

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

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CHAPTER 1
ORGANIZATION
[Prior to 1/7/04, see 581—21.1]

495—1.1(97B) Organization. The agency shall administer the retirement system created by Iowa Code chapter 97B. Specific powers and duties of the agency, CEO, board, committee, and agency staff are set forth in Iowa Code chapter 97B and these administrative rules.

Operational units within the agency shall develop and administer policies and procedures governing retirement system programs, including accounting functions for the collection of funds from employers and employee members; disbursement of retirement benefits, death benefits, lump sum payments, and disability retirement benefits; training to employers and subsequent review of employer records for compliance with Iowa Code chapter 97B, rules and policies; legal counsel to IPERS staff and members regarding eligibility for disbursement of benefits and other legal matters; preparation and release of informational newsletters and the annual report; and investment of funds contributed to the retirement system by employers and employee members. The retirement system is also the state administrator to the federal Social Security Administration.

495—1.2(97B) Definitions. Unless otherwise prescribed by federal or state regulations, the terms used in this chapter shall have the following meanings:

“*Agency*” means the Iowa Public Employees’ Retirement System (IPERS) created as an independent agency within the executive branch of state government to administer Iowa Code chapter 97B.

“*Board*” means the IPERS’ investment board as created in Iowa Code section 97B.8A.

“*Chief benefits officer*” means the person employed by IPERS’ chief executive officer, following consultation with the committee, to administer benefits programs and other member services provided under the retirement system.

“*Chief executive officer*” means the administrator of the agency appointed pursuant to Iowa Code section 97B.3 and whose term shall be determined pursuant to Iowa Code section 97B.3.

“*Chief investment officer*” means the person employed by IPERS’ chief executive officer, following consultation with the board, to administer the investment program of the retirement system.

“*Committee*” means the benefits advisory committee created pursuant to Iowa Code section 97B.8B.

“*Internal Revenue Code*” means the Internal Revenue Code as defined in Iowa Code section 422.3.

“*IPERS*” means the agency or the system as the context requires.

“*System*” means the retirement plan created pursuant to Iowa Code chapter 97B.

495—1.3(97B) Administration. The chief executive officer, through the chief investment officer and the chief benefits officer, shall administer Iowa Code chapters 97, 97B, and 97C. The chief executive officer shall execute contracts on behalf of IPERS and shall, after consultation with the board and other agency staff, establish and administer the budget, funding policy and such other duties as are required or permitted in Iowa Code section 97B.4. The chief executive officer may make expenditures, reports, and investigations as necessary to carry out the powers and duties created in Iowa Code chapter 97B and may obtain, as necessary, the specialized services of individuals or organizations on a contract-for-service basis. The chief executive officer shall be the agency’s statutory designee with respect to rule-making power.

1.3(1) Location. IPERS’ headquarters is located at 7401 Register Drive, Des Moines, Iowa. General correspondence, inquiries, requests for information or assistance, complaints, or petitions shall be addressed to: Chief Executive Officer, Iowa Public Employees’ Retirement System, P.O. Box 9117, Des Moines, Iowa 50306-9117.

1.3(2) Business hours. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding officially designated holidays.

These rules are intended to implement Iowa Code chapter 97B.

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CHAPTER 2
INVESTMENT BOARD
[Prior to 1/7/04, see 581—21.1]

495—2.1(97B) Investment board. The principal place of business of the board is IPERS' headquarters, 7401 Register Drive, Des Moines, Iowa.

1. Effective July 1, 2002, the board shall be the trustee of the retirement fund. The board shall meet annually, and may meet more often, to review its investment policies.

2. At the first meeting in each fiscal year, the voting members shall elect a chair and vice chair. Future meeting dates for the year shall also be decided at the first meeting. Advance notice of time, date, tentative agenda, and place of each meeting shall be given in compliance with Iowa Code chapter 21. All meetings of the board are open to the public and shall be held in accordance with Robert's Rules of Order, Revised Edition.

3. Parties wishing to present items for the agenda of the next meeting shall file a written request with the board chair at least five business days prior to the meeting. The board may take up matters not included on its agenda.

4. Four members eligible to vote shall constitute a quorum. A simple majority vote of the full voting membership shall be the vote of the board.

5. Members of the board shall file financial statements pursuant to Iowa Code section 68B.35(2) "e."

6. In the event that it should become necessary to fill the chief investment officer position, the board may consult with, and make hiring recommendations to, the chief executive officer consistent with provisions in Iowa Code sections 19A.2A and 19A.9(3).

7. The board shall set the salary of the CEO pursuant to Iowa Code section 97B.3.

8. The board shall participate in the annual performance evaluation of the chief investment officer.

495—2.2(97B) Calculation of investment management expenses limit. Rescinded IAB 7/16/08, effective 6/25/08.

These rules are intended to implement Iowa Code chapter 97B.

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CHAPTER 3
BENEFITS ADVISORY COMMITTEE
[Prior to 1/7/04, see 581—21.33]

495—3.1(97B) Benefits advisory committee.

3.1(1) Scope. These rules shall govern the conduct of business by the IPERS' benefits advisory committee (BAC) pursuant to Iowa Code section 97B.8B.

3.1(2) Purpose. The BAC shall be an advisory committee that serves as a channel for employers and employees to help formulate policies and recommendations regarding the provision of benefits and services to members of the system.

495—3.2(97B) Membership organizations.

3.2(1) The BAC membership organizations shall number no less than 9 and no more than 14, and the composition of the BAC must at all times meet the specific membership and voting requirements of Iowa Code section 97B.8B. A current list of organizations, appointees, terms and voting status is maintained on IPERS' Web site and may be obtained in writing upon request.

3.2(2) Appointment of BAC representatives. Each membership organization shall appoint a representative to serve on the BAC. The citizen representative shall be elected by the eight voting representatives who serve under subrules 3.4(1) and 3.4(2). All BAC representatives shall provide in writing to the chairperson the name, address, and telephone number of and other information about the representative as required by the chairperson. The BAC shall not entertain petitions disputing a membership organization's choice of its representative.

3.2(3) Attendance. Any representative shall be deemed to have submitted a resignation from participation in the BAC if either of the following events occurs:

- a.* The representative does not attend three or more consecutive regularly scheduled meetings.
- b.* The representative attends fewer than one-half of the regularly scheduled meetings of the BAC each fiscal year.

This provision applies only to a period beginning on or after the date when the person assumes the position of representative. In the event that a representative is deemed to have resigned under this provision, the chairperson shall immediately notify the representative's organization and require the appointment of a different representative within 30 days.

If a representative is unable to attend a meeting, an alternate may attend the meeting, but shall not be able to cast a vote. Attendance by an alternate shall not relieve the regular representative of the responsibility of attendance at regularly scheduled meetings.

3.2(4) Replacement of membership organizations due to nonparticipation. If a membership organization, after receiving written notice from the BAC under subrule 3.2(3), fails to appoint a new representative to serve on the BAC, the chairperson shall send a second written notice to that membership organization again requiring that the organization appoint its representative within the next 30 days. The notice shall further state that, in order for the appointment to become effective, the newly appointed representative must also attend the next regularly scheduled BAC meeting. The attendance of an alternative representative at said meeting shall not fulfill the requirements of this subrule.

If the organization does not timely appoint a new representative, or its newly appointed representative does not attend the next regularly scheduled BAC meeting, the organization shall be deemed to have relinquished its seat on the BAC.

When a membership organization has relinquished its seat on the BAC for nonparticipation, the subcommittee on membership shall, as soon as practicable, meet to consider a replacement organization. If a seat relinquished for nonparticipation was not filled and the subcommittee on membership determines that the composition of the BAC would continue to satisfy subrule 3.2(1), the subcommittee on membership may recommend any type of qualified interested organization as a replacement, or it may recommend leaving the seat open. However, if the subcommittee determines that the composition of the BAC would not satisfy subrule 3.2(1) if a seat relinquished for nonparticipation was not filled,

the subcommittee must recommend a replacement, and the replacement must be one that permits the BAC to meet the requirements of subrule 3.2(1).

Any qualified, interested organization may file a petition for consideration as a replacement membership organization. The subcommittee shall review all such petitions, if any, which have been filed after the most recent formal review under this rule. The subcommittee may also solicit petitions for BAC membership from any qualified interested organization.

The subcommittee shall make its recommendation for a replacement membership organization, if any, at the next regularly scheduled BAC meeting or as soon as practicable. The BAC, by a majority vote of the voting membership, shall approve or reject the subcommittee's recommendation.

If the subcommittee's recommendation is rejected and the seat must be filled, the subcommittee shall reconvene as soon as practicable and the foregoing process shall be repeated until such time as the subcommittee's recommendation is approved.

In order to be considered for BAC membership under this rule, an organization must be a "qualified, interested organization." "Qualified, interested organization" means a unit of the executive branch or a formally organized corporation or association representing a viable and identifiable group of covered employers or covered employees as determined by the BAC in its sole discretion.

This subrule shall not be construed to affect the BAC positions reserved for the director of the department of administrative services or the position reserved for a citizen who has pension benefits experience and who is not a member of IPERS.

3.2(5) Replacement of current membership organizations other than through nonparticipation. A qualified, interested organization that wishes to replace an existing membership organization may petition the BAC to do so. Such petitions for BAC membership must be submitted in writing to the BAC as set forth in this rule and will be considered according to the schedule established below.

An organization petitioning for membership on the BAC must include the official name of the organization, a description of its organizational structure, the number of employers or employees represented, a description of prior activities by that organization regarding IPERS issues, and a brief explanation of the reasons why the organization should be selected as a replacement organization. The petition should also include the name and contact information for the organization's proposed representative and the name and contact information of the person completing the petition.

As soon as practicable after May 31, 2006, the subcommittee will conduct a formal review of all petitions under this rule that have been received during the preceding three years. For this first formal review, the contents of such petitions shall not be required to meet the specific requirements set forth below, but must be sufficiently detailed or supplemented to permit a reasoned analysis and decision.

After the first formal review, a formal review of petitions under this rule shall be conducted every three years. IPERS shall provide 60 days' prior written notice of the next formal review session to members who have indicated in writing that they wish to file such a petition. IPERS will provide 60 days' prior written notice of the next formal review to all other potential petitioners through its Web site.

The subcommittee chosen to make recommendations regarding the replacement of a current membership organization shall not include the individual representing that organization on the BAC. However, any membership organization whose seat is being contested under this rule shall have the opportunity to submit written materials and make oral presentations to the subcommittee in support of its continued existence as a BAC membership organization.

For each formal review, the subcommittee on membership shall review all petitions for membership, if any, that have been filed after the most recent formal review under this rule. The subcommittee may also solicit petitions for BAC membership from any qualified, interested organization.

When one or more qualified, interested organizations have filed a petition to replace a current membership organization, the subcommittee on membership shall meet at least 30 days prior to the next formal review session to determine whether to recommend approval or rejection.

If the subcommittee on membership determines that the composition of the BAC would continue to satisfy subrule 3.2(1) regardless of the type of qualified, interested organization recommended, the subcommittee on membership may recommend any type of qualified, interested organization for a seat being sought under this rule.

However, if the subcommittee on membership determines that the composition of the BAC will only continue to satisfy subrule 3.2(1) if a current membership organization's seat is filled by a certain specific type of organization, the subcommittee on membership must limit its recommendations for approval to the types of organizations that would permit the composition of the BAC to continue to satisfy subrule 3.2(1).

The subcommittee shall present its recommendation regarding the replacement of a current membership organization at the next regularly scheduled formal review of petitions under this rule. The BAC, by majority vote of the voting membership, shall approve or reject the subcommittee's recommendation.

If the subcommittee determines that two qualified, interested organizations are competing for the same seat, the subcommittee shall, in its sole discretion, evaluate the competing organizations and make a recommendation that meets the requirements of this rule and takes into consideration the following factors: the number of employers or employees represented, the diversity of the representation, the degree to which the applicable constituents already have BAC representation through other BAC membership organizations, prior involvement in BAC activities, and prior activities as an IPERS advocate in other forums.

If the BAC votes to replace a current membership organization that holds a voting seat with a new membership organization, the replacement membership organization shall complete the remainder of the term for that voting seat. Otherwise, the new membership organization shall be seated as a nonvoting organization. Thereafter, if a vacancy occurs in a voting seat and the new membership organization is qualified to fill that voting seat, the new membership organization may compete for the vacant voting seat.

An organization that petitions for a seat under this rule and after a formal review is not selected must resubmit its petition for membership in order to receive consideration for a seat during the next scheduled formal review.

This subrule shall not be construed to affect the BAC position reserved for the director of the department of administrative services or the position reserved for a citizen who has pension benefits experience and who is not a member of IPERS.

495—3.3(97B) Replacement or expansion of organizations. Rescinded IAB 4/26/06, effective 5/31/06.

495—3.4(97B) Voting representatives. The BAC shall have nine voting representatives. Four shall represent employers, four shall represent active and retired members of the system, and one shall be a citizen who has pension benefits experience and who is not a member of IPERS.

3.4(1) Employer voting representatives. One representative shall be the director of the department of administrative services. The remaining employer representatives shall be elected by the full membership of the BAC as follows: one shall be a representative of an employer group representing cities, one shall be a representative of an employer group representing counties, and one shall be a representative of an employer group representing local school districts.

3.4(2) Employee voting representatives. One voting representative shall be elected by the full membership of the BAC from the membership organizations that represent teachers. The other three voting representatives of active and retired members shall be elected by the remaining BAC representatives not automatically selected by virtue of legally mandated seats or designated as voting members by the full membership of the BAC under subrule 3.4(1) or this subrule. No more than one of these voting members shall be the representative of an employee group that solely represents the public safety protection classes.

3.4(3) Voting rights. No membership organization shall be permitted to designate a substitute voting representative to cast the vote of a membership organization at a meeting in the event that the named representative cannot attend the meeting. No membership organization shall have more than one vote on a matter brought before the BAC.

3.4(4) *Terms of voting representatives.* The term of each voting representative shall be three years, beginning and ending as provided in Iowa Code section 97B.8B, except as otherwise indicated in this subrule.

The terms of the voting representatives shall be staggered, so as to maintain an acceptable level of continuity and experience on the BAC. Accordingly, the terms of voting representatives chosen to begin July 1, 2002, shall be set as follows: The voting representatives shall draw lots to determine the length of their terms of office. Two shall serve for one year, three shall serve for two years, and two shall serve for three years. This formula recognizes that two voting representatives, the director of the department of administrative services and the citizen representative, are required by law to be voting members. The citizen representative shall serve for three years. At the expiration of the one-, two- or three-year term, the voting representative elected to fill that position shall serve for a three-year term.

If a voting representative resigns or is replaced by the appointing organization, the appointing organization shall appoint a successor who shall be a voting member for the remainder of the term in question.

If an organization that is not currently a membership organization successfully petitions to replace a membership organization that is represented by a voting representative, the representative of the replacement membership organization shall complete the remainder of the term of the voting representative in question.

3.4(5) *Quorum and voting requirements and procedures.* A majority of the voting representatives of the BAC constitutes a quorum.

a. Voting requirements. A quorum of the BAC must be present at the time any vote is taken. In order for a motion to pass or for the BAC to conduct business, a majority of the full voting membership must vote in favor of the motion or other business matter.

b. Voting procedures. The chairperson shall rule as to whether the vote will be by voice or roll call. A roll-call vote shall be taken anytime a voice vote is not unanimous. Minutes of the BAC shall indicate the vote of each voting member if a roll-call vote is taken.

3.4(6) *Officers and election.*

a. Officers. The officers of the BAC are the chairperson and vice chairperson and shall be elected by a vote of the full membership of the BAC.

b. Elections. Election of officers shall take place at the first BAC meeting held on or after July 1, 2002, and at the beginning of each fiscal year thereafter. If an officer does not serve out the elected term, a special election shall be held at the first meeting after notice is provided to the BAC to elect a representative to serve out the remainder of the term.

495—3.5 Reserved.

495—3.6(97B) Duties. The BAC shall review and advise on the following matters insofar as they impact benefits and services provided to members and member employers under Iowa Code chapter 97B: overall plan design, benefits policy and goals, budget, benchmarking and quality assessment efforts, research and strategic planning. Through its voting representatives, the BAC shall make recommendations to the system, the governor and the general assembly about programs, benefits and services. The BAC shall also participate in annual performance evaluations of the chief benefits officer and, when that position becomes vacant, assist the chief executive officer in the process of defining and selecting a replacement. In addition, the BAC shall recommend to the governor at least two nominees for each vacant position on the investment board reserved for active or retired members of the system. The chairperson of the BAC shall solicit nominations for such vacancies from the entire BAC membership and, through a meeting of the BAC, select the names to be forwarded to the governor.

At least every two years, the BAC shall review the benefits and services provided to members; and the voting representatives shall make recommendations to the system, the governor, and the general assembly concerning the benefits and services provided to members and the system's benefits policies and benefits goals. All of the membership of the BAC, including nonvoting representatives, may have input into formulating such recommendations.

495—3.7(97B) Committee meetings. The BAC shall meet at least quarterly, or at the call of the chairperson, or upon the written request by the chief executive officer, or designee, or upon written request of a majority of the BAC representatives. The chairperson shall establish the dates of all regularly scheduled meetings and provide, with reasonable effort, at least one month's notice of those meeting dates, locations, and agenda. Meetings, unless otherwise specified in the agenda, will generally be held at IPERS' headquarters, 7401 Register Drive, Des Moines, Iowa.

3.7(1) Notice of meetings and agenda.

a. Form of notice. Notice of meetings is given by the posting and distributing of the agenda. The agenda lists the time, date, place, and topics to be discussed at the meeting.

b. Posting of agenda. The agenda for each meeting will be posted at IPERS' headquarters.

c. Distribution of agenda. An agenda shall be provided to each BAC representative and to anyone who files a request with the chairperson. The request should state whether the agenda for a particular meeting is desired or whether the agendas for all meetings are desired.

d. Amendments to agenda. After an agenda has been posted and distributed, any amendments to the agenda will be posted, but not distributed. The amended agenda will be posted at least 24 hours prior to the meeting unless, for good cause, notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

e. Supporting material. Written materials provided to the BAC with the agenda may be examined and copied. Copies of the materials may be distributed at the discretion of the chairperson to persons requesting the materials. The chairperson may require a fee to cover the reasonable cost to the agency to provide the copies.

3.7(2) Recordings, transcripts and minutes of meetings.

a. Recordings. The chairperson shall record by mechanized means each meeting and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

b. Transcripts. Transcripts of meetings will not routinely be prepared. The chairperson will have transcripts prepared upon receipt of a request for a transcript and payment of a fee to cover its cost.

c. Minutes. The chairperson shall record minutes of each meeting. Minutes shall be reviewed, approved, and maintained by the BAC. The chairperson shall sign the approved minutes.

3.7(3) Attendance and participation by the public.

a. Attendance. All meetings of the BAC are open to the public and shall be held in accordance with Robert's Rules of Order, Revised Edition. The BAC may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

b. Participation.

(1) Items on agenda. Persons who wish to address the BAC on a matter on the agenda should notify the chairperson in writing at least five days before the meeting. Presentations to the BAC may be made at the discretion of the chairperson.

(2) Items not on agenda. Iowa Code section 21.4 requires the BAC to give notice of its proposed agenda. Therefore, the BAC discourages persons from raising matters not on the agenda. Persons who wish to address the BAC on a matter not on the agenda should file a request with the chairperson to place the matter on the agenda of a subsequent meeting.

c. Coverage by press. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

495—3.8(97B) Expenses. Expenses of BAC representatives shall be reimbursed in accordance with Iowa Code section 97B.8B.

These rules are intended to implement Iowa Code chapter 97B.

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CHAPTER 4 EMPLOYERS

[Prior to 6/9/04, see 581—Ch 21]

495—4.1(97B) Covered employers.

4.1(1) Definition. All public employers in the state of Iowa, its cities, counties, townships, agencies, political subdivisions, instrumentalities and public schools are required to participate in IPERS. For the purposes of these rules, the following definitions also apply:

a. “Political subdivision” means a geographic area or territorial division of the state which has responsibility for certain governmental functions. Political subdivisions are characterized by public election of officers and taxing powers. The following examples are representative: cities, municipalities, counties, townships, schools and school districts, drainage and levee districts, and utilities.

b. “Instrumentality of the state or a political subdivision” means an independent entity that is organized to carry on some specific function of government. Public instrumentalities are created by some form of governmental body, including federal and state statutes and regulations, and are characterized by being under the control of a governmental body. Such control may include final budgetary authorization, general policy development, appointment of a board by a governmental body, and allocation of funds.

c. “Public agency” means state agencies and agencies of political subdivisions. Representative examples include an executive board, commission, bureau, division, office, or department of the state or a political subdivision.

d. Effective July 1, 1994, the definition of employer includes an area agency on aging that does not offer an alternative plan to all of its employees that is qualified under the federal Internal Revenue Code.

Covered employers include, but are not limited to: the state of Iowa and its administrative agencies; counties, including their hospitals and county homes; cities, including their hospitals, park boards and commissions; recreation commissions; townships; public libraries; cemetery associations; municipal utilities including waterworks, gasworks, electric light and power; school districts including their lunch and activity programs; state colleges and universities; and state hospitals and institutions.

An entity not already reporting to IPERS which meets the conditions for becoming an IPERS covered employer shall immediately contact IPERS to provide notice which includes the name and address of the entity and other information required by IPERS. If, after review of this information, IPERS determines that the entity should be enrolled as a covered employer, IPERS will notify the entity and provide an IPERS account number for the entity to use when submitting information. IPERS shall not be required to provide benefits otherwise available under Iowa Code chapter 97B for periods of service prior to the effective date for which IPERS actually approves the entity for coverage, unless the employer agrees to pay the full actuarial cost of providing such benefits.

An employer may request a revised beginning date for its status as a covered employer. The employer must submit acceptable proof to IPERS that its status as a covered employer began earlier than the date previously provided. In such case, the employer shall provide IPERS coverage retroactively to all employees providing services to that employer on or after the revised beginning date and shall pay all actuarial costs.

4.1(2) Name change. Any employer which has a change of name, address, title of the employer, its reporting official or any other identifying information shall immediately give notice in writing to IPERS. The notice shall provide IPERS with the following information:

- a.* Former name;
- b.* Former address;
- c.* IPERS account number;
- d.* New name, address, and telephone number of the employer;
- e.* Reason for the change if other than a change of reporting official; and
- f.* Effective date of the change.

4.1(3) Termination. Any employer which terminates or is dissolved for any reason shall provide IPERS with the following:

- a. Complete name and address of the dissolved entity;
- b. Assigned IPERS account number;
- c. Last date on which wages were paid;
- d. Date on which the entity dissolved;
- e. Reason for the dissolution;
- f. Whether or not the entity expects to pay wages in the future;
- g. Whether the entity is being absorbed by another covered employer;
- h. Name and address of absorbing employer if applicable; and
- i. Name and address of employer that will retain the records of the dissolved entity.

4.1(4) Reports of dissolved or absorbed employers. An employer that has been dissolved or entirely absorbed by another employer is required to file a monthly report with IPERS through the effective date on which it was dissolved or absorbed. Any wages paid after this date are reported under the account number assigned to the new or successor employer, if any.

4.1(5) IPERS account number. Each employer is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

4.1(6) For patient advocates employed under Iowa Code section 229.19, the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for forwarding reports and for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

495—4.2(97B) Records to be kept by the employer.

4.2(1) General. Each employer shall maintain records to show the information hereinafter indicated. Records shall be kept in the form and manner prescribed by IPERS. Records shall be open to inspection and may be copied by IPERS and its authorized representatives at any reasonable time.

4.2(2) Records shall show with respect to each employee:

- a. Employee's name, address and social security account number;
- b. Each date the employee was paid wages or other wage equivalent (e.g., room, board);
- c. Total amount of wages paid on each date including noncash wage equivalents;
- d. Total amount of wages including wage equivalents on which IPERS contributions are payable;
- e. Amount withheld from wages or wage equivalents for the employee's share of IPERS contributions; and
- f. Effective January 1, 1995, records will show, with respect to each employee, member contributions picked up by the employer.

4.2(3) Reports.

a. Each employer shall make reports as IPERS may require and shall comply with the instructions provided by IPERS for the reports.

b. Effective July 1, 1991, employers must report all terminating employees to IPERS within seven working days following the employee's termination date. This report shall contain the employee's last-known mailing address and such other information as IPERS might require.

c. Effective December 31, 2004, and annually thereafter, employers whose job classes include correctional officers, correctional supervisors, and others whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety and security within a correctional facility shall submit to IPERS each calendar year a list of jobs that qualify for protection occupation class coverage. This report shall also contain any changes in the designation of jobs as qualifying or not qualifying for protection occupation class coverage and effective dates of changes. IPERS' sole responsibility with respect to protection occupation status determinations is to ascertain whether IPERS' records correctly reflect service credit and contributions that are in accordance with the employer's designation of a position as being within a protection occupation class.

4.2(4) Fees. IPERS may assess to the employer a fee for administrative costs as described in subrule 4.3(6).

495—4.3(97B) Wage reporting and payment of contributions by employers.

4.3(1) *Payment of contributions.* For wages paid on or after July 1, 2008, all covered employers are required to pay contributions on a monthly basis. Upon enrollment as an IPERS covered employer, the employer shall receive the appropriate forms and instructions from IPERS to submit contributions. IPERS will provide monthly statements to each employer.

IPERS accepts the payment of contributions through electronic funds transfer. Payments utilizing the electronic funds transfer system shall be made according to the procedure described in subrule 4.3(3).

IPERS accepts the payment of contributions using checks and remittance advice forms. Employers filing monthly employer remittance advice forms on paper for two or more employers shall attach the checks to each remittance form. Checks shall be made payable to the Iowa Public Employees' Retirement System and mailed with the employer remittance advice form to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Effective August 1, 2008, such payments and reports shall be subject to a fee as described in subrule 4.3(6).

4.3(2) *Wage reports.* For wages paid on or after July 1, 2008, all IPERS covered employers are required to file wage reports on a monthly basis. IPERS will provide the forms and instructions for wage reporting to employers. Each wage report must include the required information for all employees who earned reportable wages or wage equivalents under IPERS. The reports must be received by IPERS on or before the fifteenth day of the month following the month in which the wages were paid. If the fifteenth day falls on a weekend or holiday, the wage report is due on the next regularly scheduled business day.

Effective August 1, 2008, IPERS shall accept wage reports electronically via the IPERS' employer self service Web application, on compact discs, or as a paper report. However, for those employers submitting reports on compact discs or on paper, IPERS shall charge a fee as described in subrule 4.3(6).

4.3(3) *Deadlines for payment of contributions.*

a. Contributions must be paid monthly and must be received by IPERS on or before the fifteenth day of the month following the month in which wages were paid. If the fifteenth day falls on a weekend or holiday, the contribution is due on the next regularly scheduled business day.

b. For employers paying contributions by electronic funds transfer, wage reports and contributions may be submitted at the same time.

4.3(4) *Request for time extension.* A request for an extension of time to file a wage report or pay a contribution may be granted by IPERS for good cause if a request is made before the due date, but no extension shall exceed 15 days beyond the due date. If an employer that has been granted an extension fails to submit the wage report or pay the contribution on or before the end of the extension period, the applicable interest and fees shall be charged and paid from the original due date as if no extension had been granted. If the fifteenth day falls on a weekend or holiday, the contribution or report is due on the next regularly scheduled business day.

To establish good cause for an extension of time to file a wage report or pay contributions, the employer must show that the delinquency was not due to mere negligence, carelessness or inattention. The employer must affirmatively show that it did not file the report or timely pay because of some occurrence beyond the control of the employer.

4.3(5) *No reportable wages.* When an employer has no reportable wages during the applicable reporting period, the wage reporting document shall be filed according to subrule 4.3(2). Even if there are no reportable wages, the employer's account is considered delinquent for the reporting period and is subject to a fee until the report is filed. However, if the employer has notified IPERS on or before the due date that there are no wages to report, IPERS will adjust the due date, and no fee will be charged.

4.3(6) *Fees for noncompliance.* IPERS is authorized to impose reasonable fees on employers that do not file wage reports through the IPERS' employer self service Web application as described in subrule 4.3(2), that fail to timely file accurate wage reports, or that fail to pay contributions when due pursuant to subrule 4.3(3).

For submissions filed on or after August 1, 2008, IPERS shall charge employers a processing fee of \$20 plus 25 cents per employee for late submissions and manual processing of wage reports by IPERS. Employers that are late or that do not use IPERS' employer self service Web application may be charged both fees. In addition, if a fee for noncompliance is not paid by the fifteenth day of the month after the fee

is assessed, the fee will accrue interest daily at the interest rate provided in Iowa Code section 97B.70. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full.

If the due date for a fee falls on a weekend or holiday, the due date shall be the next regularly scheduled business day.

4.3(7) *Erroneously reported wages for employees not covered under IPERS.* Employers that erroneously report wages for employees who are not eligible for coverage under IPERS may file an IPERS wage reporting adjustment form. IPERS shall return a warrant or issue a credit for both the employer and employee contributions made in error. The employer is responsible for returning the employees' share and for filing corrected federal and state wage reporting forms. Adjustments in such cases will be reported on the employer's monthly statement. Under no circumstance shall the employer adjust these wages by underreporting wages on a future periodic wage reporting document. Wages shall never be reported as a negative amount. An employer that completes the employer portion of an employee's request for a refund on an IPERS refund application form will not be permitted to file a periodic wage reporting adjustment form for that employee for the same time period. No fee will be assessed to employers that correct information as provided under this subrule.

4.3(8) *Contributions paid on wages in excess of the annual covered wage maximum.* For wages paid on or after July 1, 2008, whenever IPERS determines that an employee's wages will exceed the annual maximum established under Section 401(a)(17) of the Internal Revenue Code during a given month, IPERS shall notify the applicable employer and shall return the related excess contributions. IPERS will detail on the monthly report those employees for whom wages were reported in excess of the covered wage ceiling. The employer is responsible for returning the employee's share of excess contributions and making the applicable tax corrections.

4.3(9) *Termination within less than six months of the date of employment.* If an employee hired for permanent employment terminates within six months of the date of employment, the employer may file an IPERS form for reporting adjustments to receive a warrant or a credit, as elected by the employer, for both the employer's and employee's portions of the contributions. It is the responsibility of the employer to return the employee's share. "Termination within less than six months of the date of employment" means employment is terminated prior to the day before the employee's six-month anniversary date. For example, an employee hired on February 10 whose last day is August 8 would be treated as having resigned within less than six months. An employee hired on February 10 whose last day is August 9 (the day before the six-month anniversary date, August 10) would be treated as having worked six months and would be eligible for a refund.

4.3(10) *Reinstatement following an employment dispute.* Employees who are reinstated following an employment dispute may restore membership service credit as described in 495—9.5(97B).

495—4.4(97B) *Accrual of interest and application of employer payments.* Interest or charges as provided under Iowa Code section 97B.9 shall accrue on all employer payments not received by IPERS by the due date, except that interest or charges may be waived by IPERS if the employer requests an extension of time under subrule 4.3(4) prior to the due date. Effective August 1, 2008, employers that remit late contributions shall be charged a minimum of \$20 or interest at the rate provided in Iowa Code section 97B.70, whichever is greater. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full. Payments received from employers having unpaid account balances shall first be applied to the oldest outstanding balance.

495—4.5(97B) *Credit memos voided.* Rescinded IAB 3/26/08, effective 4/30/08.

495—4.6(97B) *Contribution rates.* The following contribution rate schedule, payable on the covered wage of the member, is determined by the position or classification and the occupation class code of the member.

4.6(1) *Contribution rates for regular class members.*

a. Effective July 1, 2007, except as otherwise provided by law, the following contribution rates shall be effective for all covered members except those identified in subrules 4.6(2) and 4.6(3):

	Ended June 30, 2007	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010
Combined rate	9.45%	9.95%	10.45%	10.95%	11.45%
Employer	5.75%	6.05%	6.35%	6.65%	6.95%
Employee	3.70%	3.90%	4.10%	4.30%	4.50%

b. Effective July 1, 2011, and every year thereafter, the contribution rates shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective no later than July 1 of the next fiscal year.

4.6(2) Contribution rates for sheriffs and deputy sheriffs.

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009
Combined rate	15.40%	15.04%	15.24%
Employer	7.70%	7.52%	7.62%
Employee	7.70%	7.52%	7.62%

4.6(3) Contribution rates for protection occupation.

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009
Combined rate	14.11%	14.08%	15.34%
Employer	8.47%	8.45%	9.20%
Employee	5.64%	5.63%	6.14%

4.6(4) Members employed in a “protection occupation” shall include:

a. Conservation peace officers. Effective July 1, 2002, all conservation peace officers, state and county, as described in Iowa Code sections 350.5 and 456A.13.

b. Effective July 1, 1994, a marshal in a city not covered under Iowa Code chapter 400 or a firefighter or police officer of a city not participating under Iowa Code chapter 410 or 411. (See employee classifications in rule 495—5.1(97B).) Effective January 1, 1995, part-time police officers shall be included.

c. Correctional officers as provided for in Iowa Code section 97B.49B. Employees who, prior to December 22, 1989, were in a “correctional officer” position but whose position is found to no longer meet this definition on or after that date shall retain coverage, but only for as long as the employee is in that position or another “correctional officer” position that meets this definition. Movement to a position that does not meet this definition shall cancel “protection occupation” coverage.

d. Airport firefighters employed by the military division of the department of public defense (airport firefighters). Effective July 1, 2004, airport firefighters become part of and shall make the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1994, through June 30, 2004, airport firefighters were grouped with and made the same contributions as sheriffs and deputy sheriffs. From July 1, 1988, through June 30, 1994, airport firefighters were grouped with and made the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1986, through June 30, 1988, airport firefighters were a separate protection occupation group and made contributions at a rate calculated for members of that group. Prior to July 1, 1986, airport firefighters were grouped with regular members and made the same contributions as regular members.

Notwithstanding the foregoing, all airport firefighter service prior to July 1, 2004, shall be coded by IPERS as sheriff/deputy sheriff/airport firefighter service, and all airport firefighter service after June 30, 2004, shall be coded by IPERS as protection occupation service. This coding, however, shall not supersede provisions of this title that require members to make contributions at higher rates in order to receive certain benefits, such as in the hybrid formula pursuant to 495—12.4(97B).

e. Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city with a population of 100,000 or more, and employees covered by the Iowa Code chapter 8A merit system whose primary duties are providing airport security and who carry or are licensed to carry firearms while performing those duties.

f. Effective July 1, 1990, an employee of the state department of transportation who is designated as a “peace officer” by resolution under Iowa Code section 321.477.

g. Effective July 1, 1992, a fire prevention inspector peace officer employed by the department of public safety. Effective July 1, 1994, a fire prevention inspector peace officer employed before that date who does not elect coverage under Iowa Code chapter 97A in lieu of IPERS.

h. Effective July 1, 1994, through June 30, 1998, a parole officer III with a judicial district department of correctional services.

i. Effective July 1, 1994, through June 30, 1998, a probation officer III with a judicial district department of correctional services.

j. Effective July 1, 2008, county jailers and detention officers working as jailers.

k. Effective July 1, 2008, National Guard installation security officers.

l. Effective July 1, 2008, emergency medical care providers.

m. Effective July 1, 2008, special investigators who are employed by county attorneys.

