an English translation and an equivalency evaluation of their educational credentials by one of through the following organization: Foreign Credentialing Commission on Physical Therapy, Inc., P.O. Box 25827, Alexandria, VA 22313-9998, 124 West Street South, Third Floor, Alexandria, VA 22314; telephone (703)684-8406; Web site [www.fccpt.org](http://www.fccpt.org); International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site [www.ierf.org](http://www.ierf.org), or E-mail at [info@ierf.org](mailto:info@ierf.org); International Consultants of Delaware, Inc., 109 Barksdale, Professional Center, Newark, DE 19711, telephone (302)737-8715; International Credentialing Associates, Inc., 7245 Bryan Dairy

Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone (727)549-8555. The credentials of foreign-educated physical therapist licensure applicants should be evaluated using the version of the Federation of State Boards of Physical Therapy (FSBPT) Coursework Evaluation Tool (CWT) that covers the date the applicant graduated from the applicant’s respective physical therapy education program. A credentialing agency should use the version for the CWT that coincides with the professional educational criteria that were in effect on the date the applicant graduated from the applicant’s respective physical therapy education program. This same process should be used for first-time licensees and for those seeking licensure through endorsement. The professional curriculum must be equivalent to the Commission on Accreditation in Physical Therapy Education standards. An applicant shall bear the expense of the curriculum evaluation.

b. Submit a notarized copy of the certificate or diploma awarded to the applicant from either a physical therapy program or a physiotherapy program in the country in which the applicant was educated and provide written proof that the applicant’s school of physical therapy or physiotherapy education is recognized by its own ministry of education.

e b. Submit certified proof of proficiency in the English language by achieving on the Test of English as a Foreign Language (IBT-TOEFL) a total score of at least 560 on the Test of English as a Foreign Language (TOEFL) paper examination and a score of at least 200 on the computer examination 89 on the Internet-based TOEFL as well as accompanying minimum scores in the four test components as follows: 24 in writing; 26 in speaking; 21 in reading comprehension; and 18 in listening comprehension. This examination is administered by Educational Testing Services, Inc., P.O. Box 6157, Princeton, NJ 08541-6157. An applicant shall bear the expense of the TOEFL examination. Applicants may be exempt from the TOEFL examination when the native language is English, physical therapy education was completed in a school approved by the Commission on Accreditation in Physical Therapy Education (CAPTE), language of instruction in physical therapy was English, language of the textbooks was English, and the applicant’s transcript was in English.

d c. Submit an official statement from each country’s or territory’s board of examiners or other regulatory authority regarding the status of the applicant’s license, including issue date, expiration date and information regarding any pending or prior investigations or disciplinary action. The applicants shall request such statements from all entities in which they are currently or formerly licensed.

e. Submit proof of legal authorization to be employed in a jurisdiction of the United States.

f d. Receive a final determination from the board regarding the application for licensure.

ITEM 4. Amend subrule **200.6(1)** by rescinding and reserving paragraphs “f” and “h” and amending paragraphs “e” and “i” as follows:

e. Supervise not more than the equivalent of two full-time PTAs who are providing physical therapy per calendar day, including supervision by telecommunication;

i. Ensure that the signature of a PTA or applicant PT on a physical therapy treatment record indicates that the physical therapy services were provided in accordance with the rules and regulations for practicing as a PT or PTA.

ITEM 5. Amend subrule 200.6(4) as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**200.6(4)** The PT must provide patient evaluation and participate in treatment based upon the health care admission or residency status of the patient being treated. ~~A PT may not delegate to the PTA the authority to provide more than the following~~ *Participation shall include direct client contact according to the following schedule:*

<u>Patient's Health Care Residency or Admission Status</u>	<u>Maximum of Physical Therapist Delegation (whichever comes first)</u>
Hospital, acute care	3 visits or 2 consecutive calendar days
Hospital, non-CARF	3 visits or 2 consecutive calendar days
Hospital, CARF-accredited beds	4 visits or 4 consecutive calendar days
Skilled nursing	4 visits or 4-7 consecutive calendar days
Home health	4 visits or 9 consecutive calendar days
Nursing facility	9 visits or 9 consecutive calendar days
Iowa educational agency	4 visits or 29 consecutive calendar days
Other facility/admissions status	4 visits or 9 consecutive calendar days

Calendar days include weekends and holidays.

ITEM 6. Amend subrule **200.6(5)** by adopting **new** paragraph **"f"** as follows:  
 i. Shall record on every patient chart the name of the PTA's supervisor for each treatment session.

ITEM 7. Adopt **new** subrule 200.7(6) as follows:  
**200.7(6)** Foreign-trained applicants applying for licensure by endorsement shall also meet the requirements outlined in subrule 200.5(2).

**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 subrule 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
Lifesafer Interlock, FC 100	Lifesafer Interlock, Inc.	Cincinnati, Ohio
IMT Lifesafer Interlock	Lifesafer Interlock, Inc.	Cincinnati, Ohio
Autosense Interlock	Autosense International	San Jose, California
Guardian Interlock, Model 4.4	Guardian Interlock Systems	Marietta, Georgia
Draeger 920 Interlock	Draeger Safety Diagnostics, Inc.	Durango, Colorado

Device	Company	Company Location
Draeger XT Interlock	Draeger Safety Diagnostics, Inc.	Durango, Colorado
Smart Start SSI 20/20	Smart Start, Inc.	Irving, Texas

The listed devices are approved for use in Iowa effective September 1, 2007. This list supersedes any previous list of approved devices.

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 an ignition interlock 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  
 2240 S. Ankeny Blvd.  
 Ankeny, Iowa 50023-9093

**ARC 6256B**

**PUBLIC SAFETY DEPARTMENT[661]**

**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 101.1, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 51, "Flammable and Combustible Liquids," and adopt new Chapter 221, "Flammable and Combustible Liquids," Iowa Administrative Code.

Iowa Code section 101.1 authorizes and requires the State Fire Marshal to adopt administrative rules establishing reasonable requirements for the safe transportation, storage, handling, and use of flammable liquids. These rules were last extensively updated in 2003. The amendments proposed herein would update these requirements, including basing them on the International Fire Code, which is the basis for general rules of the State Fire Marshal and has been widely adopted by local jurisdictions in Iowa. The flammable liquid rules also would be moved to new Chapter 221, which is part of a general renumbering of the administrative rules of the Department of Public Safety to make the rules more accessible to the public and to persons who are subject to the requirements established in the rules. The definitions of flammable and combustible liquids are proposed to be revised for consistency with the definition of flammable liquid in Iowa Code chapter 101. A new, clearer definition of refinery is proposed, which would encompass any facility which produces a flammable or combustible liquid on a commercial scale or

PUBLIC SAFETY DEPARTMENT[661](cont'd)

which uses flammable or combustible liquid to produce motor fuel on a commercial scale, whether or not the end product is a flammable or combustible liquid. Provisions for dispensing E-85, included in 2007 Iowa Acts, Senate File 551, are included. Finally, one provision is included about which the Fire Marshal specifically solicits comments. These provisions concern under dispenser containment (UDC) for new and replacement dispensers. Currently, the Iowa Department of Natural Resources (DNR) is in the process of adopting such a requirement, in response to a federal requirement, for new and replacement dispensers and dispensers for which piping within 10 feet of a dispenser is repaired or replaced, at locations with underground storage tank systems. The Fire Marshal proposes to adopt the DNR requirement and to extend it in two ways: (1) to apply it to all new and replacement dispensers and dispensers in which piping is replaced within 10 feet of the dispenser and (2) to omit an exception in the DNR requirement for locations that are not within 1,000 feet of a community water system or a potable drinking water well. The rule proposed herein would continue to exempt existing systems from installing UDC when only the following items are replaced: emergency shutoff, shear valves, or check valves, and also exempts any dispenser which sits on a solid concrete apron. The advantages of requiring UDC include reducing the risk of leaked flammable and combustible liquids escaping from containment, which potentially creates both environmental and fire hazards. However, the costs of compliance are largely unknown, so, before making the decision to adopt the broader requirement for UDC, the Fire Marshal is soliciting comments about this provision.

A public hearing on these proposed amendments will be held on October 17, 2007, at 9 a.m. in Room 125 (First Floor Conference Room) in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The building and conference room are fully accessible. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail, by telephone at (515)725-6185, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on October 17, 2007, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on October 17, 2007.

These amendments are intended to implement Iowa Code chapter 101.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind rules **661—51.200(101)** through **661—51.203(101)**, **661—51.205(101)**, **661—51.206(101)**, **661—51.250(101)**, **661—51.300(101)** and **661—51.350(101)**.

ITEM 2. Adopt the following **new** chapter:

## CHAPTER 221

### FLAMMABLE AND COMBUSTIBLE LIQUIDS

**661—221.1(101) Scope.** This chapter provides the rules of the fire marshal for safe transportation, storage, handling, and use of flammable and combustible liquids.

**661—221.2(101) Definitions.** The following definitions shall apply to rules 661—221.1(101) through 661—221.8(101). These definitions are adopted in addition to those which appear in the International Fire Code, 2006 edition; NFPA 30, Flammable and Combustible Liquids Code, 2003 edition; and NFPA 30A, Code for Motor Fuel Dispensing and Repair Garages, 2003 edition. If a definition adopted in this rule conflicts with a definition included in a code or standard adopted by reference in this chapter, the definition found in this rule shall apply.

“Fire code official” means any employee of the fire marshal division of the department of public safety, of any local fire department, or of the department of natural resources if the employee is operating under an agreement between the department of public safety and the department of natural resources.

“ICC” means the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

“IFC” means the International Fire Code, published by the ICC. “IFC” will be followed by a year (e.g., IFC, 2006), which indicates the specific edition of the IFC to which reference is made.

“Mobile air-conditioning system” means mechanical vapor compression equipment which is used to cool the driver or passenger compartment of any motor vehicle.

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

“Under dispenser containment” or “UDC” means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater.

**661—221.3(101) Flammable and combustible liquids.** The International Fire Code, 2006 edition, published by the ICC, Chapter 34 and references contained therein, and NFPA 30, Flammable and Combustible Liquids Code, 2003 edition and references contained therein, are adopted by reference as the rules for transportation, storage, handling, and use of flammable and combustible liquids. In any case in which a provision of the IFC conflicts with a provision of NFPA 30, the IFC provision shall apply. Any refinery shall comply with the provisions of this rule and with any applicable provisions of 661—Chapter 201.

**221.3(1)** The IFC, 2006 edition, is adopted with the following amendments:

a. In section 3402.1, amend the following definitions:

(1) Delete the definition of combustible liquid and insert in lieu thereof the following:

**COMBUSTIBLE LIQUID.** A liquid having a closed cup flash point at or above 100°F (38°C) and below 200°F (93°C). Combustible liquids shall be subdivided as follows:

Class II. Liquids having a closed cup flash point at or above 100°F (38°C) and below 140°F (60°C).

Class IIIA. Liquids having a closed cup flash point at or above 140°F (60°C) and below 200°F (93°C).

The category of combustible liquids does not include compressed gases or cryogenic fluids.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

(2) Delete the definition of refinery and insert in lieu thereof the following:

**REFINERY.** A plant in which flammable or combustible liquids are produced on a commercial scale from crude petroleum, natural gasoline or other sources, or in which flammable or combustible liquids are used to produce on a commercial scale fuels intended for use in motor vehicles, whether or not those fuels are flammable or combustible liquids.

b. Delete section 3403.1 and insert in lieu thereof the following:

3403.1 Electrical. Electrical wiring and equipment shall be installed and maintained in accordance with NFPA 70, National Electrical Code, 2005 edition, published by NFPA.

c. Add the following new sections:

3403.6.12 Each connection to an aboveground tank through which liquid can normally flow shall be provided with an external control valve that is located as close as practical to the shell of the tank. In addition to the control valve or any other normal tank valves, there shall be an emergency internal check valve at each pipe connection to any tank opening below normal liquid level. The emergency internal check valve shall be effectively located inside the tank shell and shall be operable both manually and by an effective heat-activated device that, in case of fire, will automatically close the valve to prevent the flow of liquid from the tank even though the pipelines from the tank are broken.

3403.6.13 Any new or replacement underground piping connected to an aboveground storage tank shall be double-walled unless it lies entirely within the area of secondary containment.

3403.6.14 Any device dispensing Class I or Class II flammable liquids shall not be constructed or installed less than 100 feet from any existing dwelling unit.

d. Delete section 3404.2.8.12 and insert in lieu thereof the following:

3404.2.8.12 Liquid removal. Means shall be provided to recover liquid from the vault. Where a pump is used to meet this requirement, the pump shall not be permanently installed in the vault. Electric-powered portable pumps shall be suitable for use in Class I, Division 1 locations, as defined in NFPA 70, National Electrical Code, 2005 edition.

e. Delete section 3404.2.8.17 and insert in lieu thereof the following:

3404.2.8.17 Classified area. The interior of a vault containing a tank that stores a Class I liquid shall be designated a Class I, Division 1 location, as defined in the NFPA 70, National Electrical Code, 2005 edition.

f. Delete section 3404.2.9.1.1, introductory paragraph, and insert in lieu thereof the following:

3404.2.9.1.1 Required foam fire protection systems. Foam fire protection shall be provided at any refinery and for aboveground tanks, other than pressure tanks operating at or above 1 pound per square inch gauge (psig) (6.89 kPa) when such tank, or group of tanks spaced less than 50 feet (15,240 mm) apart measured shell to shell, has a liquid surface area in excess of 1,500 square feet (139 m<sup>2</sup>), and is in accordance with any of the following:

g. Delete section 3404.2.9.1.2.1, introductory paragraph, and insert in lieu thereof the following:

3404.2.9.1.2.1 Where foam fire protection is required, it shall be installed in accordance with NFPA 11, 2005 edition, and shall be of a type or types of foam appropriate to suppressing fires involving types of flammable and combustible liquids found on the premises.

h. Amend the exception to section 3404.2.9.1.2.1 by adding the following new numbered paragraphs:

6. The premises is not a refinery.

7. The premises does not include bulk storage of flammable or combustible liquids.

8. The premises does not contain total storage capacity to store one million gallons or more of flammable or combustible liquids.

**221.3(2)** Amend NFPA 30, section 4.3.2.3.3, by adding the following new paragraphs:

(10) Each secondary containment tank shall have top only openings and shall be either a steel double-walled tank or a steel inner tank with an outer containment tank wall constructed in accordance with nationally accepted industry standards, such as those codified by the American Petroleum Institute, the Steel Tank Institute and the American Concrete Institute. Each tank shall be listed by an independent testing laboratory.

(11) Each fill opening in a secondary containment tank shall be provided with a spill container that will hold at least 5 gallons.

(12) For any secondary containment tank, interstitial tank space shall be monitored by an approved, continuous, automatic detection system that is capable of detecting liquids, including water. An automatic detection system may be either electronically or mechanically operated.

**221.3(3)** Plans and plan review fees.

a. The owner of any premises on which flammable or combustible liquids are or will be stored or used is required to submit construction plans to the fire marshal division, prior to commencing initial construction of the facility or prior to commencing any construction at an existing facility which includes the addition or replacement of an aboveground flammable or combustible liquid storage tank. The construction plans shall be sealed by a licensed professional engineer if the facility at which the construction will occur is or will be a refinery or a bulk flammable or combustible liquid storage facility.

Construction for which plans are required to be submitted for review shall not commence until approval of the plan has been received from the fire marshal.

**EXCEPTION:** Submission of construction plans is not required if the total flammable and combustible liquid storage capacity on the premises is or will be 1,100 gallons or less.

b. Minimum requirements for plans submitted for review include the following:

(1) Drawings shall show the name of the person, firm or corporation proposing the installation, the location, and the adjacent streets or highways.

(2) In the case of refineries or bulk plants, the drawings shall show, in addition to any applicable features required under subparagraphs (4) and (5), the plot of ground to be utilized and its immediate surroundings on all sides; and complete layout of buildings, tanks, loading and unloading docks, and heating devices, if any.

(3) In the case of service stations, the drawings shall show, in addition to any applicable features required under subparagraphs (4), (5), and (6), the plot of ground to be utilized; the complete layout of buildings, drives, dispensing equipment, and greasing or washing stalls; and the type and location of any heating device.

(4) In the case of aboveground storage, the drawings shall show the location and capacity of each tank; dimensions of each tank whose capacity exceeds 50,000 gallons; the class of liquid to be stored in each tank; the type of tank supports; the clearances; the type of venting and pressure relief relied upon and the combined capacity of all venting and pressure relief valves on each tank; and the tank control valves and the

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

location of pumps and other facilities by which liquid is filled into or withdrawn from the tanks.

(5) In the case of underground storage, the drawings shall show the location and capacity of each tank; the class of liquids to be stored; and the location of fill, gauge, vent pipes, openings and clearances.

(6) In the case of an installation for storage, handling or use of flammable or combustible liquids within buildings or enclosures at any establishment or occupancy covered in this chapter, the drawing shall be in detail sufficient to show whether applicable requirements are to be met.

c. Fees for plan reviews shall apply as follows:

(1) \$100 plus \$25 for each new or replacement tank included in the plan, for any site or facility at which flammable or combustible liquids are or will be stored, except for new construction of a refinery.

(2) \$500 for review of the initial construction plans of a refinery if the projected construction costs are \$100,000,000 or less and \$1,000 for the initial construction plans for a refinery if the projected construction costs are greater than \$100,000,000.

(3) The owner shall submit payment of plan review fees in the form of a check, money order, or warrant payable to Treasurer, State of Iowa.

d. Plan review fees shall be refunded to the submitter if the plan review has not been completed and the submitter has not been notified of approval or disapproval of the plans within 60 days of receipt of the complete plans by the fire marshal division.

**221.3(4) Inspections.**

a. Any facility at which flammable or combustible liquids are stored is subject to inspection by any fire code official during the regular business hours of the facility. If the facility does not operate under regular business hours, a fire official shall have access to the facility between 8 a.m. and 4 p.m. on any day which is a business day for the state of Iowa, within four hours of notifying the owner of intent to inspect the facility.

b. Any inspection of a facility pursuant to this subrule conducted by an employee of the fire marshal division of the department of public safety shall result in an inspection fee of \$100 plus \$25 for each aboveground flammable or combustible liquid storage tank, except that there shall be no fee for an initial inspection or the first reinspection after an initial inspection, that is conducted pursuant to the receipt of a complaint alleging that the facility is in violation of any provision of this chapter, 661—Chapter 224,\* or Iowa Code chapter 101.

c. Inspections may be initiated by the inspecting official at random or on any other basis; may be conducted at the request of the owner, operator, or manager of a facility; or may be conducted to investigate allegations made in a complaint. Such a complaint shall be in writing and shall specify the location and nature of the alleged violations. The complainant may or may not be identified. Complainants who identify themselves may request to be notified of the outcome of the inspection conducted in response to the complaint.

**661—221.4(101) Motor fuel dispensing facilities and repair garages.** The International Fire Code, 2006 edition, published by the ICC, Chapter 22 and references contained therein, and NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2003 edition and references contained therein, are adopted by reference as the rules for motor

fuel dispensing facilities and repair garages. If any provision of the International Fire Code adopted herein is in conflict with any provision of NFPA 30A, the International Fire Code provision shall apply. The International Fire Code, 2006 edition, Chapter 22, is adopted with the following amendments:

**221.4(1)** Amend Table 2206.2.3 so that:

Each tank with a capacity of not more than 6,000 gallons for motor vehicle fuel dispensing systems and storing a Class I liquid, or with a capacity of not more than 12,000 gallons and storing a Class II or Class III liquid, that is located at a commercial, industrial, governmental, or manufacturing establishment, and that is intended for fueling vehicles used in connection with the establishment, is required to be located at least:

(a) 40 feet from the nearest important building on the same property;

EXCEPTION: Tanks may be located closer than 40 feet to a building of noncombustible construction.

(b) 40 feet away from any property that is or may be built upon, including the opposite side of a public way;

EXCEPTION: No minimum separation shall be required for any tank that complies with NFPA 30A, Section 4.3.2.6.

(c) 100 feet away from any residence or place of assembly.

**221.4(2)** Add the following new section:

2206.7.1.1 Dispensing of E-blend.

2206.7.1.1.1 Definitions.

“E-10” means a blend of petroleum and ethanol including no more than 15 percent ethanol intended for use as a motor vehicle fuel.

“E-blend” means a blend of petroleum and ethanol including more than 15 percent ethanol intended for use as a motor vehicle fuel.

2206.7.1.1.2 E-blend may only be dispensed if both of the following apply:

(a) Only a dispenser listed by an independent testing laboratory as compatible with ethanol blended gasoline shall be used to dispense E-blend.

(b) The owner or operator or a person authorized by the owner or operator shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

**221.4(3)** Add the following new section:

2206.7.10 Under dispenser containment. When installing a new motor fuel dispenser or replacing a motor fuel dispenser, UDC shall be installed whenever:

(1) A motor fuel dispenser is installed at a location where there previously was no dispenser; or

(2) An existing motor fuel dispenser is removed and replaced with another dispenser. UDC is not required when only the emergency shutoff, shear valves or check valves are replaced.

(3) UDC shall also be installed beneath the motor fuel dispenser whenever piping is repaired or replaced within ten feet of a motor fuel dispenser.

UDC shall:

- Be intact and liquid tight on its sides and bottom and at any penetrations;

- Be compatible with the substance conveyed by the piping; and

\*See **ARC 6255B** herein.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

- Allow for visual inspection and monitoring and access to the components in the containment system.

EXCEPTION: UDC shall not be required for a dispenser which sits directly upon a solid concrete apron.

**661—221.5(101) Aircraft fueling.** The International Fire Code, 2006 edition, published by the ICC, sections 1106 through 1106.21.1 and references contained therein, and NFPA 407, Standard for Aircraft Fuel Servicing, 2007 edition and references contained therein, are adopted by reference as the rules for aircraft fueling facilities. If any provision of the IFC adopted herein conflicts with any provision of NFPA 407, 2007 edition, the IFC provision shall apply.

**661—221.6(101) Helicopter fueling.** The International Fire Code, 2006 edition, published by the ICC, Sections 1107 through 1107.8 and references contained therein, is adopted by reference as the rules for helicopter fueling facilities.

**661—221.7(101) Fuel fired appliances.** The International Fire Code, 2006 edition, published by the ICC, Sections 603 through 603.9 and references contained therein, is adopted by reference as the rules for fuel-fired appliances, except for LP-gas fired appliances, which are subject to the provisions of 661—Chapter 226.

**661—221.8(101) Stationary combustion engines and gas turbines.** The International Fire Code, 2006 edition, Chapter 6 and references contained therein, and NFPA 37, “Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines,” 2006 edition, are adopted by reference as the rules governing the installation and use of stationary combustion engines and gas turbines. If any provision of the IFC, 2006 edition, Chapter 6, adopted herein is in conflict with any provision of NFPA 37, 2006 edition, the provision of the IFC shall apply.

These rules are intended to implement Iowa Code chapter 101.

**ARC 6255B****PUBLIC SAFETY  
DEPARTMENT[661]****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 101.1 and 101.23, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 51, “Flammable and Combustible Liquids,” and adopt new Chapter 224, “Aboveground Petroleum Storage Tanks,” Iowa Administrative Code.

Iowa Code sections 101.21 through 101.27 set out provisions for the State Fire Marshal to operate a program for the registration of aboveground petroleum storage tanks. Registration fees and late fees are established by statute. The State Fire Marshal is given authority to conduct inspections, issue orders to correct violations and issue civil penalties, and to adopt rules needed to maintain an accurate inventory of aboveground petroleum storage tanks. Iowa Code section 100.1, subsection 6, authorizes and requires the State Fire

Marshal to establish and collect fees for inspections and plan reviews conducted in relation to this program. These rules provide for each of these items.

A public hearing on these proposed amendments will be held on October 17, 2007, at 9:30 a.m. in Room 125 (First Floor Conference Room) in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The building and conference room are fully accessible. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail, by telephone at (515)725-6185, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on October 17, 2007, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on October 17, 2007.

These amendments are intended to implement Iowa Code sections 101.21 through 101.27.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **661—51.204(101)**.

ITEM 2. Adopt the following **new** chapter:

**CHAPTER 224****ABOVEGROUND PETROLEUM STORAGE TANKS**

**661—224.1(101) Scope.** These rules apply to aboveground petroleum storage tanks, as defined in Iowa Code section 101.21.

**661—224.2(101) Definition.** The following definition applies to the rules in this chapter:

“Aboveground petroleum storage tank” means one or a combination of tanks, including connecting pipes connected to the tanks which are used to contain an accumulation of petroleum and the volume of which, including the volume of the underground pipes, is more than 90 percent above the surface of the ground. Aboveground petroleum storage tank does not include any of the following:

1. Aboveground tanks of 1100 gallons or less capacity.
2. Tanks used for storing heating oil for consumptive use on the premises where stored.
3. Underground storage tanks as defined by Iowa Code section 455B.471.
4. A flow-through process tank, or a tank containing a regulated substance, other than motor fuel used for transportation purposes, for use as part of a manufacturing process, system, or facility.

**661—224.3(101) Compliance.** Any tank subject to the provisions of this chapter shall be in compliance with this chapter, all applicable provisions of 661—Chapter 221\*, and Iowa Code chapter 101 at all times.

\* See **ARC 6256B** herein.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

**661—224.4(101) Registration of existing and new tanks—fees.** All existing, new, replacement and out-of-service aboveground tanks of 1101-gallon capacity or greater shall be registered with the state fire marshal. This requirement applies to aboveground tanks used to store petroleum, as defined in Iowa Code section 455B.471, which includes crude oil, heating oil offered for resale, motor fuels and oils such as gasoline, diesel fuels and motor oil. Tanks which are used, or planned for use, to store blended fuels which include either gasoline or diesel are subject to this requirement.

**224.4(1) Registration form.** Registration forms for aboveground storage tanks may be obtained from the fire marshal division. A completed registration form shall be submitted to the fire marshal division by the date on which it is due and shall be accompanied by the applicable fee, including any applicable late charges.

**224.4(2) Fees.** The annual registration fee for each tank shall be \$10. The fee shall cover registration for each tank for one year, which ends on October 1. If a tank is registered on or after October 1 of any year, payment of the fee shall cover registration until the following October 1.

**224.4(3) Registration deadline.** Each tank shall be registered annually by October 1 of each year.

**EXCEPTION:** A tank may be registered for the first time on any date without penalty, provided that it has not previously been in use to store petroleum products. A tank that is registered for the first time shall not be used to store petroleum products until the registration has been completed and the registration tag has been attached to the tank.

**224.4(4) Late fees.** A late fee of \$25 per tank shall be imposed for failure to register a tank prior to October 31 each year. The fee shall apply individually to each tank for which registration was not completed prior to October 31.

**661—224.5(101) Approval of plans.** A registration tag for a new aboveground storage tank shall not be issued prior to approval by the state fire marshal of plans for the installation of the tank and payment of the required plan review fee. The state fire marshal may require inspection of the tank and payment of an inspection fee prior to use of the tank.

**661—224.6(101) Inspections and orders.**

**224.6(1) Inspections.** Any tank is subject to inspection at any time by the state fire marshal, an employee of the state fire marshal, a local fire chief, or any member of the local fire department designated by the local fire chief. Any of the persons listed who seeks to inspect a tank pursuant to this rule shall, upon request, be allowed access to any facility in which a tank or tanks are located. At any time such a facility is attended, the attendant shall allow immediate access to the facility to the person who requests access to the facility in order to conduct an inspection. If a facility is unattended, the person who seeks to conduct the inspection shall notify the owner or operator of the facility. During regular business hours, or between 8 a.m. and 4 p.m. Monday through Friday, access shall be allowed within one hour of notification. If access is sought other than during regular business hours, access shall be provided at 8 a.m. on the next weekday other than a holiday. If the person who seeks access to the facility indicates that access is being sought to investigate an emergency or potential emergency, the owner of the facility shall provide access within one hour of receiving the request, regardless of the time of day or day of the week when the request is received.

**224.6(2) Orders.** If the person who conducts an inspection pursuant to subrule 224.6(1) finds that a tank is in violation of any applicable provision of this chapter, 661—

Chapter 221\*, or Iowa Code chapter 101, the person may issue an order for correction. The order shall specify the violation or violations, corrective actions to be taken, and the time allowed for completion of the corrective actions.

**224.6(3) Suspension of use.** If any corrective action ordered pursuant to subrule 224.6(2) is not completed in the time specified in the order issued pursuant to subrule 224.6(2), the fire marshal may order that the tank be placed out of service until the corrective action or actions have been completed. If a tank is ordered to be placed out of service pursuant to this subrule, the tank shall have a sticker prominently affixed to it which states that the tank is out of service by order of the state fire marshal and that it is a violation of law to transfer any petroleum product into the tank.

**224.6(4) Emergency order.** If the fire marshal finds that a violation identified during an inspection conducted pursuant to subrule 224.6(1) creates an imminent threat to public safety or public health, or if the fire marshal finds, after consultation with the department of natural resources that such a violation creates an imminent threat of environmental damage, the fire marshal shall order that the tank be placed out of service immediately and may order that the tank be evacuated of liquid and purged of vapors. If a tank is ordered to be placed out of service pursuant to this subrule, the tank shall have a sticker prominently affixed to it which states that the tank is out of service by order of the state fire marshal and that it is a violation of law to transfer any petroleum product into the tank or to dispense any petroleum product from the tank.

**224.6(5) Notice.** Notice of any order issued pursuant to this rule shall be given to the owner or operator of a tank subject to the order. Notice of an emergency order issued pursuant to subrule 224.6(4) shall be given by personal service. Notice of any other order issued pursuant to this rule may be given by regular mail or personal service.

**EXCEPTION:** If the owner of a tank subject to an order issued pursuant to this rule is unknown or cannot be located, notice shall be considered to have been given if the notice is served personally to any person at the location of the tank or, if no person is present, by affixing the notice to the tank. Alternatively, notice may be given by mailing the notice to the address at which the tank is located, with a return receipt requested. Notification from the United States Postal Service that delivery was attempted unsuccessfully or that delivery was refused shall serve as proof that notice was given.

**661—224.7(101) Leaks, spills, or damage.** Any leak from, spill from, or damage to a storage tank shall be reported to the local fire department and, if required by law, to the department of natural resources. If a tank is leaking or has been damaged, it shall be placed out of service until the leak has been repaired. A sign shall be placed prominently on the tank stating that the tank is out of service and that no petroleum product shall be placed into the tank until required repairs have been completed.

**661—224.8(101) Civil penalty.** The fire marshal may impose a civil penalty upon the owner of a storage tank for any of the following:

1. Failure to register a storage tank currently being used to store a petroleum product if the registration is more than 30 days late.

\* See **ARC 6256B** herein.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

2. Allowing any petroleum product to be placed into a tank which has been ordered to be placed out of service and for which the order has not been rescinded or allowing any petroleum product to be placed into any tank which has been damaged or is leaking, if the damage or leak has not been repaired.

3. Dispensing a petroleum product from any tank which has been ordered to be placed out of service and for which the order has not been rescinded or dispensing a petroleum product from any tank which is damaged or leaking, if the damage or leak has not been repaired.

A civil penalty issued pursuant to this rule and to Iowa Code section 101.26 shall not exceed \$100 for each day during which the violation occurs or \$1000 in total.

**661—224.9(17A,101) Appeals.** Any order or civil penalty issued pursuant to this chapter may be appealed using the procedures specified in 661—Chapter 10, except that each time “commissioner” or “commissioner of public safety” appears, it shall be replaced by “state fire marshal.”

**224.9(1)** Any order or civil penalty appealed pursuant to this rule shall be stayed until the issuance of a final agency decision.

EXCEPTION: An emergency order issued pursuant to subrule 224.6(4) shall not be stayed and shall take effect immediately upon notification of the order to the owner of the tank.

**224.9(2)** Reserved.

These rules are intended to implement Iowa Code sections 101.21 through 101.27.

## ARC 6264B

### REVENUE DEPARTMENT[701]

#### 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 chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 15, “Determination of a Sale and Sale Price,” Iowa Administrative Code.

In the past, if an exemption certificate was not taken “in good faith” by a retailer, both the seller and the buyer who presented the certificate could be held liable for the tax if that buyer used the purchased good or service for a purpose which was not exempt. When the Streamlined Sales and Use Tax Agreement became a part of Iowa law (July 1, 2004), a different standard of behavior for retailers was adopted. This is a relaxed “good faith” standard which means that the seller can accept a properly completed exemption certificate, but the seller does not need to follow up with the purchaser to ensure that the claimed exemption applies to the purchaser. The retailer who accepts a properly completed exemption certificate with an absence of fraudulent intent and who has not solicited a purchaser to unlawfully claim an exemption is protected by the certificate in the event that a purchaser makes a taxable use of a purchase. The applicable rule is amended to reflect this change.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 29, 2007, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 16, 2007. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 19, 2007.

These amendments are intended to implement Iowa Code section 423.51, subsection 2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **15.3(1)**, paragraph “a,” as follows:

a. ~~The Prior to July 1, 2004, the sales tax liability for all sales of tangible personal property is was upon the seller (and on and after March 13, 1986, the purchaser as well) unless the seller takes took in good faith from the purchaser a valid exemption certificate stating that the purchase is was for an exempt purpose or the tax will would be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must include have included the purchaser’s name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services are have been purchased tax-free pursuant to a valid exemption certificate which is was taken in good faith by the seller, and the tangible personal property or services are were used or disposed of by the purchaser in a nonexempt manner, or the purchaser fails failed to pay tax to the department under a direct pay permit issued by the department, the purchaser is was solely liable for the taxes and must remit the taxes directly to the department.~~

REVENUE DEPARTMENT[701](cont'd)

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own taxable use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

ITEM 2. Amend subrule 15.3(1) by relettering paragraph "b" as paragraph "c" and adopting new paragraph "b" as follows:

b. As of July 1, 2004, the requirement of "good faith" on the part of a seller is replaced by a different standard. For sales occurring on and after that date, the sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for a nontaxable purpose and is not a retail sale, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate. If the tangible personal property or services are purchased tax-free pursuant to a valid exemption certificate and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department. The protection afforded a seller by this paragraph does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claiming of an exemption.

**ARC 6254B**

**SECRETARY OF STATE[721]**

**Notice of Termination**

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6127B**, proposing to amend Chapter 21, "Election Forms and Instructions," Chapter 22, "Voting Systems," and Chapter 26, "Counting Votes," Iowa Administrative Code.

The amendments proposed in the Notice were also Adopted and Filed Emergency as **ARC 6129B**. The Notice was published to solicit comments and to provide an opportunity for a hearing. Since no comments were received, no one requested a hearing, and no changes are required to the Adopted and Filed Emergency amendments, there is no further need to proceed with rule making for **ARC 6127B**.