4.6(5) Service reclassification.

a. Prior to July 1, 2006, except as otherwise indicated in the implementing legislation or these rules, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall be coded by IPERS staff as special service if certified by the employer as constituting special service under current law. No additional contributions shall be required by regular service reclassified as special service under this paragraph.

b. Effective July 1, 2006, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall continue to be coded by IPERS staff as regular service unless the legislature specifically provides in its legislation for payment of the related actuarial costs of such reclassified service as required under Iowa Code section 97B.65.

4.6(6) Effective July 1, 2006, in the determination of a sheriff’s or deputy sheriff’s eligibility for benefits and the amount of such benefits under Iowa Code section 97B.49C, all protection occupation service credits for that member shall count toward the total years of eligible service as a sheriff or deputy sheriff. However, this subrule shall not be construed to alter the statutory requirement that a sheriff or deputy sheriff must be employed as a sheriff or deputy sheriff at termination of covered employment in order to qualify for benefits under Iowa Code section 97B.49C.

4.6(7) Pretax.

a. Effective January 1, 1995, employers must pay member contributions on a pretax basis for federal income tax purposes only. Such contributions are considered employer contributions for federal income tax purposes and employee contributions for all other purposes. Employers must reduce the member’s salary reportable for federal income tax purposes by the amount of the member’s contribution.

b. Salaries reportable for purposes other than federal income tax will not be reduced, including for IPERS, FICA, and, through December 31, 1998, state income tax purposes.

c. Effective January 1, 1999, employers must pay member contributions on a pretax basis for both federal and state income tax purposes.

[ARC 7591B, IAB 2/25/09, effective 7/1/09; ARC 7759B, IAB 5/6/09, effective 4/17/09]

495—4.7(97B) Employee information to be provided by covered employers. Covered employers are required to enroll new employees prior to reporting wages for the new employees. Enrollment information shall include, but is not limited to, the following: member's name, social security number, date of birth, date of hire, occupation code, gender, mailing address, termination date and last check date, when appropriate, and employer identification number.

For new employee enrollments submitted on or after August 1, 2008, employers shall submit the required information using IPERS' employer self service Web application, on compact discs, or on paper. However, those employers submitting information on compact discs or on paper will be charged a fee as described in subrule 4.3(6).

495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours. This rule applies only to the restoration of covered wages reduced by an employer-mandated reduction in hours (EMRH). It does not apply to reductions in base wages, reduced overtime wages, reduced wages due to position changes, permanent layoffs or other termination of employment situations.

4.8(1) A member may restore the member's three-year average covered wage to the amount that it would have been but for an EMRH by completing the IPERS EMRH application form and related payroll deduction authorization and by filing the application and payroll deduction authorization forms with the employer. By so doing, the member agrees to pay the employee and employer contributions for all EMRH wages retroactive to January 1, 2009, and all future EMRH wages through June 30, 2010.

4.8(2) A member cannot pay the EMRH contributions described under this rule in any manner except through payroll deductions.

4.8(3) The payroll deduction authorization described under this rule shall be irrevocable, except upon death, retirement or termination of employment. If revoked by the member's death, retirement, or termination of employment, all amounts held by an employer in the member's name shall be forwarded to the member along with the member's final wages.

4.8(4) A member may obtain a refund of EMRH contributions collected under this rule as part of a refund of the member's entire account balance or an actuarial equivalent (AE) payment, but a member who commences a monthly retirement allowance shall not receive a refund of any amounts contributed, even if the covered wages being restored are not used in the member's three-year average covered wage.

4.8(5) A covered employer must cooperate with an eligible member's request for payroll deductions using the applicable IPERS forms. Employers shall be required to complete and submit wage certifications showing the covered wages that would have been reported but for the EMRH.

4.8(6) After IPERS has received and processed wage certification forms, the employer will be billed for the applicable EMRH contributions on the next employer monthly statement. If contributions are not paid by the employer statement's due date, the employer will be assessed late fees and interest in accordance with rule 495—4.3(97B).

4.8(7) In completing the federal and state wage reporting forms to be filed with the federal and state tax authorities, an employer shall treat the EMRH contributions collected and forwarded to IPERS the same as pretax IPERS employee contributions.

4.8(8) Upon receipt of the contributions pursuant to this rule, IPERS shall apply them to the member's account as pretax employee contributions.

4.8(9) This rule applies to reductions in wages caused by an EMRH through June 30, 2010. An employer's collection of contributions from such wages shall terminate as of midnight, July 31, 2010. All completed EMRH forms and contributions collected under this rule must be forwarded to IPERS by a covered employer no later than August 15, 2010.

[ARC 7759B, IAB 5/6/09, effective 4/17/09]

These rules are intended to implement Iowa Code sections 97B.4, 97B.9, 97B.14, 97B.14A, 97B.38, 97B.49A to 97B.49I, 97B.65 and 97B.70 and 2009 Iowa Acts, House File 414, section 51.

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CHAPTER 5 EMPLOYEES

[Prior to 6/9/04, see 581—Ch 21]

495—5.1(97B) Identification of employees covered by the IPERS retirement law.

5.1(1) *Definition of employee—generally.* A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term “control” refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an “employee” as defined in the agreement between the state of Iowa and the Secretary of Health and Human Services, without the element of direction and control.

A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration.

5.1(2) *Optional coverage procedures—July 1, 1994, through December 31, 1998.* Effective July 1, 1994, a person who is employed in a position which allows IPERS coverage to be elected as specified in Iowa Code section 97B.1A(8) must file a one-time election form with IPERS for coverage. If the person was employed before July 1, 1994, the election must be postmarked on or before July 1, 1995. If the person was employed on or after July 1, 1994, the election must be postmarked within 60 days from the date the person was employed. Coverage will be prospective from the date the election is approved by IPERS. The election, once filed, is irrevocable and continues until the member terminates covered employment. The election window does not allow members who had been in coverage to elect out.

5.1(3) *Election out of Iowa Code chapter 97B coverage by certain protection occupation groups.* Effective July 1, 1994, members employed before that date as a gaming enforcement officer, a fire prevention inspector peace officer, or an employee of the division of capitol police (except clerical workers), may elect coverage under Iowa Code chapter 97A in lieu of IPERS. The election must be directed to the board of trustees established in Iowa Code section 97A.5 and postmarked on or before July 1, 1995.

5.1(4) *Optional coverage procedures—January 1, 1999.* Effective January 1, 1999, new hires who may elect out of IPERS coverage shall be covered on the date of hire and shall have 60 days to elect out of coverage in writing using IPERS’ forms. Notwithstanding the foregoing, employees who had the right to elect IPERS coverage prior to January 1, 1999, but did not do so, shall be covered as of January 1, 1999, and shall have until December 31, 1999, to elect out of coverage.

495—5.2(97B) Coverage treatment for specific employee classifications. Employment as defined in Iowa Code chapter 97B is not synonymous with IPERS membership. Some classes of employees are explicitly excluded or membership is made optional under Iowa Code section 97B.1A(8) “b,” while other classes are excluded or membership is made optional by their nature. The following subrules are designed to clarify the status of certain employee positions.

5.2(1) Elected officials. Effective January 1, 1999, the following persons shall be covered by IPERS unless they elect out of coverage:

- a. Elected officials in positions for which the compensation is on a fee basis;
- b. Elected officials of school districts;
- c. Elected officials of townships; and
- d. Elected officials of other political subdivisions who are in part-time positions.

An elected official who becomes covered under this chapter may later terminate membership by informing IPERS in writing of the expiration of the member’s term of office or, if a member of the general assembly, of the intention to terminate coverage.

An elected official does not terminate covered employment with the end of each term of office if the official has been reelected for the same position. If elected for another position, the official shall be covered unless the official elects out of coverage.

5.2(2) County and municipal court bailiffs who receive compensation for duties shall be covered.

5.2(3) Full-time city attorneys shall be covered. Part-time city attorneys who are considered to be public officers or public employees shall be covered.

5.2(4) Magistrates shall be covered unless they elect out of IPERS coverage. Having made a choice to remain in IPERS coverage, a magistrate may not revoke that election and discontinue such coverage.

5.2(5) Office and clerical staff of a county medical examiner's office shall be covered. Effective January 1, 1995, county medical examiners and deputy county medical examiners who are full-time county employees shall be covered.

5.2(6) Police, firefighters, emergency personnel, and certain peace officers.

a. Effective July 1, 1994, police officers and firefighters of a city not participating in the retirement systems established under Iowa Code chapter 410 or 411 shall be covered.

b. Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer shall be covered as firefighters.

c. Effective January 1, 1995, part-time police officers shall be covered in the same manner as full-time police officers.

d. Reserve peace officers employed under Iowa Code chapter 80D shall not be covered in accordance with Iowa Code section 80D.14.

e. A police chief or fire chief who has submitted a written request to the board of trustees created by Iowa Code section 411.36 to be exempt from coverage under Iowa Code chapter 411 shall not be covered under IPERS in accordance with Iowa Code sections 384.6(1) and 411.3. The city shall make on behalf of such person the contributions required under Iowa Code section 384.6(1) to the International City Management Association/Retirement Corporation.

f. Peace officer candidates of the department of public safety shall not be covered.

5.2(7) County social welfare employees shall be covered.

5.2(8) Members of county soldiers relief commissions and their administrative or clerical employees shall be covered.

5.2(9) Part-time elected mayors, mayors of townships, and mayors who are paid on a fee basis are covered under IPERS unless they elect out of coverage. All other mayors, including appointed mayors and full-time elected mayors, whether elected by popular vote or by some other means, are covered.

5.2(10) Field assessors shall be covered.

5.2(11) Members of county boards of supervisors who receive an annual salary shall be covered. Effective for terms of office beginning January 1, 1999, part-time members of county boards of supervisors who receive an annual salary or are paid on a per diem basis shall be covered unless they elect out of coverage.

5.2(12) Temporary employees of the general assembly who are employed for less than six months in a calendar year or work less than 1,040 hours in a calendar year shall be covered unless the employee elects out of coverage. If coverage is elected, the member may not terminate coverage until termination of covered employment.

5.2(13) Effective July 1, 2008, temporary employees shall not be covered provided that they have not established an ongoing relationship with an IPERS covered employer. An ongoing relationship with an IPERS covered employer is established when:

a. The employee is paid covered wages of \$1,000 or more per quarter in two consecutive quarters; or

b. The employee is employed by a covered employer for 1,040 or more hours in a calendar year.

Coverage shall begin when the permanency of the relationship is established and shall continue until the employee's relationship with the covered employer is severed. If there is no formal severance, coverage for a person hired for temporary employment who has established an ongoing relationship with a covered employer shall continue until that person completes four consecutive calendar quarters in which no services are performed for that employer after the last covered calendar quarter.

No service credit will be granted to a temporary employee who has become a covered employee under this rule for any quarter in which no covered wages are reported unless the employee is on a leave of absence that qualifies for service credit under Iowa Code section 97B.1A(20). Contributions shall be paid, and service credit shall be accrued, when wages are paid in the quarter after the ongoing relationship has been established.

5.2(14) Drainage district employees who have vested rights to IPERS through earlier participation or employees of drainage districts shall be covered unless they elect out of coverage.

5.2(15) Full-time and part-time county attorneys shall be covered.

5.2(16) Tax study committee employees shall be covered.

5.2(17) School bus drivers who are considered to be public employees shall be covered. School bus drivers who are independent contractors shall not be covered. A determination must be made by IPERS on the facts presented on a case-by-case basis.

5.2(18) Persons who are enrolled as students and whose primary occupations are as students shall not be covered. Full-time or part-time students employed part-time by the educational institution where they are enrolled shall not be covered. All other students beyond high school are not exempt from IPERS coverage. Full-time and part-time student status is as defined by the individual educational institutions. Full-time and part-time employment status is as defined by the individual employers.

The paragraph above shall not be construed to require or permit IPERS coverage for high school students and students in the lower grades who are concurrently employed (including employment during breaks between quarters, semesters, or annual academic terms) by a covered employer.

5.2(19) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants and specialists in their fields of specialized knowledge or skill shall not be covered.

5.2(20) Members of any other retirement system in Iowa maintained in whole or in part by public funds shall not be covered. However, effective July 1, 1996, an employee who has two jobs, one covered by IPERS and one covered by another retirement system in Iowa, shall remain an IPERS covered employee, unless the employee receives credit in such other retirement system for both jobs.

5.2(21) Members who are contributing to the federal civil service retirement system or federal employees retirement system shall not be covered. However, effective July 1, 1996, an employee who has two jobs, one covered by IPERS and one covered by a federal retirement system, shall be considered as an IPERS covered employee, unless the employee receives credit in such federal retirement system for both jobs.

5.2(22) Employees of credit unions without capital stock organized and operated for mutual purposes without profit shall not be covered.

5.2(23) Members of the ministry, rabbinate or other religious order who perform full-time or part-time religious service for a covered employer shall be covered. However, members of the ministry, rabbinate or other religious order who have taken the vow of poverty may elect out of coverage.

5.2(24) Any physician, surgeon, dentist or member of other professional groups employed full-time by a covered employer shall be covered. However, any member of a professional group who performs part-time service for any public agency but whose private practice provides the major source of income shall not be covered, except for city attorneys and health officials.

5.2(25) Interns and resident doctors employed by a state or local hospital, school or institution shall not be covered.

5.2(26) Professional personnel who acquire the status of an officer of the state of Iowa or a political subdivision thereof, even though they engage in private practice and render government service only on a part-time basis, shall be covered.

5.2(27) Effective July 1, 1994, volunteer firefighters and special police officers are considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13).

5.2(28) Residents or inmates of county homes shall not be covered.

5.2(29) Members of the state transportation commission, the board of parole, and the state health facilities council shall be covered unless they elect out of coverage.

5.2(30) Employees of an interstate agency established under Iowa Code chapter 28E, and similar enabling legislation in an adjoining state, if the city had made contributions to the system for employees performing functions which are transferred to the interstate agency shall be considered employees of the city for the sole purpose of membership in IPERS, although the employer contributions for those employees are made by the interstate agency.

5.2(31) City managers, or city administrators performing the duties of city managers, under a form of city government listed in Iowa Code chapter 372 or 420 shall be covered unless they elect out of coverage.

5.2(32) Employees appointed by the state board of regents shall be covered unless, at the discretion of the state board of regents, they elect coverage in an alternate retirement system qualified by the state board of regents.

5.2(33) School employees who work in additional positions along with normal duties with the same employer shall be considered covered employees until all of their compensated duties to their employer cease. (Examples include teacher/coach; teacher/summer driver's education instructor; and Phase I, II, and III employment.)

5.2(34) Adjunct instructors employed by a community college or university shall not be covered. Adjunct instructors are persons employed by a community college or university without a continuing contract and whose teaching load does not exceed one-half time for two full semesters or three full quarters for the calendar year. The determination of whether a teaching load exceeds one-half time shall be based on the number of credit hours or noncredit contact hours that the community college or university considers to be a full-time teaching load for a regular full semester or quarter. An adjunct instructor whose teaching load exceeds the foregoing limitations shall be covered.

In determining whether an adjunct instructor is a covered employee, no credit shall be granted for teaching periods of shorter duration than a regular semester or regular quarter (such as summer semesters), regardless of the number of credit or contact hours assigned to that period.

If there is no formal severance, an adjunct instructor who becomes a covered employee shall remain a covered employee until that person completes four consecutive calendar quarters in which no services are performed for that covered employer after the last covered calendar quarter. Notwithstanding the foregoing sentence, no service credit will be granted to any adjunct instructor who has become a covered employee under this rule for any calendar quarter in which no covered wages are reported unless the adjunct instructor is on an approved leave of absence that qualifies for service credit under Iowa Code section 97B.1A(20).

5.2(35) Effective July 1, 1992, enrollees of a senior community service employment program authorized by Title V of the Older Americans Act and funded by the United States Department of Labor shall not be covered unless:

- a. Both the enrollee and the covered employer elect coverage; or
- b. The enrollee is currently contributing to IPERS.

For purposes of this subrule only, a covered employer is defined as the host agency where the enrollee is placed for training.

5.2(36) Employees of area agencies on aging shall be included. However, effective July 1, 1994, employees of area agencies on aging shall not be covered if the area agency has provided for participation by all of its eligible employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code. If an area agency on aging does not participate in an alternative plan, or terminates participation in such plan, IPERS coverage shall begin immediately.

5.2(37) Effective July 1, 1994, arson investigators shall not be covered. They were transferred to the public safety peace officers' retirement, accident and disability system as found in Iowa Code chapter 97A.

5.2(38) Persons who meet the requirements of independent contractor status as determined by IPERS using the criteria established by the federal Internal Revenue Service shall not be covered.

5.2(39) Effective July 1, 1994, a person employed on or after that date for certain public safety positions shall not be covered. These positions are gaming enforcement officers employed by the division

of criminal investigation for excursion boat gambling enforcement activities, fire prevention inspector peace officers, and employees of the division of capitol police (except clerical workers).

5.2(40) Employees of area community colleges shall be covered unless they elect coverage under an alternative system pursuant to a one-time irrevocable election.

5.2(41) Volunteer emergency personnel, such as ambulance drivers, shall be considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13). Persons who meet such requirements shall be covered under the protection occupation requirements of Iowa Code section 97B.49B if they are considered firefighters by their employers; otherwise they shall be covered under Iowa Code section 97B.11.

5.2(42) Persons employed through any program described in Iowa Code section 84A.7 and provided by the Iowa conservation corps shall not be covered.

5.2(43) Appointed and full-time elective members of boards and commissions who receive a set salary shall be covered. Effective January 1, 1999, part-time elective members of boards and commissions not otherwise described in these rules who receive a set salary shall be covered unless they elect out of coverage. Members of boards, other than county boards of supervisors, and commissions, including appointed and elective full-time and part-time members, who receive only per diem and expenses shall not be covered.

5.2(44) Persons receiving rehabilitation services in a community rehabilitation program, rehabilitation center, sheltered workshop, and similar organizations whose primary purpose is to provide vocational rehabilitation services to target populations shall not be covered.

5.2(45) Persons who are members of a community service program authorized under and funded by grants made pursuant to the federal National and Community Service Act of 1990 shall not be covered.

5.2(46) Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall not be covered. Notwithstanding the foregoing, persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

5.2(47) Effective July 1, 1999, persons performing referee services for a covered employer shall not be covered, unless the performance of such services is included in the persons' regular job duties for the employer for which such services are performed.

5.2(48) Effective July 1, 2000, patient advocates appointed under Iowa Code section 229.19 shall be covered.

5.2(49) Employees of the Iowa student loan liquidity corporation shall not be covered.

495—5.3(97B) Participation in IPERS and another retirement system. Effective July 1, 1996, an employee may actively participate in IPERS and another retirement system supported by public funds if the person does not receive credit under both IPERS and such other retirement system for any position held.

These rules are intended to implement Iowa Code sections 97B.1A, 97B.4, 97B.11, 97B.42, 97B.42A, 97B.49B, 97B.49C, and 97B.49G.

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CHAPTER 6
COVERED WAGES
[Prior to 6/9/04, see 581—Ch 21]

495—6.1(97B) IRS requirements. Wages as discussed in this chapter shall not exceed the amount permitted for a given year under Section 401(a)(17) of the Internal Revenue Code.

495—6.2(97B) Definition of wages. “Wages” means all compensation earned by employees including, except as otherwise provided under this chapter, vacation pay; sick pay; back pay; amounts deducted from the employee’s pay at the employee’s discretion for tax-sheltered annuities, dependent care and cafeteria plans; and the cash value of wage equivalents. This definition applies to these rules, regulations, interpretations, forms and other IPERS publications unless the context otherwise requires.

495—6.3(97B) IPERS coverage for various forms of compensation. The following is a list of various types of compensation and the corresponding IPERS coverage treatment:

6.3(1) *Vacation pay or annual leave pay.* Vacation pay or annual leave pay means the amount paid to an employee during a period of vacation.

6.3(2) *Sick pay.* Sick pay means payments made for sick leave which are a continuation of salary payments.

6.3(3) *Workers’ compensation payments and other third-party payments.* Workers’ compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust, are not included as wages. Payments for sick leave which are a continuation of salary payments if paid from the employer’s general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability, are covered wages.

6.3(4) *Compensatory time.* Wages include amounts paid for compensatory time taken in lieu of regular work hours or when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy.

6.3(5) *Banked holiday pay.* If an employer codes banked holiday time as holiday or additional accrued vacation time, the banked holiday pay will be vacation pay under subrule 6.3(1). If an employer codes banked holiday time as compensatory time, the banked holiday pay will be combined with compensatory pay and subject to the limits set forth in subrule 6.3(4).

6.3(6) *Special lump sum payments.* Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. Wages do not include: catastrophic leave paid in a lump sum, bonuses, tips or honoraria. Exclusion of payments as described in this subrule applies whether the payment is in a lump sum or in installments.

6.3(7) *Covered wage treatment for supplemental payments.*

a. Payments excluded from covered wages as bonuses include the following:

- (1) Recruitment payments.
- (2) Retention payments.
- (3) Payments to members who achieve improvements in their employer’s financial status or performance ratings.
- (4) Employee performance incentive payments.
- (5) Extraordinary job performance payments.
- (6) Payments for the possession, attainment, or maintenance of special skills or professional certifications (does not apply to advancements in a member’s placement in wage or salary schedule, or placement in a higher tier wage or salary schedule).

(7) Payments to members made in lieu of merit increases because the members' wage or salary scales are capped.

(8) Payments similar in substance to those enumerated above without regard to the payments' titles, tag lines, labels or classifications by employers.

b. Payments included in covered wages that are not to be treated as bonuses include the following:

(1) Payments authorized by statute and used to increase the general level of teacher pay, except as otherwise provided in this subrule (for example, when such moneys are used to pay retention bonuses).

(2) Payments for which additional, or new and different, job duties are required in order to receive the payment.

(3) Payments for employment longevity.

c. Payments that are otherwise to be treated as covered wages under paragraph "b" shall not be covered if IPERS determines that the payments are made for paragraph "a," subparagraphs (1) to (8), of this subrule or other subrules, including, but not limited to, recruitment or retention bonuses, retirement incentive and severance payments, reimbursements of business expenses, and payment of allowances.

d. IPERS shall have the final authority to determine if supplemental payments not described in paragraphs "a," "b" and "c" of this subrule should be treated as excluded bonus payments or covered wages. In making its determination, IPERS may consider, but is not limited to, such factors as the supplemental payments' similarity to payments described in paragraphs "a," "b" and "c" of this subrule, whether such payments are discretionary with the employer, and whether, on the one hand, the payments are regular and periodic over the working careers of a broad group of individuals or, on the other hand, are short-term, irregular, or ad hoc payments whose primary effect is to spike certain members' final average salaries.

6.3(8) *Other special payment arrangements.* Wages do not include amounts paid pursuant to special arrangements between an employer and employee whereby the employer pays increased wages and the employee reimburses the employer or a third-party obligor for all or part of the wage increase. This limitation includes, but is not limited to, the practice of increasing an employee's wages by the employer's share of health care costs and having the employee reimburse the employer or a third-party provider for such health care costs. Wages do not include amounts paid pursuant to a special arrangement between an employer and employee whereby wages in excess of the covered wage ceiling for a particular year are deferred to one or more subsequent years. Wages do not include employer contributions to a plan, program, or arrangement that are not included in the employee's federal taxable income. However, certain employer contributions under IRC Section 125 plans are permitted to be treated as covered wages under rule 495—6.5(97B) subject to the terms of that rule.

Employers and employees that knowingly and willfully enter into the types of arrangements described in this subrule, causing an impermissible increase in the payments authorized under Iowa Code chapter 97B, may be prosecuted under Iowa Code section 97B.40 for engaging in a fraudulent practice. If IPERS determines that its calculation of a member's monthly benefit includes amounts paid under an arrangement described in this subrule, IPERS shall recalculate the member's monthly benefit, after making the appropriate wage adjustments. IPERS may recover the amount of overpayments caused by the inclusion of the payments described in this subrule from the monthly amounts plus interest payable to the member or amounts payable to the member's successor(s) in interest, regardless of whether or not IPERS chooses to prosecute the employers and employees under Iowa Code section 97B.40.

6.3(9) *Wage equivalents.* Items such as food, lodging and transportation are includable as employee income, if they are paid as compensation for employment. The basic test is whether or not such wage equivalent was given for the convenience of the employee or employing unit. Wage equivalents are not reportable under IPERS if given for the convenience of the employing unit or are not reasonably quantifiable. Wage equivalents that are not included in the member's federal taxable income shall be deemed to be for the convenience of the employer. A wage equivalent is not reportable if the employer certifies that there was a substantial business reason for providing the wage equivalent, even if the wage equivalent is included in the employee's federal taxable income. Wages paid in any other form than money are measured by the fair market value of the meals, lodging, travel or other wage equivalents.

6.3(10) *Members of the general assembly.* Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary. Wages include per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages do not include expense payments except that, effective July 1, 1990, wages include daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly. Such nontravel expenses of office during a session of the general assembly shall not exceed the maximum established by law for members from Polk County. A member of the general assembly who has elected to participate in IPERS shall receive four quarters of service credit for each calendar year during the member's term of office, even if no wages are reported in one or more quarters during a calendar year.

6.3(11) *Wages restored following an employer-mandated reduction in hours.* Notwithstanding rule 495—6.4(97B), wages restored following the receipt of contributions forwarded pursuant to 495—4.8(97B) shall be credited to quarters in which the wages would have been received but for the employer-mandated reduction in hours (EMRH).

6.3(12) *Wages paid as a back pay settlement.* IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 6.3(6) and shall not be covered.

6.3(13) *Limitations on benefits and contributions.*

a. Section 415(b) limitations on benefits. A member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Internal Revenue Code Sections 415(b) and 415(d). For purposes of applying the limits under Internal Revenue Code Section 415(b) (Limit), the following will apply:

(1) With respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

1. The member's Limit will be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

2. To the extent the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases under the IPERS trust fund until such time as the benefit plus the accumulated increases are less than the applicable Limit; and

3. Thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost-of-living increase shall be tested under the then applicable benefit Limit, including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) (cost-of-living adjustments) and the regulations thereunder; and

(2) With respect to a member who receives a portion of the member's annual benefit in a lump sum:

1. The member's applicable Limit shall be applied taking into consideration automatic cost of living increases as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and

2. In no event shall a member's annual benefit payable under the system in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the assumptions required by Treasury Regulations, including the mortality table specified in Revenue Ruling 2001-62 or Revenue Ruling 2007-67, as applicable.

b. Section 415(c) limitations on contributions and other member additions. Member contributions and other additions paid to the system may not exceed the annual limits on contributions and other additions allowed by Internal Revenue Code Section 415(c). For purposes of applying these limits, the definition of “compensation,” where applicable, will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation. The foregoing definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2) and, for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457 and, for plan years beginning on and after January 1, 2001, pursuant to Internal Revenue Code Section 132(f)(4).

c. Limitation year. The limitation year is the calendar year.

6.3(14) *Employer payments treated as remuneration counted against the reemployment earnings limit.* All taxable or nontaxable compensation, regardless of the title, tag line, label, or classification attributed to that compensation paid by IPERS-covered employers to retired reemployed IPERS members, shall be considered remuneration when determining reemployment earnings limits and reductions as set forth under Iowa Code section 97B.48A and rule 495—12.8(97B). This rule shall apply whether the compensation is paid pursuant to individual contracts or otherwise, and regardless of whether it is considered covered or noncovered compensation under Iowa Code section 97B.1A(26) and the administrative rules thereunder, except for:

- a.* Contributions to health insurance plans and programs, and
- b.* Reimbursements of actual work-related expenses required by the retired reemployed members’ jobs.

6.3(15) *Employer contributions as remuneration counted against the reemployment earnings limit.* Employer contributions made on behalf of retired reemployed members to tax qualified and nonqualified retirement and deferred compensation plans and to other fringe benefit arrangements, excluding health insurance plans and programs, shall constitute remuneration from employment which shall be applied to the reemployment earnings limits and reductions set forth under rule 495—12.8(97B). Such contributions, even if counted as remuneration hereunder, shall not be counted as covered wages, unless the facts in the particular case indicate that, under the circumstances, the arrangement should be treated as covered wages under rules 495—6.1(97B) through 495—6.5(97B). Nonelective employer contributions to the following shall constitute remuneration when determining reemployment earnings limits: tax qualified retirement and deferred compensation plans; all nonqualified retirement plans and deferred compensation arrangements; IRAs; rabbi, secular, and other trust arrangements; split dollar and other life insurance arrangements; and long-term care insurance.

[ARC 7759B, IAB 5/6/09, effective 4/17/09]

495—6.4(97B) Month for which wages are to be reported. Wages are reportable for the month in which they are actually paid to the employee, except when employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, receive lump sum payments of extra duty pay, or request wage restorations following EMRH, and similar situations involving regular and periodic lump sum payments which IPERS in its sole discretion determines should be treated as covered wages. The employer shall file wage adjustment reporting forms with IPERS allocating the wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

6.4(1) *Actual and constructive receipt.* An employer cannot report wages as having been paid to employees as of a monthly reporting date if the employee has not actually or constructively received the payments in question. For example, wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on June 30 would be reported as June wages, but wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on July 3 would be reported as July wages.

6.4(2) One quarter of service will be credited for each quarter in which a member is paid IPERS covered wages.

a. “Covered wages” means wages of a member during periods of service that do not exceed the annual covered wage maximum as permitted for a given year under Section 401(a)(17) of the Internal Revenue Code.

b. Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)

c. If a member is employed by more than one employer during the calendar year, the total amount of wages paid by all covered employers shall be included in determining the annual covered wage limit established under Section 401(a)(17) of the Internal Revenue Code. If the amount of wages paid to a member by several employers during any given month exceeds the covered wage limit as determined for that calendar year, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. IPERS shall not accept excess wages and applicable contributions from employers and shall return excess contributions as provided in 495—subrule 4.3(8).

[ARC 7759B, IAB 5/6/09, effective 4/17/09]

495—6.5(97B) Covered wage treatment for employer contributions to IRC Section 125 plans. If certain conditions are met, employer contributions to fringe benefit programs that qualify under IRC Section 125 may be treated as covered wages. The following subrules set forth IPERS’ regulations for determining covered wage treatment and for making wage adjustments when employer-paid contributions have been covered or excluded in violation of the standards set forth below.

6.5(1) Section 125 plans. For purposes of this rule, a Section 125 plan means an employer-sponsored fringe benefit plan that is subject to Section 125 of the federal Internal Revenue Code. Some of the common names for this type of plan are cafeteria plan, flexible benefits plan, flex plan, and flexible spending arrangement.

6.5(2) Elective employer contributions. For purposes of this rule, “elective employer contributions” means employer contributions made to a Section 125 plan that can be received in cash or used to purchase benefits under the Section 125 plan. Generally, elective employer contributions that are not subject to special eligibility requirements qualify as covered wages.

6.5(3) Mandatory minimum coverage requirements. The term “elective employer contributions” does not include employer contributions that must be used to purchase benefits under a Section 125 plan. For example, if an employer provides \$2,500 to its employees to purchase benefits in a Section 125 plan, but requires that all employees must use \$1,000 of that amount to purchase single health coverage, the cost of the single coverage is deducted. In this example, \$1,000 would be subtracted from the \$2,500 provided, resulting in \$1,500 of covered wages.

6.5(4) Uniformity determined coverage group by coverage group. Iowa Code section 97B.1A(26)“a”(1)“b” states that elective employer contributions shall be treated as covered wages only if made uniformly available and not limited to highly compensated employees. The application of the uniformity concept may be illustrated as follows: Employer Z has two major groupings of employees covered under its cafeteria plan: teaching staff and support staff. Every member of the teaching staff is provided \$3,000 to purchase benefits under the Section 125 plan. Every member of the teaching staff must take single coverage costing \$1,500. Every member of the support staff is provided \$2,500 and must also take the single coverage costing \$1,500. Each member of the teaching staff would have \$1,500 treated as covered wages, and each member of the support staff would have \$1,000 treated as covered wages. This would be considered uniform treatment.

Uniformity is not destroyed by the fact that the amount available to members of a coverage group varies because the actual cost of mandatory minimum coverage varies depending on actuarial factors that apply to each individual. For example, assume Employer Z above also requires each employee to have long-term disability coverage. In Employer Z’s case, the actual cost of disability coverage will vary from individual to individual. In that case, Employer Z would also deduct the actual cost of the required disability coverage, individual by individual, when determining IPERS covered wages.

Uniformity is not destroyed if an employer has two groups of employees who, as a result of collective bargaining, have differing entitlements to employer contributions. For example, Employer Y has a contract that provides \$3,500 to each employee to purchase benefits under the Section 125 plan. Every employee may take all the cash by waiving participation in the plan, or may use all or part of the employer contributions to the Section 125 plan. In the collective bargaining process, a new contract is adopted which states that the employer will still provide \$3,500 to each employee to purchase benefits under the Section 125 plan. However, under the new contract, persons who waived participation before April 15 may still waive participation in the plan and take all the cash, but persons who did not waive participation and those hired after April 15 must have single coverage costing \$1,700. Employer Y would be treated as having two groups of employees with different elective employer contribution amounts. The grandfathered group (employees who waived participation before April 15) would have covered wages of \$3,500, and the group consisting of those who did not waive participation before April 15 and new employees would have covered wages of \$1,800.

6.5(5) *Highly compensated employee test.* Iowa Code chapter 97B provides that, in addition to being uniformly available, employer contributions must not discriminate in favor of highly compensated employees (HCEs). For purposes of this subrule, an HCE is an employee who has reported wages and tips subject to Medicare tax in excess of the IRC Section 414(q) limit then in effect. IPERS shall apply the HCE limitation as follows. If elective employer contributions are made available to HCEs, the total elective employer contributions made available to the HCE group must not exceed 25 percent of the total elective employer contributions made available under the Section 125 plan to all employees, including the HCEs. If the elective employer contributions available to the HCE group exceed the 25 percent limit (or if it is determined that the Section 125 plan discriminates in favor of HCEs under other IRS rules), elective employer contributions for HCEs shall not exceed the highest amount available to a nonexecutive coverage group of employees covered under such plan. The general application of these principles is illustrated below, using the 2002 IRC Section 414(q) dollar limit of \$90,000.

Employer W has a Section 125 plan that provides elective employer contributions totaling \$7,000 to executive staff, \$4,500 to teaching staff, and \$3,500 to support staff. There are no other limits or exclusions that apply. These amounts are treated as covered wages for each member of each group, provided that the total amount of contributions made available to HCEs does not exceed 25 percent of the total elective employer contributions for all employees covered under the plan. If elective employer contributions for the executive staff totaled \$70,000, and total elective employer contributions for the remainder of the staff totaled \$500,000, the HCE percentage of total elective employer contributions would be 12 percent (\$70,000 divided by \$570,000), and all elective employer contributions would be treated as covered wages for all groups. However, if elective employer contributions for the executive staff totaled \$70,000, and elective employer contributions for the remainder of the staff totaled \$200,000, the HCE percentage would be 26 percent (\$70,000 divided by \$270,000), and HCEs' elective employer contributions would be limited to \$4,500 per HCE for covered wage purposes.