**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 September is 7.00%.

**INTEREST RATES FOR PUBLIC  
OBLIGATIONS AND ASSESSMENTS**

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

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 13, 2007, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

**TIME DEPOSITS**

- 7-31 days . . . . . Minimum 2.00%
- 32-89 days . . . . . Minimum 3.25%
- 90-179 days . . . . . Minimum 3.25%
- 180-364 days . . . . . Minimum 3.65%
- One year to 397 days . . . . . Minimum 3.65%
- More than 397 days . . . . . Minimum 3.75%

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 6267B**

**UTILITIES DIVISION[199]**

**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 chapters 476, 478, and 479, and section 17A.4, the Utilities Board (Board) gives notice that on September 7, 2007, the Board issued an order in Docket No. RMU-07-6, In re: Incident and Outage Reporting Requirements for Natural Gas, Electric, and Water Utilities, Communications Providers, and Owners and Operators of Electric Facilities [199 IAC Chapters 19, 20, 21, 22 and 25], "Order Commencing Rule Making," that proposes amendments to the Board rules for incident and outage notification and reporting by natural gas utilities, electric utilities, rate-regulated water utilities, communications providers, and

## UTILITIES DIVISION[199](cont'd)

owners and operators of energized electric facilities. The Board is proposing amendments to these rules based upon its experience during the February and March 2007 ice storms and a review of its current rules. The experience during the ice storms demonstrated that the current notification and reporting requirements are outdated and incomplete and that revisions to the current rules are necessary. The order containing the background and support for this rule making can be found on the Board's Web site, [www.state.ia.us/iub](http://www.state.ia.us/iub).

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before October 16, 2007, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation to receive oral comments on the proposed amendments will be held at 9 a.m. on October 30, 2007, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code chapters 476, 478, 479 and section 17A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **19.1(3)**, definition of "interruption of service," as follows:

"Interruption of service" means any disturbance of the gas supply whereby gas service to ~~50 customers or more in one segment or in a portion of a distribution system~~ a customer cannot be maintained.

ITEM 2. Rescind and reserve paragraph **19.2(5)"b."**

ITEM 3. Amend paragraph **19.2(5)"f"** as follows:

i. List of persons authorized to receive board inquiries. Each utility shall file with the board *in the annual report required by 199—subrule 23.1(2)* a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) ~~emergencies during nonoffice hours~~; (6) pipeline permits (gas). *Each utility shall file with the board a 24-hour contact number where the board can obtain current information about outages and incidents from a knowledgeable person. Such The contact information required by this paragraph shall be kept current as changes or corrections are made.*

ITEM 4. Amend paragraph **19.7(7)"a"** as follows:

a. Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety. Each utility shall maintain records for not less than two years of interruptions of service as ~~defined in 19.1(3)~~ *required to be reported in 19.17(1)* and shall periodically

review these records to determine steps to be taken to prevent recurrence.

ITEM 5. Adopt **new** rule 199—19.17(476) as follows:

**199—19.17(476) Incident notification and reports.**

**19.17(1) Notification.** A utility shall notify the board immediately, or as soon as practical, of any event involving the release of gas, failure of equipment, or interruption of facility operations, which results in any of the following:

- a. A death or personal injury necessitating in-patient hospitalization.
- b. Estimated property damage of \$15,000 or more to the property of the utility and to others, including the cost of gas lost.
- c. Emergency shutdown of a liquefied natural gas (LNG) facility.
- d. An interruption of service to 50 or more customers.
- e. Any other incident considered significant by the utility.

**19.17(2) Information required.** The board shall be notified by telephone, as soon as practical, of any reportable incident by calling the board duty officer pager at 1-866-479-9461. The caller shall leave a call-back number for a person who can provide the following information:

- a. The name of the utility and the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.
- b. The location of the incident.
- c. The time of the incident.
- d. The number of deaths or personal injuries and the extent of those injuries, if any.
- e. An initial estimate of damages.
- f. The number of services interrupted.
- g. A summary of the significant information available to the utility regarding the probable cause of the incident and extent of damages.
- h. Any oral or written report required by the U.S. Department of Transportation, and the person who made the oral report or prepared the written report.

**19.17(3) Written incident reports.** Within 30 days of the date of the incident, the utility shall file a written report with the board. The report shall include the information required for telephone notice in subrule 19.17(2), the probable cause as determined by the utility, the number and cause of any deaths or personal injuries requiring in-patient hospitalization, and a detailed description of property damage and the amount of monetary damages. If significant additional information becomes available at a later date, a supplemental report shall be filed. Copies of any written reports concerning the incident or safety-related condition filed or submitted to the U.S. Department of Transportation or the National Transportation Safety Board shall also be provided to the board.

ITEM 6. Amend paragraph **20.2(5)"k"** as follows:

k. List of persons authorized to receive board inquiries. Each utility shall file with the board *in the annual report required in 199—subrule 23.1(2)* a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; (4) meter tests and repairs; (5) ~~emergencies during nonoffice hours~~; (6) franchises for electric lines; (7) (6) certificates for electric generating plants. *Each utility shall file with the board a 24-hour contact number where the board can obtain current information about outages from a knowl-*

## UTILITIES DIVISION[199](cont'd)

*edgeable person. Such* ~~The contact information required by this paragraph shall be kept current as changes or corrections are made.~~

ITEM 7. Amend subrule 20.18(6) as follows:

**20.18(6)** ~~Notification requirements and other reporting Notification and reporting of major events as defined in subrule 20.18(4) shall comply with the requirements of rule 20.19(476,478).~~

~~a. Notification. Each electric utility with over 50,000 Iowa retail customers shall notify the board of any major event as defined in subrule 20.18(4) and of any other widespread outage considered significant by the electric utility. The notice shall be provided as soon as practical once the occurrence of a major event becomes known to the electric utility. Notice shall be made by telephone to the board's customer services section, by electronic mail to the board's general E-mail address, or by facsimile. The notice shall include, to the electric utility's best knowledge at the time:~~

- ~~(1) The nature or cause of the major event;~~
- ~~(2) The area affected by the major event;~~
- ~~(3) The number of customers that have experienced a sustained interruption of service; and~~
- ~~(4) The estimated time until service is restored.~~

~~The electric utility shall provide periodic updates to the board as new or improved information becomes available until all service is restored. The electric utility shall periodically report to the general public (via broadcasts or other media and by updating telephone answering machines) its best estimate as to when the service will be restored.~~

~~b. Major event report. Each electric utility with over 50,000 Iowa retail customers shall submit a report to the board within 20 business days after the end of a major event. The report shall include the following:~~

- ~~(1) A description of the event;~~
- ~~(2) The total number of customers out of service over the course of the major event at six-hour intervals, identified by operating area or circuit area;~~
- ~~(3) The longest customer interruption;~~
- ~~(4) The damage cost estimates to the electric utility's facilities;~~
- ~~(5) The date and time when storm center opened and closed;~~
- ~~(6) The number of people used to restore service; and~~
- ~~(7) The name and telephone number of a utility employee who may be contacted about the outage.~~

ITEM 8. Adopt **new** rule 199—20.19(476,478) as follows:

**199—20.19(476,478) Notification and reporting of outages.**

**20.19(1)** Notification. Each electric utility shall notify the board of any outage that results, or is expected to result, in the following:

- a. A loss of service for more than one hour to 2,000 or more customers or 50 percent or more of a utility's customers, whichever is less;
- b. Loss of service for more than one hour to substantially all of a community;
- c. A major event as defined in subrule 20.18(4); or
- d. Any other outage considered significant by the electric utility.

**20.19(2)** Information required. Notice shall be provided as soon as the utility learns of the outage, or as soon as practical thereafter by calling the board duty officer pager at 1-866-479-9461. The caller shall leave a call-back number for a person who can provide the following information:

- a. The nature or cause of the outage;
- b. The area affected;
- c. The number of customers that have experienced a loss of electric service as a result of the outage;
- d. The estimated time until service will be restored;
- e. The name of the utility and the name and telephone number of the person making the report and the name and telephone number of a contact person knowledgeable about the outage; and
- f. The electric utility shall provide updates to the board as new or additional information becomes available until all service is restored.

**20.19(3)** Outage report. Each electric utility shall submit a report to the board within 30 days after the customers affected by the outage reported under subrule 20.19(1) have regained service. The report shall include the following:

- a. A description of the circumstances that caused the outage;
- b. The total number of customers out of service during the outage;
- c. The longest customer interruption;
- d. The damage cost estimates to the electric utility's facilities; and
- e. The number of people used to restore service.

ITEM 9. Adopt **new** rule 199—21.9(476) as follows:

**199—21.9(476) Incident reports.** A regulated public water utility shall notify the board when it notifies the Iowa department of natural resources or the local county health department about an incident involving: (1) an occurrence of waterborne emergency (e.g., treatment process malfunction, chemical/biological spill in the water supply, contamination event in the distribution system, emergency that has the potential for drinking water contamination); (2) a boil water advisory and contamination event; or (3) a low pressure event (less than 20 psi) affecting a widespread area of the system. Notification shall be made to the board by calling the board duty officer pager at 1-866-479-9461. The caller shall leave a call-back number for a person knowledgeable about the incident. The utility shall report to the board when the incident has ended and normal water service has been restored.

ITEM 10. Amend paragraph **22.2(6)“a”** as follows:

a. Each utility shall file with the board the name, title, address, and telephone number of the person who is authorized to receive, act upon, and respond to communications from the board in connection with the following:

- (1) General management duties.
- (2) Customer relations (complaints).
- (3) Engineering operations.
- (4) ~~Emergencies during nonoffice hours. Outages, including those occurring during nonoffice hours, pursuant to paragraph 22.2(8)“d.”~~

ITEM 11. Adopt **new** subrule 22.2(8) as follows:

**22.2(8)** Outage reporting requirements. All communication providers included in 47 CFR § 4.3(a), (c), (f), and (g) shall provide notification, outage reports, and current contact information as provided in this subrule.

a. Notification of reportable outage. All communication providers covered by this subrule shall notify the board of a reportable outage as defined in 47 CFR Part 4 by calling the board duty officer pager at 1-866-479-9461, as soon as reasonably possible after discovering the outage, but no later than immediately after submitting the required electronic notification to the Federal Communications Commission (FCC). Notification to the board shall include a contact name

## UTILITIES DIVISION[199](cont'd)

and contact telephone number by which the board may immediately contact the reporting communications provider.

b. Initial communications outage report. Immediately after submitting any initial communications outage report to the FCC (which is required to be submitted no later than 72 hours after an outage is discovered), all communications providers subject to this subrule shall file with the board 11 copies of the report. If the communications provider asserts the report is entitled to confidential treatment, the filing procedures of rule 199—1.9(22) should be used.

c. Final communications outage report. Immediately after submitting any final communications outage report to the FCC (which is required to be submitted no later than 30 days after an outage is discovered), all communications providers covered by this subrule shall file with the board 11 copies of any final communications outage report submitted to the FCC. If the communications provider asserts the report is entitled to confidential treatment, the filing procedures in rule 199—1.9(22) should be used.

d. Contact information required. In its annual report, every communications provider subject to this subrule shall submit to the board a current list of contact names and telephone numbers to be used when a service outage occurs or any other time the board or its staff requires immediate information, both during normal office hours and after normal office hours. The named individual(s) shall be knowledgeable about the technical aspects of a service outage(s), its estimated duration, the impact to customers, and the probable cause. Each communications provider shall update the board immediately whenever a change in the contact information occurs.

ITEM 12. Amend rule 199—25.5(476,478) as follows:

**199—25.5(476,478) Accident reports.** ~~An electric utility shall file with the board a written report on any accident to an employee or other person involving contact with its energized electrical supply facilities which results in a fatality, admission to a hospital, \$10,000 in damages to the property of the utility and others, or any other accident considered significant by the utility. Prompt telephone notice of any electrical contract accident which results in a fatality shall be given to the board's engineering section during normal working hours. Written reports shall be submitted as soon as is practical following the accident. This rule applies to all owners or operators of electrical facilities subject to the safety jurisdiction of the board under this chapter.~~

~~—Written and telephone accident reports shall include the following information:~~

~~—The name of the utility, the name of the person making the report, and their telephone number.~~

~~—The time and location of the accident.~~

~~—The number of fatalities, extent of personal injuries, and the extent of property damage.~~

~~—A description of the events associated with the accident.~~

*25.5(1) All owners and operators of electrical facilities subject to the safety jurisdiction of the board shall provide the board with a 24-hour contact number where the board can obtain immediate access to a person knowledgeable about any incidents involving contact with energized electric facilities.*

*25.5(2) All owners and operators of electrical facilities subject to the safety jurisdiction of the board shall notify the board of any incident or accident involving contact with energized electric facilities that meets the following conditions:*

*a. An employee or other person coming in contact with its electrical supply facilities which results in death or personal injury necessitating in-patient hospitalization.*

*b. Estimated property damage of \$15,000 or more to the property of the utility and others.*

*c. Any other incident considered significant by the company.*

*25.5(3) The board shall be notified by telephone immediately, or as soon as practical thereafter, by calling the board duty officer pager at 1-866-479-9761. The caller shall leave a telephone number of a person who can provide the following information:*

*a. Name of the company and the name and telephone number of the person making the report and the name and telephone number of a contact person knowledgeable about the incident.*

*b. The location of the incident.*

*c. The time of the incident.*

*d. The number of deaths or personal injuries requiring in-patient hospitalization and the extent of those injuries.*

*e. Initial estimate of damages.*

*f. A summary of the significant information available regarding the probable cause of the incident and extent of damages.*

*g. Any oral or written report made to a federal agency, the agency receiving the report, and the name and telephone number of the person who made or prepared the report.*

*25.5(4) Written incident reports. Within 30 days of the date of the incident, the owner or operator shall file a written report with the board. The report shall include the information required for telephone notice in subrule 25.5(2), the probable cause as determined by the company, the number and cause of any deaths or personal injuries requiring in-patient hospitalization, and a detailed description of property damage and the amount of monetary damages. If significant additional information becomes available at a later date, a supplemental report shall be filed. Duplicate copies of any written reports filed or submitted to a federal agency concerning the incident shall also be provided to the board.*

## ARC 6266B

## SECRETARY OF STATE[721]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

These amendments provide to county commissioners of elections instructions for mailing of absentee ballots, including a receipt form to be mailed with absentee ballots, and instructions for examining the absentee ballot affidavit envelopes and for contacting voters who have not completed the affidavit or who have made other mistakes that will result in rejection of the absentee ballot. Rules 721—21.370(53) through 21.376(53), describing the absentee courier process, are rescinded because Iowa Code section 53.17, subsection 1, paragraph "c," and section 53.17, subsection 4, which authorize this procedure, were, in effect, repealed by 2007 Iowa Acts, Senate File 601, sections 226 and 227, effective on July 1, 2007.

Also included is an amendment to subrule 21.300(8) to make a necessary correction to the limitation on the distance from a satellite absentee voting station from which political signs and activity are barred. In 2005, Iowa Code section 53.11 was amended to extend this zone from 30 feet to 300 feet.

These amendments were published under Notice of Intended Action on August 1, 2007, as **ARC 6128B**. Except for Item 2, these amendments were simultaneously Adopted and Filed Emergency as **ARC 6063B**. Some changes from the Notice are included herein. Some of the changes have been made in response to helpful comments from the public. Other changes have been made to make corrections in the rules necessary to comply with current laws.

Rule 721—21.350(53) has been rescinded. This rule provided a transitional procedure for elections held in early July and is no longer needed.

Rule 721—21.351(53) has been revised to remove the requirement that the Commissioner note the time of receipt of absentee ballots. This requirement was repealed by 2007 Iowa Acts, Senate File 601, section 229, effective on July 1, 2007.

Subrule 21.352(1) has been revised to delete the reference to office security plans.

Rule 721—21.353(53) has been revised to clarify that use of an automatic letter opener to open absentee ballots is optional.

Rule 721—21.354(53) has been revised to clarify inconsistently used terms.

Subrule 21.361(2) has been amended to change the term "qualified elector" to "registered voter." This correction has been made because "qualified elector" is no longer used in the Code of Iowa.

Subrule 21.361(8), which relates to absentee couriers, has been rescinded.

The Secretary finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing. The changes to the Noticed rules have all been made either to clarify language or to harmonize the rules with the Code of Iowa. The legal changes these amendments implement are currently in effect and the corrections are necessary to help county commissioners of elections correctly comply with 2007 Iowa Acts, Senate Files 416 and 601.

These amendments were adopted by the Secretary of State on September 6, 2007.

These amendments are intended to implement 2007 Iowa Acts, Senate Files 416 and 601.

These amendments became effective on September 7, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 721—21.300(53) as follows:

Amend the introductory paragraph as follows:

**721—21.300(53) Satellite absentee voting stations.** The county commissioner of elections may designate locations in the county for absentee voting stations. If the commissioner receives a petition requesting that a satellite absentee voting station be established at a location described on the petition, the commissioner shall provide the requested station if the petition was properly signed and filed. The petition shall be rejected if the site chosen is not accessible to elderly and disabled voters or has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, or if the owner of the site refuses permission to locate the satellite absentee voting station at the site named on the petition. *The commissioner may also refuse to conduct satellite voting for the runoff election if a special election is scheduled to be held between the regular city election and a city runoff election.* The petition may be refused if the owner of the site demands payment for its use.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 53.11 as amended by 2007 Iowa Acts, Senate File 416.

ITEM 2. Amend subrule **21.300(8)**, paragraph "c," to read as follows:

c. Electioneering. No signs supporting or opposing any candidate or question on the ballot shall be posted within 300 feet of the satellite absentee voting station. No electioneering shall be allowed within the sight or hearing of voters while they are at the satellite absentee voting station.

ITEM 3. Amend 721—Chapter 21 by adding the following **new** rule:

**721—21.303(53) Mailing absentee ballots.** The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter's residence, as indicated by the address on the absentee ballot application.

2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.

3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).

4. Affidavit envelope. The affidavit envelope, which shall be marked with the serial number used to identify the absentee request in the commissioner's records.

5. Return carrier envelope. The return carrier envelope, which shall be addressed to the commissioner's office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the serial number used to identify the absentee request in the commissioner's

SECRETARY OF STATE[721](cont'd)

records. All other materials shall be enclosed in the delivery envelope.

7. Instructions. Absentee voting instructions, which shall be in substantially the form prescribed by the state commissioner of elections.

8. Receipt. The receipt form required by 2007 Iowa Acts, Senate File 601, section 227, which may be printed on the instructions required by numbered paragraph "7" above.

This rule is intended to implement Iowa Code section 53.8 as amended by 2007 Iowa Acts, Senate File 601, section 223, and Iowa Code section 53.17 as amended by 2007 Iowa Acts, Senate File 601, section 227.

ITEM 4. Rescind and reserve rule **721—21.350(53)**.

ITEM 5. Amend 721—Chapter 21 by adding the following **new** rules:

**721—21.351(53) Receiving absentee ballots.** The commissioner shall carefully account for and protect all absentee ballots returned to the office.

**21.351(1)** Note receipt. The commissioner shall write or file-stamp on the return carrier envelope the date that the ballot arrived in the commissioner's office. The commissioner shall also record receipt of the ballot in I-Voters.

**21.351(2)** Temporary storage. If necessary, the commissioner shall immediately put the ballot into a secure container, such as a locked ballot box, until the ballots can be moved to the secure storage area.

**21.351(3)** Secure area. The commissioner shall deliver the ballots to a secure area where returned absentee ballots will be reviewed for deficiencies.

**721—21.352(53) Review of returned affidavit envelopes.**

**21.352(1)** Personnel. The commissioner may assign staff members to complete the review of returned affidavit envelopes. Only persons who have been trained for this responsibility shall be authorized to review affidavit envelopes.

**21.352(2)** Affidavit envelopes reviewed. The affidavit envelopes of all absentee ballots returned to the commissioner's office shall be reviewed, including those of ballots returned by the bipartisan team delivering absentee ballots to health care facilities, such as hospitals and nursing homes. If a reviewer finds deficiencies in absentee affidavits returned from any health care facility, the commissioner shall send the bipartisan delivery team back to make any necessary corrections or to deliver any replacement ballots.

**21.352(3)** Instructions. Each reviewer shall receive instructions in substantially the form prescribed by the state commissioner of elections. The instructions shall provide basic security and procedural guidance and include a method for accounting for all returned absentee ballots. The prohibitions shall include:

- a. Not to leave unsecured ballots unattended.
- b. Not to alter any information on any affidavit.
- c. Not to add any information to any affidavit, except as specifically required to comply with the requirements of the law.
- d. Not to seal any affidavit envelope found open.
- e. Not to discard any return carrier envelopes, ballots, or affidavit envelopes returned by voters.

**721—21.353(53) Opening the return carrier envelopes.** The commissioner may direct a staff member to open the return carrier envelopes either manually or with an automatic letter opener, if one is available. Only a trained reviewer may remove the contents of the envelope.

**721—21.354(53) Review process.** A reviewer shall remove the contents from only one return carrier envelope at a time.

**21.354(1)** Return carrier envelopes preserved. The return carrier envelopes shall be stored in a manner that will facilitate their retrieval, if necessary. They shall be stored for 22 months for federal elections and 6 months for local elections.

**21.354(2)** Examination of affidavit envelope. The reviewer shall make sure that:

- a. The affidavit envelope is sealed, apparently with the ballot inside.
- b. The affidavit envelope has not been opened and resealed.
- c. The affidavit includes all of the following:
  - (1) An address.
  - (2) A signature.
  - (3) For primary elections only, political party affiliation.

**21.354(3)** No defects or deficiencies. If the reviewer finds no defects or deficiencies that would cause the absentee and special voters precinct board to reject the ballot, the reviewer shall put the affidavit envelope into a group of envelopes to be retained in the secure storage area with others that require no further attention until they are delivered to the absentee and special voters precinct board.

**21.354(4)** Defective and deficient affidavits. The commissioner shall contact the voter if the reviewer finds any of the following flaws in the affidavit or affidavit envelope:

- a. The commissioner shall contact the voter immediately if the affidavit envelope is defective. An affidavit envelope is defective if:
  - (1) The absentee ballot is not enclosed in the affidavit envelope.
  - (2) The affidavit envelope is not sealed.
  - (3) The affidavit envelope has been opened and resealed.

b. The commissioner shall contact the voter within 24 hours if the affidavit is deficient. A deficient affidavit lacks:

- (1) The signature of the voter.
- (2) The voter's address.
- (3) For primary elections only, political party affiliation.

c. If an affidavit envelope has flaws that are included in both paragraphs "a" and "b," the commissioner shall follow the process in paragraph "a."

**21.354(5)** Defective and deficient affidavits stored separately. The commissioner shall store the defective and deficient affidavit envelopes separately from other returned absentee ballot affidavit envelopes.

a. Deficient affidavit envelopes requiring voter correction must be available for retrieval when the voter comes to make corrections.

b. Defective (improperly closed) affidavit envelopes must be attached to the original application, replacement application and replacement ballot for review by the special precinct board.

**721—21.355(53) Notice to voter.** When the commissioner finds a deficiency in an absentee ballot affidavit or finds a defective (improperly closed) affidavit envelope, the commissioner shall notify the voter in writing and, if possible, by telephone or by E-mail. The commissioner shall keep a separate checklist for each voter showing the reasons for which the voter was contacted and the methods used to contact the voter.

**21.355(1)** Notice to voter—deficient ballot affidavit. Within 24 hours after receipt of an absentee ballot with a deficient affidavit, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include:

## SECRETARY OF STATE[721](cont'd)

a. Reason for deficiency (lack of signature, address or, for primary elections only, political party affiliation).

b. The voter's options for correcting the affidavit as follows:

(1) Completing the affidavit at the commissioner's office by 5 p.m. the day before the election; or

(2) Casting a provisional ballot at the polls on election day.

c. Address of commissioner's office, business hours and contact information.

**21.355(2)** Notice to voter—defective ballot affidavit. Immediately after determining that an absentee ballot affidavit envelope was not properly closed, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include the following information:

a. Reason for defect, such as envelope not sealed, envelope opened and resealed, or the ballot was outside the affidavit envelope.

b. The voter's options for correcting the defect as follows:

(1) Applying for a replacement ballot; or

(2) Casting a provisional ballot at the polls on election day.

c. Process for applying for a replacement ballot.

d. Address of commissioner's office, business hours and contact information.

**21.355(3)** Telephone contact. If the voter has provided a telephone number, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by telephone. The commissioner shall keep a written record of the telephone conversation. The written record shall include the following information:

a. Name of the person making the call.

b. Date and time of the call.

c. If a person answered the telephone, the name of that person.

**21.355(4)** E-mail contact. If the voter has provided an E-mail address, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by E-mail. The E-mail message shall be the same message that was mailed to the voter. A copy of the E-mail message shall be attached to the checklist.

Rules 21.351(53) through 21.355(53) are intended to implement Iowa Code section 53.18 as amended by 2007 Iowa Acts, Senate File 601, section 229.

ITEM 6. Amend subrule 21.359(4) to read as follows:

**21.359(4)** If a voter has not enclosed the ballot in a secrecy envelope *and the ballot has not been folded in a manner that conceals all votes marked on the ballot*, the officials shall put the ballot in a secrecy envelope without examining the ballot. Two of the special precinct election officials, one from each of the political parties referred to in Iowa Code section 49.13(2), shall sign the secrecy envelope.

ITEM 7. Amend subrule 21.361(2) to read as follows:

**21.361(2)** An absentee ballot shall be rejected if the applicant is not a duly ~~qualified elector~~ *registered voter* in the precinct in which the ballot is cast. "Precinct" means a precinct established pursuant to Iowa Code sections 49.3 through 49.5.

ITEM 8. Rescind subrule **21.361(8)**.

ITEM 9. Rescind and reserve rules **721—21.370(53)** to **721—21.376(53)**.

[Filed Emergency After Notice 9/7/07, effective 9/7/07]

[Published 9/26/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/26/07.

## ARC 6247B

ECONOMIC DEVELOPMENT, IOWA  
DEPARTMENT OF[261]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 1, "Organization"; rescinds Chapter 2, "Grow Iowa Values Fund Assistance," Chapter 17, "High Technology Apprenticeship Program," and Chapter 56, "Entrepreneurs with Disabilities Program"; amends Chapter 53, "Community Economic Betterment Program," Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program," Chapter 59, "Enterprise Zones," Chapter 60, "Entrepreneurial Ventures Assistance Program," Chapter 61, "Physical Infrastructure Assistance Program," and Chapter 68, "High Quality Job Creation Program"; rennumbers Chapter 102, "Welcome Center Program," as Chapter 34; rennumbers Chapter 104, "Iowa Wine and Beer Promotion Grant Program," and Chapter 132, "Iowa Export Trade Assistance Program," as Chapters 33 and 72, respectively; adopts new Chapter 165, "Allocation of Grow Iowa Values Fund"; rescinds Chapter 168, "Additional Program Requirements"; rennumbers Chapter 169, "Public Records and Fair Information Practices," Chapter 170, "Department Procedure for Rule Making," Chapter 171, "Petition for Rule Making," Chapter 172, "Petition for Declaratory Order," and Chapter 173, "Uniform Waiver and Variance Rules," as Chapters 195 to 199, respectively; and adopts new Chapter 171, "Supplemental Credit or Points," Chapter 172, "Environmental Law Compliance; Violations of Law," Chapter 173, "Standard Definitions," Chapter 174, "Wage, Benefit, and Investment Requirements," Chapter 175, "Application Review and Approval Procedures," Chapter 187, "Contracting," Chapter 188, "Contract Compliance and Job Counting," and Chapter 189, "Annual Reporting"; and rescinds 264—Chapters 1 to 55, Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6027B**. The amendments were simultaneously Adopted and Filed Emergency as **ARC 6026B**.

These amendments are intended to streamline and consolidate administrative provisions for ten programs. The programs impacted by this rule making are CEBA, PIAP, VAAPFAP, EVA, EZ, HQJC, Loan and Credit Guarantee Program, Economic Development Set-aside Program, Targeted Small Business Financial Assistance Program and the Brownfield Redevelopment Program. The amendments rescind portions of existing program rules that apply to the application review and approval process, wage and threshold requirements, contracting, amendments, and reporting and combine them into two new parts that will apply to these job creation or Grow Iowa Values Fund-assisted programs.

The amendments update the Department's method of counting and tracking jobs. This revised method is intended to be accountable, verifiable and business-friendly. At the time of application, a baseline employment number will be established using payroll records. The baseline data will include details about how many jobs at the project location already meet the qualifying wage thresholds (with and without the value of benefits added to the hourly wage). Changes in these baseline employment numbers will be collected and analyzed by the Department as part of the annual reporting process.

The outcomes sought by this rule making are:

1. The establishment of a more easily understandable set of standard rules that describe the primary funding sources for job creation programs administered by IDED. Those sources are the 2003 Grow Iowa Values Fund (funded with Federal Economic Stimulus moneys), the 2005 Grow Iowa Values Fund (established by Iowa Code chapter 15G and funded with an annual \$35 million state appropriation), and moneys in program funds that previously received state appropriations.

2. A centralized description of the various advisory groups and decision makers involved with the approval processes. These include the Due Diligence Committee, the Loan and Credit Guarantee Committee, the Agricultural Products Advisory Council, the Brownfield Advisory Council, the Iowa Economic Development Board, and the Iowa Department of Economic Development.

3. The consolidation of program/funding source wage and benefit threshold requirements (e.g., 90 percent, 100 percent, 130 percent, or 160 percent of the average county wage).

4. The establishment of uniform contracting requirements and contract administration procedures.

5. The establishment of a uniform method of job counting and tracking.

The Department held a public hearing on Thursday, July 26, 2007, to receive comments on the amendments. No comments were received. The final amendments were revised as follows:

- Chapter 56, "Entrepreneurs with Disabilities Program," is rescinded. This program was transferred to the Iowa Finance Authority pursuant to 2005 Iowa Acts, chapter 179, section 161.

- In Item 60, the rescission of 261—Chapter 103 has been omitted because, subsequent to that rescission, a new 261—Chapter 103 was adopted (see **ARC 6137B**, IAB 8/17/07).

- Rule 261—174.5(15) has been revised to clarify that a business's job obligations will be the business's base employment number and the number of new jobs to be created above that base. The rule now reads as follows:

**"261—174.5(15) Job obligations.** Jobs that will be created or retained as a result of a project's receiving state or federal financial assistance or tax credit benefits from the department shall meet the qualifying wage threshold requirements. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business's job creation or job retention obligations outlined in the contract between the department and the business. A business's job obligations shall include the business's employment base and the number of new jobs required to be created above the base employment figure."

- Subrule 187.3(5) has been revised to clarify that the federally funded EDSA program does not have a two-year maintenance period. The phrase "2 more years" has been removed from the third column of the table.

- Subrule 187.5(4) has been revised to clarify that this subrule applies to both the EZ program and the HQJC program. The subrule now reads as follows:

**"187.5(4)** Department actions upon default—tax credit programs. Collection efforts for tax credit programs are handled by the local community that approved the local tax incentive and the Iowa department of revenue, the state agency responsible for the state tax incentives.

"a. Repayment. If an eligible business or eligible housing business has received incentives or assistance under the EZ

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

program or the HQJC program and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

“b. Calculation of repayment due for a business. If the department, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the tax credit program, the business is subject to repayment of all or a portion of the amount of incentives received.

“(1) Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

“1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

“2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

“3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

“4. If the business has not met the minimum job creation requirements for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

“(2) Wages and benefits. If a business fails to comply with the wage or benefit requirements for the tax credit program, the business shall not receive incentives or assistance for each year during which the business is not in compliance.

“(3) Capital investment. If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

“1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to invest.

“2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to invest.

“3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to invest.

“4. If the business has not met the minimum investment requirement for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

“c. Department of revenue; county/city recovery. Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under Iowa Code section 15E.193A or 15E.196. The value of state incentives provided under Iowa Code section 15E.193A or 15E.196 includes applicable interest and penalties.

“d. Layoffs or closures. If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a

layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

“e. Extensions. If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the department, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.”

• The rules of the Grow Iowa Values Fund, 264—Chapters 1 to 55, are rescinded. The original legislation that established Iowa Code sections 15G.101 through 15G.107 was stricken pursuant to *Rants v. Vilsack*, 684 N.W.2d 193. Therefore, the rules adopted by the former Grow Iowa Values Board pursuant to these stricken Iowa Code sections should also be rescinded.

The Iowa Economic Development Board adopted these amendments on August 16, 2007.

These amendments will become effective on October 31, 2007, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code chapters 15 and 17A.

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 [amend Chs 1, 53, 57, 59, 60, 61, 68; rescind Chs 2, 17, 56, 168 and 264—Chs 1 to 55; renumber Chs 102, 104, 132 as Chs 33, 34, 72 and Chs 169 to 173 as Chs 195 to 199; adopt Chs 165, 171 to 175, 187 to 189] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6027B** and Adopted and Filed Emergency as **ARC 6026B**, IAB 7/4/07.

[Filed 8/22/07, effective 10/31/07]  
[Published 9/26/07]

[For replacement pages for IAC, see IAC Supplement 9/26/07.]

**ARC 6252B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133(3), the Environmental Protection Commission hereby adopts an amendment to Chapter 28, “Ambient Air Quality Standards,” Iowa Administrative Code.

The purpose of the amendment is to adopt into the state air quality rules revisions to federal ambient air quality standards for particulate matter finalized by the U.S. Environmental Protection Agency (EPA) on October 17, 2006.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5692B**. A public hearing was held on March 5, 2007. No oral or written comments were received at the public hearing. The EPA submitted the only written comment during the public comment period, which closed on March 9, 2007. A summary of EPA's comment and the Department's response to the comment is provided in a public responsiveness summary available from the Department upon request. The adopted amendment was

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

modified as described below from the proposed amendment published under Notice of Intended Action to address EPA's comment.

The amendment changes rule 567—28.1(455B) by citing the Federal Register notice and corresponding Federal Register page numbers and promulgation date for the revisions made by EPA to the National Primary and Secondary Ambient Air Quality Standards, as published in 40 Code of Federal Regulations (CFR) Part 50 on October 17, 2006.

These revisions address fine particulate matter 2.5 micrometers in diameter and smaller (PM<sub>2.5</sub>) and inhalable coarse particulate matter which is 10 micrometers and smaller in diameter (PM<sub>10</sub>). EPA strengthened the 24-hour PM<sub>2.5</sub> standard from the 1997 level of 65 micrograms per cubic meter of air to 35 micrograms per cubic meter of air. EPA retained the current annual PM<sub>2.5</sub> standard at 15 micrograms per cubic meter of air. EPA also retained the existing 24-hour PM<sub>10</sub> standard of 150 micrograms per cubic meter of air, but revoked the annual PM<sub>10</sub> standard.

The Department will be required to make PM<sub>2.5</sub> attainment or nonattainment designations for the State of Iowa by December 2007. EPA will review the Department's designations and make its own PM<sub>2.5</sub> designations by December 2009. The EPA designations will become final in April 2010.

As stated in the Preamble of the published Notice, the Department initially concluded that it was no longer necessary to conduct air dispersion modeling or set air construction permit limits for the annual PM<sub>10</sub> standard since EPA had revoked the annual PM<sub>10</sub> standard. Written comments received from EPA stated that EPA's 1997 interim PM<sub>2.5</sub> implementation policy for New Source Review (NSR) continues to instruct that PM<sub>10</sub> should be used as a surrogate for PM<sub>2.5</sub> until such time that EPA has a final implementation rule for PM<sub>2.5</sub>. If the revocation of the annual PM<sub>10</sub> standard was adopted as proposed in the Notice of Intended Action, the Department would remove its only mechanism to implement EPA's interim PM<sub>2.5</sub> policy for air dispersion modeling review of annual PM<sub>2.5</sub> impacts. Since monitored values of the annual PM<sub>10</sub> standard will not be used to determine the PM<sub>10</sub> attainment or nonattainment status of an area, the Department has also concluded that the continued use of the annual PM<sub>10</sub> standard as a surrogate for the annual PM<sub>2.5</sub> standard for NSR purposes does not conflict with Iowa's statutory provisions regarding the adoption of state air quality rules that are more stringent than federal regulations.