6.5(6) *Elective employer contributions limited to dual coverage employees.* In some cases, a Section 125 plan provides for what appear to be mandatory employer contributions for health plan coverage, but the terms of the Section 125 plan permit dual coverage employees to waive coverage and receive the employer contributions in cash, if the employee can prove coverage under another health care plan. IPERS shall continue to treat the full amount of employer contributions in such cases as not being IPERS covered wages, even though individual employees with the described dual coverage may actually receive the employer contribution in cash.

6.5(7) *Corrections for overpayments and underpayments of contributions and benefits caused by Section 125 plan covered wage errors.* IPERS shall use the following guidelines in requiring corrections for overpayments and underpayments of contributions and benefits caused by the erroneous inclusion or exclusion of employer contributions to a Section 125 plan. Corrections must be made for all active, terminated and retired members, subject to the following limitations:

a. If elective employer contributions that should have been covered were not covered, wage adjustments shall be filed, and employers shall be billed for all shortages plus interest. Employers shall be entitled to collect reimbursement for the employee share of contributions as provided in Iowa Code

section 97B.9. If retirement benefits, death benefits or refunds have been underpaid as a result of the error, IPERS shall, upon receipt of the contribution shortage, make the appropriate adjustments and pay all back benefits.

b. If employer contributions that should not have been covered were covered, wage adjustments shall be filed, and the appropriate contribution amounts shall be repaid to employers for distribution to the respective employee and employer contributors. If the reporting error caused an overpayment of retirement benefits, death benefits, or refunds, IPERS shall offset excess contributions received against overpayments and shall request a repayment of the remainder of the overpayment, if any, from the recipient.

Wage adjustments, overpayments, and underpayments and unintentional reporting errors shall be determined as of the onset of the error, but shall be limited to three years before the beginning of the current contract year for school employers, or current fiscal year for all other covered employers. IPERS may go back to the onset of the error, even if the period exceeds three years, if the error is caused by intentional misconduct or gross neglect. Notwithstanding the foregoing adjustment and collection standards, IPERS reserves the right to negotiate adjustments with individual employers in special situations, and no negotiated settlement with an employer shall be deemed to constitute a waiver of this rule or a binding precedent for other employers.

6.5(8) Bounties. In some cases, an employer has a Section 125 plan with employer contributions, and what IPERS refers to as a bounty option. A bounty is an amount that may be elected by all employees, or by a subset of that group, such as employees with coverage under another health care plan, either in lieu of any coverage under the employer's health care plan, or in lieu of family coverage. A bounty is generally set at an amount that is less than the amount that would otherwise be available to purchase benefits under the Section 125 plan. IPERS does not treat bounties as covered wages. The uniformity and nondiscrimination principles described in subrule 6.5(4) do not apply to such benefits.

These rules are intended to implement Iowa Code sections 97B.1A(26), 97B.9, 97B.11, 97B.14 and 97B.14A.

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CHAPTER 7
SERVICE CREDIT AND VESTING STATUS
[Prior to 11/24/04, see 581—Ch 21]

495—7.1(97B) Service credit.

7.1(1) General.

a. A member shall receive membership service credit for service rendered after July 4, 1953. Service is counted to the complete quarter calendar year. A calendar year shall not include more than four quarters.

b. From July 4, 1953, through June 30, 1965, a member received one quarter of service credit for each quarter in which the member's covered wages totaled at least \$200. From July 1, 1965, through June 30, 1992, a member received one quarter of service credit for each quarter in which the member's covered wages totaled at least \$300. For quarters beginning July 1, 1992, and later, a member shall receive one quarter of service credit for each calendar quarter in which at least \$1 of covered wages is reported.

c. Notwithstanding paragraph "b" above, a member who is on an unpaid leave of absence and who during the period covered by the unpaid leave performs services for the covered employer granting the unpaid leave shall not receive service credit for such services until the employer has reported \$300 in two consecutive quarters included in the unpaid leave period, and such service credit shall be granted only with respect to quarters beginning after said two consecutive quarters.

d. A nonvested member who terminates covered employment prior to attaining the age of 55, but who has covered wages in the year in which the member attains the age of 55 shall be treated as a vested member.

7.1(2) Service credit for persons employed by institutions operating on a nine-month basis. An employee working in a position for a school district or other educational institution which operates on a nine-month basis shall receive credit for the third quarter when covered wages are reported in the second and fourth quarters. A member who was on an approved leave of absence in the second quarter, but who has service credit for that quarter, whether by operation of law or through a service purchase, and who returns to work in the fourth quarter immediately following shall also receive credit for the missing third quarter. In order for the member to receive this service credit, the quarters before and after the third quarter must be reported for the same occupation class code.

7.1(3) Approved leave periods.

a. Effective July 1, 1998, a member's service is not deemed interrupted while a member is on a leave of absence that qualifies for protection under the Family and Medical Leave Act of 1993 (FMLA), or would qualify but for the fact that the type of employment precludes coverage under the FMLA, or during the time a member is engaged in military service for which the member is entitled to receive credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. Sections 4301 to 4333).

b. Reentry into public employment by an employee on military leave can be achieved if the individual accepts employment with a covered employer. Reemployment may begin anytime within 12 months of the individual's discharge from military service or, if longer, within the period provided under USERRA. Upon reemployment the member shall receive credit for all service to which the member is entitled pursuant to USERRA.

Notwithstanding any provision of Iowa Code chapter 97B or these rules to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

For reemployments initiated on or after December 12, 1994, a member shall be treated as receiving compensation for each quarter during the member's period of military service equal to the compensation that the member would have received but for the period of military service, as certified by the member's employer on forms supplied by IPERS. The member's deemed compensation during the period of military service shall be taken into consideration in determining a member's make-up contributions, if any, and the member's high three-year average covered wage.

For reemployments initiated on or after December 12, 1994, following a military leave described in this subrule, make-up contributions shall be permitted with respect to employee contributions that would have been made during the period of military service if the member had actually been in covered employment during the period earning the deemed compensation provided for under this subrule. Make-up contributions shall be permitted during the five-year period that begins on the date of reemployment or, if less, a period equal to three times the period of military service.

The member shall request the foregoing make-up contributions (except contributions for periods prior to January 1, 1995, which shall be made as posttax contributions) on forms to be filed with the employer, which shall forward a copy to the system. Make-up contributions shall be made as pretax contributions under Internal Revenue Code Section 414(h)(2). Employers must comply with a member's request to begin make-up contributions during a period not exceeding that described in the preceding paragraph and shall forward said amounts to the system in the same manner as provided for pick-up contributions under Iowa Code section 97B.11A. An election to make up employee contributions under this subrule shall be irrevocable.

c. Effective for leaves of absence beginning on or after July 1, 1998, an eligible member must make contributions to the system in order to receive service credit for the period of the leave (except for leaves under paragraphs "a" and "b" above).

d. Reentry into public employment by an employee on a leave of absence under paragraphs "a" and "b" can be achieved by the employee by accepting employment with any public employer, provided that any interruption between the end of the period of leave of absence and reentry into public employment meets the requirements of the FMLA, USERRA and this subrule.

e. Credit for a leave of absence shall not be granted and cannot be purchased for any time period which begins after or extends beyond an employee's termination of employment as certified by the employer. This includes a certification of termination of employment made by an employer on a refund application. Employers shall be required to certify all leaves of absence for which credit is being requested using an affidavit furnished by IPERS and accompanied by a copy of the official record(s) which authorized the leave of absence. The provisions of this subrule denying credit for leaves of absence in cases in which the member takes a refund shall not apply to employees who were on leaves of absence that began before November 27, 1996, and took a refund before such date. The provisions of the subrule requiring employers to certify all leaves of absence using an affidavit furnished by IPERS shall apply to all requests for leave of absence credit filed after November 27, 1996, regardless of when the leave of absence was granted.

f. Effective July 1, 2008, free service credit will be given in the calculation of death benefits for members who served military duty and met the following conditions:

- (1) Served in a combat zone or hazardous duty area,
- (2) Sustained a service-related injury or disease that prevented the member from returning to IPERS-covered employment, and
- (3) Died of the service-related injury or disease within two years after suffering the injury or disease.

495—7.2(97B) Prior service.

7.2(1) General.

a. A member shall receive prior service credit if the member made contributions under the abolished Iowa Old-Age and Survivors' Insurance (IOASI) System and has not qualified for IOASI benefits. If qualified, a member will be granted credit for verified service that occurred during and prior to the IOASI period.

b. For the purposes of this rule, public school teachers are considered to have been in service on July 4, 1953, if they were under contract at the end of the school year 1952-1953 or if they signed a contract for the 1953-1954 school year on or before July 4, 1953.

7.2(2) Prior service credit for vacation or leave of absence.

a. Prior service credit shall be given for a period of vacation or leave of absence authorized by the employer not to exceed 12 months. If a period of vacation or leave of absence exceeds 12 months,

prior service credit shall be given for the first 12 months only. However, if a period of vacation or leave of absence was granted for 12 months or less, and renewed for 12 months or less, all periods of vacation or leave of absence shall be included as prior service, even though all periods added together exceed 12 months.

b. Reentry into public employment by an employee on leave of absence can be achieved by the employee by accepting employment with any public employer, provided there is no interruption between the end of the period of the leave of absence and reentry into public employment.

c. The employer must verify the inclusive dates of the period of vacation or leave of absence before prior service credit can be given.

7.2(3) *Prior service credit for military service.*

a. Prior service credit shall be given for the entire period of military service during a war or national emergency, provided the employee was employed by the employer immediately prior to entry into military service and the employee returned to work for the same employer within 12 months after release from service.

b. The employer must verify the inclusive dates of the period of absence from work. A copy of the enlistment and discharge records must also be provided to IPERS to verify enlistment and discharge dates.

7.2(4) *Prior service credit for interruption in service.* Prior service credit shall be given for periods of temporary or seasonal interruption in service where the temporary suspension of service does not terminate the period of employment of the employee. Verification from the employer is required stating the dates of employment, periods of interruption and that the employment was not terminated during those periods.

7.2(5) *Prior service credit for part-time employment.*

a. Effective July 1, 1990, if a member had covered wages reported in any quarter or the custodian of the record certifies service in any quarter, a full quarter of credit will be granted.

b. A teacher will receive credit for a full year in which three quarters of coverage are reported or three quarters of service are certified by the custodian of the records if the teacher had a contract for the following school year. IPERS may require the submission of a copy of that contract.

c. Prior to July 1, 1990, prior service credit for part-time employment was granted on the basis of actual time worked. A ratio determined either by dividing the actual average time worked per day by the normal full-time day or by some other reasonable method was used to calculate the actual time worked.

7.2(6) *Prior service credit for a set period of time.*

a. Effective July 1, 1990, prior service credit will be granted for those quarters in which covered wages were reported or if the custodian of the record certifies service.

b. Prior to July 1, 1990, full prior service credit was given for periods of employment which required the employee to be available for as much work as required, even though the employee may not have actually worked full-time. This includes the employment of town clerks, secretaries of school districts, school bus drivers and school lunch employees.

7.2(7) *Prior service credit for school year.* A public school teacher who worked full-time the entire school year shall be given a full year of prior service credit.

a. Effective July 1, 1990, an employee working in a position for a school district or other educational institution which operates on a nine-month basis shall receive credit for the third quarter when no covered wages are reported in that quarter in the same manner as provided under subrule 7.1(2).

b. Prior to July 1, 1990, school employees may have received less than a full year's credit if they had reportable wages in fewer than four quarters.

7.2(8) *Proof of prior service.*

a. A statement showing the inclusive dates of employment and the position(s) the member held shall be signed by the present custodian of those employment records. IPERS Form 507 or a statement containing similar information may be used for this purpose. This statement does not require notarization.

b. If an employment record is not available for any reason, notarized affidavits of two individuals having knowledge of the employment for which prior service credit is sought shall be submitted. IPERS Form 507-A or an affidavit containing similar information may be used.

c. Proof of prior service shall:

- (1) Refer to covered employment in Iowa;
- (2) Be signed by the proper authority;
- (3) Refer to the member in question;
- (4) Show that the position held is one for which prior service credit can be given;
- (5) Show that corrections, deletions, or additions in dates of service are initialed by the signer of the document;
- (6) Take into consideration information on the reverse side of the form; and
- (7) Contain certification showing the highest gross wage earned in any 12-consecutive-month period before July 4, 1953, and refer to a period ending before that date. IOASI records may be used for verification of wages if necessary, and this information is noted on the application for monthly retirement allowance.

d. Effective July 1, 1990, prior service will be credited by quarters. Service of less than a full quarter shall be rounded up to a full quarter. (Prior to July 1, 1990, the amount of prior service credit due on each proof of service was computed in years, months and days.)

e. If the custodian of the records cannot verify service before July 4, 1953, or if the member disputes the amount of time proven, IPERS may use any records available to supplement the member's proof.

7.2(9) *Prior service credit for service before January 1, 1946.* An active, vested or retired member who was employed prior to January 1, 1946, by an employer may file written verification of the member's dates of employment with IPERS and receive credit for years of prior service for the period of employment. However, a member who is eligible for or receiving a pension or annuity from a local school district for service prior to January 1, 1946, is not eligible to receive credit for the period of service upon which the pension or annuity is based. The member is responsible to obtain sufficient proof of service prior to January 1, 1946, as IPERS may require.

495—7.3(97B) Vesting status.

7.3(1) *General.*

a. Effective July 1, 1990, through June 30, 2005, a member achieves vested status when the member has served and made contributions in 16 or more quarters of IPERS covered employment or attains the age of 55. The vested status of a member may also be determined when the member's contribution payments cease. At that time a comparison of the membership date and termination date will be made. If service sufficient to indicate vested status is present, after any periods of interruption in service have been taken into consideration, the member shall be considered a vested member. All vested members receive all the rights and benefits of a vested member in IPERS until or unless the member files for a refund of accumulated contributions.

b. Effective July 1, 2005, a terminated nonvested member who has not attained the age of 55 shall not become vested upon attainment of the age of 55 while an inactive member. However, a member who terminates before attaining the age of 55 who has covered wages in the calendar year when the member terminates and the member attains the age of 55 in that year shall become vested, even if the member has less than 16 quarters of service credit on file at termination.

7.3(2) *Inactive members who become vested due to a statutory reduction in years.* Effective July 1, 1988, an inactive member who had accumulated, as of the date of the member's last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this rule for qualifying as a vested member on the date of termination shall be considered vested.

7.3(3) *Vesting upon complete or partial termination.* In the case of a complete or partial termination of this fund, any affected member shall have a vested interest in the accrued benefit as of the date of such termination, to the extent such benefit is then funded.

These rules are intended to implement Iowa Code sections 97B.1A, 97B.1A(13), 97B.1A(20), 97B.1A(25), and 97B.43.

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CHAPTER 8
SERVICE PURCHASES
[Prior to 11/24/04, see 581—Ch 21]

495—8.1(97B) Service eligible for purchase.

8.1(1) *Prior service buy-back.*

a. Effective July 1, 1990, a member who was active, vested or retired on or after July 1, 1978, and who made contributions to IOASI between January 1, 1946, and June 30, 1953, and took a refund of those contributions, may buy back the amount of that refund plus interest in order to establish quarters of service covered by the refund. Less than a full quarter of service will be considered equivalent to a full quarter of service. A teacher who has three quarters of service and a contract for the following year will be granted four quarters of service. IPERS may require the submission of a copy of the contract.

b. Prior to July 1, 1990, a member who was active, vested or retired as of July 1, 1978, and who made contributions to IOASI between January 1, 1946, and June 30, 1953, and who took a refund of those contributions, was able to buy back the amount of that refund and establish years of service covered by the refund.

c. A member cannot participate in the prior service buy-back if the member had taken an IPERS refund (contributions made after July 4, 1953) unless the member first participated in the IPERS buy-back in accordance with this rule.

If a member decides to buy back prior service credit, the member must repay the entire refunded amount plus the accumulated interest and interest dividends on that amount.

If a member participating in a prior service buy-back had years of public service within Iowa prior to January 1, 1946, those years of service will also be added to the member's account at no cost, subject to the member's providing verification of public service.

8.1(2) *Service credit for other public employment.*

a. Effective July 1, 1992, a vested or retired member may make application to IPERS for purchasing credit for service rendered to another public employer. In order to be eligible, a member must:

(1) Have been a public employee in a position comparable to an IPERS covered position at the time the application for buy-in is processed. Effective July 1, 1990, "public employee" includes a member who had service as a public employee in another state, or for the federal government, or within other retirement systems established in the state of Iowa; and

(2) Submit verification of service for that other public employer to IPERS.

A quarter of credit may be purchased for each quarter the employee received wages.

b. Effective July 1, 1992, through June 30, 1999, a qualifying member who decides to purchase IPERS credit must make employer and employee contributions to IPERS for each calendar quarter of service allowed in this buy-in. This contribution shall be determined using the member's IPERS covered wages for the most recent full calendar year of IPERS coverage, the applicable rates established in Iowa Code sections 97B.11, 97B.49B and 97B.49C, and multiplied by the number of quarters being purchased from other public employment. "Applicable rates" means the rates in effect at the time of purchase for the types of service being purchased. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.

c. Effective July 1, 1992, through June 30, 1999, if a vested or retired member does not have wages in the most recent calendar year, the cost of the buy-in will be calculated using the member's last calendar year of reported wages, adjusted by an inflation factor based on the Consumer Price Index as published by the United States Department of Labor.

d. Members eligible to complete the buy-in may buy the entire period of service for a public employer or may buy credit in increments of one or more calendar quarters. The quarters need not be specifically identified to particular calendar quarters. A period of service is defined as follows: (1) if a member was continuously employed by an employer, the entire time is one period of employment, regardless of whether a portion or all of the service was covered by one or more retirement systems; and (2) if a member is continuously employed by multiple employers within a single retirement system, the

entire service credited by that retirement system is one period of employment. A member with service credit under another public employee retirement system who wishes to transfer only a portion of the service value of the member's public service in another public system to IPERS must provide a waiver of that service time to IPERS together with proof that the other public system has accepted this waiver and allowed partial withdrawal of service credit. Members are allowed to purchase time credited by the other public employer as a leave of absence in the same manner as other service credit. However, members wishing to receive free credit for military service performed while in the employ of a qualifying non-IPERS covered public employer must purchase the entire period of service encompassing the service time for that public employer or in the other retirement system, excluding the military time. Veterans' credit originally purchased in another retirement system may be purchased in the same manner as other service credit.

e. The total amount paid will be added to the member's contributions, and the years of service this amount represents will be added to the member's IPERS years of service. Effective January 1, 1993, the purchase will not affect the member's three-year average covered wage.

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-in, as certified by IPERS. In calculating the actuarial cost of a buy-in, IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if gender-distinct mortality assumptions are used in the annual actuarial valuation, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after the date printed on the cost quote letter. After that time, a new cost quote must be obtained for any quarters not previously purchased.

8.1(3) IPERS buy-back. Effective July 1, 1996, only vested or retired members may buy back previously refunded IPERS credit. For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods used in preparing IPERS' annual actuarial valuation, except that: (1) the retirement assumption shall be changed to 100 percent at the member's earliest unreduced retirement age; and (2) if gender-distinct mortality assumptions are used in the annual actuarial valuation, the system shall use blended mortality assumptions reasonably representative of the system's experience. The actuarial cost of a service purchase shall be the difference between (1) the actuarial accrued liability for the member using the foregoing assumptions and current service credits, and (2) the actuarial accrued liability for the member using the foregoing assumptions, current service credits, and all quarters of service credit available for purchase. If IPERS changes the service purchase mortality assumptions, all outstanding service purchase quotes shall be binding for the remainder of the periods for which the cost quotes were issued. A cost quote for a service purchase shall expire six months after the date printed on the cost quote letter. After that time, a new cost quote must be obtained for any quarters not previously purchased.

Effective July 1, 1996, buy-backs may be made in increments of one or more calendar quarters. Prior to July 1, 1996, the member was required to repurchase the entire period of service and repay the total amount received plus accumulated interest and interest dividends.

A member who is vested solely by having attained the age of 55 must have at least one calendar quarter of wages on file with IPERS before completing a buy-back.

For persons who submitted requests for buy-back cost quotes on or before January 14, 2004, IPERS shall restore the wage records of a member who makes a buy-back based on those quotes and utilize those wage records in subsequent benefit calculations for that member.

For persons who submit requests for buy-back cost quotes and make purchases based on those quotes after January 14, 2004, IPERS shall not restore the wage records for the purchased quarters. After January 14, 2004, such buy-backs shall be treated like all other service purchases and IPERS will only restore service credit.

8.1(4) *Prior service credit prior to January 1946.* A member who had service before January of 1946 but no service between January 1, 1946, and June 30, 1953, is eligible to receive credit for that service at no cost, subject to the member's providing verification of that service. If the member was employed after July 4, 1953, and took a refund of contributions, that member must first participate in the membership service buy-back (see subrule 8.1(3)) before receiving credit for service prior to 1946.

A member must submit proof of service in order to qualify.

8.1(5) *Veterans' credit.*

a. Effective July 1, 1992, a vested or retired member, in order to receive service credit under the IPERS system, may elect to make employer and employee contributions to IPERS for a period of active duty service in the armed forces of the United States, in increments of one or more calendar quarters, if the member produces verification of active duty service in the armed forces of the United States.

b. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.

c. A service purchase shall not affect the member's high three-year average wage.

d. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f."

8.1(6) *Legislative members.*

a. Active members. Persons who are members of the Seventy-first General Assembly or a succeeding general assembly during any period beginning July 4, 1953, may, upon proof of such membership in the general assembly, make contributions to the system for all or a portion of the period of such service in the general assembly. The contributions made by the member shall be determined in the same manner as provided in paragraph 8.1(2) "f."

b. Vested or retired former members of the general assembly.

(1) A vested or retired member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly.

(2) The contributions made by the member shall be equal to the accumulated contributions as defined in Iowa Code section 97B.1A(2), which would have been made if the member of the general assembly had been a member of the system during the period of service in the general assembly being purchased.

(3) The member shall submit to IPERS proof of membership in the general assembly for the period claimed.

(4) Upon determining a member eligible and receiving the appropriate contributions from the member, IPERS shall credit the member with the period of membership service for which contributions are made.

c. Incremental purchases. Service purchased under this subrule must be purchased in increments of one or more calendar quarters.

d. Actuarial cost. Effective July 1, 1999, an eligible member must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a legislative service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f."

8.1(7) *Vocational school (area community college) employees who may elect coverage under another retirement system.*

a. Effective July 1, 1990, a person newly entering employment with an area vocational school or area community college may choose to forego IPERS coverage and elect coverage under an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees. This option is available only to those newly hired persons who are already members of the alternative retirement system. Such an election by a newly employed person is irrevocable.

b. Effective July 1, 1994, and providing that the board of directors of the area vocational school or area community college have approved participation in an alternative retirement system pursuant to Iowa Code section 260C.23, a member employed by an area vocational school or an area community college may elect coverage under an alternative retirement benefits system, which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees, in lieu of continuing or commencing contributions to IPERS.

c. Effective July 1, 1994, a person who is employed before that date with an area community college may file a one-time irrevocable election form with IPERS and the employer electing participation in an alternative plan. The election form must be postmarked by December 31, 1995. If a person is employed July 1, 1994, or later, the person may file a one-time election form with IPERS and the employer electing participation in the alternative plan. The election form must be postmarked within 60 days from the date employed. The employee will be a member of IPERS unless an election is filed within the specified time frames. An employee vested with IPERS retains all of the rights of any vested member for as long as the contributions remain with the fund. Such members may not, however, apply for retirement benefits until attaining the age of 70, or until they terminate employment with all public employers.

d. Effective July 1, 1999, an eligible member must pay the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f."

8.1(8) *Leaves of absence.* Service credit for leaves of absence that begin on or after July 1, 1998, may be purchased. A member must be vested or retired and must have one calendar year of wages on file in order to make such a purchase.

For a leave of absence beginning on or after July 1, 1998, and purchased before July 1, 1999, the service purchase cost shall be equal to the employer and employee contributions and interest payable for the employee's most recent year of covered wages, adjusted by the inflation factor used in paragraph 8.1(2) "c." For a leave of absence beginning on or after July 1, 1998, and purchased on or after July 1, 1999, the service purchase cost shall be the actuarial cost, as certified by IPERS. In calculating the actuarial cost of a service purchase under this subrule, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f."

8.1(9) *Service credit for elective coverage positions—coverage not elected.* Service credit for periods of time prior to January 1, 1999, when the member was employed in a position for which coverage could have been elected, but was not, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under paragraph 8.1(2) "f." In addition, a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase.

8.1(10) *Service credit for noncovered public employment in Iowa.* A vested or retired member who has one or more years of service credit and who was previously employed in public employment for which optional coverage was not available, such as substitute teaching or other temporary employment, may purchase service credit for such employment subject to the requirements of Iowa Code section 97B.80C. Service credit may not be purchased under this subrule for periods in which the individual was performing services as an independent contractor. The contributions required under this subrule shall be in an amount equal to the actuarial cost of the service purchase as determined under paragraph 8.1(2) "f."

8.1(11) *Federal Peace Corps program service credit under Iowa Code section 97B.80C.* Rescinded IAB 7/16/08, effective 6/25/08.

8.1(12) *Purchase of service credit for employment with a qualified Canadian governmental entity.* Rescinded IAB 7/16/08, effective 6/25/08.

8.1(13) *Patient advocate service purchases.* Rescinded IAB 7/16/08, effective 6/25/08.

495—8.2(97B) Revocation of service purchase application and refund of amounts paid. A member may revoke a service purchase application and receive a refund without interest of all or a portion of amounts paid to IPERS to buy back prior service credit or to purchase credit for other service pursuant to Iowa Code chapter 97B. The revocation must be made in writing within 60 days after the date of receipt of such amounts by IPERS. Such refunds shall be in increments representing one or more quarters. No refund shall be made if a member has made a service purchase under this chapter and one or more monthly retirement allowance payments have been made thereafter. Furthermore, this rule shall not limit IPERS' ability to refund service purchase amounts when required in order to meet the provisions of the Internal Revenue Code that apply to IPERS. This rule shall be effective for revocation requests received by IPERS on or after May 3, 1996.

495—8.3(97B) IRC Section 415(n) compliance. Service purchases made under this chapter and other posttax contributions shall not exceed the defined contribution limit then in effect under Internal Revenue Code Section 415(c), per calendar year. In addition, the amounts contributed for service purchases under this chapter shall not exceed the amount required to purchase the service according to the current cost schedules. In implementing these and the other requirements of IRC Section 415(n), IPERS shall use the following procedures.

8.3(1) If the member's total benefit at retirement passes the fully reduced IRC Section 415(b) dollar limit test, IPERS shall pay the total benefit.

8.3(2) If the member's total benefit at retirement fails the fully reduced IRC Section 415(b) dollar limit test, and the member made one or more service purchases, IPERS shall perform the applicable IRC Section 415 tests, with adjustments for posttax service purchases and other posttax contributions, and pay excess amounts, if any, under a qualified benefits arrangement authorized under Iowa Code section 97B.49I.

8.3(3) IPERS permits the purchase of nonqualified service credit, as defined under IRC Section 415(n). "Nonqualified service" means:

- a. Service that is not qualified service under Iowa Code section 97B.80C; and
- b. Service for which no services were performed; and
- c. Service for which the member is entitled to receive retirement benefits under another retirement plan. A member must have 20 quarters of existing service to make such a purchase. Nonqualified service credit purchased shall not exceed 20 quarters. This limit is an aggregate limit that applies to all quarters categorized as nonqualified service credit.

8.3(4) The limitations of this rule shall not apply to buy-backs of prior refunds. In addition, the annual limit under this rule shall not apply to service purchases grandfathered under the provisions of the Iowa Code and Section 1526 of the Taxpayer Relief Act of 1997.

8.3(5) If IPERS adopts rules and procedures permitting service to be purchased on a pretax basis, the amounts contributed will not be combined with posttax service purchases and other posttax contributions in applying the foregoing procedures.

8.3(6) The provisions of this rule shall apply to all vested members who have an account balance and to retired members.

8.3(7) The IRC Section 415(c) limitations shall not apply to a service purchase that qualifies as a direct rollover for an eligible retirement plan or a direct transfer from a plan qualified under IRC Section 403(b) or 457. The IRC Section 415(c) limits also shall not apply to a service purchase under subrule 8.1(3).

8.3(8) IPERS reserves the right to apply the limitations of IRC Section 415(n) on a case-by-case basis to ensure that such limits are not exceeded.

495—8.4(97B) Required quarters of wages on file. If a member is attempting to purchase service credit under this chapter, and any particular rule under this chapter requires that the member must have four calendar quarters of wages on file as a precondition to making the purchase, and the member's regular job duties are performed in fewer than four calendar quarters each year, the four-calendar-quarter requirement shall be reduced to the number of calendar quarters regularly worked by the member.

495—8.5(97B) Additional information, procedures and limitations.

8.5(1) Information required for service purchase cost quotes.

a. Active and inactive members. For active and inactive members, a service purchase cost quote must include the following information: member's date of birth, the applicable occupation class code, total years of current unused IPERS service credit, highest calendar year of covered wages on file, member's current investment, and the total number of quarters available to purchase on this cost quote.

b. Retired members. For retired members, a service purchase cost quote must include the following information: member's date of birth, the applicable occupation class code, average of the highest three calendar years of covered wages, the option the member selected at retirement, the total number of quarters available to purchase on this cost quote, and a calculation of the member's new benefit amount if the member actually purchases all of the quarters in this service purchase cost quote.

If the member retired under Option 4 or 6, IPERS must be provided with either the date of death or the date of birth, as applicable, for the contingent annuitant, and the percent selected by the member for continuation of benefits to the contingent annuitant upon the member's death. If the member retired under Option 6, IPERS shall calculate how the member's benefits will change under Option 2 upon the contingent annuitant's death. In preparing cost quotes for retired members who selected Option 4 or 6, IPERS shall use for beneficiary mortality assumption the reverse of the assumption used for benefit mortality.

If the member retired under Option 5, a service purchase cost quote shall also include information on how many months are remaining on the guaranteed ten-year payout.

c. Reemployment. If the member is retired and subsequently reemployed in IPERS covered employment and then requests a service purchase cost quote, IPERS shall apply the service to be purchased to the member's original annuity. IPERS shall use the same information as described in paragraphs "a" and "b" of this subrule, and IPERS shall appropriately calculate the service purchase cost quote.

d. Wage records restored. When buy-back quarters are purchased based on cost quotes requested prior to January 14, 2004, the member's wage record shall be restored, beginning with the lowest wage quarter and restoring additional quarters in ascending order based on the covered wages reported for such quarters. Wage records shall not be created or restored for any other type of service purchase.

e. Wage records not restored. For members who submit requests for buy-back cost quotes and make purchases based on those quotes after January 14, 2004, IPERS shall not restore the wage records for the purchased quarters. After January 14, 2004, such buy-backs shall be treated like all other service purchases, and IPERS will only restore service credit.

8.5(2) Additional service purchase procedures.

a. Service purchase cost quotes for members currently in special service positions shall be prepared as special service credit.

b. Service purchase cost quotes for a member with a combination of currently unused regular service credit and special service credit shall be prepared reflecting purchase as regular service credit and alternatively as special service credit, regardless of the member's current occupation classification code. The member may choose whether to purchase the service as regular service credit or as special service credit, but not as a combination of both.

c. Members covered under another retirement plan. Members who wish to buy service credit for all employment that is covered by another retirement plan qualified under IRC Section 401 (or would qualify if submitted to the IRS under IRC Section 401), IRC Section 403 or 457 and similar plans and retirement pay from the United States government for active duty in the armed forces (except retirement pay for nonregular service pursuant to 10 U.S.C. Sections 12731-12739) must waive their right to benefits

based on the service credit that is being purchased under IPERS. If a waiver is not obtained, however, service purchases for such employment may still be made, but shall be limited to 20 quarters.

d. Members retired under IPERS' disability formula. A retired member receiving IPERS benefits as a result of a disability shall receive a service purchase cost quote which reflects no penalty for early age reduction.

e. Effective January 1, 2007, IPERS may, notwithstanding certain provisions of Iowa Code section 97B.82 adopted in order to comply with prior rollover provisions of the Internal Revenue Code, utilize forms and procedures permitting direct rollover service purchases to include after-tax amounts as provided under the applicable rollover provisions of the Internal Revenue Code as amended subsequent to the enactment of Iowa Code section 97B.82.

8.5(3) Additional service purchase limitations.

a. Under no circumstances shall service purchases be allowed for quarters already on file with IPERS as covered quarters.

b. If a member has requested a service purchase cost quote and, before the six-month expiration has passed, submits another request for a service purchase cost quote for the same or different employer, the new service purchase cost quote will be based on a combination of the two service purchase cost quotes. The latest service purchase cost quote shall supersede all prior cost quotes provided to the member for the quarters that the member purchases after the issuance of the second cost quote.

c. If before the six-month expiration has passed a member has made a partial purchase under a service purchase cost quote and requests another service purchase cost quote, the quarters covered by the original cost quote will be added to the new request. IPERS will prepare a new service purchase cost quote. The latest service purchase cost quote shall supersede all prior quotes provided to the member for quarters that the member purchases after the issuance of the second cost quote. For example, if the member receives a cost quote of \$300 per quarter for 6 quarters of Illinois public employment and, three months later, after buying 3 Illinois quarters, requests a service purchase cost quote for 8 quarters of military service, the second quote would be prepared using 11 quarters as the basis for the cost quote. The per-quarter cost quote prepared using the 11 quarters would supersede the \$300 per-quarter cost previously quoted. This superseding cost principle will apply regardless of whether the recalculated cost is greater or less than the superseded quote. Thus, in the above example, if the second cost quote is \$350 per quarter, that would be the price for all 11 quarters for the next six months. However, if the second quote comes in at \$250 per quarter, that would be the cost for all 11 quarters for the next six months.

d. Self-employed members. Because of the difficulty in documenting what portion of the amounts paid are actually related to the performance of services, including amounts reported to the federal and state tax authorities, members shall not be permitted to purchase service credit for periods of self-employment.

8.5(4) "Buy up" of service credit through service purchase. Effective July 1, 2008, IPERS members may be allowed to "buy up" service credit. The term "buy up" means to convert regular service credit to special service credit by payment of the actuarial cost. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions and cost methods as those in paragraph 8.1(2) "f," except as modified according to the actuary's recommendations.

a. Active, retired and inactive members. A member must have at least one quarter of available or retired special service wages on file and must be vested at the time of the buy-up. A service purchase cost quote must include the following information:

	Active and Inactive Members	Retired Members
Member ID or social security account number	X	X
Date of birth	X	X
Occupation code	Current	At retirement
Wage	Highest year of calendar wage	Average of the highest three calendar years of wages used at retirement

Years of service – regular	X	X
Years of service – sheriffs/deputies	X	X
Years of service – protection occupation	X	X
Number of quarters available to buy up	X	X
Type of conversion – sheriffs/deputies or protection occupation	X	X
Investment (employee’s contributions and interest)	Current	At retirement

b. Mixture of service time. If a member’s service time contains a mixture of regular, protection and sheriff service credit, IPERS shall prepare buy-up cost quotes as follows:

(1) If the member is currently employed in the sheriff class or retired as a sheriff, the cost quote shall be prepared reflecting a buy-up to sheriff service credit.