To address this issue until final PM<sub>2.5</sub> implementation guidance is promulgated by EPA, the Department has amended the Chapter 28 language proposed in the Notice of Intended Action to add language clarifying that the annual PM<sub>10</sub> standard shall continue to be applied for purposes of implementation of new source permitting provisions in 567—Chapters 22 and 33. Since the Department continues to implement EPA's 1997 interim implementation guidance for PM<sub>2.5</sub>, the Department believes that this change from what was published in the Notice of Intended Action is within the scope of the published Notice and is a logical outgrowth of EPA's comment on the published Notice.

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

This amendment will become effective on October 31, 2007.

The following amendment is adopted.

Amend rule 567—28.1(455B) as follows:

**567—28.1(455B) Statewide standards.** The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), and 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), and 71 Federal Register 61144-61233 (October 17, 2006), except that the annual PM<sub>10</sub> standard specified in 40 CFR Section 50.6(b) shall continue to be applied for purposes of implementation of new source permitting provisions in 567 IAC Chapters 22 and 33. The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws, regulations and guidance documents.

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

[Filed 9/6/07, effective 10/31/07]

[Published 9/26/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/26/07.

## ARC 6253B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.304(8), the Environmental Protection Commission hereby adopts amendments to Chapter 103, "Sanitary Landfills: Coal Combustion Residue," Chapter 104, "Sanitary Disposal Projects with Processing Facilities," Chapter 105, "Organic Materials Composting Facilities," Chapter 106, "Citizen Convenience Centers and Transfer Stations," Chapter 112, "Sanitary Landfills: Biosolids Monofills," Chapter 114, "Sanitary Landfills: Construction and Demolition Wastes," Chapter 115, "Sanitary Landfills: Industrial Monofills," Chapter 118, "Discarded Appliance Demanufacturing," Chapter 120, "Landfarming of Petroleum Contaminated Soil," Chapter 121, "Land Application of Wastes," Chapter 122, "Cathode Ray Tube Device Recycling," and Chapter 123, "Regional Collection Centers and Mobile Unit Collection and Consolidation Centers," Iowa Administrative Code.

These new and amended rules are intended to fully implement the financial assurance requirements for all sanitary disposal projects as required by Iowa Code sections 455B.304(8) and 455B.306(9).

In 1986, the Code of Iowa was amended to require financial assurance requirements for all sanitary disposal projects. Financial assurance requirements for municipal solid waste landfills were adopted by the Commission in 1994 (567—Chapter 111). Since 2002, financial assurance requirements have been adopted for composting facilities (567—Chapter 105) and transfer stations (567—Chapter 106). This rule making is intended to implement the statutorily required financial assurance requirements for the remaining categories of sanitary disposal projects. The amendments are based upon the existing rules for municipal solid waste landfills, composting facilities, and transfer stations.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The amendments apply to coal combustion residue landfills, solid waste processing facilities, solid waste composting facilities, solid waste transfer stations, biosolids monofill sanitary landfills, construction and demolition waste landfills, appliance demanufacturing facilities, persons engaged in the permitted land application of solid wastes and petroleum-contaminated soils, cathode ray tube collection facilities, and household hazardous waste regional collection centers. Exceptions to the new financial assurance requirements are adopted for facilities to which the current financial assurance requirements are applicable. Financial assurance mechanisms should already be in place for such facilities.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 3, 2007, as **ARC 5633B**. A public hearing was held on March 28, 2007. Written comments were received through the end of the day on March 28, 2007. Overall, there were 17 public comments pertaining to this rule making. Based on the public comments, the Department made changes that either offered additional flexibility or provided greater clarification to the proposed rules. Examples of added flexibility include the option of a multitude of financial assurance mechanisms instead of specifying one mechanism or a cash account as the financial assurance mechanism, as was done previously for transfer station and compost facilities. Clarification was provided in 567—Chapter 103, 567—Chapter 112, 567—Chapter 114 and 567—Chapter 115 to indicate that for existing facilities, the initial deposit into a trust fund or local government dedicated fund shall take place within 30 days of the close of the first fiscal year that begins after the effective date of these rules. Additionally, revisions were made to 567—Chapter 103 and 567—Chapter 115 to not require owners of monofill landfills to establish closure and postclosure accounts.

These amendments are intended to implement Iowa Code sections 455B.304 and 455B.306.

These amendments shall become effective October 31, 2007.

The following amendments are adopted.

ITEM 1. Amend 567—Chapter 103 by adopting the following **new** rule:

**567—103.3(455B) Coal combustion residue sanitary landfill financial assurance.**

**103.3(1) Purpose.** The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at coal combustion residue sanitary landfills (CCR landfills).

**103.3(2) Applicability.** The requirements of this rule apply to all owners and operators of CCR landfills accepting waste as of October 31, 2007, except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

**103.3(3) Financial assurance for closure.** The owner or operator of a CCR landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrule 103.1(5). Proof of compliance pursuant to paragraphs 103.3(3)“a” to “e” must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to,

the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 103.3(8). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 103.3(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the CCR landfill in accordance with the closure/postclosure plan as required by subrule 103.1(5). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the CCR landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CCR landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or CCR landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 103.3(3)“a” to “e” and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well and piezometer modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

13. Legal, financial and administrative services; and

14. Closure compliance certifications and documentation.

d. For CCR landfills owned by local governments, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CCR landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**103.3(4)** Financial assurance for postclosure. The owner or operator of a CCR landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the closure/postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 103.3(4)"a" to "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 103.3(8). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 103.3(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the CCR landfill in compliance with the closure/postclosure plan developed pursuant to subrule 103.1(5). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third-party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CCR landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or CCR landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate

of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 103.3(4)"a" to "e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Groundwater and surface water monitoring systems maintenance;
6. Groundwater and surface water quality monitoring and reports;
7. Groundwater monitoring systems performance evaluations and reports;
8. Leachate control systems maintenance;
9. Leachate management, transportation and disposal;
10. Leachate control systems performance evaluations and reports;
11. Facility inspections and reports;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Financial assurance, accounting, audits and reports.

d. For CCR landfills owned by local governments, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CCR landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**103.3(5)** Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action must have a detailed written estimate, in current dollars, prepared by an Iowa-licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or CCR landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided

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if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a CCR landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 103.3(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

**103.3(6)** Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(9)“a” must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 103.3(6)“a” to “i.”

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 103.3(3), 103.3(4), and 103.3(5) and placed in the facility’s official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the CCR landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of a response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 103.3(8) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 103.3(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the amount specified in 103.3(8) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 103.3(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator or another person authorized to conduct closure, postclosure, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility’s official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 103.3(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 103.3(6)“b”(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 103.3(6)“a” except the requirements for initial

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payment and subsequent annual payments specified in subparagraphs 103.3(6)"a"(2) to (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform, and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 103.3(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation and the closure and postclosure periods.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year in an amount at least equal to the amount specified in subrule 103.3(8) for closure, postclosure, or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a standby trust fund established pursuant to paragraph 103.3(6)"a." If the owner or op-

erator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the standby trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the CCR landfill whenever final closure occurs or to provide postclosure for the CCR landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 103.3(8) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator or another person authorized to conduct closure or postclosure may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel

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the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into a standby trust fund established pursuant to paragraph 103.3(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subrule within the 60-day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 103.3(6)"e"(1)"1," "2" and "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or

- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus \$10 million except as provided in the second bulleted paragraph of numbered paragraph 103.3(6)"e"(1)"2"; or

- Net worth of \$10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 103.3(6)"e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 103.3(3) to 103.3(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 103.3(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 103.3(6)"e"(1) but which differs from data in the audited financial statements referred to in numbered paragraph 103.3(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 103.3(6)"e"(2)"1," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that doc-

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uments how these obligations have been measured and reported and verifies that the tangible net worth of the owner or operator is at least \$10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 103.3(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 103.3(6)“e”(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 103.3(6)“e”(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 103.3(6)“e”(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 103.3(6)“e,” the owner or operator must include cost estimates required for subrules 103.3(3) to 103.3(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 103.3(6)“f” if it:

- Is currently in default on any outstanding general obligation bonds; or

- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 103.3(6)“f”(1)“2.” A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

“Cash plus marketable securities” means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

“Debt service” means the amount of principal and interest due on a loan in a given time period, typically the current year.

“Deficit” means total annual revenues minus total annual expenditures.

“Total expenditures” means all expenditures, excluding capital outlays and debt repayment.

“Total revenues” means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 103.3(6)“f”(4); that provides evidence and certifies that the local government meets the conditions of numbered paragraphs 103.3(6)“f”(1)“1,” “2,” and “3”; and that certifies that the local government meets the conditions of subparagraphs 103.3(6)“f”(2) and (4); and

- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 103.3(6)“f”(1)“1,” second bulleted paragraph, if applicable, and the requirements of numbered paragraph 103.3(6)“f”(1)“2” and the third and fourth bulleted paragraphs of numbered paragraph 103.3(6)“f”(1)“3” and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

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2. The items required in numbered paragraph 103.3(6)“f”(3)“1” must be submitted to the department and placed in the facility’s official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility’s official files, the local government owner or operator must update the information and place the updated information in the facility’s official files within 180 days following the close of the owner’s or operator’s fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 103.3(6)“f” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner’s or operator’s fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government’s total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government’s total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 103.3(6)“f”(4)“1” and “2.”

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the

owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 103.3(6)“e” and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility’s operating record along with copies of the letter from a certified public accountant and the accountant’s opinions. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 103.3(6)“g”(3)“2” and “3,” the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 103.3(6)“a” in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 103.3(6)“g”(3)“3.”

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 103.3(6)“a.” If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 103.3(6)“e,” the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

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(5) The owner or operator is no longer required to meet the requirements of paragraph 103.3(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 103.3(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 103.3(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 103.3(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 103.3(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 103.3(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 103.3(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 103.3(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 103.3(6)"f," the owner or operator must, within the 90-day period, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned CCR landfill or a local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 103.3(6)"i"(1) or (2) below, and all other provisions of this paragraph, and if documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arise from the operation of the CCR landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage and funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the CCR landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 103.3(8), divided by the number of years in the pay-in period as defined in paragraph 103.3(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in paragraph 103.3(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be in-

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curred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

**103.3(7) General requirements.**

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent shall not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple CCR landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all CCR landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 103.3(455B).

**103.3(8) Amount of required financial assurance.** A financial assurance mechanism established pursuant to subrule 103.3(6) shall be in the amount of the third-party cost estimates required by subrules 103.3(3), 103.3(4), and 103.3(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 2. Amend 567—Chapter 104 by adopting the following **new** rule:

**567—104.26(455D) Financial assurance for solid waste processing facilities.** Permitted solid waste processing facilities must obtain and submit a financial assurance instrument to the department for preprocessed and postprocessed waste storage in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any materials that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**104.26(1) No permit without financial assurance.** The department shall not issue or renew a permit to an owner or operator of a solid waste processing facility until a financial assurance instrument has been submitted to and approved by the department.

**104.26(2) Proof of compliance.** Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new solid waste processing facility or application for a permit renewal, whichever occurs first. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**104.26(3) Use of one financial assurance instrument for multiple permitted activities.** Solid waste processing facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**104.26(4) Financial assurance amounts required.** The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and must account for at least the following factors determined by the department to be minimal necessary costs for closure:

a. The cost of hiring a third party to properly clean and decontaminate all equipment, storage facilities, holding areas and drainage collection systems pursuant to subrule 104.11(1). This estimate shall include the cost of properly disposing of a one-week volume of washwater from the processing facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

b. Third-party labor and transportation costs and total tip fees to properly dispose of all preprocessed and postprocessed waste equal to the maximum storage capacity of the processing facility pursuant to subrule 104.11(2). If materials are temporarily stored on site in transportation vehicles or waste receptacles, then this estimate shall include disposal costs for the maximum number of transportation vehicles and waste receptacles that can be on site at any one time.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567—Chapters 100 to 123, if any, in accordance with subrule 104.26(3).

**104.26(5) Acceptable financial assurance instruments.** The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 104.26(4) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the ap-

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proval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator of a solid waste processing facility or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to the provision of proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned solid waste processing facility or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the solid waste processing facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any preprocessed and postprocessed waste that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 104.26(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 104.26(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

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1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 104.26(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 104.26(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 104.26(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 104.26(5)"f"(2)"2," if applicable, and the requirements of subparagraphs 104.26(5)"f"(3) and (4).

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3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 104.26(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 104.26(5)“f”(2), (3), (4) and (5).

**104.26(6)** Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, “proper closure” means completion of all items pursuant to rule 104.11(455B) and subrule 104.26(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 3. Rescind rule 567—105.14(455B,455D) and adopt the following **new** rule in lieu thereof:

**567—105.14(455B,455D) Composting facility financial assurance.** Permitted solid waste composting facilities receiving more than 5,000 tons of feedstock annually, bulking agent excluded, must obtain and submit a financial assurance instrument to the department for waste materials received and stockpiled by the facility in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any preprocessed and postprocessed stockpiled materials that may remain at a facility due to the

owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**105.14(1)** No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of a solid waste composting facility until a financial assurance instrument has been submitted to and approved by the department.

**105.14(2)** Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after June 19, 2002, or at the time of application for a permit for a new solid waste composting facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**105.14(3)** Use of one financial assurance instrument for multiple permitted activities. Solid waste composting facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**105.14(4)** Financial assurance amounts required. The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and must account for at least the following factors determined by the department to be minimal necessary costs for closure:

a. Transportation costs, which include the cost to load the material, and total tip fees to properly dispose of the maximum tonnage of received materials that could be managed and stockpiled by the compost facility. Also included shall be the costs of properly removing any wastewater held at the facility, or

b. Cost of a beneficial reuse option, approved pursuant to subrule 105.13(3), for the total amount of material that could be managed and stockpiled by the composting facility. If the total amount of material will not be beneficially reused, the remainder of the cost shall be calculated according to paragraph 105.14(4)“a.” Also included shall be the costs of properly removing any wastewater held at the facility.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567—Chapters 100 to 123, if any, in accordance with subrule 105.14(3).

**105.14(5)** Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 105.14(4) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator of a solid waste composting facility or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be

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restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to the provision of proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned solid waste composting facility or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the solid waste composting facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any solid waste that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and

whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 105.14(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 105.14(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

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(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 105.14(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 105.14(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 105.14(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable

securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 105.14(5)"f"(2)"2," if applicable, and the requirements of subparagraphs 105.14(5)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 105.14(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 105.14(5)"f"(2), (3), (4) and (5).

**105.14(6)** Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

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b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to rule 105.13(455B,455D) and subrule 105.14(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 4. Rescind rule 567—106.18(455B) and adopt the following **new** rule in lieu thereof:

**567—106.18(455B) Citizen convenience center and transfer station financial assurance.** Permitted solid waste citizen convenience centers and transfer stations must obtain and submit a financial assurance instrument to the department for solid waste storage in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any solid waste that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**106.18(1)** No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of a citizen convenience center or transfer station until a financial assurance instrument has been submitted to and approved by the department.

**106.18(2)** Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after July 17, 2002, or at the time of application for a permit for a new citizen convenience center or transfer station. The owner or op-

erator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**106.18(3)** Use of one financial assurance instrument for multiple permitted activities. Citizen convenience centers and transfer stations required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**106.18(4)** Financial assurance amounts required. The estimate submitted to the department must be certified by an Iowa-licensed professional engineer and must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 106.7(455B) for citizen convenience centers and rule 106.17(455B) for transfer stations, as applicable:

a. Third-party labor and transportation costs and total tip fees to properly dispose of all solid waste and litter at the facility equal to twice the maximum storage capacity of the facility. If materials are temporarily stored on site in transportation vehicles or waste receptacles, then this estimate shall include disposal costs for the maximum number of transportation vehicles and waste receptacles that can be on site at any one time.

b. The cost of hiring a third party to properly clean and decontaminate all equipment, storage facilities, holding areas and drainage collection systems. This estimate shall include the cost of properly disposing of a one-week volume of washwater from the facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567—Chapters 100 to 123, if any, in accordance with subrule 106.18(3).

**106.18(5)** Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 106.18(4) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator of a citizen convenience center or transfer station or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to the provision of proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

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(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned citizen convenience center or transfer station or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any solid waste that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 106.18(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 106.18(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

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- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 106.18(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 106.18(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 106.18(5)"a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 106.18(5)"f"(2)"2," if applicable, and the requirements of subparagraphs 106.18(5)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 106.18(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 106.18(5)"f"(2), (3), (4) and (5).

**106.18(6)** Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of

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continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to rule 106.7(455B) or 106.17(455B), as applicable, and subrule 106.18(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 5. Amend 567—Chapter 112 by adopting the following new rule:

**567—112.31(455B) Biosolids monofill sanitary landfill financial assurance.**

**112.31(1) Purpose.** The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at biosolids monofill sanitary landfills (BMF landfills).

**112.31(2) Applicability.** The requirements of this rule apply to all owners and operators of BMF landfills accepting waste as of October 31, 2007, except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

**112.31(3) Financial assurance for closure.** The owner or operator of a BMF landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 112.26(13) and 112.13(10). Proof of compliance pursuant to paragraphs 112.31(3)"a" to "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 112.31(9). Doc-

umentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 112.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the BMF landfill in accordance with the closure plan as required by subrules 112.26(13) and 112.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the BMF landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the BMF landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or BMF landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 112.31(3)"a" to "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned BMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

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e. Privately held BMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**112.31(4)** Financial assurance for postclosure. The owner or operator of a BMF landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 112.31(4)“a” to “e” must be submitted by the owner or operator yearly by April 1 and must be approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 112.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 112.31(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the BMF landfill in compliance with the postclosure plan developed pursuant to subrules 112.26(14) and 112.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third-party estimate of postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the BMF landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or BMF landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 112.31(4)“a” to “e” and must receive department approval

for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

d. For publicly owned BMF landfills, the owner or operator shall submit to the department a copy of the owner’s or operator’s most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held BMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**112.31(5)** Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action must have a detailed written estimate, in current dollars, prepared by an Iowa-licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or BMF landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a BMF landfill required to undertake a corrective action plan must establish financial

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 112.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

**112.31(6)** Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(9)“a” must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 112.31(6)“a” to “i.”

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 112.31(3), 112.31(4), and 112.31(5) and placed in the facility’s official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the BMF landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of a response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 112.31(9) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 112.31(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the amount specified in 112.31(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 112.31(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator or another person authorized to conduct closure, postclosure, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility’s official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 112.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 112.31(6)“b”(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 112.31(6)“a” except the requirements for initial payment and subsequent annual payments specified in subparagraphs 112.31(6)“a”(2) to (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

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(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 112.31(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation and the closure and postclosure periods.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year in an amount at least equal to the amount specified in subrule 112.31(9) for closure, postclosure, or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code section 455B.306(9)"b." The provi-

sion of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the BMF landfill whenever final closure occurs or to provide postclosure for the BMF landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or another person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 112.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator or another person authorized to conduct closure or postclosure may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the de-

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partment adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(9)“b.” If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60-day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 112.31(6)“e”(1)“1,” “2” and “3” to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus \$10 million except as provided in the second bulleted paragraph in numbered paragraph 112.31(6)“e”(1)“2”; or
- Net worth of \$10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner’s or operator’s audited financial statements and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current

closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 112.31(6)“e”(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility’s official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 112.31(3) to 112.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 112.31(6)“e”(1).

2. A copy of the independent certified public accountant’s unqualified opinion of the owner’s or operator’s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner’s or operator’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant’s letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 112.31(6)“e”(1) but which differs from data in the audited financial statements referred to in numbered paragraph 112.31(6)“e”(2)“2,” then a special report from the owner’s or operator’s independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant’s letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant’s letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 112.31(6)“e”(2)“1,” then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported and verifies that the tangible net worth of the owner or

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operator is at least \$10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 112.31(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 112.31(6)“e”(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 112.31(6)“e”(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 112.31(6)“e”(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 112.31(6)“e,” the owner or operator must include cost estimates required for subrules 112.31(3) to 112.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 112.31(6)“f” if it:

- Is currently in default on any outstanding general obligation bonds; or

- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 112.31(6)“f”(1)“2.” A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

“Cash plus marketable securities” means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

“Debt service” means the amount of principal and interest due on a loan in a given time period, typically the current year.

“Deficit” means total annual revenues minus total annual expenditures.

“Total expenditures” means all expenditures, excluding capital outlays and debt repayment.

“Total revenues” means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 112.31(6)“f”(4); that provides evidence and certifies that the local government meets the conditions of numbered paragraphs 112.31(6)“f”(1)“1,” “2,” and “3”; and that certifies that the local government meets the conditions of subparagraphs 112.31(6)“f”(2) and (4); and

- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 112.31(6)“f”(1)“1,” second bulleted paragraph, if applicable, and the requirements of numbered paragraph 112.31(6)“f”(1)“2” and the third and fourth bulleted paragraphs of numbered paragraph 112.31(6)“f”(1)“3,” and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

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2. The items required in numbered paragraph 112.31(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 112.31(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, or corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 112.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guaran-

tor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 112.31(6)"e" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 112.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or

- Establish a fully funded trust fund as specified in paragraph 112.31(6)"a" in the name of the owner or operator (payment guarantee); or

- Obtain alternative financial assurance as required by numbered paragraph 112.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 112.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 112.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

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(5) The owner or operator is no longer required to meet the requirements of paragraph 112.31(6)“g” upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 112.31(6)“f” and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 112.31(6)“h”(1)“2” and “3,” the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 112.31(6)“a” in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 112.31(6)“h”(1)“3.”

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 112.31(6)“a.” If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 112.31(6)“f”(3) and place a copy in the facility’s official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 112.31(6)“h”(2)“1” when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 112.31(6)“f,” the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned BMF landfill or a local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 112.31(6)“i”(1) or (2) and all other provisions of this paragraph and if documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs arising from the operation of the BMF landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the BMF landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 112.31(9), divided by the number of years in the pay-in period as defined in paragraph 112.31(6)“i.” The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in 112.31(6)“i.” The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be in-

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curred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

**112.31(7) General requirements.**

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple BMF landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all BMF landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 112.31(455B).

**112.31(8) Closure and postclosure accounts.** The holder of a permit for a BMF landfill shall maintain a separate account for closure and postclosure as required by Iowa Code section 455B.306(9)“b.” The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

“Account” means a formal separate set of records.

“Current balance” means cash in an account established pursuant to this subrule plus the current value of investments of moneys collected pursuant to subrule 112.31(8) and used

to purchase one or more of the investments listed at Iowa Code section 12B.10(5).

“Current cost estimate” means the closure cost estimate prepared and submitted to the department pursuant to subrule 112.31(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 112.31(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 112.31(8)“e,” moneys in the accounts may be withdrawn without department approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 112.13(10). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 112.31(6)“a” to satisfy the requirements of this rule must comply with the requirements of subparagraph 112.31(6)“a”(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this subrule. Permit holders for new BMF landfills permitted after April 1, 2008, shall submit to the department, prior to the landfill’s initial receipt of waste, a statement of account that is signed by the permit holder.

g. An account established pursuant to paragraph 112.31(6)“a” for trust funds or paragraph 112.31(6)“i” for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraph 112.31(6)“a” or 112.31(6)“i,” which are intended to satisfy the requirements of this subrule, must comply with Iowa Code section 455B.306(9)“b.”

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility’s first fiscal year that begins after October 31, 2007. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

“CE” means the current cost estimate of closure and postclosure costs.

“CB” means the current balance of the closure or postclosure accounts.

“RPC” means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder’s fiscal year.

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“TR” is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 112.31(3)“a” and 112.31(4)“a.”

j. The department shall have full rights of access to all funds existing in a facility’s closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

**112.31(9)** Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 112.31(6) shall be in the amount of the third-party cost estimates required by subrules 112.31(3), 112.31(4), and 112.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 112.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 6. Amend 567—Chapter 114 by adopting the following **new** rule:

**567—114.31(455B) Construction and demolition wastes sanitary landfill financial assurance.**

**114.31(1)** Purpose. The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at construction and demolition wastes sanitary landfills (CND landfills).

**114.31(2)** Applicability. The requirements of this rule apply to all owners and operators of CND landfills accepting waste as of October 31, 2007, except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

**114.31(3)** Financial assurance for closure. The owner or operator of a CND landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 114.26(13) and 114.13(10). Proof of compliance pursuant to paragraphs 114.31(3)“a” to “e” must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 114.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 114.31(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the CND landfill in accordance with the closure plan as required by subrules 114.26(13) and 114.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the CND landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or CND landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 114.31(3)“a” to “e” and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and must account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned CND landfills, the owner or operator shall submit to the department a copy of the owner’s or operator’s most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CND landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certi-

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fied public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**114.31(4)** Financial assurance for postclosure. The owner or operator of a CND landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 114.31(4)"a" to "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 114.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 114.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the CND landfill in compliance with the postclosure plan developed pursuant to subrules 114.26(14) and 114.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs during the entire postclosure period.

(2) The costs contained in the third-party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CND landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or CND landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 114.31(4)"a" to "e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and must account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

d. For publicly owned CND landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CND landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**114.31(5)** Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to subrules 114.26(4) to 114.26(9), inclusive, must have a detailed written estimate prepared by an Iowa-licensed professional engineer, in current dollars, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or CND landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a CND landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 114.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

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(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

**114.31(6)** Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 114.31(6)"a" to "i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 114.31(3), 114.31(4), and 114.31(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the CND landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of a response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 114.31(9) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 114.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the amount specified in subrule 114.31(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 114.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure

and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator or another person authorized to conduct closure, postclosure, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 114.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 114.31(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 114.31(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 114.31(6)"a"(2) to (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance,

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notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform, and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 114.31(6)“b”(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation and the closure and postclosure periods.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year in an amount at least equal to the amount specified in subrule 114.31(9) for closure, postclosure, or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(9)“b.” If the owner or operator has not complied with this subparagraph within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code section 455B.306(9)“b.” The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the CND landfill whenever final closure occurs or to provide postclosure for the CND landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or another person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 114.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator or another person authorized to conduct closure or postclosure may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(9)“b.” If

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the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60-day period shall make the insurer liable for the closure and postclosure costs of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 114.31(6)“e”(1)“1,” “2,” and “3” to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s; or

- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or

- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus \$10 million except as provided in the second bulleted paragraph of numbered paragraph 114.31(6)“e”(1)“2”; or

- Net worth of \$10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner’s or operator’s audited financial statements, and subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 114.31(6)“e”(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the

department and place a copy in the facility’s official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 114.31(3) to 114.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 114.31(6)“e”(1).

2. A copy of the independent certified public accountant’s unqualified opinion of the owner’s or operator’s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner’s or operator’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant’s letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 114.31(6)“e”(1) but which differs from data in the audited financial statements referred to in numbered paragraph 114.31(6)“e”(2)“2,” then a special report from the owner’s or operator’s independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant’s letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant’s letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 114.31(6)“e”(2)“1,” then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported and verifies that the tangible net worth of the owner or operator is at least \$10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 114.31(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to

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demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 114.31(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 114.31(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 114.31(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 114.31(6)"e," the owner or operator must include cost estimates required for subrules 114.31(3) to 114.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 114.31(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial

statement as required under numbered paragraph 114.31(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

"Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

"Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

"Deficit" means total annual revenues minus total annual expenditures.

"Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

"Total revenues" means revenues from all taxes and fees excluding revenue from funds managed by local government on behalf of a specific third party and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 114.31(6)"f"(4); that provides evidence and certifies that the local government meets the conditions of numbered paragraphs 114.31(6)"f"(1)"1," "2," and "3"; and that certifies that the local government meets the conditions of subparagraphs 114.31(6)"f"(2) and (4); and

- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 114.31(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 114.31(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 114.31(6)"f"(1)"3," and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 114.31(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local gov-

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ernment owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 114.31(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 114.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 114.31(6)"e" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter

from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 114.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 114.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by subparagraph 114.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 114.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 114.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 114.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee

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provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 114.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 114.31(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 114.31(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 114.31(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 114.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 114.31(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 114.31(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 114.31(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned CND landfill or a local government serving as a guarantor may demonstrate financial assur-

ance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 114.31(6)"i"(1) or (2) and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arise from the operation of the CND landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the CND landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 114.31(9), divided by the number of years in the pay-in period as defined in paragraph 114.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in paragraph 114.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure and postclosure; or no later than 120 days after the

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

**114.31(7) General requirements.**

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple CND landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all CND landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 114.31(455B).

**114.31(8) Closure and postclosure accounts.** The holder of a permit for a CND landfill shall maintain a separate account for closure and postclosure as required by Iowa Code section 455B.306(9)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal separate set of records.

"Current balance" means cash in an account established pursuant to this subrule plus the current value of investments of moneys collected pursuant to subrule 114.31(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 114.31(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 114.31(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the own-

ership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 114.31(8)"e," moneys in the accounts may be withdrawn without department approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 114.13(10). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 114.31(6)"a" to satisfy the requirements of this rule must comply with the requirements of subparagraph 114.31(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this subrule. Permit holders for new CND landfills permitted after April 1, 2008, shall submit to the department, prior to the landfill's initial receipt of waste, a statement of account that is signed by the permit holder.

g. An account established pursuant to paragraph 114.31(6)"a" for trust funds or paragraph 114.31(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraphs 114.31(6)"a" or 114.31(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code section 455B.306(9)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after October 31, 2007. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 114.31(3)"a" and 114.31(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department.

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These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

**114.31(9)** Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 114.31(6) shall be in the amount of the third-party cost estimates required by subrules 114.31(3), 114.31(4), and 114.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 114.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 7. Amend 567—Chapter 115 by adopting the following **new** rule:

**567—115.31(455B) Industrial monofill sanitary landfill financial assurance.**

**115.31(1)** Purpose. The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure, and corrective action at industrial monofill landfills (IMF landfills).

**115.31(2)** Applicability. The requirements of this rule apply to all owners and operators of IMF landfills accepting waste as of October 31, 2007, except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

**115.31(3)** Financial assurance for closure. The owner or operator of an IMF landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 115.26(13) and 115.13(10). Proof of compliance pursuant to paragraphs 115.31(3)"a" to "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 115.31(8). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 115.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the IMF landfill in accordance with the closure plan as required by subrules 115.26(13) and 115.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the IMF landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or IMF landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 115.31(3)"a" to "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
  2. Site preparation, earthwork and final grading;
  3. Drainage control culverts, piping and structures;
  4. Erosion control structures, sediment ponds and terraces;
  5. Final cap construction;
  6. Cap vegetation soil placement;
  7. Cap seeding, mulching and fertilizing;
  8. Monitoring well, piezometer and gas control modifications;
  9. Leachate system cleanout and extraction well modifications;
  10. Monitoring well installations and abandonments;
  11. Facility modifications to effect closed status;
  12. Engineering and technical services;
  13. Legal, financial and administrative services; and
  14. Closure compliance certifications and documentation.
- d. For publicly owned IMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.
- e. Privately held IMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**115.31(4)** Financial assurance for postclosure. The owner or operator of an IMF landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 115.31(4)"a" to "e" must be submitted by the

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owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(9)“e” and 455B.306(7)“c,” and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(9)“b.”

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 115.31(8). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 115.31(6)“a” to “i.”

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the IMF landfill in compliance with the postclosure plan developed pursuant to subrules 115.26(14) and 115.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third-party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the IMF landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or IMF landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 115.31(4)“a” to “e” and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;

2. Cap and vegetative cover maintenance;

3. Drainage and erosion control systems maintenance;

4. Groundwater to waste separation systems maintenance;

5. Gas control systems maintenance;

6. Gas control systems monitoring and reports;

7. Groundwater and surface water monitoring systems maintenance;

8. Groundwater and surface water quality monitoring and reports;

9. Groundwater monitoring systems performance evaluations and reports;

10. Leachate control systems maintenance;

11. Leachate management, transportation and disposal;

12. Leachate control systems performance evaluations and reports;

13. Facility inspections and reports;

14. Engineering and technical services;

15. Legal, financial and administrative services; and

16. Financial assurance, accounting, audits and reports.

d. For publicly owned IMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held IMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

**115.31(5)** Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to subrules 115.26(4) to 115.26(9) must have a detailed written estimate, in current dollars, prepared by an Iowa-licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or IMF landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of an IMF landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 115.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

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**115.31(6)** Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(9)“a” must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 115.31(6)“a” to “i.”

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 115.31(3), 115.31(4), and 115.31(5) and placed in the facility’s official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the IMF landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of a response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 115.31(8) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 115.31(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the amount specified in subrule 115.31(8) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 115.31(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator or another person authorized to conduct closure, postclosure, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or cor-

rective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility’s official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 115.31(8) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 115.31(6)“b”(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 115.31(6)“a” except the requirements for initial payment and subsequent annual payments specified in subparagraphs 115.31(6)“a”(2) to (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform, and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or

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corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 115.31(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation and the closure and postclosure periods.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year in an amount at least equal to the amount specified in subrule 115.31(8) for closure, postclosure, or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a standby trust fund established pursuant to paragraph 115.31(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the standby trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative fi-

ancial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the IMF landfill whenever final closure occurs or to provide postclosure for the IMF landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or another person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 115.31(8) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator or another person authorized to conduct closure or postclosure may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into a standby trust fund established pursuant to paragraph 115.31(6)"a." If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60-day period shall make the insurer liable for the closure and postclosure costs of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter

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annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Department of the Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 115.31(6)“e”(1)“1,” “2,” and “3” to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus \$10 million except as provided in the second bulleted paragraph in numbered paragraph 115.31(6)“e”(1)“2”; or
- Net worth of \$10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner’s or operator’s audited financial statements and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 115.31(6)“e”(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility’s official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 115.31(3) to 115.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities

under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 115.31(6)“e”(1).

2. A copy of the independent certified public accountant’s unqualified opinion of the owner’s or operator’s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner’s or operator’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant’s letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 115.31(6)“e”(1) but which differs from data in the audited financial statements referred to in numbered paragraph 115.31(6)“e”(2)“2,” then a special report from the owner’s or operator’s independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant’s letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant’s letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 115.31(6)“e”(2)“1,” then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported and verifies that the tangible net worth of the owner or operator is at least \$10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 115.31(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 115.31(6)“e”(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 115.31(6)“e”(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 115.31(6)“e”(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 115.31(6)“e,” the owner or operator must include cost estimates required for subrules 115.31(3) to 115.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

- The owner or operator must satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 115.31(6)“f” if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 115.31(6)“f”(1)“2.” A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

“Cash plus marketable securities” means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

“Debt service” means the amount of principal and interest due on a loan in a given time period, typically the current year.

“Deficit” means total annual revenues minus total annual expenditures.

“Total expenditures” means all expenditures, excluding capital outlays and debt repayment.

“Total revenues” means revenues from all taxes and fees excluding revenue from funds managed by local government on behalf of a specific third party and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 115.31(6)“f”(4); that provides evidence and certifies that the local government meets the conditions of numbered paragraphs 115.31(6)“f”(1)“1,” “2,” and “3”; and that certifies that the local government meets the conditions of subparagraphs 115.31(6)“f”(2) and (4); and

- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 115.31(6)“f”(1)“1,” second bulleted paragraph, if applicable, and the requirements of numbered paragraph 115.31(6)“f”(1)“2” and the third and fourth bulleted paragraphs of numbered paragraph 115.31(6)“f”(1)“3”; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 115.31(6)“f”(3)“1” must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 115.31(6)“f” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

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5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 115.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 115.31(6)"e" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 115.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 115.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 115.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 115.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 115.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 115.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 115.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, post-closure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 115.31(6)“h”(1)“2” and “3,” the guarantor will:

- Perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 115.31(6)“a” in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 115.31(6)“h”(1)“3.”