(2) If the member is not currently employed in the sheriff class or did not retire as a sheriff, the cost quote shall be prepared reflecting a buy-up to protection occupation service credit.

c. Wage adjustment after a buy-up.

(1) If an employer submits wage adjustments on service credit that has been purchased through a buy-up, the member’s cost quote will not be affected by a wage adjustment that alters the reported wages on file, so long as reported wages for the buy-up quarters are not reduced below \$1.

(2) If an employer wage adjustment completely removes a member’s service credit in a buy-up quarter, IPERS shall correct the service credit, perform the necessary recalculations, and contact the member, if necessary, for any contribution and benefit payment adjustments.

d. IRS limitations. Buy-up service purchases will be aggregated with buy-in service purchases during a calendar year and subjected to the applicable limits of Section 415(c) of the Internal Revenue Code. Amounts that are rolled over from other qualified plans for service purchases are excluded from these limits.

These rules are intended to implement Iowa Code sections 97B.1A, 97B.1A(13), 97B.1A(20), 97B.43, 97B.73B, 97B.80, 97B.80C, and 97B.82.

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CHAPTER 9 REFUNDS

[Prior to 11/24/04, see 581—Ch 21]

495—9.1(97B) Refunds for members with only one type of service credit. A member is eligible for a refund of the employee accumulated contributions as soon as practicable after the last date the member is considered an employee, provided that the employee has filed the required forms and has not returned to covered employment before the date the refund is paid. Effective July 1, 1999, a vested member's refund shall also include a portion of the employer accumulated contributions. Refund amounts are determined as follows:

9.1(1) Employee accumulated contributions. Upon receiving an eligible member's application for refund, IPERS shall pay to the terminated member the amount of the employee accumulated contributions currently reported to, and processed by, IPERS as of the date of the refund. Upon reconciliation of the final employee contributions for that member, a supplemental refund of the employee accumulated contributions will be paid if funds remain in the member account.

9.1(2) Employer accumulated contributions. IPERS shall also pay to vested members, in addition to the employee accumulated contributions, a refund of a portion of the employer accumulated contributions. The refundable portion shall be calculated by multiplying the employer accumulated contributions by the "service factor." The "service factor" is a fraction, the numerator of which is the member's quarters of service and the denominator of which is the "applicable quarters." The "applicable quarters" shall be 120 for regular members and 88 for all special service members.

All quarters of service credit shall be included in the numerator of the service factor. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

In addition to the foregoing provisions, IPERS shall calculate the refundable portion of the employer accumulated contributions as follows:

a. Upon reconciliation of the final employer contributions for that member, the member's portion of the employer accumulated contributions will be recalculated. IPERS will add the additional quarter(s) of service to the numerator of the service factor. The adjusted service factor will be multiplied by the sum of the original employer accumulated contributions plus the supplemental employer accumulated contributions. The employer accumulated contributions included in the original refund will then be subtracted from that recalculated figure to determine the amount of employer accumulated contributions to be included in the supplemental refund.

b. The member's portion of employer accumulated contributions shall be determined under rule 9.2(97B) if the member had a combination of regular service and special service, or a combination of different types of special service.

9.1(3) In making calculations under this rule and rule 9.2(97B), IPERS shall round to not less than six decimal places to the right of the decimal point.

495—9.2(97B) Refunds for members eligible for a hybrid refund. The calculation of the member's portion of employer accumulated contributions for a "hybrid refund" shall be as follows:

9.2(1) A "hybrid refund" is a refund that is calculated for a member who has a combination of regular service and special service quarters.

9.2(2) If a member is eligible for a hybrid refund, the member's portion of employer accumulated contributions shall be calculated by multiplying the total employer accumulated contributions by: (a) the member's regular service factor, if any; and (b) the special service factor, if any (except as otherwise provided in this subrule). The amounts obtained will be added together to determine the amount of the employer accumulated contributions payable. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

9.2(3) Upon reconciliation of the final contributions from a member's employer, the member's portion of the employer accumulated contributions under this rule will be recalculated. IPERS will add the additional quarter(s) of service to the numerator of the applicable service factor. The adjusted

service factor will be multiplied by the sum of the original employer accumulated contributions plus the supplemental employer accumulated contributions. The employer accumulated contributions included in the original refund will then be subtracted from that recalculated figure to determine the amount of the employer accumulated contributions to be included in the supplemental refund.

9.2(4) If wages reported for a quarter are a combination of regular and special service wages, IPERS will classify the service credit for each quarter based on the largest dollar amount reported for that quarter. A member shall not receive more than one quarter of service credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

9.2(5) If a member is last employed in a sheriff or deputy sheriff position, all quarters of “eligible service” shall be counted as quarters of sheriff or deputy sheriff service credit.

9.2(6) A special limitation applies to hybrid refunds where the member and employer contributed at regular rates for quarters that are eligible for coverage under Iowa Code section 97B.49B or Iowa Code section 97B.49C. If a member has regular service credit and special service credit and any part of the special service credit consists of quarters for which only regular contributions were made, such quarters will be counted as regular service quarters. However, the foregoing limitation will not apply if the member only has service credit eligible for coverage under Iowa Code section 97B.49B or only has service credit eligible for coverage under Iowa Code section 97B.49C.

495—9.3(97B) Refund of retired reemployed members’ contributions.

9.3(1) *Less than six months.* A retired member who returns to permanent covered employment, but who resigns within six months of the date the reemployment began, is eligible to have the member contributions for this period refunded. The contributions made by the employer will be refunded to the employer.

9.3(2) *Six months or longer.* A retired member who returns to permanent employment and subsequently terminates the member’s employment may elect to receive an increased monthly allowance, or a refund of the member’s accumulated contributions and, effective July 1, 1998, employer’s accumulated contributions accrued during the period of reemployment. A reemployed member who elects a refund under this rule in lieu of an increased monthly allowance shall forfeit all other rights to benefits under the system with respect to the period of reemployment. If IPERS determines that the reemployment will not increase the amount of a member’s monthly benefit, a member shall elect only the refund.

495—9.4(97B) General administrative provisions. In addition to the foregoing, IPERS shall administer a member’s request for a refund as follows:

9.4(1) To obtain a refund, a member must file a refund application form, which is available directly from IPERS or which can be reprinted from IPERS’ Web site www.ipers.org. Effective December 31, 2002, refund application forms shall only be available from IPERS.

9.4(2) The last date the member is considered an employee and the date of the last paycheck from which IPERS contributions will be deducted must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year. Terminated employees must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered.

9.4(3) Unless otherwise specified by the member, the refund warrant will be mailed to the member at the address listed on the application for refund. If a member so desires, the warrant may be delivered to the member or the member’s agent at IPERS’ principal office. The member must show verification of identification by presenting a picture identification containing both name and social security number. If a member designates in writing an agent to pick up the refund warrant, the agent must present to IPERS both the written designation and the described picture identification.

9.4(4) No payment of any kind is required under this rule if the amount due is less than \$1.

9.4(5) Effective July 1, 2004, an employee must sever all covered employment for 30 days after the date the employee was last considered an employee, and not for 30 days after the date of the last paycheck containing IPERS covered wages.

9.4(6) Effective November 2006, an individual who previously stopped participating in IPERS to begin participating in an alternative plan shall not receive a refund of that individual's IPERS account while still employed by a covered employer, even if the member is no longer in IPERS covered employment.

495—9.5(97B) Reinstatement following an employment dispute. If an involuntarily terminated employee takes a refund and is later reinstated in covered employment as a remedy for an employment dispute, the member may reinstate membership service credit for the period covered by the refund by repaying the amount of the refund plus interest within 90 days after the date of the order or agreement requiring reinstatement. A reinstatement following an employment dispute shall not constitute a violation of Iowa Code section 97B.53(4), even if the reinstatement occurs less than 30 days after the date of termination. Accordingly, the reinstatement described above or, if later, a buy-back, shall be permitted but is not required. However, if the employee is retroactively reinstated and the previously reported termination is expunged, the reemployment shall be treated as falling within the scope of Iowa Code section 97B.53(4) and a previously paid refund shall be repaid with interest.

495—9.6(97B) Refund followed by commencement of disability benefits under Iowa Code section 97B.50(2). If a vested member terminates covered employment, takes a refund, and is subsequently approved for disability under the federal Social Security Act or the federal Railroad Retirement Act, the member may reinstate membership service credit for the period covered by the refund by paying the actuarial cost as determined by IPERS' actuary. Repayments must be made by:

1. For members whose federal social security or railroad retirement disability payments begin before July 1, 2000, within 90 days after July 1, 2000; or

2. For members whose social security or railroad retirement disability payments begin on or after July 1, 2000, within 90 days after the date federal social security or railroad retirement payments begin.

These rules are intended to implement Iowa Code sections 97B.50 and 97B.53.

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CHAPTER 10
INTEREST ON ACCUMULATED CONTRIBUTIONS
[Prior to 11/24/04, see 581—Ch 21]

495—10.1(97B) Interest on accumulated contributions of active and inactive members.

10.1(1) The term “interest” as used in this rule means statutory interest plus, if applicable, the interest dividend.

a. For calendar years prior to January 1, 1997, statutory interest is a credit to the accumulated contributions of active members and inactive vested members at a rate of two percent per annum. The interest dividend is a credit to the accumulated contributions of active members and inactive vested members that equals the excess of the average rate of interest earned on the retirement fund through investment during a calendar year over the statutory interest as determined in Iowa Code section 97B.70(1) “a” plus twenty-five hundredths of one percent.

b. For calendar years beginning January 1, 1997, a per annum interest rate at one percent above the interest rate on one-year certificates of deposit shall be credited to the member’s contributions and the employer’s contributions to become part of the accumulated contributions. For purposes of this paragraph, the interest rate on one-year certificates of deposit shall be determined by IPERS based on the average rate for such certificates of deposit as of the first business day of each year as published in a publication, including Internet-based publications, of general acceptance in the business community. The per annum interest rate shall be credited on a quarterly basis by applying one quarter of the annual interest rate to the sum of the accumulated contributions as of the end of the previous calendar quarter.

10.1(2) For all periods, if a member is vested upon termination, interest will continue to accrue through the month (or quarter, as applicable under Iowa Code section 97B.70) preceding the month (or quarter, as applicable under Iowa Code section 97B.70) of payment of the refund benefit, or in the case of retirement benefits, through the month (or quarter, as applicable under Iowa Code section 97B.70) preceding the first month of entitlement. For periods ending prior to July 1, 1995, if a member is not vested upon termination, interest will cease to accrue on termination of covered employment for as long as the member remains inactive. For periods beginning July 1, 1995, interest will cease to accrue if a member is not vested upon termination of employment for as long as the member is inactive or nonvested. Effective July 1, 1995, interest will be credited to an inactive nonvested member’s account as provided in Iowa Code section 97B.70, beginning with the first month (or quarter, as applicable under Iowa Code section 97B.70) thereafter that such a member becomes a vested member as provided in Iowa Code section 97B.1A(25).

495—10.2(97B) Erroneous contributions. Interest shall not be credited to a member’s account if the wages were reported in error.

495—10.3(97B) Interest on undistributed accumulated contributions after member’s death. Interest shall continue to accrue on the undistributed accumulated contributions of a deceased member, based on the member’s vested status at date of death, and the interest crediting method described in rule 10.1(97B). No interest shall be credited to any postretirement death benefit payable with respect to that member’s account under Iowa Code chapter 97B. If IPERS determines that a dispute among alleged heirs exists which delays the payment of death benefits on which interest would be payable, the amount of the death benefits shall be placed in a non-interest-bearing account.

495—10.4(97B) Interest on all undistributed accumulated contributions—effective January 1, 1998. Effective July 1, 1998, interest shall be credited in the manner described in paragraph 10.1(1) “b” on all undistributed accumulated contributions, regardless of whether the member is vested or was vested at termination, through the quarter preceding the quarter in which any distribution is made.

These rules are intended to implement Iowa Code sections 97B.52, 97B.53 and 97B.70.

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CHAPTER 11
APPLICATION FOR, MODIFICATION OF, AND TERMINATION OF BENEFITS
[Prior to 11/24/04, see 581—Ch 21]

495—11.1(97B) Application for benefits.

11.1(1) *Form used.* It is the responsibility of the member to notify IPERS of the intention to retire. This should be done 60 days before the expected retirement date. The application for monthly retirement benefits is obtainable from IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. The printed application form shall be completed by each member applying for benefits and shall be mailed, sent by fax or brought in person to IPERS. An application that is incomplete or incorrectly completed will be returned to the member. To be considered complete, an application must include the following:

- a.* Proof of date of birth for the member.
- b.* Option selected, and
 - (1) If Option 1 is selected, the death benefit amount.
 - (2) If Option 4 or 6 is selected, the contingent annuitant's name, social security number, proof of date of birth, and relationship to member.
 - (3) If Option 1, 2, or 5 is selected, a list of beneficiaries.
- c.* If the member is disabled, a copy of the award letter from social security or railroad retirement and a statement that the member is retiring due to disability.
- d.* If the member has been terminated less than one year, the employer certification page must be completed by the employer.
- e.* Signature of member and spouse, both properly notarized.
- f.* If the member has no spouse, "NONE" must be designated.

A retirement application is deemed to be valid and binding when the first payment is paid. Members shall not cancel their applications, change their option choice, or change an IPERS option containing contingent annuitant benefits after that date.

11.1(2) *Proof required in connection with application.* Proof of date of birth to be submitted with an application for benefits shall be in the form of a birth certificate or an infant baptismal certificate. If these records do not exist, the applicant shall submit two other documents or records which will verify the day, month and year of birth. A photographic identification record may be accepted even if now expired unless the passage of time has made it impossible to determine if the photographic identification record is that of the applicant. The following records or documents are among those deemed acceptable to IPERS as proof of date of birth:

- a.* United States census record;
- b.* Military record or identification card;
- c.* Naturalization record;
- d.* A marriage license showing age of applicant in years, months and days on date of issuance;
- e.* A life insurance policy;
- f.* Records in a school's administrative office;
- g.* An official form from the United States Immigration and Naturalization Service, such as the "green card," containing such information;
- h.* Driver's license or Iowa nondriver identification card;
- i.* Adoption papers;
- j.* A family Bible record. A photostatic copy will be accepted with certification by a notary that the record appears to be genuine; or
- k.* Any other document or record ten or more years old, or certification from the custodian of such records which verifies the day, month, and year of birth.

If the member, the member's representative, or the member's beneficiary is unable or unwilling to provide proof of birth, or in the case of death, proof of death, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, Iowa division

of records and statistics, IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access.

IPERS is required to begin making payments to a member or beneficiary who has reached the required beginning date specified by Internal Revenue Code Section 401(a)(9). In order to begin making such payments and to protect IPERS' status as a plan qualified under Internal Revenue Code Section 401(a), IPERS may rely on its internal records with regard to date of birth, if the member or beneficiary is unable or unwilling to provide the proofs required by this subrule within 30 days after written notification of IPERS' intent to begin mandatory payments.

495—11.2(97B) Retirement benefits and the age reduction factor.

11.2(1) Normal retirement.

a. A member shall be eligible for monthly retirement benefits with no age reduction effective with the first of the month in which the member attains the age of 65, if otherwise eligible.

b. Effective July 1, 1998, a member shall be eligible for full monthly retirement benefits with no age reduction effective with the first of the month in which the member attains the age of 62, if the member has 20 full years of service and is otherwise eligible.

c. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55 and is otherwise eligible.

11.2(2) Early retirement. A member shall be eligible to receive benefits for early retirement effective with the first of the month in which the member attains the age of 55 or the first of any month after attaining the age of 55 before the member's normal retirement date, provided the date is after the last day of service and the member is otherwise eligible.

11.2(3) Aged 70 and older retirees. A member shall be eligible to receive monthly retirement benefits with no age reduction effective with the first day of the month in which the member attains the age of 70, even if the member continues to be employed.

11.2(4) Required beginning date. Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the application for benefits. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in such a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all employment with employers covered under Iowa Code chapter 97B.

If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the default option described above, or as a refund, if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member which adjustments or repayments are required in order to make the change.

If a member cannot be located to commence payment on or before the required beginning date described above, the member's benefit shall be forfeited. However, if a member later contacts IPERS and wishes to file an application for retirement benefits, the member's benefits shall be reinstated.

For purposes of determining benefits, the life expectancy of a member, a member's spouse, or a member's beneficiary shall not be recalculated after benefits commence.

11.2(5) Mandatory distribution of small inactive accounts. As soon as practicable after July 1, 2004, IPERS shall distribute small inactive accounts to members and beneficiaries as authorized in Iowa Code section 97B.48(5).

495—11.3(97B) First month of entitlement (FME).

11.3(1) General. A member shall submit a written application to IPERS setting forth the retirement date, provided the member has attained at least age 55 by the retirement date and the retirement date is

after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 11.3(2). No payment shall be made for any month prior to the month the completed application for benefits is received by IPERS.

If a member files a retirement application but fails to select a valid first month of entitlement, IPERS will select by default the earliest month possible. A member may appeal this default selection by sending written notice of the appeal postmarked on or before 30 days after a notice of the default selection was mailed to the member. Notice of the default selection is deemed sufficient if sent to the member at the member's address.

11.3(2) Additional FME provisions.

a. Effective through December 31, 1992, the first month of entitlement of a member who qualifies for retirement benefits is the first month following the member's date of termination or last day of leave, with or without pay, whichever is later.

b. Effective January 1, 1993, the first month of entitlement of an employee who qualifies for retirement benefits shall be the first month after the employee is paid the last paycheck, if paid more than one calendar month after termination. If the final paycheck is paid within the month after termination, the first month of entitlement shall be the month following termination.

c. Effective January 1, 2001, employees of a school corporation who are permitted by the terms of their employment contracts to receive their annual salaries in monthly installments over periods ranging from 9 to 12 months may retire at the end of a school year and receive trailing wages through the end of the contract year if they have completely fulfilled their contract obligations at the time of retirement. For purposes of this paragraph, "school corporation" means body politic described in Iowa Code sections 260C.16 (community colleges), 273.2 (area education agencies) and 273.1 (K-12 public schools). For purposes of this paragraph, "trailing wages" means previously earned wage payments made to such employees of a school corporation after the first month of entitlement. This exception does not apply to hourly employees, including those who make arrangements with their employers to hold back hourly wages for payment at a later date, to employees who are placed on sick or disability leave or leave of absence, or to employees who receive lump sum leave, vacation leave, early retirement incentive pay or any other lump sum payments in installments.

For all employees of all IPERS covered employers who terminate employment in January 2003, or later, if the final paycheck is paid within the same quarter or within one quarter after termination and wages are reported under the normal pay schedule, the first month of entitlement shall be the month following termination. However, if the last paycheck is paid more than one quarter after the termination, the first month of entitlement shall be the first month after the employee is paid the last paycheck. Under no circumstances shall such trailing wages result in more than one quarter of service credit being added to retiring members' earning records.

11.3(3) Survival into designated FME. To be eligible for a monthly retirement benefit, the member must survive into the designated first month of entitlement. If the member dies prior to the first month of entitlement, the member's application for monthly benefits is canceled and the distribution of the member's account is made pursuant to Iowa Code section 97B.52. Cancellation of the application shall not invalidate a beneficiary designation. If the application is dated later in time than any other designations, IPERS will accept the designation in a canceled application as binding until a subsequent designation is filed.

11.3(4) Members retiring under the rule of 88. The first month of entitlement of a member qualifying under the rule of 88 shall be the first of the month when the member's age as of the last birthday and years of service equal 88. The fact that a member's birthday allowing a member to qualify for the rule of 88 is the same month as the first month of entitlement does not affect the retirement date.

495—11.4(97B) Termination of monthly retirement allowance. A member's retirement benefit shall terminate after payment is made to the member for the entire month during which the member's death occurs. Death benefits shall begin with the month following the month in which the member's death occurs.

Upon the death of the retired member, IPERS will reconcile the decedent's account to determine if an overpayment was made to the retired member and if further payment(s) is due to the retired member's named beneficiary, contingent annuitant, heirs at law or estate. If an overpayment has been made to the retired member, IPERS will determine if steps should be taken to seek collection of the overpayment from the named beneficiary, contingent annuitant, estate, heirs at law, or other interested parties.

495—11.5(97B) Bona fide retirement and bona fide refund.

11.5(1) *Bona fide retirement—general.* To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS' bona fide retirement requirements.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to or during the member's first month of entitlement, entered into contractual arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

The bona fide retirement period will be waived, however, if the member is elected to public office which term begins during the normal four-month bona fide retirement period. This waiver does not apply if the member was an elected official who was reelected to the same position for another term. The bona fide retirement period will also be waived for state legislators who terminate their nonlegislative employment and the IPERS coverage for their legislative employment and begin retirement but wish to continue with their legislative duties.

A member will have a bona fide retirement if the member returns to work as an independent contractor with a public employer during the four-month qualifying period. Independent contractors are not covered under IPERS.

Effective July 1, 1998, through June 30, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered by 495—Chapter 4, is terminated and the member receives at least four monthly benefit payments. In order to receive retirement benefits, the member must file a completed application for benefits with IPERS before returning to any employment with the same employer.

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits before returning to any employment with a covered employer.

11.5(2) *Bona fide retirement—licensed health care professionals.* For retirees whose first month of entitlement is no earlier than July 2004 and no later than June 2010, a retiree who is reemployed as a "licensed health care professional" by a "public hospital" does not have a bona fide retirement until all employment with covered employers is terminated for at least one calendar month. In order to receive

retirement benefits, the member must file a completed application for benefits form before returning to any employment with a covered employer.

“Licensed health care professional” means a public employee who is a physician, surgeon, podiatrist, osteopath, psychologist, physical therapist, physical therapist assistant, nurse, speech pathologist, audiologist, occupational therapist, respiratory therapist, pharmacist, social worker, dietitian, mental health counselor, or physician assistant who is required to be licensed under Iowa Code chapter 147.

“Public hospital” means a governmental entity of a political subdivision of the state of Iowa that is authorized by legislative authority. For purposes of this subrule, a “public hospital” must also meet the requirements of Iowa Code section 249J.3. Under Iowa Code section 249J.3, a “public hospital” must be licensed pursuant to Iowa Code chapter 135B and governed pursuant to Iowa Code chapter 145A (merged hospitals), Iowa Code chapter 347 (county hospitals), Iowa Code chapter 347A (county hospitals payable from revenue), or Iowa Code chapter 392 (creation by city of a hospital or health care facility). For the purposes of this definition, “public hospital” does not include a hospital or medical care facility that is funded, operated, or administered by the Iowa department of human services, Iowa department of corrections, or board of regents, or the Iowa Veterans Home.

A “public hospital” possesses the powers conferred upon it by statute, the Iowa Constitution, and regulatory provisions that are unique to governmental entities and hospitals. For example, a “public hospital” may finance its activities by tax levies or the issuance of bonds, condemn property, hold elections, and join forces with other governmental entities in cooperative ventures that are authorized under Iowa Code chapter 28D and Iowa Code chapter 28E. “Public hospitals” are subject to scrutiny by the public by complying with Iowa Code chapter 21 (open meetings Act) and Iowa Code chapter 22 (open records Act). Public employees of a “public hospital” are covered by Iowa Code chapter 20 (public employment relations Act). A “public hospital” can be distinguished from a profit or not-for-profit hospital by examining whether the focus of the hospital is community service with profits being applied not to rates of return to investors, but to enhance community services, facility upgrading, or subsidized care for persons unable to pay the full cost of service.

This subrule only applies to reemployments that meet all the foregoing requirements and in addition occur following a “complete termination of employment.” A “complete termination of employment” means: (1) the employer must post the opening and conduct a job search; (2) the retired member must receive all termination payouts that are mandatory for other terminated employees of that employer; (3) the retired member must give up all perquisites of seniority, to the extent applicable to all other terminated employees of that employer; and (4) the retired member must not enter into a reemployment agreement with the prior employer or another public hospital as defined in this subrule prior to or during the first month of entitlement.

11.5(3) *Bona fide refund.* The 30-day bona fide refund period shall be waived for an elected official covered under Iowa Code section 97B.1A(8) “a”(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8) “a”(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS covered employment prior to the issuance of the refund. Such an official may remain in the elective office and receive an IPERS refund without violating IPERS’ bona fide refund rules. If such elected official terminates coverage for the elective office and also terminates all other IPERS covered employment but is then reemployed in covered employment, and has not received a refund as of the date of hire, the refund shall not be made. Furthermore, if such elected official is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the public official shall not be eligible for new IPERS coverage for such elected position.

The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official is reelected to the same position without an intervening term out of office. The waiver granted in this subrule shall be applicable to such elected officials who were in violation of the prior bona fide refund rules on and after November 1, 2002, when such individuals have not repaid the previously invalid refund.

If a member takes a refund in violation of the bona fide refund requirements of Iowa Code section 97B.53(4), the member shall have 30 days from the date of written notice by IPERS to repay the refund

in full without interest. Thereafter, in order to receive service credit for the period covered by the refund, the member shall be required to buy back the period of service at its full actuarial cost.

11.5(4) *Part-time appointed members of boards or commissions receiving minimal noncovered wages.* Solely for purposes of determining whether a member has severed all employment with all covered employers and has remained out of employment as required under Iowa Code section 97B.52A, persons who have been appointed as part-time members of boards or commissions prior to or during their first month of entitlement and who receive only per diem and reimbursements for reasonable business expenses for such positions will be deemed not to be in employment prohibited under Iowa Code section 97B.52A.

For purposes of this subrule, per diem shall not exceed the amount authorized under Iowa Code section 7E.6(1) “a” for members of boards, committees, commissions, and councils within the executive branch of state government. This limit shall apply regardless of whether or not the position in question is within the executive branch of state government.

Members of boards and commissions not exempted under this subrule include: (a) those who are entitled to the payment of per diem regardless of attendance at board or commission meetings, and (b) those who would have received per diem in excess of the amount authorized under Iowa Code section 7E.6(1) “a” were it not for an agreement by the member to waive such compensation.

Persons appointed as part-time board or commission members who receive only per diem as set forth above and reimbursements of reasonable business expenses may continue in or accept appointments to such positions without violating the bona fide retirement rules under Iowa Code section 97B.52A.

495—11.6(97B) Payment processing and administration.

11.6(1) *Paper warrants processing fee.* Effective July 1, 2005, IPERS shall charge a per-warrant processing fee to members who choose to receive paper warrants in lieu of electronic deposits of their monthly retirement allowance. The fee may be waived if the person establishes that it would be an undue hardship for the person to do what is necessary to receive payment of the person’s IPERS monthly retirement allowance by electronic deposit. The processing fee will be deducted from the member’s retirement allowance on a posttax basis.

For purposes of this subrule, a member claiming undue hardship must establish that the cost normally assessed for the processing of paper warrants would be unduly burdensome because of the member’s limited income, or is otherwise financially burdensome or physically impracticable.

11.6(2) *Repeated requests for replacement warrants.* Effective July 1, 2002, for a member or beneficiary who, due to the member’s or beneficiary’s own actions or inactions, has benefits warrants replaced twice in a six-month period, except when the need for a replacement warrant is caused by IPERS’ failure to mail to the address specified by the recipient, payment shall be suspended until such time as the recipient establishes a direct deposit account in a bank, credit union or similar financial institution and provides IPERS with the information necessary to make electronic transfer of said monthly payments. Persons subject to said cases may be required to provide a face-to-face interview and additional documentation to prove that such a suspension would result in an undue hardship.

11.6(3) *Forgery claims.* When a forgery of a warrant issued in payment of an IPERS refund or benefit is alleged, the claimant must complete and sign an affidavit before a notary public that the endorsement is a forgery. A supplementary statement must be attached to the affidavit setting forth the details and circumstances of the alleged forgery.

11.6(4) *Rollover fees.* Effective January 1, 2007, if the recipient of a lump-sum distribution which qualifies to be rolled over requests that a rollover be made to more than one IRA or other qualified plan, IPERS may assess a \$5 administrative fee for each additional rollover beyond the first one. The fee will be deducted from the gross amount of each distribution, less federal and state income tax.

11.6(5) *Offsets against amounts payable.* IPERS may, with or without consent and upon reasonable proof thereof, offset amounts currently payable to a member or the member’s designated beneficiaries, heirs, assigns or other successors in interest by the amount of IPERS benefits paid in error to or on behalf of such member or the member’s designated beneficiaries, heirs, assigns or other successors in interest.

495—11.7(97B) Overpayment of IPERS benefits.**11.7(1) *Overpayments—general.***

a. An “overpayment” means a payment of money by IPERS that results in a recipient receiving a higher payment than the recipient is entitled to under the provisions of Iowa Code chapter 97B.

b. A “recipient” is a person or beneficiary, heir, assign, or other successor in interest who receives an overpayment from an IPERS benefit and is liable to repay the amount(s) upon receipt of a written explanation and request for the amounts to be repaid.

c. If IPERS determines that the cost of recovering the amount of an overpayment is estimated to exceed the overpayment, the repayment may be deemed to be unrecoverable.

d. If the overpayment is equal to or less than \$50 and cannot be recovered from other IPERS payments, IPERS may limit its recovery efforts to written requests for repayment and other nonjudicial remedies.

11.7(2) *Overpayment made to a retired member.* A retired member shall receive written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and a limited opportunity to repay the overpayment in full without interest. If a retired member repays an overpayment in full within 30 days after the date of the notice, there will be no interest charge. A retired member may repay an overpayment out of pocket or direct IPERS to recover the overpayment from future retirement benefit payments, or a combination of both. If the retired member cannot repay an overpayment in full, either out of pocket or from the next monthly installment of retirement benefits, or both, interest shall be charged. A retired member who cannot repay the full amount of the overpayment within 30 days after the date of the notice must enter into an agreement with IPERS to make monthly installment payments, or to have the overpayment offset against future monthly benefit payments or death benefits, if any, and authorize any unpaid balance as a first priority claim in the recipient’s estate.

11.7(3) *Overpayment made to a person other than a retired member.* A recipient other than a retired member, except a recipient listed in subrule 11.7(4), shall receive written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. If such a recipient repays an overpayment in full within 30 days after the date of the notice, there will be no interest charge. If such a recipient cannot repay an overpayment in full within 30 days after the date of the notice, interest shall be charged. If repayment in full cannot be made within 30 days, such a recipient shall make repayment arrangements subject to IPERS’ approval within 30 days of the written notice and request for repayment.

If the overpayment recipient cannot be located to receive notice of the overpayment at the recipient’s last-known address, IPERS shall, after trying to locate the person, consider the recipient to have waived entitlement to the quarters covered by the refund.

11.7(4) *Overpayment made to a person who violates a bona fide severance period.* If a recipient takes a refund and does not complete the required period of severance, the recipient shall receive a written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. The recipient shall have 30 days after the date of notice to repay the full amount of the refund without interest. If the repayment is not made within 30 days after the date of notice, the person shall receive no credit for the period of employment covered by the refund and shall be required to buy back the refund at its actuarial cost if the member later decides that the member wants service credit for any portion of the period of employment covered by the refund.

11.7(5) *Interest charges.*

a. *Overpayment not fraudulent.* If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was not the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of 5 percent, or the rate IPERS determines, on the outstanding balance, beginning 30 days after the date of notice of the overpayment(s) is provided by IPERS.

b. *Overpayments as the result of fraud.* If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was the result of wrongdoing, negligence,

misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of 5 percent on the outstanding balance, beginning on the date of the overpayment(s).

c. Overpayments that result in a judgment. If the overpayment results in a judgment against the recipient, the interest rate may be set by the court.

11.7(6) *Recovery of overpayment from a deceased recipient.* If a recipient dies prior to the full repayment of an erroneous overpayment of benefits, IPERS shall be entitled to apply to the estate of the deceased to recover the remaining balance.

11.7(7) *Offsets against amounts payable.* IPERS may, in addition to other remedies and after notice to the recipient, request an offset against amounts owing to the recipient by the state according to the offset procedures pursuant to Iowa Code sections 8A.504 and 421.17.

11.7(8) *Rights of appeal.* A recipient who is notified of an overpayment and required to make repayments under this rule may appeal IPERS' determination in writing to the chief executive officer. The written request must explain the basis of the appeal and must be received by IPERS' office within 30 days of overpayment notice pursuant to 495—Chapter 26.

11.7(9) *Release of overpayment.* IPERS may release a recipient from liability to repay an overpayment, in whole or in part, if IPERS determines that the receipt of overpayment is not the fault of the recipient, and that it would be contrary to equity and good conscience to collect the overpayment. No release of an individual recipient's obligation to repay an overpayment shall stand as precedent for release of another recipient's obligation to repay an overpayment.

These rules are intended to implement Iowa Code sections 97B.4, 97B.9A, 97B.15, 97B.25, 97B.38, 97B.40, 97B.45, 97B.47, 97B.48, 97B.48A, 97B.49A to 97B.49I, 97B.50, 97B.51, 97B.52, 97B.52A, 97B.53, and 97B.53B.

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CHAPTER 12
CALCULATION OF MONTHLY RETIREMENT BENEFITS
[Prior to 11/24/04, see 581—Ch 21]

495—12.1(97B) General.

12.1(1) *Formula benefit versus money purchase benefit.* If a member has four or more complete years of service credit in IPERS, a monthly payment allowance will be paid in accordance with the formulas set forth in Iowa Code sections 97B.49A through 97B.49I, the applicable paragraphs of this chapter and the option the member elects pursuant to Iowa Code section 97B.51(1). IPERS shall determine on the applicable forms which designated fractions of a member's monthly retirement allowance payable to contingent annuitants shall be provided as options under Iowa Code section 97B.51(1). Any option elected by a member under Iowa Code section 97B.51(1) must comply with the requirements of the Internal Revenue Code that apply to governmental pension plans, including but not limited to Internal Revenue Code Section 401(a)(9). If a member has less than four complete years of service credit, the benefit receivable will be computed on a money purchase basis, with reference to annuity tables used by IPERS in accordance with the member's age and option choice.

12.1(2) *Reduction for early retirement.*

a. Effective July 1, 1988, through December 31, 2000, a member's benefit formula will be reduced by .25 percent for each month the member's retirement precedes the normal retirement date, as defined in Iowa Code section 97B.45 excluding section 97B.45(4). The following are situations in which a member is considered to be taking early retirement:

(1) If a member has not attained the age of 65 in the member's first month of entitlement and has less than 20 years of service; or

(2) If a member has not attained the age of 62 in the month of the member's retirement and has 20 years of service.

b. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55.

c. Effective July 1, 1991, a member qualifying for early retirement due to disability under Iowa Code section 97B.50 shall not be subject to a reduction in benefits due to age.

d. If a member retires with at least 20 years of service but has not attained the age of 62, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 62. If a member retires with less than 20 years of service, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 65.

e. Effective January 1, 2001, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the earliest possible normal retirement date for that member based on the age and years of service at the member's actual retirement.

12.1(3) *Early retirement date.* A member's early retirement date shall be the first day of the month of the fifty-fifth birthday or any following month before the normal retirement date, provided that date is after the member's termination date.