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 115.31(6)“a.” If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 115.31(6)“f”(3) and place a copy in the facility’s official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 115.31(6)“h”(2)“1” when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 115.31(6)“f,” the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned IMF landfill or a local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with subparagraph 115.31(6)“i”(1) or (2) and all other provisions of this paragraph, and if documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or

order to pay for closure, postclosure, or corrective action costs that arise from the operation of the IMF landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the IMF landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 115.31(8), divided by the number of years in the pay-in period as defined in paragraph 115.31(6)“i.” The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in paragraph 115.31(6)“i.” The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or within 30 days of close of the first fiscal year that begins after October 31, 2007, in the case of existing facilities; before the cancellation of an alternative financial assurance mechanism in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

**115.31(7) General requirements.**

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by estab-

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lishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple IMF landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all IMF landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 115.31(455B).

**115.31(8)** Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 115.31(6) shall be in the amount of the third-party cost estimates required by subrules 115.31(3), 115.31(4), and 115.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 115.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 8. Amend 567—Chapter 118 by adopting the following new rule:

**567—118.16(455B,455D) Appliance demanufacturing facility financial assurance requirements.** Unless a facility is exempt from this rule pursuant to subrule 118.16(1), permitted appliance demanufacturing facilities must obtain and submit a financial assurance instrument to the department for storage of appliances in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of any appliances, refrigerant, PCBs, mercury and any other hazardous materials associated with appliance demanufacturing that may remain at a facility due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**118.16(1)** Exemptions. An appliance demanufacturing facility owned and operated in conjunction with a sanitary landfill already required to have financial assurance shall not be required to obtain additional financial assurance in com-

pliance with this chapter.

**118.16(2)** No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of an appliance demanufacturing facility until a financial assurance instrument has been submitted to and approved by the department.

**118.16(3)** Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new appliance demanufacturing facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**118.16(4)** Use of one financial assurance instrument for multiple permitted activities. Appliance demanufacturing facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**118.16(5)** The estimate submitted to the department must be certified by a professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 118.14(455B,455D):

a. Third-party labor and transportation costs and disposal fees to properly manage any appliances, refrigerant, PCBs, mercury and any other hazardous materials associated with appliance demanufacturing equal to the maximum storage capacity of the facility. If materials are temporarily stored on site in transportation vehicles, waste receptacles or drums, then this estimate shall include disposal costs for the maximum number of transportation vehicles, waste receptacles and drums that can be on site at any one time.

b. The cost of hiring a third party to properly clean and decontaminate all equipment, storage facilities, holding areas and drainage collection systems. This estimate shall include the cost of properly disposing of a one-week volume of washwater from the facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

c. The costs for maintaining financial assurance pursuant to any other provisions of 567—Chapters 100 to 123, if any, in accordance with subrule 118.16(4).

**118.16(6)** Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 118.16(5) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator of an appliance demanufacturing facility or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency. The fund shall be

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restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned appliance demanufacturing facility or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state, and the surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any appliances, refrigerant, PCBs, mercury and any other hazardous materials associated with appliance demanufacturing that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 118.16(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 118.16(6)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

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(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 118.16(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
  - Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 118.16(6)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 118.16(6)"a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or

AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of appliances at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 118.16(6)"f"(2)"2," if applicable, and the requirements of subparagraphs 118.16(6)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 118.16(5); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 118.16(6)"f"(2), (3), (4) and (5).

**118.16(7)** Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substi-

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tutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to rule 118.14(455B,455D) and subrule 118.16(5).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 9. Amend 567—Chapter 120 by adopting the following **new** rule:

**567—120.13(455B,455D) Financial assurance requirements for multiuse and single-use landfarms.** The holder of a sanitary disposal project permit for a multiuse or single-use landfarm must obtain and submit a financial assurance instrument to the department in accordance with this rule. The financial assurance instrument shall provide monetary funds for the purpose of conducting closure activities at the operating area(s) due to the permit holder's failure to properly close the site as required in accordance with rule 120.12(455B) within 30 days of permit suspension, termination, revocation, or expiration.

**120.13(1) No permit without financial assurance.** The department shall not issue or renew a permit to an owner or operator of a multiuse or single-use landfarm until a financial assurance instrument has been submitted to and approved by the department.

**120.13(2) Proof of compliance.** Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall

be submitted by July 1, 2008, or at the time of application for a permit for a new multiuse or single-use landfarm. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**120.13(3) Financial assurance amounts required.** The estimate submitted to the department must be certified by a professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 120.12(455B):

a. Third-party costs to conduct groundwater and soil sampling and properly clean all equipment and storage areas at the operating area(s).

b. If PCS is temporarily stored on site prior to incorporation, then this estimate shall include third-party labor and transportation costs and total tip fees to properly dispose of all PCS equal to the maximum storage capacity on site.

**120.13(4) Acceptable financial assurance instruments.** The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 120.13(3) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator of a landfarm or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the landfarm sites, and a copy of the trust agreement must be submitted to the department and placed in the permit holder's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned entity permitted to landfarm PCS or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedi-

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cated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the landfarm site(s).

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the permit holder's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular landfarm owner or operator for the purpose of funding closure in accordance with rule 120.12(455B) and removing any stockpiled PCS that may remain at the site(s) due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the permit holder's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the permit holder and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the permit holder's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 120.13(4)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subse-

quent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a landfarm site(s) covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 120.13(4)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the permit holder's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 120.13(3); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 120.13(4)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An ad-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

verse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a landfarm site(s) covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 120.13(4)"a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and must have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or
2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial application of PCS

at the landfarm site(s) or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular site(s), the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the landfarm site(s).
2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 120.13(4)"f"(2)"2," if applicable, and the requirements of subparagraphs 120.13(4)"f"(3) and (4).
3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 120.13(3); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 120.13(4)"f"(2), (3), (4) and (5).

**120.13(5)** Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to rule 120.12(455B) and subrule 120.13(3).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

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g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 10. Amend 567—Chapter 121 by adopting the following **new** rule:

**567—121.8(455B,455D) Financial assurance requirements for land application of wastes.** The holder of a sanitary disposal project permit for the land application of solid wastes that has received authorization to temporarily store waste at the application site(s) must obtain and submit a financial assurance instrument to the department in accordance with this rule. The financial assurance instrument shall provide monetary funds for the purpose of properly disposing of or having a third party land apply any stored solid wastes due to the permit holder's failure to properly land apply wastes in accordance with rule 121.7(455B) and the applicable permit provisions.

**121.8(1)** No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator until a financial assurance instrument has been submitted to and approved by the department.

**121.8(2)** Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted by July 1, 2008, or at the time of application for a permit to land apply solid wastes. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**121.8(3)** Financial assurance amounts required. The estimate submitted to the department must be certified by a professional engineer and account for at least the following factors determined by the department to be minimal necessary costs for closure:

a. Third-party labor and transportation costs and total tip fees to properly dispose of all solid wastes equal to the maximum storage capacity of all approved storage areas, or

b. Third-party labor costs to land apply all solid wastes equal to the maximum storage capacity of all approved storage areas.

**121.8(4)** Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 121.8(3) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator or entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be

restricted for the sole purpose of funding closure activities at the land application site(s), and a copy of the trust agreement must be submitted to the department and placed in the permit holder's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned entity permitted to land apply solid waste or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the land application sites.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the permit holder's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular land application site(s) for the purpose of funding closure in accordance with subrule 121.8(3) and removing any stockpiled solid wastes that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and

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whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the permit holder's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the permit holder and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the permit holder's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 121.8(4)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a land application site(s) covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 121.8(4)"a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or
2. A ratio of less than 1.5 comparing total liabilities to net worth; or
3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the permit holder's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 121.8(3); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 121.8(4)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a land application site(s) covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 121.8(4)"a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable

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securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial application of waste at the land application site(s) or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular land application site(s), the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the land application sites.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 121.8(4)"f"(2)"2," if applicable, and the requirements of subparagraphs 121.8(4)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 121.8(3); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 121.8(4)"f"(2), (3), (4) and (5).

**121.8(5)** Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to subrule 121.8(3).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 11. Amend rule 567—122.8(455B,455D) as follows:

**567—122.8(455B,455D) Operational requirements for CRT collection facilities.** All CRT collection shall be done in a manner that complies with the following requirements. So long as this rule is complied with, the only rules within this chapter that shall apply to the permitted activity are rules 122.1(455B,455D) to 122.3(455B,455D), 122.6(455B,455D), 122.7(455B,455D), 122.9(455B,455D), 122.10(455B,455D), and this rule.

**122.8(1)** *CRT storage at a permitted collection site shall be limited to 48 Gaylord boxes or the equivalent containing no more than 2,000 CRTs. A permitted CRT collection site may store additional CRTs subject to the permit holder's obtaining and maintaining financial assurance for these additional CRTs in accordance with rule 567—122.28(455B,455D).*

**122.8(1)** **122.8(2)** Collection activities for discarded CRTs shall occur in an area and through a process that minimizes the risk of hazardous conditions.

~~122.8(2)~~ **122.8(3)** Any hazardous condition shall immediately be contained and remedied with proper equipment and procedures.

~~122.8(3)~~ **122.8(4)** Discarded CRTs shall be collected and contained in a manner that is structurally adequate to prevent

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breakage and spillage under normal operating conditions, and that is compatible with the contents.

~~122.8(4)~~ **122.8(5)** CRT glass and CRTs that show evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents into the environment shall be collected in enclosed and separate containers from other discarded CRTs. Such containers shall be protected from precipitation.

~~122.8(5)~~ **122.8(6)** A CRT recycling facility may store discarded CRTs and materials derived from discarded CRTs outdoors if the following conditions are met:

- a. The facility has a stormwater permit, if applicable.
- b. The material is not harboring or attracting vectors.
- c. Litter is contained within the storage area or unit.
- d. The discarded CRTs and materials derived from discarded CRTs are not broken CRTs or CRT glass.

~~122.8(6)~~ **122.8(7)** Discarded CRTs and materials derived from discarded CRTs shall not be speculatively accumulated at a permitted CRT recycling facility without the permit holder's obtaining and maintaining financial assurance for the additional CRTs in accordance with rule 122.28(455B, 455D). Speculative accumulation occurs when a facility cannot demonstrate that the amount of discarded CRTs and materials derived from discarded CRTs leaving the facility within a 12-month time period is greater than ~~75~~ 60 percent, by weight or volume, of the discarded CRTs and materials derived from discarded CRTs received by the facility within a 12-month time period.

~~122.8(7)~~ **122.8(8)** Containers or packages shall be labeled and transported in compliance with state and federal Department of Transportation (DOT) regulations.

ITEM 12. Adopt the following **new** rule 567—122.28(455B,455D):

**567—122.28(455B,455D) Financial assurance requirements for cathode ray tube (CRT) collection and recycling facilities.** Permitted CRT collection and recycling facilities must obtain and submit a financial assurance instrument to the department for the storage of solid waste, discarded CRTs and materials derived from discarded CRTs at the site in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of solid waste, discarded CRTs and materials derived from discarded CRTs that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**122.28(1)** No permit without financial assurance. The department shall not issue or renew a permit to an owner or operator of a CRT collection or recycling facility until a financial assurance instrument has been submitted to and approved by the department.

**122.28(2)** Proof of compliance. Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new CRT collection or recycling facility. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**122.28(3)** Use of one financial assurance instrument for multiple permitted activities. CRT collection or recycling facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial as-

surance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**122.28(4)** The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to rule 122.27(455B,455D):

a. CRT collection facilities shall have financial assurance coverage equal to one dollar per pound stored above the permitted storage capacity of 48 Gaylord boxes or the equivalent containing no more than 2,000 CRTs, in accordance with subrule 122.8(1).

b. CRT recycling facilities shall have financial assurance coverage equal to one dollar per pound of CRTs determined to be speculatively accumulated in accordance with subrule 122.8(7).

**122.28(5)** Acceptable financial assurance instruments. The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 122.28(4) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. Secured trust fund. The owner or operator of a CRT collection or recycling facility or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. Local government dedicated fund. The owner or operator of a publicly owned CRT collection or recycling facility or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedi-

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cated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. Surety bond. A surety bond must be written by a company authorized by the commissioner of insurance to do business in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any solid waste, discarded CRTs, and materials derived from discarded CRTs associated with the collection and recycling of CRTs that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 122.28(5)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subse-

quent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 122.28(5)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 122.28(4); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 122.28(5)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An ad-

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verse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);
2. Establish a fully funded secured trust fund as specified in paragraph 122.28(5)"a" in the name of the owner or operator (payment guarantee); or
3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or
2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of CRTs at

the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.
2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 122.28(5)"f"(2)"2," if applicable, and the requirements of subparagraphs 122.28(5)"f"(3) and (4).
3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 122.28(4); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 122.28(5)"f"(2), (3), (4) and (5).

**122.28(6)** Financial assurance cancellation and permit suspension.

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to rule 122.27(455B,455D) and subrule 122.28(4).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

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g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

ITEM 13. Amend 567—Chapter 123 by adopting the following **new** rule:

**567—123.12(455B,455D,455F) Financial assurance requirements for regional collection centers and mobile unit collection and consolidation centers.** Unless a facility is exempt from this rule pursuant to subrule 123.12(1), permitted RCCs and MUCCCs must obtain and submit a financial assurance instrument to the department for the storage of household hazardous materials in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of household hazardous wastes, universal wastes, hazardous waste from conditionally exempt small quantity generators, and any other solid wastes that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

**123.12(1) Exemptions.** RCC and MUCCC facilities owned and operated in conjunction with a sanitary landfill already required to have financial assurance shall not be required to obtain additional financial assurance in compliance with this chapter.

**123.12(2) No permit without financial assurance.** The department shall not issue or renew a permit to an owner or operator of an RCC or MUCCC until a financial assurance instrument has been submitted to and approved by the department.

**123.12(3) Proof of compliance.** Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department by July 1, 2008, or at the time of application for a permit for a new RCC or MUCCC. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

**123.12(4) Use of one financial assurance instrument for multiple permitted activities.** RCCs and MUCCCs required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one financial assurance instrument if the permit holder ensures that the instrument provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

**123.12(5) The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to subrule 123.9(3):**

a. The cost estimate submitted to the department shall be an average of the disposal costs charged by the hazardous waste contractor to the RCC or MUCCC as reported on the semiannual reports submitted in accordance with rule 123.11(455B,455D,455F) for the most recent three-year period.

b. For new facilities or existing facilities that do not have sufficient data to determine an average disposal cost, the ini-

tial cost estimate shall be equal to \$15,000. The estimate shall be adjusted once sufficient data is available for a three-year period.

**123.12(6) Acceptable financial assurance instruments.** The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with subrule 123.12(5) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

a. **Secured trust fund.** The owner or operator of an RCC or MUCCC or an entity serving as a guarantor may demonstrate financial assurance for closure by establishing a secured trust fund that conforms to the requirements of this paragraph.

(1) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The fund shall be restricted for the sole purpose of funding closure activities at the facility, and a copy of the trust agreement must be submitted to the department and placed in the facility's official files.

(2) A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) Moneys in the fund shall not be assigned for the benefit of creditors with the exception of the state.

(4) Moneys in the fund shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

(5) The owner or operator or another person authorized to conduct closure activities may request reimbursement from the trustee for closure expenditures as they are incurred. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure and if documentation of the justification for reimbursement has been submitted to the department for prior approval.

(6) If the balance of the trust fund exceeds the current cost estimate for closure at any time, the owner or operator may request withdrawal of the excess funds from the trustee so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

b. **Local government dedicated fund.** The owner or operator of a publicly owned RCC or MUCCC or a local government serving as a guarantor may demonstrate financial assurance for closure by establishing a dedicated fund that conforms to the requirements of this paragraph.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, resolution or order as a restricted fund to pay for closure costs arising from the operation of the facility.

(2) A copy of the document establishing the dedicated fund must be submitted to the department and placed in the facility's official files.

(3) If the balance of the dedicated fund exceeds the current cost estimate for closure at any time, the owner or operator may withdraw excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

c. **Surety bond.** A surety bond must be written by a company authorized by the commissioner of insurance to do busi-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ness in the state. The surety bond shall comply with the following:

(1) The bond shall be in a form approved by the commissioner of insurance and shall be payable to the department of natural resources.

(2) The bond shall be specific to a particular facility for the purpose of properly disposing of any household hazardous wastes that may remain on site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

(3) The owner or operator shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the owner or operator has applied for renewal.

d. Letter of credit. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(1) The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph 123.12(6)"a." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

e. Corporate guarantee. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

2. Establish a fully funded secured trust fund as specified in paragraph 123.12(6)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth; or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(3) The tangible net worth of the guarantor must be greater than the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(4) The guarantor must have assets amounting to at least the sum of the current closure cost estimate and any other environmental obligations, including other financial assurance guarantees.

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. A copy of the written guarantee between the owner or operator and the guarantor.

2. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by subrule 123.12(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs 123.12(6)"e"(2), (3) and (4).

3. A copy of the independent certified public accountant's unqualified opinion of the guarantor's financial statements for the latest completed fiscal year. In order for the guarantor to be eligible to use the guarantee, the guarantor's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this instrument. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate guarantee, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

f. Local government guarantee. An owner or operator may demonstrate financial assurance for closure by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E.

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. Perform closure or pay a third party to perform closure as required (performance guarantee);

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

2. Establish a fully funded secured trust fund as specified in paragraph 123.12(6)"a" in the name of the owner or operator (payment guarantee); or

3. Establish an alternative financial assurance instrument in the name of the owner or operator as required by this rule.

(2) The guarantor must satisfy one of the following requirements:

1. If the guarantor has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the guarantor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

2. The guarantor must satisfy each of the following financial ratios based on the guarantor's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

(3) The guarantor must prepare its financial statements in conformity with generally accepted accounting principles or other comprehensive basis of accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(4) A guarantor is not eligible to assure its obligations if:

1. The guarantor is currently in default on any outstanding general obligation bonds; or

2. The guarantor has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. The guarantor operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. The guarantor receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement. A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism; or

5. The closure costs to be assured are greater than 43 percent of the guarantor's total annual revenue.

(5) The local government guarantor must include disclosure of the closure costs assured through the guarantee in its next annual audit report prior to the initial receipt of household hazardous wastes at the facility or prior to cancellation of an alternative financial assurance instrument, whichever is later. For the first year the guarantee is used to assure costs at a particular facility, the reference may instead be placed in the guarantor's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(6) The local government owner or operator must submit to the department the following items:

1. A copy of the written guarantee between the owner or operator and the local government serving as guarantor for the closure costs at the facility.

2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph 123.12(6)"f"(2)"2," if

applicable, and the requirements of subparagraphs 123.12(6)"f"(3) and (4).

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in subrule 123.12(5); and that provides evidence and certifies that the local government meets the conditions of subparagraphs 123.12(6)"f"(2), (3), (4) and (5).

**123.12(7) Financial assurance cancellation and permit suspension.**

a. A financial assurance instrument may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance prior to cancellation, as specified in this rule, or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

b. A financial assurance instrument shall be continuous in nature until canceled by the financial assurance provider or until the department gives written notification to the owner, operator, and financial assurance provider that the covered site has been properly closed. The financial assurance provider shall give at least 90 days' notice in writing to the owner or operator and the department in the event of any intent to cancel the instrument.

c. Within 60 days of receipt of a written notice of cancellation of financial assurance by the financial assurance provider, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within that 60 days, the department shall suspend the permit.

d. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, "proper closure" means completion of all items pursuant to subrule 123.9(3).

e. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the financial assurance instrument provider to collect the amount of funds necessary to properly close the site.

f. An owner or operator who elects to terminate a permitted activity, whose renewal application has been denied, or whose permit has been suspended or revoked for cause must submit within 30 days of the termination of the permit a schedule for completing proper closure of the terminated activity. Closure completion cannot exceed 60 days from the date of termination of the permit.

g. The director may also request payment from any financial assurance provider for the purpose of completing closure when the following circumstances exist:

(1) The owner or operator is more than 15 days late in providing a schedule for closure or for meeting any date in the schedule for closure.

(2) The owner or operator declares an economic inability to comply with this rule, either by sending written notification to the director or through an action such as, but not limited to, filing for bankruptcy.

[Filed 9/6/07, effective 10/31/07]

[Published 9/26/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/26/07.

**ARC 6263B**  
**INSPECTIONS AND APPEALS**  
**DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 99B.13 and 2007 Iowa Acts, Senate File 414, the Department of Inspections and Appeals hereby amends Chapter 100, "Administration," and adopts Chapter 107, "Game Nights," Iowa Administrative Code.

New Chapter 107 provides rules to implement 2007 Iowa Acts, Senate File 414, which provides for cash prizes for annual game nights held by certain eligible qualified organizations. The chapter includes definitions, standards for licensing, and rules for holding a game night.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6123B**. These amendments were simultaneously Adopted and Filed Emergency as **ARC 6122B**. No public hearing was held, and no comments were received. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

These amendments are intended to implement 2007 Iowa Acts, Senate File 414.

These amendments were adopted September 7, 2007.

These amendments will become effective on October 31, 2007, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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 [100.31, 100.60 to 100.63, Ch 107] is being omitted. These amendments are identical to those published under Notice as **ARC 6123B** and Adopted and Filed Emergency as **ARC 6122B**, IAB 8/1/07.

[Filed 9/7/07, effective 10/31/07]  
 [Published 9/26/07]

[For replacement pages for IAC, see IAC Supplement 9/26/07.]

**ARC 6259B**  
**INTERIOR DESIGN**  
**EXAMINING BOARD[193G]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board hereby adopts new Chapter 3, "Continuing Education," Iowa Administrative Code.

New Chapter 3 provides rules for continuing education requirements for registered interior designers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6044B**. No public comments were received. No changes have been made from the Notice of Intended Action.

These rules were adopted by the Board on September 7, 2007.

These rules will become effective October 31, 2007.

These rules are intended to implement Iowa Code chapters 544C and 272C.

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 rules [Ch 3] is being omitted. These rules are identical to those published under Notice as **ARC 6044B**, IAB 7/18/07.

[Filed 9/7/07, effective 10/31/07]  
 [Published 9/26/07]

[For replacement pages for IAC, see IAC Supplement 9/26/07.]

**ARC 6258B**  
**INTERIOR DESIGN**  
**EXAMINING BOARD[193G]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board hereby adopts new Chapter 8, "Renewal and Reinstatement," Iowa Administrative Code.

New Chapter 8 provides rules for renewal and reinstatement procedures for registered interior designers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6041B**. No public comments were received. One nonsubstantive change has been made from the Notice of Intended Action: Paragraph 8.2(2)"e" has been renumbered as subrule 8.2(3).

These rules were adopted by the Board on September 7, 2007.

These rules will become effective October 31, 2007.

These rules are intended to implement Iowa Code chapters 544C and 272C.

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 rules [Ch 8] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 6041B**, IAB 7/18/07.

[Filed 9/7/07, effective 10/31/07]  
 [Published 9/26/07]

[For replacement pages for IAC, see IAC Supplement 9/26/07.]

**ARC 6257B**  
**PROFESSIONAL LICENSURE**  
**DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Massage Therapy hereby amends Chapter 130, "Administrative and Regulatory Authority for the Board of Massage Therapy," and Chapter 131, "Licensure of Massage Therapists," rescinds Chapter 132, "Massage Therapy Education Curriculum," and adopts a new Chapter 132 with the same title, and amends Chapter 133, "Continuing Education for Massage Therapists," Chapter 134, "Discipline for Massage Therapists," and Chapter 135, "Fees," Iowa Administrative Code.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments rescind Chapter 132 and adopt a new Chapter 132 regarding curriculum. Additionally, the amendments implement changes necessitated by the passage of 2007 Iowa Acts, Senate File 74, and amend subrule 131.8(3), paragraph “c,” to remove the first-aid certification requirement for license renewal.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5977B**. A public hearing was held on July 24, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments were received addressing the removal of instructor qualifications, not allowing students to be paid during their clinical practicum, eliminating the 200-hour minimum course of study requirement before students are able to serve clients in the clinical practicum, and requesting removal of CPR and first aid from the curriculum requirement since some students already have current certification in these areas prior to school enrollment. In response to public comment, the Board removed the restriction against paid clinical practicum for students, removed CPR and first aid in the curriculum content areas, restored the curriculum requirement that a student must complete at least 200 hours of coursework prior to beginning the clinical practicum. The Board discussed instructor qualifications but was advised by the assistant attorney general that the Board did not have statutory authority that covered that area. The Board decided to keep the rule making as noticed for the instructor rules as recommended by the assistant attorney general.

The amendments were adopted by the Board for Massage Therapy on September 4, 2007.

These amendments will become effective October 31, 2007.

These amendments are intended to implement Iowa Code chapters 147 and 152C and 2007 Iowa Acts, Senate File 74.

The following amendments are adopted.

ITEM 1. Amend **645—Chapters 130 to 134** by striking the term “board of examiners for massage therapy” wherever it appears and inserting the term “board of massage therapy” in lieu thereof.

ITEM 2. Amend subrule **131.8(3)**, paragraph “c,” as follows:

c. Submit evidence of current certification in CPR/~~first~~aid.

ITEM 3. Rescind 645—Chapter 132 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 132

#### MASSAGE THERAPY EDUCATION CURRICULUM

##### **645—132.1(152C) Definitions.**

“Approved curriculum” means that the massage therapy education course of study meets the criteria specified in this chapter and has been approved by the board of massage therapy.

“Board” means the board of massage therapy.

“Client” means any person with whom the school has an agreement to provide massage therapy.

“Clinical practicum” means hands-on massage therapy provided to members of the public by a student who is enrolled at a massage therapy school and is under the supervision of an instructor who is an Iowa-licensed massage therapist, is physically present on the premises and is available for advice and assistance. “Clinical practicum” does not include classroom practice.

“Course of study” means a series of classroom courses, not including continuing education, which is approved by the board as having a unified purpose in training individuals toward a certificate, degree or diploma in the practice of massage therapy.

“Massage therapy” means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

##### **645—132.2(152C) Application for approval of massage therapy education curriculum.**

**132.2(1)** From October 31, 2007, through June 30, 2008, both in-state and out-of-state massage therapy schools may apply for curriculum approval. Beginning July 1, 2008, only in-state massage therapy schools may request curriculum approval or reapproval. Massage therapy schools seeking curriculum approval shall submit the application and fees in accordance with the requirements of subrule 132.2(3). The curriculum approval shall be valid for up to two years with reapplication for approval due June 30 of each even-numbered year. The biennial renewal cycle shall begin July 1 of an even-numbered year and end June 30 two years later. Schools that receive curriculum approval within six months prior to the start of the next biennial renewal cycle shall not need to reapply for curriculum approval until the following even-numbered year.

**132.2(2)** The board-approved application form and Curriculum Criteria and Documentation form for schools providing a massage therapy curriculum shall be obtained from the board’s Web site, [www.idph.state.ia.us/licensure](http://www.idph.state.ia.us/licensure), or directly from the board office.

**132.2(3)** Applications and fees shall be submitted to the Board of Massage Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. The application for curriculum approval shall include all of the following:

- a. A completed board-approved application form;
- b. The curriculum approval application fee as specified in 645—Chapter 135;
- c. A completed Curriculum Criteria and Documentation form;
- d. The current school catalog, including name of the program(s), a description of the curriculum delivery system, course descriptions, and program accreditation or approval by other professional entities; and
- e. A sample diploma and a sample transcript that identify the name of the graduate, name of the program, graduation date, and the degree, diploma or certificate awarded.

**132.2(4)** Beginning June 30, 2008, the board shall conduct curriculum reviews only for in-state massage therapy schools. Out-of-state school curriculum shall be reviewed on a case-by-case basis upon receipt of the curriculum as a part of an individual’s application for licensure to practice massage therapy in the state of Iowa.

**132.2(5)** Massage therapy schools that do not renew curriculum approval by the expiration date shall be removed from the board’s list of approved curriculum providers until such time that they comply with curriculum approval requirements.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**132.2(6)** Schools that apply for curriculum approval shall, at a minimum, provide a curriculum that meets the requirements of this chapter, offer a course of study of at least 500 clock hours or the equivalent in academic credit hours, and require for entrance into the massage therapy school graduation from high school or its equivalent.

**645—132.3(152C) Curriculum requirements.** An approved curriculum shall include but not be limited to the following content areas:

1. Fundamentals of massage therapy.
2. Clinical application of massage and bodywork therapies.
3. Client communication theory and practice.
4. Health care referral theory and practice.
5. Anatomy and physiology.
6. Kinesiology.
7. Pathology and skills in infection control, injury prevention and sanitation.
8. Iowa law and ethics.
9. Business management, including legal and financial aspects, documentation and record maintenance.
10. Wellness and healthy lifestyle theory and practice in such areas as hydrotherapy, hot and cold applications, spa techniques, nutrition, herbal studies, wellness models, somatic movement and energy work.

**645—132.4(152C) Student clinical practicum standards.**

**132.4(1)** The school must provide clinical practicum hours at the school's primary location or an event sponsored by the school.

**132.4(2)** At all times when the student delivers physical contact with the public or other students, a clinical instructor/supervisor who is an Iowa-licensed massage therapist shall be personally in attendance.

**132.4(3)** Students shall complete at least 200 hours of coursework in the content areas of fundamentals of massage therapy and assessment that includes indications and contraindications for treatment prior to providing services to the public and beginning the clinical practicum. Included in this 200 hours will be a minimum of 100 hours in anatomy and physiology, which shall include the structure and function of the human body and common pathologies.

**132.4(4)** The clinical practicum shall not exceed 100 hours of a 500-hour program.

**645—132.5(152C) School certificate or diploma.** Upon successful completion of a school's course of study, the student shall be awarded a certificate or diploma, which shall identify the legal name of the graduate, the name of the program, the graduation date, and the degree or certificate awarded.

**645—132.6(152C) School records retention.** Records documenting the student's completion of the curriculum shall be maintained for two years following the student's graduation date. In the event of school closure, the board shall be notified of the location of the records.

**645—132.7(152C) Massage school curriculum compliance.**

**132.7(1)** A school shall maintain curriculum records and shall make the records available to the board upon request.

**132.7(2)** A school whose curriculum is approved shall notify the board in writing within 30 days if there is a change of address, a school closing, or a curriculum revision that does not meet the requirements of this chapter.

**132.7(3)** For each student who successfully completes curriculum requirements, the school shall provide the student an official transcript that includes the student's legal name and date of graduation.

**645—132.8(152C) Denial or withdrawal of approval.**

**132.8(1)** The board shall deny approval of a school curriculum if the curriculum does not meet the requirements of this chapter.

**132.8(2)** The board shall withdraw approval of an approved school curriculum if the board determines that the curriculum no longer meets the requirements of this chapter.

**132.8(3)** The board shall notify the school in writing if the board denies or withdraws curriculum approval. Following denial or withdrawal of approval by the board, the school may request that the board reconsider its decision. Requests for curriculum approval reconsideration must be submitted in writing and include any evidence the school believes supports its belief that all requirements of this chapter are met. The board in its sole discretion shall determine whether to grant such a request.

These rules are intended to implement Iowa Code chapter 152C.

ITEM 4. Amend subrule 135.1(10) as follows:

**135.1(10)** ~~Initial application~~ *Application* fee for approval of massage therapy education curriculum is \$120.

[Filed 9/7/07, effective 10/31/07]

[Published 9/26/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/26/07.

**ARC 6265B**

## SECRETARY OF STATE[721]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State adopts amendments to Chapter 22, "Voting Systems," Iowa Administrative Code.

The amendments streamline the process of testing voting equipment before it is used in an election by combining the preelection and public test procedures.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6130B**. No public comment was received on these amendments. These amendments are identical to those published under Notice of Intended Action.

The Secretary of State adopted these amendments on September 6, 2007.

These amendments shall become effective on October 31, 2007.

These amendments are intended to implement Iowa Code sections 52.9 and 52.35.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

SECRETARY OF STATE[721](cont'd)

these amendments [22.39, 22.41 to 22.43] is being omitted. These amendments are identical to those published under Notice as **ARC 6130B**, IAB 8/1/07.

[Filed 9/7/07, effective 10/31/07]  
[Published 9/26/07]

[For replacement pages for IAC, see IAC Supplement 9/26/07.]

## **ARC 6261B**

### **VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 15H and section 17A.3, the Iowa Commission on Volunteer Service hereby amends Chapter 7, "Retired and Senior Volunteer Program (RSVP)," Iowa Administrative Code.

These rules establish the procedures for the administration of the Retired and Senior Volunteer Program to ensure that grant awards are made in a fair and orderly manner.

Notice of Intended Action was published in IAB Volume XXIX: Number 23, p. 1446, on May 9, 2007, as **ARC 5883B**. A public hearing was held on May 31, 2007, from 8:30 to 11 a.m. at the Iowa Department of Economic Development, Main Conference Room. No persons attended the hearing, and no comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 15H.2(3)"i."

These amendments shall become effective October 31, 2007.

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 [7.1 to 7.6] is being omitted. These amendments are identical to those published under Notice as **ARC 5883B**, IAB 5/9/07.

[Filed 9/7/07, effective 10/31/07]  
[Published 9/26/07]

[For replacement pages for IAC, see IAC Supplement 9/26/07.]

## **ARC 6260B**

### **VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 15H and section 17A.3, the Iowa Commission on Volunteer Service hereby adopts Chapter 8, "Iowa Youth Mentoring Program Certification," Iowa Administrative Code.

These rules establish procedures for the certification of youth mentoring programs to ensure that certifications are handled in a fair and orderly manner.

Notice of Intended Action was published in IAB Volume XXIX: Number 23, p. 1447, on May 9, 2007, as **ARC 5882B**. A public hearing was held on May 31, 2007, from 10 to 11:30 a.m. at the Iowa Department of Economic Development, Main Conference Room. No persons attended the hearing, and no comments were received. These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code chapter 15H.

These rules shall become effective October 31, 2007.

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 rules [Ch 8] is being omitted. These rules are identical to those published under Notice as **ARC 5882B**, IAB 5/9/07.

[Filed 9/7/07, effective 10/31/07]  
[Published 9/26/07]

[For replacement pages for IAC, see IAC Supplement 9/26/07.]

## **ARC 6249B**

### **WORKERS' COMPENSATION DIVISION[876]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

This amendment adds a new rule to provide that any hearing held by the agency may be by voice or video technology including, but not limited to, Internet-based video.

Notice of Intended Action to solicit public comment on this amendment was published in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6038B**. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 6037B**.

Written comments were solicited until August 7, 2007, and two comments were received. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

This amendment will become effective October 31, 2007, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

This amendment is intended to implement Iowa Code sections 17A.12, 85.27, 86.8, 86.17, and 86.18.

The following amendment is adopted.

Amend 876—Chapter 4 by adopting the following new rule:

**876—4.49(17A,85,86) Method of holding hearing.** Any hearing held under this chapter may be by voice or video technology including but not limited to Internet-based video.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8, 86.17 and 86.18.

[Filed 9/6/07, effective 10/31/07]  
[Published 9/26/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/26/07.

**IOWA ADMINISTRATIVE BULLETIN**  
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