12.1(4) *Members employed before January 1, 1976, and retiring after January 1, 1976.* Members employed before January 1, 1976, and retiring after January 1, 1976, with four or more complete years of membership service shall be eligible to receive the larger of a monthly formula benefit equal to the member's total covered wages multiplied by one-twelfth of one and fifty-seven hundredths percent, multiplied by the percentage calculated in subrule 12.1(2), if applicable, or a benefit as calculated in subrule 12.1(6).

12.1(5) *Members employed before January 1, 1976, who qualified for prior service credit.* Members employed before January 1, 1976, who qualified for prior service credit shall be eligible to receive a monthly formula benefit of eight-tenths of one percent multiplied by each year of prior service multiplied by the monthly rate of the member's total remuneration during the 12 consecutive months of prior service

for which the total remuneration was the highest, disregarding any monthly rate amount in excess of \$250, plus three-tenths of one percent of the monthly rate amount not in excess of \$250 for each year in which accrued liability for benefit payments created by the abolished system is funded.

12.1(6) *Benefit formulas for members retiring on or after July 1, 1994.*

a. For each active member retiring on or after July 1, 1994, with four or more complete years of service, the monthly benefit will be equal to one-twelfth of an amount equal to 60 percent of the three-year average covered wage multiplied by a fraction of years of service.

b. For all active and inactive vested members, the monthly retirement allowance shall be determined on the basis of the formula in effect on the date of the member's retirement. If the member takes early retirement, the benefit shall be adjusted as provided in subrule 12.1(2).

c. Effective July 1, 1996, through June 30, 1998, in addition to the 60 percent multiplier identified above, members who retire with years of service in excess of their "applicable years" shall have the percentage multiplier increased by 1 percent for each year in excess of their "applicable years," not to exceed an increase of 5 percent. For regular members, "applicable years" means 30 years; for protection occupation members, "applicable years" means 25 years; for sheriffs, deputy sheriffs, and airport firefighters, "applicable years" means 22 years.

d. Effective July 1, 1998, sheriffs, deputy sheriffs, and airport firefighters who retire with years of service in excess of their applicable years shall have their percentage multiplier increased by 1.5 percent for each year in excess of their applicable years, not to exceed an increase of 12 percent.

e. Effective July 1, 2000, the "applicable years" and increases in the percentage multiplier for years in excess of the applicable years for protection occupation members shall be determined under Iowa Code section 97B.49B(1), as set forth in paragraph "f" below.

f. For special service members covered under Iowa Code section 97B.49B, the applicable percentage and applicable years for members retiring on or after July 1, 2000, shall be determined as follows:

(1) For each member retiring on or after July 1, 2000, and before July 1, 2001, 60 percent plus, if applicable, an additional .25 percent for each additional quarter of eligible service beyond 24 years of service (the "applicable years"), not to exceed 6 additional percentage points;

(2) For each member retiring on or after July 1, 2001, and before July 1, 2002, 60 percent plus, if applicable, .25 percent for each additional quarter of eligible service beyond 23 years of service (the "applicable years"), not to exceed a total of 7 additional percentage points;

(3) For each member retiring on or after July 1, 2002, and before July 1, 2003, 60 percent plus, if applicable, .25 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 8 additional percentage points;

(4) For each member retiring on or after July 1, 2003, 60 percent plus, if applicable, an additional .375 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 12 additional percentage points.

(5) Regular service does not count as "eligible service" in determining a special service member's applicable percentage.

12.1(7) *Average covered wages.*

a. "Three-year average covered wage" means a member's covered calendar year wages averaged for the highest three years of the member's service. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, IPERS may determine the wages for the third year by computing the final quarter or quarters of wages to complete the year. The computed year wages shall not exceed the maximum covered wage in effect for that calendar year. Furthermore, for members whose first month of entitlement is January of 1999 or later, the computed year shall not exceed the member's highest actual calendar year of covered wages by more than 3 percent. Effective July 1, 2007, a member's high three-year average wage shall be the greater of (1) the member's high three-year average covered wage based on covered wages reported through June 30, 2007; or (2) the member's high three-year average covered wage after application of the antispiking control as described in paragraph "c" below.

For members whose first month of entitlement is January 1995 or later, a full third year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the last year. The value of this average quarter will be computed by selecting the highest covered wage year not used in the computation of the three high years and dividing the covered salary by four quarters. This value will be combined with the final quarter or quarters to complete a full calendar year. If the member's final quarter of wages will reduce the three-year average covered wage, it can be dropped from the computation. However, if the covered wages for that quarter are dropped, the service credit for that quarter will be forfeited as well. If the final quarter is the first quarter of a calendar year, those wages must be used in order to give the member a computed year. The three-year average covered wage cannot exceed the highest maximum covered wages in effect during the member's service.

If the three-year average covered wage of a member who retires on or after January 1, 1997, and before January 1, 2002, exceeds the limits set forth in paragraph "b" below, the longer period specified in paragraph "b" shall be substituted for the three-year averaging period described above. No quarters from the longer averaging period described in paragraph "b" shall be combined with the final quarter or quarters to complete the last year.

b. For the persons retiring during the period beginning January 1, 1997, and ending December 31, 2001, the three-year average covered wage shall be computed as follows:

(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds \$48,000, the member's covered wages averaged for the highest four years of the member's service or \$48,000, whichever is greater.

(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds \$52,000, the member's covered wages averaged for the highest five years of the member's service or \$52,000, whichever is greater.

(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds \$55,000, the member's covered wages averaged for the highest six years of the member's service or \$55,000, whichever is greater.

(4) For a member who retires on or after January 1, 2000, but before January 1, 2001, and whose three-year average covered wage at the time of retirement exceeds \$65,000, the member's covered wages averaged for the highest six years of the member's service or \$65,000, whichever is greater. For the calendar year beginning January 1, 2001, the six-year wage averaging trigger shall be increased to \$75,000.

(5) Effective January 1, 2002, the computation of average covered wages shall be as provided in paragraph 12.1(7)"a."

For purposes of paragraph 12.1(7)"b," the highest years of the member's service shall be determined using calendar years and may be determined using one computed year. The computed year shall be calculated in the manner and subject to the restrictions provided in paragraph 12.1(7)"a."

c. Antispiking limit on the growth of a member's high three-year average.

(1) Selection of the control year shall give highest priority to calendar years of wages in which there are four quarters of service credit for wages on file not used in the high three-year average wage calculation. For example, if the member receives \$20,000 of wages for a calendar year with four quarters of service credit for wages, and the member also has received \$30,000 of wages for a calendar year with three quarters of service credit for wages, the control year selection process shall give preference to the calendar year with \$20,000 of reported wages.

(2) If there is a calendar year of covered wages outside the high three-year average wage calculation that has four quarters, but the covered wages for that year are less than the covered wages for the fourth highest calendar year of covered wages, and that fourth highest calendar year of covered wages does not have four quarters of service credit for wages, the control year will be the lowest of the high three calendar years of wages with service credits for wages in all four quarters being used in the high three-year average wage calculation.

(3) "Service credit for wages" means service credit recorded for:

1. Quarters in which the member receives covered wages from covered employment.
2. Quarters in which the member is credited with covered wages due to a military leave.

3. Quarters in which the member would have had covered wages but for the application of the IRS covered wage limitations.

4. Quarters in which an employee of a nine-month institution receives service credit for a qualifying leave of absence under 495—subrule 7.1(2).

5. Quarters in which a legislator, legislative employee, or elected official receives service credit for employment.

(4) If none of the calendar years of wages that fall outside of the high three-year average wage calculation have service credit for wages reported in all four quarters, the control year will then be the lowest of the high three calendar years of wages with service credit for wages in all four quarters being used in the high three-year average wage calculation.

(5) If none of the wage years used in the high three-year average wage calculation have service credits for wages reported in all four quarters, the control year will then revert to the highest calendar year of wages not included in the high three-year average wage calculation, regardless of whether there are fewer than four quarters with service credits for wages on file.

(6) For high three-year average wage calculations that utilize the computed year, the control year may be the calendar year from which the “average quarters” used in the computed year are drawn. However, the control year cannot be the computed year, as the computed year will never be a calendar year with service credit for wages in all four quarters.

495—12.2(97B) Initial benefit determination.

12.2(1) The initial monthly benefit for the retired member will be calculated utilizing the wages that have been reported as of the member’s retirement and subject to the requirements of subrule 12.1(7). When the final quarter(s) of wages is reported for the retired member, a recalculation of benefits will be performed by IPERS to redetermine the member’s benefit amount. In cases where the recalculation determines that the benefit will be changed, the adjustment in benefits will be made retroactive to the first month of entitlement. The wages for the “computed year” shall not exceed the highest covered wage ceiling in effect during the member’s period of employment.

12.2(2) In cases where the member’s final quarter’s wages have been reported to IPERS prior to retirement, the original benefit will be calculated utilizing all available wages.

12.2(3) The Option 1 death benefit amount cannot exceed the member’s investment and cannot lower the member’s benefit below the minimum distribution required by federal law.

495—12.3(97B) Minimum benefits. Effective January 1, 1997, those members and beneficiaries of members who retired prior to July 1, 1990, and who upon retirement had years of service equal to or greater than 10, will receive a minimum benefit as follows.

12.3(1) The minimum benefit is \$200 per month for those members with 10 years of service who retired under Option 2. The minimum shall increase by \$10 per year or \$2.50 per each additional quarter of service to a maximum benefit of \$400 per month for members with 30 years of service. No increase is payable for years in excess of 30. The minimum benefit will be adjusted by a percentage that reflects option choices other than Option 2, and a percentage that reflects any applicable early retirement penalty.

12.3(2) In determining minimum benefits under this rule, IPERS shall use only the years of service the member had at first month of entitlement (FME). Reemployment periods and service purchases completed after FME shall not be used to determine eligibility.

12.3(3) The adjusted minimum benefit amount shall be determined using the option and early retirement adjustment factors set forth below.

a. The option adjustment factor is determined as follows:

Option 1	.94
Option 2	1.00
Option 3	1.00
Option 4 (100%)	.87
Option 4 (50%)	.93
Option 4 (25%)	.97
Option 5	.97

b. The early retirement adjustment factor is determined as follows:

(1) There is no early retirement adjustment if the member's age at first month of entitlement equals or exceeds 65, or if the member's age at first month of entitlement is at least 62 and the member had 30 or more years of service.

(2) The early retirement adjustment for a member having 30 years of service whose first month of entitlement occurred before the member attained age 62 is .25 percent per month for each month the first month of entitlement precedes the member's sixty-second birthday.

(3) The early retirement adjustment for a member having less than 30 years of service whose first month of entitlement occurred before the member attained age 65 is .25 percent per month for each month the first month of entitlement precedes the member's sixty-fifth birthday.

(4) IPERS shall calculate the early retirement adjustment factor to be used in subrule 12.3(4) as follows:

$$100\% - \text{early retirement adjustment percentage} = \text{early retirement adjustment factor}$$

(5) The early retirement adjustment shall not be applied to situations in which the member's retirement was due to a disability that qualifies under Iowa Code section 97B.50 or 97B.50(2).

12.3(4) IPERS shall use the following formula to calculate the adjusted minimum benefit:

$$\frac{\text{unadjusted minimum benefit}}{\text{option adjustment factor}} \times \frac{\text{early retirement adjustment factor}}{\text{adjusted minimum benefit}} =$$

12.3(5) IPERS shall compare the member's current benefit to the adjusted benefit determined as provided in subrules 12.3(3) and 12.3(4). If the member's current benefit is greater than or equal to the adjusted minimum benefit, no change shall be made. Otherwise, the member shall receive the adjusted minimum benefit.

12.3(6) Effective January 1, 1999, the monthly allowance of certain retired members and their beneficiaries, including those whose monthly allowance was increased by the operation of subrules 12.3(3) to 12.3(5), shall be increased. If the member retired from the system before July 1, 1986, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 15 percent. If the member retired from the system on or after July 1, 1986, and before July 1, 1990, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 7 percent.

495—12.4(97B) Hybrid formula for members with more than one type of service credit.

12.4(1) Eligibility. Effective July 1, 1996, members having both regular and special service (as defined in Iowa Code section 97B.1A(22)) shall receive the greater of the benefit amount calculated under this subrule or the benefit amount calculated under the applicable nonhybrid benefit formula.

a. Members who have a combined total of 16 quarters of service may utilize the hybrid formula.

b. The following classes of members are not eligible for the hybrid formula:

(1) Members who have only regular service credit.

(2) Members who have 22 years of special service credit.

- (3) Members who have 30 years of regular service.
- (4) Members with less than 16 total quarters of service.

12.4(2) Assumptions. IPERS shall utilize the following assumptions in calculating benefits under this rule.

a. The member's three-year average covered wage shall be determined in the same manner as it is determined for the nonhybrid formula.

b. Increases in the benefit formula under this rule shall be determined as provided under Iowa Code section 97B.49D. The percentage multiplier shall only be increased for total years of service over 30.

c. Years of service shall be utilized as follows:

(1) Quarters which have two or more occupation class codes shall be credited as the class that has the highest reported wage for said quarter. A member shall not receive more than one quarter of credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

(2) Quarters shall not be treated as special service quarters unless the applicable employer and employee contributions have been made.

12.4(3) Years of service fraction not to exceed one.

a. In no event shall a member's years of service fraction under the hybrid formula exceed, in the aggregate, one.

b. If the years of service fraction does, in the aggregate, exceed one, the member's quarters of service credit shall be reduced until the member's years of service fraction equals, in the aggregate, one.

c. Service credit shall first be subtracted from the member's regular service credit and, if necessary, shall next be subtracted from the member's special service credit.

12.4(4) Age reduction. The portion of the member's benefit calculated under this rule that is based on the member's regular service shall be subject to a reduction for early retirement. In calculating the age reduction to be applied to the portion of the member's benefit based on the member's regular service, the system shall use all quarters of service credit, including both regular and special service quarters.

12.4(5) Calculations. A member's benefit under the hybrid formula shall be the sum of the following:

a. The applicable percentage multiplier divided by 22 times the years of special service credit times the member's high three-year average covered wage, plus

b. The applicable percentage multiplier divided by 30 times the years of regular service credit (if any) times the member's high three-year average covered wage minus the applicable wage reduction (if any).

If the sum of the percentages obtained exceeds the applicable percentage multiplier for that member, the percentage obtained above for each class of service shall be subject to reduction so that the total shall not exceed the member's applicable percentage multiplier in the order specified in paragraph 12.4(3) "c" of this subrule.

495—12.5(97B) Money purchase benefits.

12.5(1) For each vested member retiring with less than four complete years of service, a monthly annuity shall be determined by applying the total reserve as of the effective retirement date (plus any retirement dividends standing to the member's credit on December 31, 1966) to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised 6.5 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used.

12.5(2) For each vested member for whom the present value of future benefits under Option 2 is less than the member reserve as of the effective retirement date, a monthly annuity shall be determined by applying the member reserve to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised 6.5 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used.

12.5(3) For calculations under subrule 12.5(1), the term “total reserve” means the total of the member’s investment and the employer’s investment as of the effective retirement date, plus any retirement dividends standing to the member’s credit as of December 31, 1966. For calculations under subrule 12.5(2), the term “member reserve” means the member’s total investment, excluding all other amounts standing to the member’s credit.

12.5(4) For calculations under subrule 12.5(1), Options 2, 3, 4, 5 and 6 shall be calculated by dividing the member’s total reserve by the applicable Option 2, 3, 4, 5 or 6 annuity factor taken from the system’s tables to determine the monthly amount. For calculations under subrule 12.5(2), Options 2, 3, 4, 5 and 6 shall be calculated by dividing the member reserve by the applicable Option 2, 3, 4, 5 or 6 annuity factor taken from the system’s tables to determine the monthly amount.

12.5(5) For Option 1, the cost per \$1,000 of death benefit shall be determined according to the system’s tables. That cost shall be subtracted from the Option 3 monthly amount to determine the Option 1 monthly benefit amount. The Option 1 death benefit amount shall be reduced as necessary so that the Option 1 monthly benefit amount is not less than one-half of the Option 2 monthly benefit amount.

12.5(6) If the member has prior service (service prior to July 4, 1953), the Option 2 benefit amount calculated under subrules 12.5(1) and 12.5(2) shall be calculated by determining the amount of the member’s Option 2 benefit based on the member’s prior service and the applicable plan formula, plus the amount of the member’s Option 2 benefit based on the member’s membership service as determined under this rule. The Option 2 benefit amount based on prior service shall be adjusted for early retirement.

495—12.6(97B) Recalculation for a member aged 70. A member remaining in covered employment after attaining the age of 70 years may receive a retirement allowance without terminating the covered employment. A member who is in covered employment, attains the age of 70 and begins receiving a retirement allowance must terminate all covered employment before the member’s retirement allowance can be recalculated to take into account service after the member’s original FME. The termination of employment must be a true severance lasting at least 30 days. The formula to be used in recalculating such a member’s retirement allowance depends on the date of the member’s FME and the member’s termination date, as follows:

If the member is receiving a retirement allowance with an FME prior to July 1, 2000, and terminates covered employment on or after January 1, 2000, the member’s retirement formula for recalculation purposes shall be the formula in effect at the time of the member’s termination from covered employment or, if later, the date the member applies for a recalculation.

In all other cases, the recalculation for a member aged 70 who retires while actively employed shall use the retirement formula in effect at the time of the member’s FME.

Payments under this rule shall begin no earlier than the month following the month of termination, upon IPERS’ receipt of a member’s application for recalculation.

495—12.7(97B) Level payment choice for special service members. A level payment choice is created effective July 1, 2002. IPERS shall implement the level payment choice by preparing factors to convert nonhybrid IPERS Options 1, 2, 3, 4, and 5 to the level payment choice. The new benefit feature applies solely to special service members, and any reference to members in this rule shall only apply to special service members.

12.7(1) Conversion rights window. A special service member who qualifies for a July 2002 or later first month of entitlement (FME) may elect to retire under the regular IPERS Option 1, 2, 3, 4 or 5, and later have the member’s option converted to the level payment choice. Retroactive adjustments in monthly amounts and death benefits, without interest, shall be provided.

In order to qualify for the conversion and retroactive payments, the member must request the level payment choice in writing no later than six months after the member’s first monthly payment. If the member is married, the member’s spouse must also consent to the requested change. Election of conversion to the level payment choice shall be irrevocable upon receipt of the first payment under the level payment choice.

A member who has retired under Iowa Code section 97B.49D or under IPERS Option 6 on or after July 1, 2002, and who wishes to receive benefits under this rule may revoke the member's initial election and choose IPERS Option 1, 2, 3, 4, or 5 to be paid as a level payment choice. The conversion to the level payment choice under this subrule is mandatory and irrevocable.

The conversion rights granted in this subrule shall not apply to members whose FME is January 2003 and later. Those members must select the level payment choice at the time they submit an IPERS retirement application.

12.7(2) *Member's social security retirement amount.* Calculations of a member's level payment choice shall be based on the member's social security retirement amount at age 62 as verified by Social Security Administration statements provided by the member. No adjustments shall be made if subsequent social security statements indicate an increase in the age 62 social security retirement amount. Verification of the social security benefits shall not precede the member's first month of entitlement by more than 12 months.

12.7(3) *Death benefit assumptions.* In preparing level payment choice factors, IPERS shall assume:

a. For IPERS Options 1 and 2, death benefits under those options shall not be reduced as a result of a member's attaining the age of 62 and having the member's monthly allowance reduced under this rule.

b. For IPERS Options 4 and 5, IPERS shall assume that the contingent annuitant's or beneficiary's monthly payments and death benefits, if any, prior to the date the member attains, or would have attained, age 62 shall be based on the amount that was payable to the member for periods before the member attains, or would have attained, age 62. Beginning with the month that the member attains, or would have attained, age 62, a contingent annuitant's or beneficiary's monthly payments and death benefits, except death benefits under IPERS Options 1 and 2, shall be based on the reduced amount that would have been payable to the member in the month after the month that the member attained age 62.

12.7(4) *Favorable experience dividends.* An eligible member's or beneficiary's favorable experience dividend, if any, shall be based on the member's or beneficiary's level payment choice monthly amount as of the preceding December 31.

12.7(5) *Prohibitions.* The following special service members shall be prohibited from receiving benefits under this rule:

- a. Those who retire under Iowa Code section 97B.49D.
- b. Those who retire under Option 6.
- c. Those who request a level payment amount that reflects less than a full offset for the social security retirement amount at age 62.
- d. Those reemployed in covered employment and subsequently retiring, for the period of reemployment. A member who has elected the level payment choice shall have retirement benefits calculated solely for the period of reemployment, except for vesting credit.

12.7(6) *Limit on reductions.* For a member who has substantial noncovered employment, the application of the level payment choice factors shall not reduce the monthly amount payable to a member at age 62 to less than 50 percent of the monthly amount that would have been payable under IPERS Option 2. Accordingly, payments before age 62 to such members shall be reduced in the same manner, with the corresponding adjustments made to death benefits.

495—12.8(97B) Reemployment of retired members.

12.8(1) Effective July 1, 1998, the monthly benefit payments for a member under the age of 65 who has a bona fide retirement and is then reemployed in covered employment shall be reduced by 50 cents for each dollar the member earns in excess of the annual limit. Effective July 1, 2002, this reduction is not required until the member earns the amount of remuneration permitted for a calendar year for a person under the age of 65 before a reduction in federal social security retirement benefits is required, or earns \$30,000, whichever is greater. The foregoing reduction shall apply only to IPERS benefits payable for the applicable year that the member has reemployment earnings and after the earnings limit has been reached. Said reductions shall be applied as provided in subrule 12.8(2).

Effective January 1, 1991, this earnings limitation does not apply to covered employment as an elected official. A member aged 65 or older who has completed at least four full calendar months of bona fide retirement and is later reemployed in covered employment shall not be subject to any wage-earning disqualification.

12.8(2) Beginning on or after July 1, 1996, the retirement allowance of a member subject to reduction pursuant to subrule 12.8(1) shall be reduced as follows:

a. A member's monthly retirement allowance in the following calendar year shall be reduced by the excess amounts earned in the preceding year divided by the number of months remaining in the following calendar year after the excess amount has been determined. A member may elect to make repayment of the overpayments received in lieu of having the member's monthly benefit reduced. Elections to make installment payments must be accompanied by a repayment agreement signed by the member and IPERS. If the monthly amount to be deducted exceeds a member's monthly retirement allowance, the member's monthly allowance shall be withheld in its entirety until the overpayment is recovered. If a member dies and the full amount of overpayments determined under this subrule has not been repaid, the remaining amounts shall be deducted from the payments to be made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which there are no remaining amounts to be paid, or the remaining amounts are insufficient, the unrecovered amounts shall be a charge on the member's estate.

b. Employers shall be required to complete IPERS wage reporting forms for reemployed individuals which shall reflect the prior year's wage payments on a month-to-month basis. These reports shall be used by IPERS to determine the amount which must be recovered to offset overpayments in the prior calendar year due to reemployment wages.

c. A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this rule in lieu of receiving a reduced retirement allowance under paragraph "a" of this subrule. If the member's retirement allowance is not suspended timely, the overpayment will be recovered pursuant to paragraph "a" of this subrule. The member's retirement allowance shall remain suspended until the earlier of January of the following calendar year or the member's termination of covered employment. The member's election shall remain binding until revoked in writing. Effective July 1, 2007, "remuneration" shall include those amounts as described in 495—subrule 6.3(13).

12.8(3) A member who is reemployed in covered employment after retirement may, after again retiring from employment, request a recomputation of benefits. The member's retirement benefit shall be increased if possible by the addition of a second annuity, which is based on years of reemployment service, reemployment covered wages and the benefit formula in place at the time of the recomputation. A maximum of 30 years of service is creditable to an individual retired member. If a member's combined years of service exceed 30, a member's initial annuity may be reduced by a fraction of the years in excess of 30 divided by 30. The second retirement benefit will be treated as a separate annuity by IPERS. Any contributions that cannot be used in the recomputation of benefits shall be refunded to the employee and the employer.

Effective July 1, 1998, a member who is reemployed in covered employment after retirement may, after again terminating employment for at least one full calendar month, elect to receive a refund of the employee and employer contributions made during the period of reemployment in lieu of a second annuity. If a member requests a refund in lieu of a second annuity, the related service credit shall be forfeited.

Effective July 1, 2007, employer contributions described in 495—subrule 6.3(13) shall constitute "remuneration" for purposes of applying the reemployment earnings limit and determining reductions in the member's monthly benefits but shall not be considered covered wages for IPERS benefits calculations.

12.8(4) In recomputing a retired member's monthly benefit, IPERS shall use the following assumptions.

a. The member cannot change the option or beneficiary with respect to the reemployment period.

b. If the reemployment period is less than 4 years, the money purchase formula shall be used to compute the benefit amount.

c. If the reemployment period is 4 or more years, the benefit formula in effect as of the first month of entitlement (FME) for the reemployment period shall be used. If the FME is July 1998 or later, and the member has more than 30 years of service, including both original and reemployment service, the percentage multiplier for the reemployment period only will be at the applicable percentage (up to 65 percent) for the total years of service.

d. If a period of reemployment would increase the monthly benefit a member is entitled to receive, the member may elect between the increase and a refund of the employee and employer contributions without regard to reemployment FME.

e. If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least \$1,000. The maximum amount of the increase shall be equal to the member's investment (reemployment contributions and interest). In determining the increase in Option 1 death benefits, IPERS shall round up to the nearest \$1,000. For example, if a member's investment for a period of reemployment is \$2,900, the maximum death benefit attributable to the reemployment shall be \$3,000 (\$2,900 rounded up to the nearest \$1,000). In the example above, the member may choose a death benefit increase of \$1,000, or \$2,000, or \$3,000, but must choose at least the \$1,000 increase. Notwithstanding the foregoing, if the member's investment for the period of reemployment is less than \$1,000, the benefit formula for a member who originally elected new IPERS Option 1 shall be calculated under IPERS Option 3.

f. A retired reemployed member whose reemployment FME precedes July 1998 shall not be eligible to receive the employer contributions made available to retired reemployed members under Iowa Code section 97B.48A(4) effective July 1, 1998.

g. A retired reemployed member who requests a return of the employee and employer contributions made during a period of reemployment cannot repay the distribution and have the service credit for the period of reemployment restored.

h. If a retired reemployed member selected IPERS Option 5 at retirement, and after the period of reemployment requests an increase in the member's monthly allowance, at death all remaining guaranteed payments with respect to both periods of employment shall be paid in a commuted lump sum.

i. If a retired reemployed member selected IPERS Option 2 (or old IPERS Option 1) at retirement, and after the period of reemployment requests an increase in the member's monthly allowance, at death the member's monthly payments following the increase shall be prorated between the member's two annuities to determine the amount of the member's remaining accumulated contributions that may be paid as a death benefit.

j. A retired reemployed member who has attained the age of 70 may take an actuarial equivalent (AE) payment. However, such a member must terminate covered employment for at least 30 days before taking an additional AE payment.

12.8(5) Mandatory distribution of active wages. If a retired reemployed member whose annual benefit would be increased by less than \$600 does not request a second annuity or a lump sum payment of reemployment accruals by the end of the fourth quarter after the last quarter in which the member had covered wages, IPERS shall proceed to pay the member the applicable lump sum amount. The member shall have 60 days after the postmark date of the mandatory payment to return the payment and restore the member's account.

495—12.9(97B) Actuarial equivalent (AE) payments.

12.9(1) If a member aged 55 or older requests an estimate of benefits which results in a monthly benefit amount under Option 2 of less than \$50, the member shall receive, under Iowa Code section 97B.48(1), a lump sum actuarial equivalent (AE) payment in lieu of a monthly benefit. Once the AE payment has been paid to the member, the member shall not be entitled to any further benefits based on the contributions included in the AE payment and the employment period represented thereby. If

the member later returns to covered employment, any future benefits the member accrues shall be based solely on the new employment period. If an estimate of benefits based on the new employment period again results in any one of the options having a monthly benefit amount of less than \$50, the member may again elect to receive an AE payment.

12.9(2) If a member, upon attaining the age of 70 or later, requests a retirement allowance without terminating employment and the member's monthly benefit amount under Option 2 is less than \$50, the member shall receive an AE payment based on the member's employment up to, but not including, the quarter in which the application is filed. When the member subsequently terminates covered employment, any benefits due to the member will be based only on the period of employment not used in computing the AE paid when the member first applied for a retirement allowance. If an estimate of benefits based on the later period of employment again results in a monthly benefit amount under Option 2 of less than \$50, the member shall receive another AE payment. However, a member who elects to receive an AE payment upon or after attaining age 70 without terminating employment may not elect to receive additional AE payments unless the member terminates all covered employment for at least one full calendar month.

12.9(3) An AE payment under this rule shall be equal to the sum of the member's and employer's accumulated contributions and the retirement dividends standing to the member's credit before December 31, 1966.

495—12.10(97B) Conforming rules for lump-sum payments. Effective January 1, 2007, IPERS may, notwithstanding certain provisions of Iowa Code section 97B.53B enacted in order to comply with prior rollover provisions of the Internal Revenue Code, utilize forms and procedures affording payees of lump-sum distributions with broader rollover rights as permitted under the applicable roll-over provisions of the Internal Revenue Code as amended subsequent to the enactment of Iowa Code section 97B.53B.

These rules are intended to implement Iowa Code sections 97B.1A, 97B.1A(24), 97B.15, 97B.25, 97B.45, 97B.47 to 97B.48A, 97B.49A to 97B.49I, 97B.51, and 97B.53B.

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CHAPTER 13
DISABILITY FOR REGULAR AND SPECIAL SERVICE MEMBERS
[Prior to 11/24/04, see 581—Ch 21]

495—13.1(97B) Disability for persons retiring under Iowa Code section 97B.50(2).

13.1(1) For IPERS regular class members retiring because of a disability:

a. The member must indicate on the application for retirement that the retirement is due to an illness, injury or similar condition.

b. The member must be awarded federal social security benefits due to a disability which existed at the time the application for retirement was filed.

c. Effective July 1, 1990, the member may also qualify for the IPERS disability provision by being awarded, and commencing to receive, disability benefits through the federal Railroad Retirement Act, 45 U.S.C. Section 231 et seq., due to a disability which existed at the time of retirement.

d. The period for which up to 36 months of retroactive payments under Iowa Code section 97B.50(2) shall be paid is for up to 36 months preceding the month in which such completed application for IPERS disability is received by IPERS. In no event shall retroactive disability benefits payments under Iowa Code section 97B.50(2) precede the month the member actually receives the member's first social security or railroad retirement disability payment. The member shall provide IPERS with a copy of the Social Security Administration award letter showing dates of eligibility.

e. Continued qualification monitoring. For a member retiring due to a disability on or after January 1, 2009, in order to continue qualification for disability benefits, the member shall provide IPERS with proof of continuing eligibility for federal social security disability benefits or railroad retirement disability benefits by June 30 of each calendar year. IPERS may also require complete copies of the member's state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year. IPERS may suspend the benefits of any such member if these records are not timely provided.

13.1(2) If a member returns to covered employment after achieving a bona fide retirement, the benefits being provided to the member under Iowa Code section 97B.50(2) "a" or "b" shall be suspended or reduced as follows. If the member has not attained the age of 55 upon reemployment, benefit payments shall be suspended in their entirety until the member subsequently terminates employment, applies for, and is approved to receive benefits under the provisions of Iowa Code chapter 97B. If the member has attained the age of 55 or older upon reemployment, the member shall continue to receive monthly benefits adjusted as follows. Monthly benefits shall be calculated under the same benefit option that was first selected, based on the member's age, years of service, and the applicable reductions for early retirement as of the month that the member returns to covered employment. The member's benefit shall also be subject to the applicable provisions of Iowa Code section 97B.48A pertaining to reemployed retired members.

13.1(3) Upon terminating a reemployment that resulted in the suspension of all or a portion of the member's disability retirement allowance, the member's benefits shall be recomputed under Iowa Code section 97B.48A and rule 495—12.8(97B). To requalify for a monthly retirement allowance under Iowa Code section 97B.50(2), the member must furnish a new or updated Social Security Administration disability award letter, or other acceptable documentation from the Social Security Administration, indicating that the member is currently eligible for social security disability benefits.

13.1(4) If a member whose IPERS disability benefits were suspended because of the member's return to covered employment provides proof acceptable to IPERS that the member remains eligible for federal social security disability benefits or railroad retirement disability benefits, IPERS shall reinstate the member's disability benefits, subject to the member's continued compliance with paragraph 13.1(1) "e."

495—13.2(97B) Disability claim process for special service members. Except as otherwise indicated, this rule shall apply only to disability claims initiated under Iowa Code section 97B.50A. Except as otherwise indicated, disability claims under Iowa Code section 97B.50(2) shall be administered under rule 495—13.1(97B).

13.2(1) *Initiation of disability claim.* The disability claim process shall originate as an application to the system by the member. The application shall be forwarded to the system's designated retirement benefits officer. An application shall be sent upon request to members who qualify pursuant to Iowa Code section 97B.50A(13). The application consists of the following sections which must be completed and returned to the system's designated retirement benefits officer:

1. General applicant information.
2. Applicant's statement.
3. Employer's statement.
4. Member's assigned duties.
5. Disability/injury reports.
6. Medical information release.

13.2(2) *Preliminary processing.* Completed forms shall be returned to the disability retirement benefits officer. If the forms are not complete, they will be returned for completion. The application package shall contain copies of all relevant medical records and the names, addresses, and telephone numbers of all relevant physicians. If medical records are not included, the designated retirement benefits officer shall have the authority to contact the listed physicians for copies of the files on the individual and shall request that any applicable files be sent to the medical board. In addition, IPERS may request workers' compensation records, social security records and such other official records as are deemed necessary. The application, including copies of the medical information, shall be forwarded to the medical board for review. All medical records that will be part of a member's permanent file shall be kept in locked locations separate from the member's other retirement records.

13.2(3) *Scheduling of appointments.* Upon receipt and forwarding of the application and sufficient medical records to the medical board, the disability retirement benefits officer shall establish an appointment for the applicant to be seen by the medical board in Iowa City. The member shall be notified by telephone and in writing of the appointment, and shall be given general instructions about where to go for the examinations. The appointment for the examinations shall be no later than 60 days after the completed application, including sufficient medical records, is provided. All examinations must be scheduled and completed on the same date. The member shall also be notified about the procedures to follow for reimbursement of travel expenses and lodging. Fees for physical examinations and medical records costs shall be paid directly by IPERS pursuant to its contractual arrangements with the medical providers required to implement Iowa Code section 97B.50A.

13.2(4) *Medical board examinations.* The medical board, consisting of three physicians from the University of Iowa occupational medicine clinic and other departments as required, shall examine the member and perform the relevant tests and examinations.

The medical board shall submit a letter of recommendation to the system, based on its findings and the job duties supplied in the member's application, whether or not the member is mentally or physically incapacitated from the further performance of the member's duties and whether or not the incapacity is likely to be permanent. "Permanent" means that the mental or physical incapacity is reasonably expected to last more than one year. The medical board's letter of recommendation shall include a recommended schedule for reexaminations to determine the continued existence of the disability in question.

IPERS shall not be liable for any diagnostic testing procedures performed in accordance with Iowa Code section 97B.50A and this rule which are alleged to have resulted in injury to the members being examined.

The medical board shall furnish its determination, test results, and supporting notes to the system no later than ten working days after the date of the examination. The medical board may use electronic signatures in fulfilling its reporting obligations under this rule.

The medical board shall not be required to have regular meetings, but shall be required to meet with IPERS' representatives at reasonable intervals to discuss the implementation of the program and performance review.

13.2(5) *Member and employer comments.* Upon receipt by the system, the medical board's determination regarding the existence or nonexistence of a permanent disability shall be distributed to the member and to the employer for review. The member and the employer may forward to the

system written statements pertaining to the medical board's findings within ten days of transmittal. If relevant medical information not considered in materials previously forwarded to the medical board is contained within such written statements, the system shall submit such information to the medical board for review and comment.

13.2(6) *Fast-track review.* IPERS' disability retirement benefits officer may refer any case to IPERS' chief benefits officer for fast-track review. The CEO or the CEO's designee may, based upon a review of the member's application and medical records, determine that the medical board be permitted to make its recommendations based solely upon a review of the application and medical records, without requiring the member to submit to additional medical examinations by, or coordinated through, the medical board.

13.2(7) *Initial administrative determination.* The medical board's letter of recommendation, test results, and supporting notes, and the member's file shall be forwarded to IPERS. Except as otherwise requested by IPERS, the medical board shall forward hospital discharge summary reports rather than the entire set of hospital records. The complete file shall be reviewed by the system's disability retirement benefits officer, who shall, in consultation with the system's legal counsel, make the initial disability determination. Written notification of the initial disability determination shall be sent to the member and the member's employer within 14 days after a complete file has been returned to IPERS for the initial disability determination.

13.2(8) *General benefits provisions.* Effective July 1, 2000, if an initial disability determination is favorable, benefits shall begin as of the date of the initial disability determination or, if earlier, the member's last day on the payroll, but no more than six months of retroactive benefits are payable, subject to Iowa Code section 97B.50A(13). "Last day on the payroll" shall include any form of authorized leave time, whether paid or unpaid. If a member receives short-term disability benefits from the employer while awaiting a disability determination hereunder, disability benefits will accrue from the date the member's short-term disability payments are discontinued. If an initial favorable determination is appealed, the member shall continue to receive payments pending the outcome of the appeal.

Any member who is awarded disability benefits under Iowa Code section 97B.50A and this rule shall be eligible to elect any of the benefit options available under Iowa Code section 97B.51. All such options shall be the actuarial equivalent of the lifetime monthly benefit provided in Iowa Code section 97B.50A(2) and (3).

The disability benefits established under this subrule shall be eligible for the favorable experience dividends payable under Iowa Code section 97B.49F(2).

If the award of disability benefits is overturned upon appeal, the member may be required to repay the amount already received or, upon retirement, have payments suspended or reduced until the appropriate amount is recovered.

IPERS shall, at the member's written request, precertify a member's medical eligibility through the procedures set forth in subrules 13.2(3) and 13.2(4), provided that IPERS shall have full discretion to request additional medical information and to redetermine the member's medical eligibility if the member chooses not to apply for disability benefits at the time of the precertification. IPERS shall not pay for the costs of more than one such precertification per 12-month period.

13.2(9) *In-service disability determinations.* Subject to the presumptions contained in Iowa Code section 97B.50A in determining whether a member's mental or physical incapacity arises in the actual performance of duty, "duty" shall mean:

a. For special service members other than firefighters, any action that the member, in the member's capacity as a law enforcement officer:

(1) Is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(2) Performs in the course of controlling or reducing crime or enforcing the criminal law; or

b. For firefighters, any action that the member, in the member's capacity as a firefighter:

(1) Is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(2) Performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

13.2(10) *Appeal rights.* The member or the employer, or both, may appeal IPERS' initial disability determination. Within 30 days after the notification of IPERS' initial disability determination was mailed, the member shall submit to IPERS' CEO or CEO's designee a notice of appeal in writing setting forth:

- a. The name, address, and social security number of the member or employee number of the employer;
- b. A reference to the decision from which the appeal is being made;
- c. The fact that an appeal from the decision is being made;
- d. The grounds upon which the appeal is based;
- e. Additional medical or other evidence to support the appeal; and
- f. The request that a different decision be made by IPERS.

The system shall conduct an internal review of the initial disability determination, and the CEO or CEO's designee shall notify in writing the party who filed the appeal of IPERS' final disability determination with respect to the appeal. The CEO or CEO's designee may appoint a review committee to make nonbinding recommendations on such appeals. The disability retirement benefits officer, if named to the review committee, shall not vote on any such recommendations, nor shall any members of IPERS' legal staff participate in any capacity other than a nonvoting capacity. Further appeals shall follow the procedures set forth in 495—Chapter 26.

13.2(11) *Notice of abuse of disability benefits.* The system has the obligation and full authority to investigate allegations of abuse of disability benefits. The scope of the investigation to be conducted shall be determined by the system, and may include the ordering of a sub rosa investigation of a disability recipient to verify the facts relating to an alleged abuse. A sub rosa investigation shall only be considered upon receipt and evaluation of an acceptable notice of abuse. The notification must be in writing and include:

- a. The informant's name, address, telephone number, and relationship to the disability recipient; and
- b. A statement pertaining to the circumstances that prompted the notification, such as activities which the informant believes are inconsistent with the alleged disability.
- c. Anonymous calls shall not constitute acceptable notification.

IPERS may employ such investigators and other personnel, in IPERS' sole discretion, as may be deemed necessary. IPERS may also, in its sole discretion, decline to carry out such investigations if more than five years have elapsed since the date of the disability determination.

13.2(12) *Qualification for social security or railroad retirement disability benefits.* Upon qualifying for social security or railroad retirement disability benefits, a special service member may contact the system to have the member's disability benefits calculated under Iowa Code section 97B.50(2). The member and spouse must complete the designated application to stop having benefits calculated under Iowa Code section 97B.50A and to start having benefits calculated under Iowa Code section 97B.50(2). The decision is irrevocable, and must be made within 60 days after the member receives written notification of eligibility for disability benefits from social security or railroad retirement and has commenced receiving such payments.

13.2(13) *Reemployment/income monitoring.* A member who retires under Iowa Code section 97B.50A and this rule shall be required to supply a copy of a complete set of the member's state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year. IPERS may suspend the benefits of any such member if such records are not timely provided.

Only wages and self-employment income shall be counted in determining a member's reemployment comparison amount, as adjusted for health care coverage for the member and member's dependents.

For purposes of calculating the income offsets required under Iowa Code section 97B.50A, IPERS shall convert any lump sum workers' compensation award, disability insurance payments, or similar lump sum awards for the same illnesses or injuries to an actuarial equivalent, as determined by IPERS.

These rules are intended to implement Iowa Code sections 97B.50 and 97B.50A.

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CHAPTER 14
DEATH BENEFITS AND BENEFICIARIES
[Prior to 11/24/04, see 581—Ch 21]

495—14.1(97B) Internal Revenue Code limitations. The maximum claims period shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for death benefits payable under benefit options described in Iowa Code section 97B.51 and for members who die after their required beginning date. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this rule shall end April 1 of the year following the year of the member's death. A death benefit payable under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed the maximum amount possible under the Internal Revenue Code.

To ensure that the limit is not exceeded, a member's combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed 100 times the Option 2 amount that would have been payable to the member at the member's earliest normal retirement age. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit payable under Iowa Code section 97B.52(1). The "100 times" limit shall apply to active and inactive members. The death benefits payable under this chapter for a period of reemployment for a retired reemployed member who dies during the period of reemployment shall also be subject to the limits described in this rule.

A member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest, if any, for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. Interest for periods following the quarter of forfeiture will accrue beginning with the quarter that the claim for reinstatement is received by IPERS. For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

Effective January 14, 2004, all claims for a previously forfeited death benefit shall be processed under the procedure set forth at rule 495—14.13(97B).

495—14.2(97B) Survival into first month of entitlement. When a member who has filed an application for retirement benefits and has survived into the first month of entitlement dies prior to the issuance of the first benefit check, IPERS will pay the death benefit allowed under the retirement option elected by the member in the application for retirement benefits.

495—14.3(97B) Designation of beneficiaries.

14.3(1) Designation of beneficiaries. To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits revokes all prior designation of beneficiary forms. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 or 6 retired member may name someone other than the member's contingent annuitant as beneficiary, but only for lump sum death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member before the period of reemployment unless a qualified domestic relations order (QDRO) directs otherwise. If a reemployed IPERS Option 4 or 6 retired member dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the lump sum death benefits awarded in a QDRO shall be paid to the contingent

annuitant as alternate payee, and the remainder of the lump sum death benefits shall be paid to the member's estate or, if applicable, to the member's heirs if no estate is probated.

14.3(2) *Change of beneficiary.* The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

495—14.4(97B) Applications for death benefits. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, together with information establishing the claimant's right to payment. A named beneficiary must complete an IPERS application for death benefits based on the deceased member's account. If the claimant's claim is based on dissolution of marriage that revoked the IPERS beneficiary designation, the claim must be processed pursuant to rule 14.16(97B).

495—14.5(97B) Commuted lump sums.

14.5(1) *Designated beneficiary is an estate, trust, church, charity, or similar organization.* Where the designated beneficiary is an estate, trust, church, charity or similar organization, or is a person, such as a trustee, executor, or administrator who has been appointed to receive funds on behalf of such entities, payment of benefits shall be made in a lump sum only.

14.5(2) *Multiple beneficiaries.* Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares unless a different proportion is stipulated.

14.5(3) *Guaranteed payments.* Where a member has selected Option 5 and dies before receiving all guaranteed payments, and the member's designated beneficiary also dies before all guaranteed payments are made, any remaining guaranteed payments shall be paid in a commuted lump sum.

495—14.6(97B) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary form is on file. When no designation of beneficiary or an invalid designation of beneficiary form is on file with IPERS, payment shall be made in one of the following ways.

14.6(1) Where the estate is open, payment shall be made to the administrator or executor where said executor or administrator shall be duly appointed and serving under Iowa Code chapter 633 or 635.

14.6(2) Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made to the surviving spouse. The following documents shall be presented as supporting evidence:

- a. Copy of the will, if any;
- b. Copy of any letters of appointment; and
- c. Copy of the court order closing the estate and discharging the executor or administrator.

14.6(3) Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits and there is no surviving spouse, payment will be made to the heirs-at-law as determined by the intestacy laws of the state of Iowa.

14.6(4) Where a trustee has been named as designated beneficiary and is not willing to accept the death benefit or otherwise serve as trustee, IPERS may apply but is not required to apply to the applicable district court for an order to distribute the funds to the clerk of court on behalf of the beneficiaries of the member's trust. Upon the issuance of an order and the giving of such notice as the court prescribes, IPERS may deposit the death benefit with the clerk of court for distribution. IPERS shall be discharged from all liability upon deposit with the clerk of court.

495—14.7(97B) Waiver of beneficiary rights. A named beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would have been entitled. The waiver of the rights shall occur prior to the receipt of a payment from IPERS to the beneficiary. The waiver of rights shall be binding and will be executed on a form provided by IPERS. The waiver of rights may be

general, in which case payment shall be divided equally among all remaining designated beneficiaries or, if there are none, to the member's estate. The waiver of rights may also expressly be made in favor of one or more of the member's designated beneficiaries or the member's estate. If the waiver of rights operates in favor of the member's estate and no estate is probated or claim made, or if the executor or administrator expressly waives payment to the estate, payment shall be paid to the member's surviving spouse unless there is no surviving spouse or the surviving spouse has waived the surviving spouse's rights. In that case, payment shall be made to the member's heirs excluding any person who waived the right to payment. Any waiver filed by an executor, administrator, or other fiduciary must be accompanied by a release acceptable to IPERS indemnifying IPERS from all liability to beneficiaries, heirs, or other claimants for any waiver executed by an executor, administrator, or other fiduciary.

495—14.8(97B) Beneficiaries under the age of 18. Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is \$25,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than \$25,000.

495—14.9(97B) Simultaneous deaths. IPERS will apply the provisions of the Uniform Simultaneous Death Act, Iowa Code sections 633.523 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

495—14.10(97B) Felonious deaths. IPERS will apply the provisions of the Felonious Death Act, Iowa Code sections 633.535 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

495—14.11(97B) No interest on postretirement death benefits. Interest is only accrued on a member's death benefit if the member dies before the member's first month of entitlement (FME) or, for a retired reemployed member, before the member's reemployment FME, and is only accrued with respect to the retired or retired reemployed member's accumulated contributions account.

495—14.12(97B) Preretirement death benefits.

14.12(1) Pre-January 1, 1999, deaths. Where the member dies prior to the first month of entitlement, the death benefit shall include the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the "applicable denominator," as provided in Iowa Code section 97B.52(1). The amount payable shall not be less than the amount that would have been payable on the death of the member on June 30, 1984. The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

14.12(2) Post-January 1, 1999, deaths—death benefits under Iowa Code section 97B.52(1).

a. Definitions.

"Accrued benefit" means the monthly amount that would have been payable to the deceased member under IPERS Option 2 at the member's earliest normal retirement age, based on the member's covered wages and service credits at the date of death. If a deceased member's wage record consists of a combination of regular and special service credits, the deceased member's earliest normal retirement age shall be determined under the regular or special service benefit formula for which the majority of the deceased member's service credits were reported.

"Beneficiary(ies)" shall, unless the context indicates otherwise, refer to both window period beneficiaries and post-window period beneficiaries.

"Implementation date" means January 1, 2001.

"Nearest age" means a member's or beneficiary's age expressed in whole years, after rounding for partial years of age. Ages shall be rounded down to the nearest whole year if less than six complete months have passed following the month of the member's or beneficiary's last birthday, and shall be rounded up if six complete months or more have passed following the month of the member's or beneficiary's last birthday.

“Post-window period beneficiary” means a beneficiary of a member who dies before the member’s first month of entitlement and on or after January 1, 2001.

“Window period beneficiary” means a beneficiary of a member who dies before the member’s first month of entitlement during the period January 1, 1999, through December 31, 2000.

b. Any window period beneficiary or post-window period beneficiary may elect to receive the lump sum amount available under Iowa Code section 97B.52(1). Sole beneficiaries may elect, in lieu of the foregoing lump sum amount, to receive a single life annuity that is the actuarial equivalent of such lump sum amount.

A window period beneficiary must repay any prior preretirement death benefit received as follows:

(1) If a window period beneficiary wishes to receive the larger lump sum amount, if any, the system shall pay the difference between the prior death benefit lump sum amount and the new death benefit lump sum amount.

(2) If a sole window period beneficiary wishes to receive a single life annuity under Iowa Code section 97B.52(1), the sole window period beneficiary may either:

1. Annuitize the difference between the previously paid lump sum amount and the new larger lump sum amount, if any; or

2. Annuitize the full amount of the largest of the lump sum amounts available under the revised statute, but must repay the full amount of the previously paid lump sum amount.

(3) To the extent possible, repayment costs shall be recovered from retroactive monthly payments, if any, and the balance shall be offset against current and future monthly payments until the system is repaid in full.

c. A claim for a single life annuity under this subrule must be filed as follows:

(1) A sole window period beneficiary must file a claim for a single life annuity within 12 months of the implementation date.

(2) A sole post-window period beneficiary must file a claim for a single life annuity within 12 months of the member’s death.

(3) A beneficiary who is a surviving spouse must file a claim for a single life annuity within the period specified in subparagraph (1) or (2), as applicable, or by the date that the member would have attained the age of 70½, whichever period is longer.

d. Elections to receive the lump sum amount or single life annuity available under Iowa Code section 97B.52(1) and this subrule shall be irrevocable once the first payment is made. Election shall be irrevocable as of the date the first paycheck is issued, or would have been issued but for the fact that the payment is being offset against a prior preretirement death benefit payment.

e. No further benefits will be payable following the death of any beneficiary who qualifies and elects to receive the single life annuity provided under this subrule.

f. The provisions of this subrule shall not apply to members who die before January 1, 1999.

g. Procedures and assumptions to be used in calculating the lump sum present value of a member’s accrued benefit are as follows:

(1) IPERS shall calculate a member’s retirement benefit at earliest normal retirement age under IPERS Option 2, based on the member’s covered wages and service credits at the date of death, and the retirement benefit formula in effect in the month following the date of death.

(2) For purposes of determining the “member date of death annuity factor” under the conversion tables supplied by IPERS’ actuary, IPERS shall assume that “age” means the member’s nearest age at the member’s date of death.

(3) For purposes of determining the “member unreduced retirement annuity factor” under the conversion tables supplied by IPERS’ actuary, IPERS shall assume that “age” means the member’s nearest age at the member’s earliest normal retirement date. If a member had already attained the member’s earliest normal retirement date, IPERS shall assume that “age” means the member’s nearest age at the date of death.

h. Procedures and assumptions for converting the lump sum present value of a deceased member’s preretirement death benefit to a single life annuity are as follows:

(1) For purposes of determining the “age of beneficiary annuity factor” under the conversion tables supplied by IPERS’ actuary, IPERS shall assume that “age” means the beneficiary’s nearest age as of the beneficiary’s first month of entitlement.

(2) A beneficiary’s first month of entitlement is the month after the date of the member’s death.

(3) Effective for claims filed after June 30, 2004, no retroactive payments of the single life annuity shall be made under this subrule.

(4) Effective for claims filed after June 30, 2004, the beneficiary whose single life annuity is less than \$600 per year shall be able to receive only the lump sum payment under this rule.

i. Eligibility for favorable experience dividend (FED) payments. Any sole beneficiary who is eligible for and elects to receive a single life annuity under this subrule shall also qualify for the dividend payments authorized under rule 495—15.2(97B), subject to the requirements of that rule.

j. Retired reemployed members and aged 70 members who retire without terminating employment. Preretirement death benefits for retired reemployed members and aged 70 members who retire without terminating employment shall be calculated as follows:

(1) For beneficiaries of such members who elect IPERS Option 4 or 6 at retirement, IPERS shall recompute (for retired reemployed members) or recalculate/recompute (for aged 70 members who retired without terminating employment) the member’s monthly benefits as though the member had elected to terminate employment as of the date of death, to have the member’s benefits adjusted for postretirement wages, and then lived into the recomputation or recalculation/recomputation (as applicable) first month of entitlement.

(2) The recomputation provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member’s monthly benefit would have been increased by the period of reemployment, and is subject to the limitations of Iowa Code sections 97B.48A, 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. The recalculation/recomputations provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member’s monthly benefit would have been increased by the period of employment after the initial retirement, and is subject to the limitations of Iowa Code sections 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. In all other cases, preretirement death benefits under this subparagraph shall be equal to the lump sum amount equal to the accumulated employee and accumulated employer contributions.

(3) Beneficiaries of members who had elected IPERS Option 4 or 6 may also elect to receive the accumulated employer and accumulated employee contributions described in subparagraph 14.12(2)“j”(2), in lieu of the increased monthly annuity amount. Notwithstanding subparagraph (2) above, if the member elected IPERS Option 5 at retirement, the lump sum amount payable under this paragraph shall be the greater of the applicable commuted lump sum or the accumulated employee and accumulated employer contributions.

k. Inactive members with less than 16 quarters of service credit. For deaths occurring after June 30, 2004, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“a,” and shall only be payable in lump sum amounts for inactive members who have less than 16 quarters of service credit. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

495—14.13(97B) Payment procedures for heirs that cannot be located.

14.13(1) Order of priority. If a death benefit cannot be paid because heirs cannot be located, IPERS will pay a death benefit to the member’s heirs according to the following procedure.

a. Children. If there is no surviving spouse, but at least one child survives, the death benefit shall be divided equally among the member’s children. If there are living and deceased children, the shares that would have been payable to deceased children shall be payable in equal shares to the surviving children of each such deceased child.

b. Grandchildren. If neither the spouse nor children survive, but at least one grandchild survives, the death benefit shall be divided equally among the member’s grandchildren. If there are living and

deceased grandchildren, the shares that would have been payable to any deceased grandchild shall be payable in equal shares to the surviving children of such deceased grandchild.

c. Parent(s). If there is no surviving spouse, child, or grandchild, but at least one parent survives, the death benefit shall be divided equally between the member's parents.

d. Siblings. If there is no surviving spouse, child, grandchild, or parent, but at least one sibling survives, the death benefit shall be divided equally among the member's siblings. If there are living and deceased siblings, the shares that would have been payable to any deceased sibling shall be payable in equal shares to the surviving children of such deceased siblings.

e. Nephew(s) and niece(s). If no one from the above-mentioned groups survives, but there is at least one surviving niece or nephew, the death benefit shall be divided equally among the member's surviving nieces and nephews.

f. Estate. If someone other than a member of one of the groups listed above claims the member's death benefit, an estate must be opened and the death benefit shall only be payable to the administrator of that estate.

14.13(2) Procedures for initial distribution for identified heirs. IPERS shall distribute the death benefit to the heirs making a claim for such benefit in descending order listed in 14.13(1) "a" to "f." A claimant shall be required to submit an affidavit suitable to IPERS that verifies the claimant's share or, to the best of the claimant's knowledge, that there are no other surviving persons from the claimant's group and that there are no living persons in any lower-numbered group that would have a higher priority claim to the death benefit. IPERS shall have no responsibility to determine or search out the member's heirs at law, nor shall IPERS incur any liability for relying on a claimant's affidavits in paying the death benefit hereunder.

14.13(3) Procedures for final distribution to heirs who have filed claims. If a claimant has identified other persons in the claimant's group who would be entitled to a share of the member's death benefit, but such persons have not filed a claim within five years after the member's death, or by the date required under IRC Section 401(a)(9) if earlier, the remainder of the member's death benefit shall be paid in pro-rata shares to the claimants who were previously paid a share of the death benefit. In order to comply with the applicable IRS limitations, the final payments under this subrule shall be made by December 31 of the fifth year that begins after the member's date of death, or by December 31 of the year that distribution is required under IRC Section 401(a)(9), if earlier. The sole recourse of any claimant who is a member of a group receiving payments hereunder or of any lower-numbered group that should have received all of such payments shall be against the claimants of the group that received death benefit payments.

495—14.14(97B) Procedures for deaths of certain voluntary emergency services personnel occurring in the line of duty. Effective July 1, 2006, for a member who dies while performing the functions of a voluntary emergency services provider as described under Iowa Code section 85.61 or 147A.1, benefits for deaths occurring in the line of duty shall be paid pursuant to Iowa Code section 100B.31.

495—14.15(97B) Rollovers by nonspouse beneficiaries. Effective January 1, 2007, nonspouse beneficiaries shall be permitted to request a direct rollover of such beneficiaries' death benefit payments to traditional IRA accounts established in accordance with Section 829 of the Pension Protection Act of 2006 and IRS Notice 2007-7. IPERS shall determine the amount eligible for direct rollover under IRC Section 401(a)(9), if any, and the procedural requirements for requesting such rollovers. It shall be the beneficiaries' responsibility to determine that the recipient IRAs meet the structural and operational requirements of Section 829 and Notice 2007-7. IPERS shall bear no responsibility for rollovers to IRA accounts that fail to meet such requirements.

Effective January 1, 2008, IPERS will also allow rollovers under this rule to Roth IRA accounts established in accordance with the structural and operational requirements of Section 829 and Notice 2007-7.

495—14.16(97B) Beneficiary revocation pursuant to Iowa Code section 598.20B, dissolution of marriage. IPERS is not liable for the payment of death benefits to a beneficiary pursuant to a beneficiary designation that has been revoked or reinstated by a divorce, annulment, or remarriage before IPERS receives the written notice set forth in subrule 14.16(1). Furthermore, IPERS shall only be liable for payments made after receipt of such written notice if the written notice is received at least ten calendar days prior to the payment.

14.16(1) *Form of notice.* The written notice shall include the following information:

- a. The name of the deceased member,
- b. The name of the person(s) whose entitlement to IPERS death benefits is being challenged,
- c. The name, address, and telephone number of the person(s) asserting an interest,
- d. A statement that the decedent's divorce, annulment, or remarriage revoked the entitlement of the person(s) whose status is being challenged to the IPERS death benefits in question, and
- e. A copy of the divorce decree upon which the claim is based.

In addition to the above information, if the person whose entitlement is being challenged is not the former spouse, the written notice must indicate that the person was related to the former spouse, but not the member, by blood, adoption or affinity, and state the nature of the relationship.

14.16(2) *Delivery of notice.* Written notice under this rule must be addressed to IPERS General Counsel and mailed to IPERS by registered mail or served upon IPERS in the same manner as a summons in a civil action.

14.16(3) *Administration.* Upon receipt of written notice that meets the requirements of subrules 14.16(1) and 14.16(2):

- a. IPERS shall review the deceased member's account and determine if there are moneys left to be distributed from the account.
- b. IPERS shall pay the amounts owed, if any, to the probate court having jurisdiction over the decedent's estate, if the deceased member has an open estate.
- c. IPERS shall pay the amounts owed, if any, to the probate court that had or would have had jurisdiction over the decedent's estate, if the deceased member's estate is closed or an estate was not opened.
- d. As IPERS makes applicable payments, a copy of the written notice received by IPERS shall be filed with the probate court.

If the probate court charges a filing fee for the deposit of amounts payable hereunder, IPERS shall deduct such filing fees and other court costs from the amounts payable prior to transfer. The probate court shall hold the funds and, upon its determination, shall order disbursement or transfer in accordance with the determination. Additional filing fees and court costs, if any, shall be charged upon disbursement either to the recipient or against the funds on deposit with the probate court, in the discretion of the court.

14.16(4) *Release of claims.* Payments made to a probate court under this rule shall discharge IPERS from all claims by all persons for the value of amounts paid the court.

These rules are intended to implement Iowa Code sections 97B.1A(8), 97B.1A(18), 97B.1A(19), 97B.34, 97B.34A, 97B.44, 97B.52 and 97B.53B and 2000 Iowa Acts, chapter 1077, section 75.

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CHAPTER 15 DIVIDENDS

[Prior to 11/24/04, see 581—Ch 21]

495—15.1(97B) Dividend payments for beneficiaries of members retiring prior to July 1, 1990, who chose joint and survivor annuity options.

15.1(1) *November dividend adjustment.* Effective July 1, 2008, in order to determine whether the adjustment to dividend payments is payable under Iowa Code section 97B.49F(1) “b,” an IPERS actuary shall compare the actuarially required contribution rate for the fiscal year of the dividend adjustment to the statutory contribution rate for that same fiscal year and certify the results to IPERS. If the actuarially required contribution rate exceeds the statutory contribution rate for that same fiscal year, the applicable percentage used to calculate dividend adjustments shall be zero.

15.1(2) *General.* The dividend payable to the beneficiary of a pre-July 1, 1990, retired member who selected a joint and survivor annuity option, except for the year of the member’s death and the next year, is calculated in the same manner as for retired members.

For a member who lives into November of the year in which the member dies, the dividend will be payable to the member’s account.

15.1(3) *Dividend for the years in which member’s death occurs.* For a member who does not live into November of the year in which the member dies, the dividend payable for the year in which the member dies is calculated the same as it would have been calculated for the deceased retired member. The dividend amount that would have been payable to the deceased retired member is then multiplied by the survivor annuity percentage selected for the contingent annuitant (CA) in the member’s retirement application.

15.1(4) *Dividend for the year following the year of the retired member’s death.* For a member who does not live into November of the year in which the member dies, the dividend payable in the year following the year of the member’s death is calculated as follows. The sum of the survivor’s monthly benefit payments received for the year in which the member’s death occurs is divided by the number of survivor benefit payments for that year, and that amount is multiplied by 12. That amount plus the member’s survivor’s prior dividend is then multiplied by the dividend rate for the year following the year of the member’s death, which equals the dividend adjustment for the year following the year of the member’s death. This dividend adjustment plus the prior year’s dividend produces the dividend amount for the year following the year of the member’s death.

15.1(5) *Examples.*

a. Dividend for the year of the member’s death. The following assumptions are made. The member retired in 1989 and selected a joint and 50 percent to survivor annuity. The retired member received a monthly payment of \$1,000, and died in June 2002. The member received \$12,000 in monthly benefits for January through December 2001. The member received a dividend of \$500 in 2001, and the dividend rate is 3 percent for 2002.

2001 total monthly benefits		2001 dividend amount		2002 dividend rate		2002 dividend adjustment		2001 dividend amount		Dividend payable amount		CA%		CA 2002 dividend
\$12,000.00	+	\$500.00	×	3%	=	\$375.00	+	\$500.00	=	\$875.00	×	50%	=	\$437.50

b. Dividend for the year following the year of the member’s death. The following assumptions are made. The member retired in 1989 and selected a joint and 50 percent to survivor annuity. The retired member received a monthly payment of \$1,000, and died in June 2002. The survivor received \$500 each month for July through December of 2002 for a total of \$3,000. The survivor received a dividend of \$437.50 in 2002, and the dividend rate is 3 percent for 2003.

2002 total monthly benefits for CA		Total of payments for CA 2002		Twelve months for 2002		2002 dividend amount		2003 dividend rate		2003 dividend adjustment		2002 dividend amount		Dividend payable to CA for 2003
\$3,000.00	÷	6 months	×	12 months	+	\$437.50	×	3%	=	\$193.13	+	\$437.50	=	\$630.63

[ARC 7759B, IAB 5/6/09, effective 4/17/09]

495—15.2(97B) Favorable experience dividend (FED) under Iowa Code section 97B.49F(2). For members retiring on and after July 1, 1990, dividends are payable as follows.

15.2(1) Allocation of favorable experience. The system shall, following the first annual actuarial evaluation in which IPERS is found to be fully funded, determine by rule the allocation of the system's favorable actuarial experience, if any, between the reserve account created under Iowa Code section 97B.49F(2) and the remainder of the retirement fund.

Effective July 1, 2006, IPERS shall in no event credit amounts attributable to favorable experience to the FED reserve account, unless IPERS is fully funded and will remain fully funded after such amounts are credited to the FED reserve account. "Fully funded" means that the funded ratio as determined under Iowa Code section 97B.1A(11A) remains at least 100 percent following the allocation of favorable experience to the FED reserve account.

15.2(2) Determination of applicable percentage. The system shall have sole discretion to determine the applicable percentages that will be used in calculating favorable experience dividends payable under this rule, if any, subject to the actuary's certification that the resulting favorable experience dividends meet the requirements of Iowa Code section 97B.49F(2) and this rule.

a. The system's annual applicable percentage target for calculating dividends under Iowa Code section 97B.49F(2) shall be equal to the applicable percentage used in calculating dividends payable to retired members under Iowa Code section 97B.49F(1). Notwithstanding the foregoing, the system may set a greater or lesser applicable percentage for calculating dividends under this rule depending on the funding adequacy of the reserve account. In no event shall the applicable percentage exceed 3 percent.

b. In determining the annual applicable percentage, the system shall consider, but not be limited to, the value of the reserve account, distributions made from the reserve account in previous years, and the likelihood of future credits to and distributions from the reserve account. The system shall make its annual applicable percentage decisions using at least a rolling five-year period.

c. If for any year the system cannot afford an applicable percentage equal to that payable to retired members under Iowa Code section 97B.49F(1), the system may use applicable percentages in succeeding years that are higher than those used in calculating dividends for retired members under Iowa Code section 97B.49F(1) (but not in excess of 3 percent).

d. An applicable percentage in excess of the applicable percentage declared under Iowa Code section 97B.49F(1) made for catch-up purposes shall not reduce the funding of the reserve account below the amount the system's actuary determines is necessary to pay the maximum favorable experience dividend for each of the next five years, based on reasonable actuarial assumptions.

15.2(3) Calculation of FED for individual members and beneficiaries. A member must be retired for one full year to qualify for a favorable experience dividend. In determining whether a member has been retired one full year, the system shall count the member's first month of entitlement as the first month of the one-year period. The month in which the favorable experience dividend is payable shall be included in determining whether a member meets the eligibility requirements.

An eligible member's favorable experience dividend shall be calculated by multiplying the retirement allowance payable to the retired member, beneficiary, or contingent annuitant for the previous December, or such other month as determined by the system, by 12, and then multiplying that amount by the number of complete years the member has been retired or would have been retired if living on the date the dividend is payable, and by the applicable percentage set by the system. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

For otherwise eligible retired reemployed members who chose to suspend their monthly allowance under 495—paragraph 12.8(2) “c,” the suspension shall have no effect on the calculation of FED.

15.2(4) *FED for eligible members and beneficiaries who die before the January distribution date.* If a member or beneficiary receiving monthly payments would have been eligible for a FED distribution in the following January but dies prior to the January distribution date, IPERS will pay a FED to the member’s or beneficiary’s account for the calendar year in which the death occurred. The FED shall be calculated using the monthly payments received in the calendar year the death occurred. A lump sum death benefit shall not constitute a monthly payment for purposes of determining FED eligibility or in making FED calculations.

The FED percentage applied to the monthly payments received in the calendar year of death shall be the most recently declared FED percentage in effect at the time of the FED payment to the member or beneficiary. This subrule shall not be construed to permit a FED distribution to a member where the total monthly benefits received by the member, counting the month of death, is less than 12, even if a period of 12 months has elapsed between the first payment of monthly benefits to the member and the January distribution date.

Notwithstanding the foregoing, if IPERS determines in January of a given year that, based on reasonable actuarial assumptions, there is a reasonable likelihood that a FED will not be declared for the next following January, IPERS may defer paying FED distributions under this subrule until the determination is made. If IPERS subsequently determines that no FED will be declared for a given year, no FED will be payable to a person whose death occurs during the applicable calendar year.

Effective July 1, 2000, a retired member or beneficiary eligible for a FED payment must, in addition to all other applicable requirements, be living on January 1 in order to receive a FED payment otherwise payable in that January.

15.2(5) *Limit on transfers of favorable experience.* Rescinded IAB 11/22/06, effective 12/27/06.

These rules are intended to implement Iowa Code sections 97B.1A(11A), 97B.49F and 97B.70.

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CHAPTER 16
QUALIFIED DOMESTIC RELATIONS ORDERS AND OTHER ASSIGNMENTS
[Prior to 11/24/04, see 581—Ch 21]

495—16.1(97B) Garnishments and income withholding orders.

16.1(1) For the limited purposes of this rule, the term “member” includes IPERS members, beneficiaries, contingent annuitants and any other third-party payees to whom IPERS is paying a monthly benefit or a lump sum distribution.

16.1(2) A member’s right to any payment from IPERS is not transferable or assignable and is not subject to execution, levy, attachment, garnishment, or other legal process, including bankruptcy or insolvency law, except for the purpose of enforcing child, spousal, or medical support.

16.1(3) Only members receiving payment from IPERS, including monthly benefits and lump sum distributions, may be subject to garnishment, attachment, or execution against funds that are payable. Such garnishment, attachment, or execution is not valid and enforceable for members who have not applied for and have not been approved to receive funds from IPERS.

16.1(4) Upon receipt of an income withholding order issued by the Iowa department of human services or a court, IPERS shall send a copy of the withholding order to the member. If a garnishment has been issued by a court, the party pursuing the garnishment shall send a notice pursuant to Iowa law to the member against whom the garnishment is issued.

16.1(5) IPERS shall continue to withhold a portion of the member’s monthly benefit as specified in the initial withholding order until instructed by the court or the Iowa department of human services issuing the order to amend or cease payment. IPERS shall continue to withhold a portion of the member’s monthly benefit as specified in the garnishment until the garnishment expires or is released.

16.1(6) Funds withheld or garnished are taxable to the member. IPERS may assess a fee of \$2 per payment in accordance with Iowa Code section 252D.18A(2). The fee will be deducted from the gross amount, less federal and state income tax, before a distribution is divided.

16.1(7) A garnishment, attachment or execution may not be levied upon funds which are already the subject of a levy, including a levy placed upon funds by the United States Internal Revenue Service, unless the requirements of IRC Section 6334(a)(8) are met. Multiple garnishments, attachments and executions are allowed as long as the amount levied upon does not exceed the limitations prescribed in 15 U.S.C. Section 1673(b).

16.1(8) IPERS may release information relating to entitlement to funds to a court or to the Iowa department of human services prior to receipt of a valid garnishment, attachment, execution, or income withholding order when presented with a written request stating the information requested and reasons for the request. This request must be signed by a magistrate, judge, or child support recovery unit director or the director’s designee, including an attorney representing the Iowa department of human services. In addition, IPERS may release information to the Iowa department of human services through automated matches.

495—16.2(97B) Qualified domestic relations orders. This rule shall apply only to marital property orders. All support orders shall continue to be administered under rule 495—16.1(97B).

16.2(1) Definitions.

“*Alternate payee*” means a spouse or former spouse of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by IPERS with respect to such member. “Alternate payee” also refers to persons who are entitled pursuant to a qualified domestic relations order to receive benefits after the death of the original alternate payee.

“*Benefits*” means, for purposes of this rule and depending on the context, a refund, monthly allowance (including monthly allowance paid as an actuarial equivalent (AE)), or death benefit payable with respect to a member covered under IPERS. “Benefits” does not include dividends payable under Iowa Code section 97B.49 or other cost-of-living increases unless specifically provided for in a qualified domestic relations order.

“Domestic relations order” means any judgment, decree, or order which relates to the provision of marital property rights to a spouse or former spouse of a member and is made pursuant to the domestic relations laws of a state.

“Member” means, for purposes of this rule, IPERS members, beneficiaries, and contingent annuitants.

“Qualified domestic relations order” or *“QDRO”* means a domestic relations order which assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member under IPERS and meets the requirements of this rule.

“Trigger event” means a distribution or series of distributions of benefits made with respect to a member.

16.2(2) Requirements.

a. Mandatory provisions. A domestic relations order is a qualified domestic relations order if such order:

(1) Clearly specifies the member’s name and last-known mailing address, member identification number or social security number, and the names and last-known mailing addresses and social security numbers of alternate payees. This information shall be provided to IPERS in a cover letter or a court’s Confidential Information Form;

(2) Clearly specifies a fixed dollar amount or a percentage, but not both, of the member’s benefits to be paid by IPERS to the alternate payee or the manner in which the fixed dollar amount or percentage is to be determined, provided that no such method shall require IPERS to perform present value calculations of the member’s accrued benefit;

(3) Clearly specifies the period to which such order applies, including whether benefits cease upon the death or remarriage of the alternate payee;

(4) Clearly specifies that the order applies to IPERS;

(5) Clearly specifies that the order is for purposes of making a property division; and

(6) Is clearly signed by the judge and filed with the clerk of court. IPERS will consider an order duly signed if it carries an original signature, a stamp bearing the judge’s signature, or is conformed in accordance with local court rules.

b. Prohibited provisions. A domestic relations order is not a qualified domestic relations order if such order:

(1) Requires IPERS to provide any type or form of benefit or any option not otherwise provided under Iowa Code chapter 97B;

(2) Requires IPERS to provide increased benefits determined on the basis of actuarial value;

(3) Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined by IPERS to be a qualified domestic relations order;

(4) Requires any action by IPERS that is contrary to its governing statutes or plan provisions;

(5) Awards any future benefit increases that are provided by the legislature, except as provided in subparagraph 16.2(2)“c”(2); or

(6) Requires the payment of benefits to an alternate payee prior to a trigger event.

c. Permitted provisions. A qualified domestic relations order may also:

(1) If a trigger event has not occurred as of the date the order is received by IPERS, name an alternate payee as a designated beneficiary or contingent annuitant, require the payment of benefits under a particular benefit option, or both;

(2) Specify that the alternate payee shall be entitled to a fixed dollar amount or percentage of dividend payments, or cost-of-living increase or any other postretirement benefit increase to the member (all known as dividend payments), as follows:

1. If the court order awards a fixed dollar amount of benefits to the alternate payee, the dollar amount of dividend payments to be added or method for determining said dollar amount shall be stated in the court order or an award of a share of dividend payments shall be given no effect; and

2. If the court order awards a specified percentage of benefits to the alternate payee, IPERS shall add dividends to the alternate payee's share of the retirement allowance as necessary to keep the alternate payee's share of payments at the percentage specified in the court order;

(3) Bar a vested member from requesting a refund of the member's accumulated contributions without the alternate payee's written consent;

(4) Allow benefits to be paid to an alternate payee based on a period of reemployment for a retired member; and

(5) Name a successor alternate payee to receive the amounts that would have been payable to the member's spouse or former spouse under the order, if the alternate payee dies before the member. The designation of a successor alternate payee in an order shall be void and be given no effect if IPERS does not receive confirmation of the successor's name, social security number, and last-known mailing address in a cover letter or in a copy of the court's confidential information form. A QDRO that lists a series of default successor alternate payees by class or permits a successor alternate payee to designate additional successor alternate payees is not permitted and will be rejected. Once a QDRO is qualified and accepted by IPERS for administration, in order to change the designation of successor alternate payees, an amended order is required.

16.2(3) Administrative provisions.

a. Payment to an alternate payee shall be made in a like manner and at the same time that payment is made to the member. Payment to the alternate payee shall be in a lump sum if benefits are paid in a lump sum distribution or as monthly payments if a retirement option is in effect. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member's and alternate payee's respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee.

b. The alternate payee shall not be entitled to any share of the member's death benefits except to the extent such entitlement is recognized in a qualified domestic relations order or in a beneficiary designation filed subsequent to the dissolution.

c. If a qualified domestic relations order directs the member to name the alternate payee under the order as a designated beneficiary, and the member fails to do so, the provisions of the qualified domestic relations order awarding the alternate payee a share of the member's death benefit shall be deemed, except as revoked or modified in a subsequent qualified domestic relations order, to operate as a beneficiary designation, and shall be given first priority by IPERS in the determination and payment of such member's death benefits. Death benefits remaining after payments required by the qualified domestic relations order, to the extent possible, shall then be made according to the terms of the member's most recent beneficiary designation.

d. If an alternate payee has been awarded a share of the member's benefits and dies before the member, the entire account value shall be restored to the member unless otherwise specified in the order and in the manner required under this rule.

e. An alternate payee shall not receive a share of dividends or other cost-of-living increases, unless so provided in a qualified domestic relations order.

f. The CEO, or CEO's designee, shall have exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A final determination by the CEO, or CEO's designee, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

g. A person who attempts to make IPERS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to a member shall be liable to IPERS for its costs and attorney's fees.

h. A domestic relations order shall not become effective until it is approved by IPERS. If a member is receiving a retirement allowance at the time a domestic relations order is received by the system, the order shall be effective only with respect to payments made after the order is determined to be a qualified

domestic relations order. If the order is determined to be qualified after the current month's benefit is certified for payment, the alternate payee's portion of the member's benefit shall begin with the next month's benefit paid to the member without credit for the prior month's payment. If the member is not receiving a retirement allowance at the time a domestic relations order is approved by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS. If IPERS has placed a hold on the member's account following written or verbal notification from the member, member's spouse, or legal representative of either party of a pending dissolution of marriage, and no further contacts are received from either party or their representatives within the following one-year period, IPERS shall release the hold.

i. IPERS and its staff shall have no liability for making or withholding payments in accordance with the provisions of this rule.

j. Alternate payees must notify IPERS of any change in their mailing addresses. IPERS shall contact the alternate payee in writing at the last-known mailing address on file with IPERS, notifying the alternate payee that an application for a distribution has been received with respect to the member and providing the alternate payee with an application to be completed and returned by the alternate payee. The written notice shall provide that if the alternate payee does not return said application to IPERS within 60 days after such written materials are mailed by IPERS, the amounts otherwise payable to the alternate payee shall be paid to the member or the member's beneficiary(ies) until a valid application is received, and IPERS shall have no liability to the alternate payee with respect to such amounts. IPERS has no duty or responsibility to search for alternate payees. If distributions have already begun at the time that an order is determined by IPERS to be a qualified domestic relations order, the qualified domestic relations order shall be deemed to be the alternate payee's application to begin receiving payments under the QDRO.

k. If an alternate payee's application is received after the member's first or current month's benefit is certified for payment, the alternate payee's portion of the member's benefit shall begin with the next month's benefit paid to the member without credit for the prior month's payment.

l. For both lump sum and monthly payments, the alternate payee's tax withholding and rollover (if eligible) elections must be received before the first or current month's benefit is certified for payment or IPERS will use the applicable default tax withholding elections.

m. If an order that is determined to be a qualified domestic relations order divides a member's account using a service factor formula and the member's IPERS benefits are based on a number of quarters less than the member's total covered quarters, notwithstanding any terms of the order to the contrary, IPERS shall limit the number of quarters used in the numerator and the denominator of the service fraction to the number of quarters actually used in the calculation of IPERS benefits.

n. The parties or their attorneys in a dissolution action involving an IPERS member shall decide between themselves which attorney will submit a proposed domestic relations order to IPERS for review. IPERS shall not review a proposed order that has not been approved as to form by both parties or their counsel. A rejection under this paragraph shall not preclude IPERS from placing a hold on a member's account until the qualified status of a proposed order is resolved.

These rules are intended to implement Iowa Code sections 97B.4, 97B.15, 97B.25, 97B.38 and 97B.39.

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CHAPTER 17
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

495—17.1(17A,22) Definitions. As used in this chapter:

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information as described in Iowa Code section 97B.17, and records, or information contained in records, that are specified in Iowa Code section 22.7, or by other provision of law.

“Custodian” means the CEO or designee.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system under the jurisdiction of the agency.

“Record” means all or part of a “public record” as defined in Iowa Code section 22.1 or 97B.17 which is owned by or in the physical possession of the agency.

“Record system” means any group of records under the jurisdiction of the agency from which a confidential record or information may be retrieved.

495—17.2(17A,22) Statement of policy, purpose and scope. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This chapter implements Iowa Code section 22.11 by establishing rules, policies, and procedures for the maintenance of employee, member, and other records in the possession of and under the jurisdiction of the agency.

495—17.3(17A,22) Requests for access to records.

17.3(1) Location of record. A request for access to a record under the jurisdiction of the agency shall be directed to the CEO or designee, Iowa Public Employees’ Retirement System (IPERS), 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117.

17.3(2) Office hours. Records shall be made available during all customary office hours which are from 8 a.m. to 4:30 p.m., excluding officially designated holidays.

17.3(3) Request for access. Requests for access to open records may be made in writing, by telephone, electronically or in person. All requests shall include the name, address, telephone number, and the E-mail address (if available) of the person requesting the information. All requests for information regarding member accounts must contain the member’s identification number or social security number. Requests shall identify the particular records sought by name or other personal identifier and shall include a description in order to facilitate the location of the record. A person shall not be required to give a reason for requesting an open record. The request shall indicate the maximum search fee the requester is prepared to pay. If the maximum amount is reached before the requested records have been located and copied, the requester shall be notified and asked for further directions.

17.3(4) Response to requests. The custodian is authorized to grant or deny access to agency records according to the provisions of this chapter. The decision to grant or deny access may be delegated to one or more designated employees.

Access to an open record shall be provided promptly upon request, unless the size or nature of the request makes prompt access impractical. However, access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall inform the requester of the reason for the delay and an estimate of the length of that delay and, upon request, shall provide a written reply.

The custodian may deny access to the record or information in the record by members of the public only on the grounds that a denial is warranted under Iowa Code section 22.8(4) or 22.10(4), or that it is a confidential record or information, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record or information is limited by law and, therefore,

may generally be provided only in accordance with the provisions of rule 495—17.4(97B) and other applicable provisions of law.

17.3(5) *Security of record.* Individuals will not be given access to the area where the records are kept. All examination and copying of records shall be done under supervision. Records shall be protected from damage and disorganization.

17.3(6) *Copying.* A reasonable number of copies may be made at IPERS. If the number of copies is prohibitive or the copying equipment is not available, IPERS may arrange to have copies made elsewhere subject to costs.

17.3(7) *Fees.*

a. When charged. The agency is authorized to charge fees in connection with the retrieval, restoration, supervision, compiling and copying of records in accordance with Iowa Code section 22.3. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published records and for copies of records supplied by the agency shall be posted in the agency. Copies of records may be made by or for members of the public at cost, as determined by and posted in the agency. When the mailing of copies of records is requested, the actual costs of mailing may also be charged to the requester.

c. Search and supervisory fee. A fee may be charged for actual expenses in retrieval, restoration, compiling and supervising the examination and copying of requested records. The fee shall be based on the hourly rate of pay of an agency employee who ordinarily would be appropriate and suitable to perform this function and shall be posted in the agency. No fee shall be charged if the records are not made available for inspection. The requester shall be given advance notice of the hourly rate that will be charged in connection with the retrieval, restoration, supervision, compilation and copying of records.

d. Computer-stored information. A fee, as described in the paragraph above, may be charged for the actual expenses related to the retrieval, restoration and copying of information stored in electronic records. IPERS shall not create custom software to elicit information that is not readily available or accessible on the electronic systems as a normal business function.

e. Advance payments.

(1) When the estimated fee chargeable under this subrule exceeds \$25, the requester shall be required to make an advance payment of the estimated fee. Upon completion of the request for records, the actual fee shall be calculated and the difference refunded or collected.

(2) When a requester has previously failed to pay a fee charged under this subrule, full advance payment of future estimated fees of any amount may be required before processing a new or pending request for access to records from that requester.

495—17.4(17A,22) Access to confidential records. Under Iowa Code sections 22.7, 97B.17 or other applicable provisions of law, the custodian may disclose certain confidential records to members of the public. Other provisions of law may authorize or require the custodian to release specified confidential records or information under certain circumstances or to particular persons. The following procedures apply to requests for the custodian to permit the examination or copying of a confidential record and are in addition to those specified for requests for access to records in rule 17.3(17A,22).

17.4(1) *Proof of identity.* A person requesting access to a confidential record shall be required to provide proof of identity satisfactory to the custodian.

17.4(2) *Requests.* A request for access to a confidential record shall be in a form acceptable to the agency. A person requesting access to a confidential record shall be required to sign a statement enumerating the specific grounds alleged to justify access and provide any proof necessary to establish relevant facts.

17.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases that record, the custodian may make reasonable efforts to notify any person who is a subject of that record, is identified in that record, and whose address, telephone number, or other personal identifier is contained in that record. The custodian shall give the subject of that confidential record to whom notification is transmitted a

reasonable opportunity to seek an injunction under Iowa Code section 22.8 and indicate to the subject of that record the specified period of time during which disclosure will be delayed for that purpose.

17.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, in whole or in part, the custodian shall notify the requester in writing. The denial shall be signed by the custodian of the record and shall include:

- a. The name and title of the person responsible for the denial; and
- b. A citation to the statute or other provision of law which prohibits disclosure of the record; or
- c. A citation to the statute vesting discretion in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

17.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

495—17.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as confidential and withhold it from examination only to the extent that the custodian is authorized to refuse to disclose the record to members of the public by Iowa Code section 22.7 or 97B.17, another applicable provision of law, or in response to a court order.

17.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of all or a part of a record under the jurisdiction of the agency to members of the public and who asserts that Iowa Code section 22.7 or 97B.17, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record, may file a request, as provided for in this rule, for its treatment as a confidential record and to withhold it from public inspection.

17.5(2) *Request.* A request for the treatment of a record as a confidential record shall be in writing and shall be filed with the custodian. The request shall include an enumeration of the specific reasons justifying confidential record treatment for all or part of that record, the specific provisions of law that authorize confidential record treatment in this instance, and the name, mailing address, telephone number and, if available, the E-mail address of the person authorized to respond to any action concerning the request. If the information is regarding an IPERS member, the member identification number or social security number of the member must be included. The person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of the record as a confidential record and to provide any proof necessary to establish relevant facts. The person filing a request shall, if possible, accompany the request with a redacted copy of the record in question for which confidential record treatment has been requested. If the original record is submitted at the same time the request is filed, the person shall indicate conspicuously on the original record which portions of it are requested to be confidential. Requests for treatment of all or portions of a record as confidential for a limited time period shall also specify the precise period of time for which confidential record treatment is requested.

17.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record or confidential information contained in a record shall not preclude the custodian from treating it as a confidential record or the confidential information contained in that record as permitted under Iowa Code section 22.7 or 97B.17. However, if a person who has submitted information does not request confidential record treatment under the provisions of Iowa Code sections 22.7(3) (trade secrets), 22.7(6) (advantage to competitors), and 22.7(18) (communications not required by law, rule, procedure or contract), the custodian of records containing that information may, but is not required to, proceed as if that person has no objection to its disclosure to members of the public.

17.5(4) *Timing of decision.* A decision by the agency with respect to the disclosure of all or part of a record under its jurisdiction to members of the public may be made when a request for its treatment as a confidential record is filed or when a request is received for access to the record by a member of the public.

17.5(5) *Request granted or deferred.* If a request for a confidential record or information is granted, or if action on a request is deferred, a copy of the record from which the material in question has been deleted and a copy of the decision to grant the request or to defer action on the request will be placed in

the original file, and will be made available for public inspection. If a request is subsequently received for access to the original record, reasonable and timely efforts will be made to notify any person who has filed a request for its treatment as a confidential record.

17.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of the reasons for that determination. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

495—17.6(17A,22) Procedure by which a person who is the subject of a record may have additions, dissents, or objections entered into certain records. Except as otherwise provided by law, the subject of a record may file a request with the custodian to review and to have the right to have written additions, dissents, or objections entered into a record under the jurisdiction of the agency. However, this does not authorize a person who is a subject of a record to alter the original copy of the record or to expand the official record of an agency proceeding. The subject shall send the request to review a record or the written statement of additions, dissents or objections to the agency. Additions, dissents, or objections must be dated and signed by the subject, and shall include the current mailing address, telephone number and, if available, the E-mail address of the subject or the subject's representative. The subject's social security number must also be included on the addition.

495—17.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record under the jurisdiction of the agency may consent to disclosure to a third party of that portion of the record concerning the subject except as provided in subrule 17.12(1). The consent must be in writing and must identify the particular record or records that may be disclosed, the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record or information may be disclosed. The subject and, where applicable, the person to whom the record is to be disclosed, must provide proof of identity. Appearance of legal counsel, or a duly appointed representative on behalf of a subject of a confidential record, is deemed to constitute consent for the agency to disclose records about that person to the person's representative.

495—17.8(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

495—17.9(17A,22) Disclosures without the consent of the subject.

17.9(1) Open records shall be routinely disclosed without the consent of the subject.

17.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 495—17.10(97B) or in the notice for a particular record system.
- b.* To a recipient who has provided advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the authorized representative of the government agency or instrumentality has submitted a written request to the custodian specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual following a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known mailing address of the subject.
- e.* To the legislative services agency.
- f.* In the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

495—17.10(17A,22) Routine use.

17.10(1) Defined. “Routine use” means the disclosure of a record, without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required or permitted to be made by statute other than the public records law, Iowa Code chapter 22.

17.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a.* Disclosure to officers, employees and agents of the agency who have a need for the record in the performance of duties. The CEO or designee shall resolve disputes concerning what constitutes legitimate need to use confidential or exempt records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of an agency.
- d.* Transfers of information within an agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal, state, or other governmental entities for audit purposes or for purposes of determining whether an agency is operating a program lawfully.
- f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.
- g.* Disclosure to officers, employees and agents of the agency who need to use the record to determine the named beneficiary when a wage earner or retiree dies; to maintain a record of wages reported and quarters worked for computation of benefits; to track benefits received; to recompute and adjust benefits; to update information for electronic deposit of benefits; to audit payroll reports; and to verify quarterly update of wages paid.

495—17.11(17A,22) Consensual disclosure of confidential records.

17.11(1) *Consent to disclosure by a subject individual.* The subject may consent in writing to disclosure of confidential records as provided in rule 495—17.7(97B).

17.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves a record

under the jurisdiction of the agency may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter. The public official shall be required to treat the information received as confidential.

17.11(3) *Obtaining information from a third party.* The agency may be required to obtain information to coordinate benefits, verify applicant and employee information or to provide other services. Requests to third parties for this information may involve the release of confidential identifying information about individuals contained in records under the jurisdiction of the agency. Such requests are within the meaning of routine use as defined in rule 495—17.10(97B) and shall not require authorization from the subject of the record.

495—17.12(17A,22) Release to subject.

17.12(1) Records shall be released to the subject of a confidential record upon a written request from the subject. The agency need not release the following records or information to the requester:

- a. The identity of a person providing information about the requester when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).
- b. Records that are the work products of an attorney or are otherwise privileged.
- c. Peace officers' criminal investigative reports except as required by the Iowa Code. See Iowa Code section 22.7(5).
- d. As otherwise authorized by law or covered as an investigative request required by the system.

17.12(2) Where a record has multiple persons with interest in the confidentiality of the record, reasonable steps shall be taken to protect confidential information relating to other persons in the record.

495—17.13(17A,22) Availability of records.

17.13(1) *Open records.* Records under the jurisdiction of the agency are open for public inspection and copying unless otherwise provided by these rules.

17.13(2) *Confidential records.* The following records under the jurisdiction of the agency may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids. See Iowa Code section 72.3.
- b. Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract, provided that, if requests for proposals are canceled prior to the issuance of a notice of intent to award, all procurement proposals shall be returned in confidence to the bidders and no file copies shall be retained.
- c. Tax records made available to the agency.
- d. Records which are exempt from disclosure under Iowa Code sections 22.7 and 97B.17, including, but not limited to:
 - (1) Communications not required by rule, law, procedure or contract to the extent that the agency reasonably believes that such communications would not be made if the supplier knew the information would be made available for general public examination. These records are confidential under Iowa Code section 22.7(18).
 - (2) Data processing software, as defined in Iowa Code section 22.3A, which is developed by a governmental body.
 - (3) Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.
 - (4) Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.
- e. Minutes of closed meetings of a government body under Iowa Code section 21.5(4).
- f. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e."

g. Those portions of agency manuals, examination materials, instructions or other statements issued which set forth criteria or guidelines to be used in auditing, in making inspections, in settling commercial disputes or negotiating commercial contract arrangements, or in the selection or handling of cases, such as operational tactics on allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4) and 622.10, Iowa R.C.P. 1.503, Fed. R.Civ.P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code section 622.10, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Any other records made confidential by law.

17.13(3) Authority to release confidential records. The agency, under certain circumstances, may disclose some information or confidential records which otherwise are exempt from disclosure under Iowa Code sections 22.7 and 97B.17, or other law. Any person may request permission to inspect particular records withheld from inspection as confidential records. If it is initially determined that records will be released, reasonable efforts will be made, where appropriate, to notify interested persons, and the records may be withheld from inspection for up to ten days to allow interested persons to seek injunctive relief.

495—17.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by personal identifier in record systems defined in rule 495—17.1(97B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information, and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Record systems under the jurisdiction of the agency that are retrievable through the use of personal identifiers are described as follows:

17.14(1) IPERS personnel files and records. Personnel files of IPERS employees are maintained and kept under the jurisdiction of the agency and contain personal, private, and otherwise confidential records under Iowa Code section 22.7(11). It is unlikely that the personal and private information in these records can be separated from otherwise releasable information without identifying the subject or the employee's family. These records contain names, social security numbers and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Data processing systems permit the comparison of personally identifiable information in one record system with that in another system.

17.14(2) Iowa public employees' retirement system. The retirement system possesses records that concern individual public employees who are covered by IPERS and their families. Records are collected in accordance with Iowa Code chapter 97B and are confidential records in part under Iowa Code sections 22.7 and 97B.17. These records contain names, addresses, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Data processing systems permit the comparison of personally identifiable information in one record system with that in another system.

17.14(3) Vendor contracts. These are records pertaining to facilities management, training, investment management, and other services. These records are collected in accordance with Iowa Code chapter 97B and are confidential records in part under Iowa Code section 22.7. These records contain names, addresses, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Data processing systems permit the comparison of personally identifiable information in one record system with that in another system.

495—17.15(17A,22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the agency other than those record systems retrieved by personally identifiable information as defined in rule 495—17.1(97B). These records are routinely available to the public subject to costs. However, these records may contain confidential information. In addition, the records listed in subrules 17.15(1) to 17.15(4), 17.15(6), and 17.15(9) may contain information about individuals. All records may be stored on paper, microfilm, tape or in automated data processing systems unless otherwise noted.

17.15(1) Rule-making records. Rule-making records may identify individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is not retrieved by individual identifier.

17.15(2) Board and committee records. Agendas, minutes, and materials presented to the board and committee within the agency are available from the agency except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may identify individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

17.15(3) Publications. News releases, annual reports, final project reports, newsletters, and brochures describing various programs are available from the agency. These publications may contain information about individuals, including staff or members of the board or committee. This information is not retrieved by individual identifier.

17.15(4) Statistical reports. Periodic reports of activity for various department programs are available from the department. This information is not retrieved by individual identifier.

17.15(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 495—17.5(97B) or subrule 17.13(2). These records, collected under the authority of Iowa Code chapters 97B and 97C, may contain confidential information about individuals.

17.15(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws. This information is not retrieved by individual identifier.

17.15(7) Policy manuals. The agency's manuals containing the policies and procedures for programs administered by the agency are available at IPERS' headquarters. This information is not retrieved by individual identifier.

17.15(8) Administrative records. These are records related to the budgets of the agency, the requisition of equipment and supplies, the payment of claims, and other accounting functions as well as records kept by the investments section, including information on investment policies and portfolios. Some investment information is partially confidential under Iowa Code sections 22.7 and 97B.17.

17.15(9) All other records not exempted from disclosure by law.

495—17.16(17A,22) Comparison of data processing systems. To the extent required by law, all data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

495—17.17(17A,22) Applicability. This chapter does not:

1. Make available to the general public records which contain information about individuals by that person's name or other personal identifier.
2. Make records available to the general public which would otherwise not be available under the public records law, Iowa Code chapter 22 and Iowa Code section 97B.17.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are under the jurisdiction of another agency.
4. Apply to grantees, including local governments or their subdivisions, administering state-funded programs unless otherwise provided by law or agreement.

5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of those records to the general public or to any individual or party to litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

6. Require the agency to create, compare or procure a record solely for the purpose of making it available.

These rules are intended to implement Iowa Code chapter 97B.

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CHAPTER 18
Reserved

CHAPTER 19
DECLARATORY ORDERS

495—19.1(17A) Petition for declaratory order. Any person may file a petition with the agency for a declaratory order regarding the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. Such petitions shall be addressed to the CEO, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. A petition is deemed filed when it is received by the agency.

The agency shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	} PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting pursuant to 19.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

495—19.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons not served by the petitioner pursuant to rule 19.7(17A) to whom notice is required by any provision of law. Notice may also be given to any other person.

495—19.3(17A) Intervention.

19.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

19.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the agency.

19.3(3) A petition for intervention shall be filed at IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. Such a petition is deemed filed when it is received by IPERS.

The agency will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

Petition by (Name of Original Petitioner)
for a Declaratory Order on
(Cite provisions of law in original petition).



PETITION FOR
INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented in the original petition for declaratory order, and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

495—19.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The agency may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

495—19.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117.

495—19.6(17A) Service and filing of petitions and other papers.

19.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

19.6(2) When filing required. Petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the agency.

19.6(3) Method of service. Method of service, time of filing, and proof of mailing shall be as provided by uniform rule on contested cases 495—26.13(17A).

495—19.7(17A) Informal meeting. The agency may schedule a brief and informal meeting between the original petitioner, all intervenors, and the agency, a member of the agency, or a member of the staff of the agency to discuss the questions raised. The agency may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the agency by any person.

495—19.8(17A) Action on petition.

19.8(1) Within 30 days after receipt of a petition for a declaratory order, the CEO or designee shall take action on the petition pursuant to Iowa Code section 17A.9(5).

19.8(2) The date of issuance of an order or of a refusal to issue an order shall be the date of mailing of a decision or order, or the date of delivery if service is by other means, unless another date is specified in the order.

495—19.9(17A) Refusal to issue order.

19.9(1) The agency shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1). The agency may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a.* The petition does not substantially comply with the required form.
- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the agency to issue an order.
- c.* The agency does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
- i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j.* The petitioner requests the agency to determine whether any of the conditions under Iowa Code section 17A.19(8), incorporated by this reference, have been met.
- k.* The agency will not issue declaratory orders on the following:
 - (1) The present value of IPERS retirement monthly benefits;
 - (2) Actuarial assumptions used or proposed to be used by the agency;
 - (3) The impact of proposed legislation;
 - (4) Issues which require the disclosure of confidential information; and
 - (5) Items listed in rule 495—26.13(17A,97B).

19.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

19.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

495—19.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance; the name of petitioner and all intervenors; the specific statutes, rules, policies, decisions, or orders involved; the particular facts upon which it is based; and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

495—19.11(17A) Copies of orders. Copies of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

495—19.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the agency, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant

facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the agency. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 97B.

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CHAPTER 20
RECOGNITION OF AGENTS
[Prior to 11/24/04, see 581—Ch 21]

495—20.1(97B) Recognition of agents.

20.1(1) *Recognition of agents in general.* When a claimant desires to be represented by an agent before the system, the claimant shall designate in writing the name of a representative and the nature of the business the representative is authorized to transact. Such designation on the part of the claimant shall constitute for IPERS sufficient proof of the acceptability of the individual to serve as the claimant's agent. An attorney in good standing may be so designated by the claimant.

20.1(2) *Payment to incompetents.* When it appears that the interest of a claimant or retired member would be served, IPERS may recognize an agent to represent the individual in the transaction of the affairs with IPERS. Recognition may be obtained through the filing with IPERS of a copy of the guardianship, trusteeship, power of attorney, conservatorship, or social security representative payee documents by the individual so designated. Such persons have all the rights and obligations of the member. Notwithstanding the foregoing, none of the foregoing representatives shall have the right to name the representative as the member's beneficiary unless approved to do so by a court having jurisdiction of the matter, or unless expressly authorized to do so in a power of attorney executed by the member.

495—20.2(97B) Agreements by agents. An individual serving in the capacity of an agent establishes an agreement with IPERS to transact all business with IPERS in such a manner that the interests of the retired member or claimant are best served. Payments made to the agent on behalf of the individual will be used for the direct benefit of the retired member or claimant. Failure to adhere to the agreement will cause discontinuance of the agency relationship and may serve as the basis for legal action by IPERS or the member.

These rules are intended to implement Iowa Code sections 97B.34 and 97B.37.

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CHAPTER 21

MERGERS

[Prior to 11/24/04, see 581—Ch 21]

495—21.1(97B) Procedures for merger of qualified pension plans with IPERS.

21.1(1) Effective January 1, 2003, IPERS will begin accepting qualified pension plans for merger into the IPERS pension plan. This merger process shall provide for the transfer of all active and inactive members, retired members, and beneficiaries of retired members of the merging plan into IPERS, except as otherwise agreed to by IPERS and the merging plan.

21.1(2) The merging plan shall transfer assets to IPERS in an amount equal to the actuarial accrued liability created for IPERS as the result of the transfer of pension obligations owed to active, inactive and retired members of the merging plan. Said actuarial accrued liability shall be determined using the merging plan's membership data, the IPERS benefit structure, and the current IPERS actuarial valuation assumptions as of the date of the transfer.

21.1(3) All years of service under the merging plan shall be recognized by IPERS for purposes of determining eligibility and vested status and calculating IPERS benefits.

21.1(4) All wage records for current active members shall be summarized on the quarterly basis used by IPERS to determine a member's IPERS benefits. IPERS will not independently verify wage records, but will monitor those records to ensure that IRC Section 401(a)(17) limits are not exceeded.

21.1(5) The merging plan's actuary may determine that the accrued benefit of an active or inactive member of the merging plan exceeds the member's accrued IPERS benefits based on the merging plan's membership data and the IPERS benefit structure. The compensation of such individuals for any difference between the monthly benefit they accrued in the merging plan and the benefit they will have under IPERS shall be at the merging plan's sole discretion, and IPERS shall have no liability.

21.1(6) The same methods of conversion and cash out will be used for terminated vested members with a current plan account in the merging plan and for members, if any, who previously elected to freeze their accounts in the former plan to begin participation in IPERS.

21.1(7) The merging plan's retired members shall receive annuity payments from IPERS in the same forms and amounts as provided in the merging plan, provided those forms of payment are available under IPERS. If any retired member from the merging plan is also receiving a benefit from IPERS and the forms of benefits under the two plans differ, the retired member must agree to have the benefit payable from the merging plan converted and paid in the same form as the benefit under IPERS. Dividends for retired members transferred to IPERS shall be determined based on the first month of entitlement under the merging plan.

21.1(8) The monthly benefit payable to transferred members (excluding retired members) by IPERS may be greater or less than the monthly benefit they would have received under the merging plan. IPERS shall not be responsible for any difference in the two benefit amounts. It shall be the sole responsibility of the merging plan to ensure the protection of the accrued benefits of the merging plan's members and beneficiaries.

21.1(9) IPERS may agree to accept in-kind transfers of assets in satisfaction of the liabilities created by the merger, but may, in IPERS' sole discretion, decline all in-kind asset transfers and demand cash to fund the merger.

495—21.2(97B) Mandatory merger criteria.

21.2(1) General. Mergers shall meet the following criteria:

a. There shall be no actuarial gain or loss to IPERS (defined as a change in the unfunded accrued actuarial liability) as a result of a merger with another pension plan.

b. The merging plan shall defend and hold IPERS harmless from any claims by transferred members with respect to employee contribution accounts, cut-back claims, tax issues, and any other cause of action arising hereunder that does not result from IPERS' negligence or misconduct. This indemnification shall also extend to any contractual claims by the merging plan's vendors, pending or

threatened lawsuits or regulatory actions against the merging plan, and appeals by members, retired members and beneficiaries of the merging plan.

c. Prior to the merger date, the merging plan authority and IPERS shall formally agree on all material terms and conditions of the merger in writing.

d. The merging plan authority shall adopt by resolution a proposal to merge the pension plan with and into the IPERS pension plan, with IPERS as the surviving plan, which shall incorporate by reference the details of the merger expressed in the merger agreement between the merging plan and IPERS. The merging plan authority shall secure all other approvals necessary to the merger, and shall certify to IPERS that all necessary authorizations have been received.

e. All assets required to fund the transfer of liabilities created under the merger shall be transferred to IPERS within 120 days after the proposed effective date, plus an additional amount representing a 7.5 percent interest rate (or the current rate assumed by IPERS' actuary in valuing assets and liabilities) commencing on the proposed effective date.

f. After the merger, the merging plan authority, as a covered employer, shall determine employee classifications and deduct and forward member and employer contributions in the same amount as required for all IPERS covered employment.

g. The merging plan authority shall transfer to IPERS in a mutually agreed upon method all employment records for active, inactive, and retired members and beneficiaries, including all tax reporting records. In addition to employment and tax reporting records, transferred electronic files shall include the same enrollment information as required for IPERS covered employers' new employees. Similar demographic information shall be provided to IPERS for spouses and beneficiaries.

h. The merging plan shall, prior to merger, in its sole discretion, make such amendments to its plan documents that it deems to be necessary or appropriate to accomplish the merger, provided that no such amendments shall vary the terms of the agreement to merge without the express written consent of IPERS.

i. IPERS shall, prior to merger, in its sole discretion, make such amendments to its plan documents that it deems to be necessary or appropriate to accomplish the merger, provided that no such amendments shall vary the terms of the agreement to merge without the express written consent of the merging plan.

j. The transferred records of the merging plan shall be treated as confidential records by IPERS as described in Iowa Code section 97B.17.

k. The merging plan authority and its legal and actuarial advisors shall determine the excess accruals, if any, owed to any member of the merging plan transferred to IPERS; shall provide such members with the appropriate election forms and related information; and shall take all steps necessary to complete the payment of compensation to such individuals in satisfaction of the obligation to protect accrued benefits under the merging plan as described above.

l. Excluding matters relating to the distribution of excess accruals, if any, the merging plan authority, its legal counsel, and IPERS and its legal counsel shall jointly develop all required communications regarding the plan merger. IPERS shall have sole responsibility for providing benefits estimates to the merging plan members, in anticipation of the merger. Following the effective date of the merger, all member services shall be handled by IPERS.

m. Following the merger, transferred active, inactive, and retired members and beneficiaries shall be entitled to benefits, including monthly allowances, refunds, actuarial equivalent (AE), death benefits and dividends as other IPERS members having the same demographic, wage and service records.

n. The members of the merging plan who currently have binding assignments against their benefits shall continue to have those assignments administered by IPERS as described in 495—Chapter 16 or as otherwise required by law.

o. The members of the merging plan currently receiving disability retirement benefits must agree to have their disability retirement benefits administered by IPERS as described under 495—Chapter 13, or those members shall not be transferred.

p. The merging plan and IPERS shall jointly agree whether the merger will be submitted to the IRS for approval.

21.2(2) Reserved.

These rules are intended to implement Iowa Code section 97B.42C.

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CHAPTER 22
FEDERAL SOCIAL SECURITY
[Prior to 1/7/04, see 581—Ch 22]

495—22.1(97C) General. In order to extend to the employees of the state of Iowa and its political subdivisions, agencies and instrumentalities the basic protections accorded by the old-age and survivors system embodied in Title II of the federal Social Security Act, on July 1, 1953, the state of Iowa signed a Section 218 Agreement with the Social Security Administration. That Section 218 Agreement, as implemented in Iowa Code chapter 97C, provides Social Security mandates and federal Social Security coverage for most Iowa public employees.

495—22.2(97C) Pre-January 1, 1987, duties. Prior to January 1, 1987, the agency had substantial responsibilities for administering withholding, depositing and reporting requirements for Social Security and Medicare taxes, including audit, tax collection, and dispute resolution responsibilities. Effective January 1, 1987, those responsibilities were mostly transferred to the federal Internal Revenue Service. Accordingly, the agency will assist employers with respect to wage reports, tax collections and adjustments only for the period prior to January 1, 1987.

495—22.3(97C) Post-January 1, 1987, duties.

22.3(1) The agency's responsibilities under the Section 218 Agreement are to administer and maintain the Section 218 Agreement by:

- a.* Maintaining physical custody of the master Section 218 Agreement, modifications, dissolutions, consolidations and intrastate and interstate coverage agreements.
- b.* Preparing Section 218 Agreement modifications to include additional covered employers, following the employer's submission of an IPERS Status Report form indicating the employer should be covered under the Iowa Public Employees' Retirement System.
- c.* Preparing Section 218 Agreement modifications to include additional coverage groups of employees when appropriate.
- d.* Preparing Section 218 Agreement modifications to remove covered employers, coverage groups, and to correct errors in prior modifications.
- e.* Providing advice on Section 218 Agreement optional exclusions applicable to Iowa employers and employees and advice on Iowa Code chapter 97C.
- f.* Providing the Social Security Administration with notice and supporting evidence of the legal dissolution or consolidation of covered entities.
- g.* Assisting with referenda for Social Security and Medicare coverage as set forth in Iowa Code chapter 97C.
- h.* Assisting in the resolution of coverage and taxation questions associated with the Section 218 Agreement and modifications.
- i.* Negotiating with the Social Security Administration to resolve contribution payment and wage reporting issues concerning wages paid before January 1, 1987.
- j.* Advising covered employers on Social Security and Medicare tax and withholding issues.
- k.* Serving as a bridge between covered employers and the Social Security Administration and the IRS by obtaining clarifications of laws, regulations and other appropriate information from other State Social Security administrators, the Social Security Administration, and the Internal Revenue Service.

22.3(2) IPERS shall have no responsibility for Social Security and Medicare matters involving non-Section 218 Agreement employers and employees.

495—22.4(97C) Reports. To assist IPERS in fulfilling its responsibilities hereunder, all covered employers shall provide such reports as IPERS may reasonably require. This reporting requirement is in addition to and does not supersede any federal reporting or other obligations imposed on covered employers in order for them to comply with the current and future withholding, reporting and submission of Social Security and Medicare taxes.

495—22.5(97C) Conflict of laws. In the event of any conflict between Iowa Code chapter 97C, these rules, and the provisions of the Social Security Act, the provisions of the Social Security Act, as amended, shall be controlling.

These rules are intended to implement Iowa Code chapter 97C.

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CHAPTERS 23 to 25
Reserved

CHAPTER 26
APPEALS AND CONTESTED CASES—PROCEEDINGS
[Prior to 1/7/04, see 581—21.9]

495—26.1(17A,97B) Scope and applicability. These rules are applicable to appeals and contested case proceedings conducted by the Iowa Public Employees' Retirement System.

495—26.2(17A,97B) Definitions. Except where otherwise specifically defined by law:

"Appeal" means a dispute, other than a disability claim under Iowa Code section 97B.52A, of an agency decision or action. An appeal shall be conducted as a contested case if IPERS has issued its final agency decision and if the aggrieved party wishes to continue in the appeal process.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means an administrative law judge provided by the department of inspections and appeals.

495—26.3(17A,97B) Appeals.

26.3(1) A party who wishes to appeal a decision by IPERS, other than a disability claim pursuant to Iowa Code section 97B.50A, shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

- a. The name, address, and social security number of the applicant;
- b. A reference to the decision from which the appeal is being made;
- c. The fact that an appeal from the decision is being made;
- d. The grounds upon which the appeal is based; and
- e. Any evidence necessary to support the appeal.

Upon receipt of the appeal, IPERS shall conduct an internal review of the facts and circumstances involved, in accordance with its appeal review procedure. IPERS shall issue a final agency decision which becomes final unless within 30 days of issuance the member files a request for a contested case proceeding. In determining the date that an appeal or request for a contested case proceeding is filed with IPERS, the following shall apply: An appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt. Upon receipt of a request for contested case proceeding, IPERS shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the case in question. The department of inspections and appeals shall, after issuing proper notice, hold a hearing on the case under the contested cases procedure as described in 26.4(17A,97B) and shall affirm, modify, or reverse IPERS' decision.

26.3(2) Appeals of disability claims under Iowa Code section 97B.50A shall be filed and processed as provided under rule 495—13.2(97B) and, upon exhaustion of that appeal process, shall revert to the procedures set forth in 26.4(17A,97B).

495—26.4(17A,97B) Contested case procedures. Appeals of final agency decisions by IPERS shall be conducted pursuant to the following subrules.

26.4(1) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34).

26.4(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule that specifies a jurisdictional filing deadline. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

495—26.5(17A,97B) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding shall:

1. State the name and address of the requester;
2. Identify the specific agency action which is disputed;
3. Where the requester is represented by an attorney, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved; and
4. Include a short and plain statement of the issues of material fact in dispute.

495—26.6(17A,97B) Notice of hearing.

26.6(1) Delivery. Delivery of the notice of hearing by the department of inspections and appeals constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

26.6(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and
- h. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 26.7(17A,97B), that the presiding officer be an administrative law judge.

495—26.7(17A,97B) Presiding officer. The presiding officer for contested cases shall be an administrative law judge employed by the department of inspections and appeals.

495—26.8(17A,97B) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

495—26.9(17A,97B) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

495—26.10(17A,97B) Disqualification.

26.10(1) A presiding officer shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;

- b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, CEO or designee or trustee of a party;
 - (2) Is an attorney or legal representative in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

26.10(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 26.10(3) and 26.24(9).

26.10(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

26.10(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 26.10(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 26.26(17A,97B) and seek a stay under rule 26.30(17A,97B).

495—26.11(17A,97B) Consolidation—severance.

26.11(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

26.11(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

495—26.12(17A,97B) Pleadings.

26.12(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

26.12(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

26.12(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

26.12(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

495—26.13(17A,97B) Service and filing of pleadings and other papers.

26.13(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

26.13(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

26.13(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the agency.

26.13(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

26.13(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

_____(Date) _____(Signature)

495—26.14(17A,97B) Discovery.

26.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

26.14(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 26.14(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

26.14(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

495—26.15(17A,97B) Subpoenas.

26.15(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least five days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

26.15(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

495—26.16(17A,97B) Motions.

26.16(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

26.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

26.16(3) The presiding officer may schedule oral argument on any motion.

26.16(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days, or other time period designated by the agency or presiding officer, prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

26.16(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or normal submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered

on all issues in a contested case is subject to rehearing pursuant to 26.29(17A,97B) and appeal pursuant to 26.28(17A,97B).

495—26.17(17A,97B) Prehearing conference.

26.17(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

26.17(2) Each party shall bring to the prehearing conference:

- a.* A final list of the witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.
- c.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

26.17(3) In addition to the requirements of subrule 26.17(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters which the parties intended to be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters which will expedite the hearing.

26.17(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

495—26.18(17A,97B) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

26.18(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency or presiding officer may waive notice of such requests for a particular case or an entire class of cases.

26.18(2) In determining whether to grant a continuance, the presiding officer may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection;
- f.* Any applicable time requirements;
- g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h.* The timeliness of the request; and
- i.* Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

495—26.19(17A,97B) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. A party requesting withdrawal of an appeal shall do so in writing and submit the request to the CEO or presiding officer, whichever is applicable. Unless otherwise provided, a withdrawal shall be with prejudice.

495—26.20(17A,97B) Intervention.

26.20(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

26.20(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. The presiding officer may deny the motion for leave to intervene if not filed timely. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

26.20(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

26.20(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceeding. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

495—26.21(17A,97B) Hearing procedures.

26.21(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

26.21(2) All objections shall be timely made and stated on the record.

26.21(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. The cost of representation is the responsibility of the party.

26.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

26.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

26.21(6) Witnesses may be sequestered during the hearing.

26.21(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

495—26.22(17A,97B) Evidence.

26.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

26.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

26.22(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

26.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

26.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

26.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

495—26.23(17A,97B) Default.

26.23(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

26.23(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

26.23(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 26.27(17A,97B). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

26.23(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

26.23(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to

the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

26.23(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rules of Civil Procedure 1.977.

26.23(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 26.26(17A,97B).

26.23(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

26.23(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

26.23(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 26.30(17A,97B).

495—26.24(17A,97B) Ex parte communication.

26.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 26.10(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

26.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

26.24(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

26.24(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 26.13(17A,97B) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through a conference telephone call including all parties or their representatives.

26.24(5) Persons who jointly act as presiding officer or are a committee assigned to conduct a contested case may communicate with each other without notice or opportunity for parties to participate.

26.24(6) The CEO, or designee, or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 26.24(1).

26.24(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 26.18(17A,97B).

26.24(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication while a contested case is pending must initially determine if the effect of the

communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record and disclosed to all parties having an interest in the contested case. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

26.24(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

26.24(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the CEO or agency general counsel for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

495—26.25(17A,97B) Recording costs. Upon request, the agency shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

495—26.26(17A,97B) Interlocutory appeals. Upon written request of a party or on its own motion, the CEO, or designee, may review an interlocutory order of the presiding officer. In determining whether to do so, the CEO shall weigh the extent to which the granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within ten days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

495—26.27(17A,97B) Hearing decision. Following the conclusion of a hearing of an appeal, the administrative law judge within the department of inspections and appeals shall announce the findings of fact and conclusion of law and issue a written decision. The decision shall be signed by the administrative law judge, and filed with IPERS, with a copy mailed to the appellant. This decision shall be deemed final unless, within 30 days after the issuance date of such decision, further appeal is initiated. The issuance date is the date that the decision is signed by the administrative law judge.

495—26.28(17A,97B) Appeal of the hearing decision.

26.28(1) Notice of appeal. An appeal of a written decision of an administrative law judge is initiated by filing a timely notice of appeal with the employment appeal board of the Iowa department of inspections and appeals. In determining the date that a notice of appeal or any other document is filed with the employment appeal board, and subject to applicable exceptions adopted by the employment appeal board, the following shall apply: an appeal or any other document delivered by mail shall be deemed to be filed as of the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed as of the date that it is received. The notice of appeal must be signed

by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

26.28(2) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The CEO, or a designee, may preside at the taking of additional evidence.

26.28(3) *Scheduling.* The employment appeal board shall issue a schedule for consideration of the appeal.

26.28(4) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The employment appeal board may resolve the appeal on the briefs or provide an opportunity for oral argument.

26.28(5) *Judicial review.* The employment appeal board's decision shall be final and without further review 30 days after the decision is mailed to all interested parties of record unless within 20 days a petition for rehearing is filed with the employment appeal board or within 30 days a petition for judicial review is filed in the appropriate district court. The agency, in its discretion, may also petition the district court for judicial review of questions of law involving any of its decisions. Action brought by the agency for judicial review of its decisions shall be brought in the district court of Polk County, Iowa.

495—26.29(17A,97B) Applications for rehearing.

26.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

26.29(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 26.28(2), the applicant requests an opportunity to submit additional evidence.

26.29(3) *Time of filing.* The application shall be filed with the Iowa department of inspections and appeals within 20 days after issuance of the written decision.

26.29(4) *Notice to other parties.* A copy of the application shall be timely served by the applicant to all parties of record not joining therein.

26.29(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the appeal board grants the application within 20 days after its filing.

495—26.30(17A,97B) Stays of agency actions.

26.30(1) *When available.*

a. Any party to a contested case proceeding may petition the agency for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The CEO, or designee, may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the agency for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

26.30(2) *When granted.* In determining whether to grant a stay, the CEO, or designee, or presiding officer shall consider the factors listed in Iowa Code section 17A.19(4).

26.30(3) *When vacated.* A stay may be vacated by the issuing authority upon application of the agency's representative or any other party.

495—26.31(17A,97B) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

495—26.32(17A,97B) Emergency adjudicative proceedings.

26.32(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

26.32(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

26.32(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

26.32(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapters 17A and 97B.

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CHAPTERS 27 to 29
Reserved

CHAPTER 30
PETITIONS FOR RULE MAKING

495—30.1(17A) Petition for rule making.

30.1(1) Filing. Any person or agency may file a petition for adoption of rules or request for review of rules with the CEO, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. A petition is deemed filed when it is received by the agency. The agency shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).	} PETITION FOR RULE MAKING

The petition must provide the following information:

- a.* A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
- b.* A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
- c.* A brief summary of petitioner's arguments in support of the action urged in the petition.
- d.* A brief summary of any data supporting the action urged in the petition.
- e.* The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
- f.* Any request by petitioner for a meeting pursuant to rule 30.4(17A).

30.1(2) Content. The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

30.1(3) Denial. The agency may deny a petition because it does not substantially conform to the required form.

495—30.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

495—30.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the CEO, or designee, at the headquarters of the agency.

495—30.4(17A) Agency consideration.

30.4(1) The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency to discuss the petition.

Copies of the petition and accompanying information shall be submitted by the agency to the administrative rules coordinator and to the administrative rules review committee at the conclusion of the petition review.

30.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that rule-making proceedings on the subject of the petition have begun. The petitioner shall be deemed notified of the denial or the granting of the petition on the date of notification or mailing by the agency to the petitioner.

30.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 97B.

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CHAPTER 31
AGENCY PROCEDURE FOR RULE MAKING

495—31.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the Iowa Public Employees' Retirement System are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

495—31.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) "a," solicit comments from the public by any reasonable means on a subject matter of possible rule making by the agency. Notwithstanding the foregoing, except as otherwise provided by law, the agency may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

495—31.3(17A) Public rule-making docket.

31.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

31.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the CEO for subsequent proposal under the provisions of Iowa Code section 17A.4(1) "a," the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

31.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) "a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the effective date of the rule. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule's adoption;
- j. The dates of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

495—31.4(17A) Notice of proposed rule making.

31.4(1) Contents. At least 35 days before the adoption of a rule, the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;

- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule;
- e. Where, when, and how persons may request an oral proceeding on the proposed rule if the notice does not already provide for one; and
- f. A fiscal impact statement as described under 495—31.7(17A,25B).

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

31.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 31.12(2).

31.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and mailing the Notices of Intended Action for a period of one year.

495—31.5(17A) Public participation.

31.5(1) *Written comments.* For at least 20 days after publication of a Notice of Intended Action, persons may submit arguments, data, and views, in writing, on the subject matter of the published notice. Such written submissions should identify each proposed rule to which they relate and should be submitted to the person and address designated in the Notice of Intended Action.

31.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a Notice of Intended Action. The agency shall schedule an oral proceeding if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

- a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
- b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
- c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

31.5(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b,” or this chapter.

b. *Scheduling and notice.* An oral proceeding on a Notice of Intended Action may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the applicable Notice of Intended Action by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The agency, through an employee of the agency, who is familiar with the substance of the rules proposed in the Notice of Intended Action, shall preside at the oral proceeding. The presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a Notice of Intended Action, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the subject matter of the rules proposed in the Notice of Intended Action. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of an oral proceeding, the presiding officer shall give a brief synopsis of the subject matter of the rules proposed in the Notice of Intended Action, a statement of the statutory authority for each proposed rule, and the reasons for the agency's decision to propose each rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of an oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of a meeting.

(5) Physical and documentary submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) An oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

31.5(4) Additional information. In addition to receiving written comments and oral presentations according to the provisions of this rule, the agency may obtain information concerning its proposed rules through any other lawful means deemed appropriate under the circumstances.

31.5(5) Accessibility. The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance of the proceeding to arrange access or other needed services.

495—31.6(17A) Regulatory analysis.

31.6(1) Definition of small business. A "small business" is defined in Iowa Code section 17A.4A(7).

31.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to IPERS, 7401 Register Dr., P.O. Box 9117, Des Moines, Iowa 50306-9117. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact; and
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

31.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

31.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "a" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

31.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "b" after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

31.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in Iowa Code section 17A.4A(4).

31.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

31.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and 17A.4A(5).

31.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

31.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "a," unless a written request expressly waives one or more of the items listed in the section.

31.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small

business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

495—31.7(17A,25B) Fiscal impact statement.

31.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 or combined expenditures of at least \$500,000 within five years by all affected political subdivisions, the agency itself, or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

31.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

495—31.8(17A) Time and manner of rule adoption.

31.8(1) *Time of adoption.* The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

31.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

31.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

495—31.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

31.9(1) The agency shall not adopt a rule that differs from the rule proposed in a Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

31.9(2) In determining whether a Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

- a. The extent to which persons who will be affected should have understood that the rule making on which it is based could affect their interests;
- b. The extent to which the subject matter or the issues determined by the adopted rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the adopted rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

31.9(3) The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of an adopted rule that differs from the proposed rule contained in the Notice of Intended Action upon which the adopted rule is based, unless the agency finds that the differences are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

31.9(4) Concurrent rule-making proceedings. Nothing in this rule sets aside the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject each with its appropriate Notice of Intended Action.

495—31.10(17A) Exemptions from public rule-making procedures.

31.10(1) *Omission of notice and comment.* To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule or set of rules, the agency may adopt that rule or set of rules without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

31.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each category:

- a. Rules that implement nondiscretionary federal law;
- b. Rules that implement nondiscretionary state law;
- c. Rules implementing contribution rates recommended by IPERS;
- d. Minor changes such as grammar, punctuation, spelling and other scrivener's errors that are otherwise nonsubstantive and serve only to make a correction; and
- e. Any other categories added to this list by rule making where such an exemption is justified.

31.10(3) *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 31.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 31.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. A rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 31.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

495—31.11(17A) Concise statement of reasons.

31.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

31.11(2) *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the particular rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

31.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

495—31.12(17A) Contents, style, and form of rules.

31.12(1) Contents. Each rule making by the agency shall contain the text of each rule and, in addition:

- a.* The date the agency adopted the rule;
- b.* A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4A(1) “b,” or the agency in its discretion decides to include such reasons;
- c.* A reference to all rules repealed, amended, or suspended by the rule;
- d.* A reference to the specific statutory or other authority authorizing adoption of the rule;
- e.* Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f.* Effective July 1, 1999, if the agency has not included the subject matter of the proposed rule in a separate rule listing categories of rules for which no waiver provision will be included, a brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waivers or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4A(1) “b,” or the agency in its discretion decides to include such reasons; and
- g.* The effective date of the rule.

31.12(2) Incorporation by reference. The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated material in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated material by location, title, citation, date, and edition, if any; and may state that the proposed or adopted rule includes any later amendments or editions of the proposed material that are binding on the agency by state or federal law or regulation. The agency may incorporate such material by reference in a proposed or adopted rule if copies are readily available to the public at the agency’s headquarters. The agency shall retain permanently a copy of materials that are incorporated by reference in a rule. Copies of incorporated material may be obtained at cost from the agency.

31.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request and shall ensure that copies of the full text are available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the agency shall provide a statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

31.12(4) Style and form. In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

495—31.13(17A) Agency rule-making record.

31.13(1) Requirement. The agency shall maintain for each separate rule making an index listing and summarizing the rules being proposed, adopted, amended or repealed. In addition, the agency shall maintain a rule-making record as described in subrule 31.13(2) for each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. These

indices and rule-making records, including materials incorporated by reference, are available for public inspection at IPERS' headquarters.

31.13(2) Contents of rule-making record. The agency shall maintain a file containing the indices from each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. This file shall also include information showing the date of publication in the Iowa Administrative Bulletin and ARC number where each applicable rule making was published. Each separate rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to a rule making and any file-stamped copies of agency submissions to the administrative rules coordinator concerning the rule making;

b. All written petitions for declaratory orders, all requests for rule makings, all submissions by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered in connection with the formulation, proposal, or adoption of a rule or the proceeding upon which a rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

c. Any official transcript of oral presentations made in the rule-making proceedings or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

d. A copy of any regulatory analysis or fiscal impact statement prepared for the rule-making proceedings;

e. A copy of the rule and any concise statement of reasons prepared for the rule;

f. All petitions for amendment, repeal or suspension of the rule;

g. A copy of any objection to the issuance of that rule without public notice and participation filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

h. A copy of any objection to a rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to such objection;

i. A copy of any significant criticism of the rule, including a summary of any petitions for waiver of a rule; and

j. A copy of any executive order concerning the rule.

31.13(3) Effect of record. Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on a rule.

31.13(4) Maintenance of record. The agency shall maintain the rule-making record for a period of not less than five years from the date the rules to which it pertains became effective.

495—31.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

495—31.15(17A) Effectiveness of rules prior to publication.

31.15(1) *Grounds.* The agency may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare.

The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

31.15(2) *Special notice.* When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

495—31.16(17A) General statements of policy.

31.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)“a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

31.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subrule shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 31.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

495—31.17(17A) Review by agency of rules.

31.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

31.17(2) In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the

changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 32
QUALIFIED BENEFITS ARRANGEMENT

[Prior to 1/7/04, see 581—21.32]

495—32.1(97B) Qualified benefits arrangement. This rule establishes a separate unfunded qualified benefits arrangement (QBA) as provided for in Iowa Code section 97B.49I. This arrangement is established for the sole purpose of enabling IPERS to continue to apply the same formula for determining benefits payable to all employees covered by the retirement system created under Iowa Code chapter 97B, including those whose benefits are limited by Section 415 of the Internal Revenue Code.

32.1(1) The agency shall administer the QBA. The agency has full discretionary authority to determine all questions arising in connection with the QBA, including its interpretation and any factual questions arising under the QBA. Further, the agency has full authority to make modifications to the benefits payable under the QBA as may be necessary to maintain the QBA's qualification under Section 415(m) of the Internal Revenue Code.

32.1(2) All members, retired members, and beneficiaries of the agency are eligible to participate in the QBA if their benefits would exceed the limitation imposed by Section 415 of the Internal Revenue Code. Participation is determined for each plan year, and participation shall cease for any plan year in which the benefit of a retiree or beneficiary is not limited by Section 415 of the Internal Revenue Code.

32.1(3) On and after the effective date of the QBA, the agency shall pay to each eligible retiree and beneficiary a supplemental pension benefit equal to the difference between the retiree's or beneficiary's monthly benefit otherwise payable from the agency prior to any reduction or limitation because of Section 415 of the Internal Revenue Code and the actual monthly benefit payable from the agency as limited by Section 415. The agency shall compute and pay the supplemental pension benefits in the same form, at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under the agency except for the IRC Section 415 limitations.

32.1(4) The agency shall determine the amount of benefits that cannot be provided under the agency because of the limitations of Section 415 of the Internal Revenue Code, and the amount of contributions that must be made to the QBA as a separate fund within the retirement fund created in Iowa Code section 97B.7. If applicable, fees for the actuary's service shall be paid by the applicable employers.

32.1(5) Contributions shall not be accumulated under this QBA to pay future supplemental pension benefits. Instead, each payment of contributions by the applicable employer that would otherwise be made to the agency shall be reduced by the amount necessary to pay supplemental pension benefits and administrative expenses of the QBA. The employer shall pay to this QBA the contributions necessary to pay the required supplemental pension payments, and these contributions will be deposited in a separate fund which is a portion of the retirement fund established under Iowa Code section 97B.7 and administered by the agency. This fund is intended to be exempt from federal income tax under Sections 115 and 415(m) of the Internal Revenue Code. The agency shall pay the required supplemental pension benefits to the member out of the employer contributions so transferred. The employer contributions otherwise required under the terms of Iowa Code sections 97B.11, 97B.49B and 97B.49C shall be divided into those contributions required to pay supplemental pension benefits hereunder, and those contributions paid into and accumulated in the retirement fund created at Iowa Code section 97B.7 to pay the maximum benefits permitted. Employer contributions made to a separate fund to provide supplemental pension benefits shall not be commingled with the contributions paid into and accumulated in the retirement fund created at Iowa Code section 97B.7. The supplemental pension benefit liability shall be funded on a plan-year-to-plan-year basis. Any assets of the separate QBA fund not used for paying benefits for a current plan year shall be used, as determined by the agency, for the payment of administrative expenses of the QBA for the plan year.

32.1(6) A member cannot elect to defer the receipt of all or any part of the payments due under this QBA.

32.1(7) Payments under this rule are exempt from garnishment, assignment, attachment, alienation, judgments, and other legal processes to the same extent as provided under Iowa Code section 97B.39.

32.1(8) Nothing herein shall be construed as providing for assets to be held in trust or escrow or any form of asset segregation for members, retirees, or beneficiaries. To the extent any person acquires the right to receive benefits under this QBA, the right shall be no greater than the right of any unsecured general creditor of the state of Iowa.

32.1(9) This QBA is a portion of a governmental plan as defined in Section 414(d) of the Internal Revenue Code, is intended to meet the requirements of Internal Revenue Code Sections 115 and 415(m), and shall be so interpreted and administered.

32.1(10) Amounts deducted from employer contributions and deposited in the separate QBA fund shall not reduce the amounts that are to be credited to employer contribution accounts under Iowa Code sections 97B.11, 97B.49B and 97B.49C.

This rule is intended to implement Iowa Code section 97B.49I.

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CHAPTER 33
UNIFORM RULES FOR WAIVERS

495—33.1(17A,97B,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the agency.

33.1(1) Agency authority. A waiver from rules adopted by the agency may be granted in accordance with this rule if:

a. The agency has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

b. No statute or rule otherwise controls the grant of a waiver from the rule for which a waiver is requested.

33.1(2) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the agency does not possess delegated authority to bind the courts to any extent with its definition.

33.1(3) Compliance with statute. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

495—33.2(17A,97B,ExecOrd11) Criteria for waiver. The agency may issue an order granting a waiver, as applied to the circumstances of a specified person, if the petitioner establishes by clear and convincing evidence that:

1. Application of the rule to that person would result in hardship or injustice; and
2. Granting the waiver on the basis of the particular circumstances of that specified person would be consistent with the public interest; and
3. Granting the waiver in that case would not prejudice the substantial legal rights of any other person.

In determining whether a waiver would be consistent with the public interest under paragraph “2,” the agency shall consider whether, if the waiver is granted, the public interest will be protected by other means that are substantially equivalent to full compliance with the rule.

33.2(1) The agency may condition the grant of a proposed waiver on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

33.2(2) This rule shall not preclude the agency from granting waivers in other contexts or on the basis of other standards if the agency deems it appropriate to do so and is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

33.2(3) The inadvertent granting of a waiver by the agency shall not be deemed to be a waiver to which the provisions of this rule apply but, depending on the facts and circumstances, the agency may limit enforcement of the affected rule(s) on a prospective basis.

33.2(4) The petitioner shall bear the burden of persuasion when a petition for waiver from an agency rule is filed.

33.2(5) When the rule from which a waiver is sought establishes administrative deadlines, the agency shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

495—33.3(17A,97B,ExecOrd11) Process for filing a petition. Any person may file with the agency a petition requesting a waiver, in whole or in part, of a rule of the agency on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

A petition for a waiver must be submitted in writing to the Administrative Rules Coordinator, Iowa Public Employees’ Retirement System (IPERS), 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. If the request relates to a pending contested case, the request shall also be filed in the contested case proceedings. Waiver rulings shall be made by agency staff having jurisdiction over the

particular issue and having the authority to issue final rulings on appeals regarding such issues, provided that the CEO shall have final authority with respect to all waiver rulings.

33.3(1) Contents of petition. A petition for waiver does not need to follow a particular format, but must contain the following elements.

- a. The name, address, social security number, and telephone number of the petitioner and the name, address, and telephone number of the petitioner's representative, if any.
- b. The specific rule or rules for which a waiver is requested.
- c. The precise scope and operative period of the waiver requested, including any alternative means or other condition or modification proposed to achieve the purposes of the rule.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition.
- e. An explanation of the reasons for the waiver, including all material facts relevant to the waiver in question.
- f. A description of any prior contacts between the agency and the petitioner relating to the proposed waiver including, but not limited to, a list or description of prior notices, investigative reports, advice, negotiations, consultations or conferences, contested case rulings, and penalties relating to the proposed waiver.
- g. The name, address, and telephone number of any person or entity that would be adversely affected by the waiver in question.
- h. Any information known to the petitioner regarding the agency's treatment of similar cases.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- j. Any signed releases required to obtain relevant information from persons with knowledge of such information.

33.3(2) Burden of proof. When a petition is filed for a waiver, the burden of proof shall be on the petitioner to demonstrate by clear and convincing evidence that the agency should grant the waiver.

495—33.4(17A,97B,ExecOrd11) Additional information. Prior to issuing an order granting or denying a petition for waiver, the agency may request additional information from the petitioner relating to the petition and surrounding circumstances. If the petition was not filed in a contested case, the agency may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and agency representatives.

495—33.5(17A,97B,ExecOrd11) Notices. Within 30 business days after receipt of a petition for waiver of a rule, the agency shall give notice of the pendency of the petition and a concise summary of its contents to all persons to whom notice is required by any provision of law. In addition, the agency may give notice to other persons.

If notice is required to be served, the agency may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the agency attesting that notice has been provided.

495—33.6(17A,97B,ExecOrd11) Intervenors. Persons who qualify as intervenors under any provision of law may intervene in proceedings for waiver of a rule if they file timely petitions for intervention according to agency rules governing such intervention.

495—33.7(17A,97B,ExecOrd11) Hearing, ruling and timing. The provisions of 495—Chapter 26 shall apply to proceedings under this chapter if the petition for waiver is filed in a contested case proceeding. Prior to issuing an order granting or denying a proposed waiver, the agency shall determine whether or not the facts alleged in the proposed waiver are accurate and complete.

33.7(1) Ruling. An order granting or denying a proposed waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement

of the relevant facts and reasons on which that action is based, and a description of the precise scope (including any conditions) and operative period of the waiver, if one is granted.

33.7(2) *Timing of ruling.* The agency shall grant or deny a petition for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the agency, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition for waiver has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

33.7(3) *When deemed denied.* Failure of the agency to grant or deny a petition for waiver within the required time period shall be deemed a denial of that petition by the agency.

33.7(4) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

495—33.8(17A,97B,ExecOrd11) Defense. After an order granting a waiver is issued, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

495—33.9(17A,97B,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the agency shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the headquarters of the agency.

495—33.10(17A,97B,ExecOrd11) Rules from which the agency shall not grant waivers. The agency shall not grant waivers from the following rules, except as otherwise indicated in the following list.

1. Rules which implement state or federal law, if the waiver could affect the taxability of pension benefits under the Internal Revenue Code and regulations thereunder or the Iowa Code and rules adopted thereunder;

2. Rules which set forth the formulas used to calculate IPERS’ monthly retirement benefits, actuarial equivalents, dividends, amounts to be credited to supplemental accounts of active members, refunds, death benefits, and service purchase costs;

3. Rules which implement contribution rates and actuarial assumptions set by IPERS;

4. Rules which limit the release of confidential information;

5. Rules which implement contracts between the agency and its vendors (except as permitted in such contracts);

6. Rules governing separations, disciplinary actions, reductions in force, and grievances and appeals as permitted by statute and applicable agency rules.

7. Rules governing the number of voting members of the IPERS’ investment board necessary to constitute a quorum and the number of votes necessary to constitute a vote of that board.

495—33.11(17A,97B,ExecOrd11) Voiding or cancellation. A waiver is void if the material facts upon which the petition is based are not true or if material facts have been withheld or omitted. The agency may at any time cancel a waiver upon appropriate notice and hearing if the agency finds that the facts as stated in the request are not true, material facts have been withheld or omitted, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the petitioner has failed to comply with conditions set forth in the order.

495—33.12(17A,97B,ExecOrd11) Violations of conditions. Violations of the conditions precedent to a waiver’s approval shall be deemed to be violations of the particular rule for which the waiver was granted and will be subject to the same remedies or penalties.

495—33.13(17A,97B,ExecOrd11) Appeals. Appeals of the agency's decisions regarding proposed waivers shall be filed in writing within 30 days after notice of the decision is mailed to the petitioner.

These rules are intended to implement Executive Order Number 11 and Iowa Code chapters 17A and 97B.

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