State of Iowa

Iowa Administrative Code Supplement

Biweekly
July 12, 2000

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PUBLISHED BY THE
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

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IOWA ADMINISTRATIVE CODE

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[Previous Supplement dated 6/28/00]

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20.11(2) *Notification plan.* On or before April 15, 1983, each investor-owned utility shall file with the board a plan to notify its customers of an approaching peak demand on the day when peak demand is likely to occur.

a. The plan shall include the following:

(1) A provision for a general notice to be given customers prior to the time when peak demand is likely to occur as prescribed in 20.11(2)*"b"* and an explanation of when and how notice of an approaching peak in electric demand will be given to customers.

(2) A provision for direct notice to be given customers whose load reduction will have a significant impact on the utility's peak. The utility shall provide for such notice to be given prior to the time when peak demand is likely to occur, as prescribed in 20.11(2)*"b,"* and shall explain the criteria used to identify customers to whom notice will be given and when and how notice will be given.

(3) A statement showing the total costs, with each component thereof itemized, projected to be associated with implementing the plan. Notice should be provided in the most efficient manner available. The board may reject a plan which includes excessive costs or which specifies an ineffective method of customer notification and may direct development of a new plan.

(4) The text of the general and direct message to be given in the general notice to customers. The message shall, at a minimum, include the name of the utility or utilities providing the notice, an explanation that conditions exist which indicate a peak in demand is approaching, and a statement that reduction in usage of electricity during the period of peak demand will ease the burden placed on the utility's system by growth in peak demand and may help delay or reduce the amount of future rate increases.

(5) A designation of the U.S. weather station(s), situated within the utility's service territory, whose temperature readings and predictions will be used by the utility in applying the standard in 20.11(2)*"b."*

(6) A provision for joint delivery, by two or more utilities, of the general notice to customers in regions of the state where U.S. weather station(s) predict conditions specified in 20.11(2)*"b"* will exist on the same day.

b. For purposes of this rule, peak demand is likely to occur on a nonholiday weekday between June 15 and September 15 when the following conditions exist:

(1) The utility's designated weather station predicts the temperature will rise above 95° Fahrenheit (35° Celsius), and the designated weather station officially recorded a temperature above 95° Fahrenheit (35° Celsius) on the previous day, or

(2) The utility's designated weather station predicts the temperature will rise to above 90° Fahrenheit (33° Celsius) on a day following at least two consecutive days of temperatures above 95° Fahrenheit (35° Celsius), as officially recorded by the designated weather station, but

(3) If a utility can demonstrate it would have been required to provide between June 15 and September 15 a peak alert notice to customers, because of the existence of the conditions set forth in 20.11(2)*"b"*(1) or 20.11(2)*"b"*(2), on more than six days in any one of the preceding ten years, the utility may substitute a 97° Fahrenheit (36° Celsius) standard in lieu of the 95° Fahrenheit (35° Celsius) standard in the subrule.

20.11(3) *Implementation of notification plan.* Upon approval of a peak notification plan by the board, the utility shall immediately prepare for implementation of the plan. The utility shall implement the approved plan on each day of the year when peak demand is likely to occur, as prescribed by 20.11(2)*"b."*

20.11(4) *Permissive notices.* The standard for implementing peak alert notification in subrule 20.11(2) is a minimum standard and does not prohibit a utility or association of utilities from issuing a notice requesting customers to reduce usage at any other time.

20.11(5) *Annual report.* Each electric utility required by subrule 20.11(2) to file a plan for customer notification shall file, on or before April 1 of each year, a report stating the number of notices given its customers, the dates when notices were issued, the annual cost of providing both general and direct notice to customers and measures of kilowatt hour demand at the time when notice was given and at hourly intervals thereafter until kilowatt hour demand decreases to the level at which it was measured when the notice was issued. The annual report shall also include a statement of any problems experienced by the utility in providing customer notification of a peak demand and a proposal to modify the plan, if necessary, to make customer notification more effective. Modifications must be approved by the board before they are implemented.

199—20.12(476) New structure energy conservation standards. Each utility providing electric service shall not provide such service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under Iowa Administrative Code 661—16.801(103A) and 661—16.802(103A). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service, or are not intended primarily for human occupancy.

199—20.13(476) Periodic electric energy supply and cost review [476.6(16)].

20.13(1) *Procurement plan.* The board shall periodically conduct a contested case proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's electric fuel procurement and contracting practices. By January 31 each year the board will notify a rate-regulated utility if the utility will be required to file an electric fuel procurement plan. In the years in which it does not conduct a contested case proceeding, the board may require a utility to file certain information for the board's review. In years in which a full proceeding is conducted, a rate-regulated utility providing electric service in Iowa shall prepare and file with the board on or before May 15 of each required filing year a complete electric fuel procurement plan for an annual period commencing June 1 or, in the alternative, for the annual period used by the utility in preparing its own fuel procurement plan. A utility's procurement plan shall be organized to include information as follows:

a. Index. The plan shall include an index of all documents and information required to be filed in the plan, and the identification of the board files in which the documents incorporated by reference are located.

b. Purchase contracts and arrangements. A utility's procurement plan shall include detailed summaries of the following types of contracts and agreements executed since the last procurement review:

(1) All contracts and fuel supply arrangements for obtaining fuel for use by any unit in generation;

(2) All contracts and arrangements for transporting fuel from point of production to the site where placed in inventory, including any unit generating electricity for the utility;

(3) All contracts and arrangements for purchasing or selling allowances;

(4) Purchased power contracts or arrangements, including sale-of-capacity contracts, involving over 25 MW of capacity;

(5) Pool interchange agreements;

(6) Multiutility transmission line interchange agreements; and

(7) Interchange agreements between investor-owned utilities, generation and transmission cooperatives, or both, not required to be filed above, which were entered into or in effect since the last filing, and all such contracts or arrangements which will be entered into or exercised by the utility during the prospective 12-month period.

All procurement plans filed by a utility shall include all of the types of contracts and arrangements listed in subparagraphs (1) and (2) of this paragraph which will be entered into or exercised by the utility during the prospective 12-month period. In addition, the utility shall file an updated list of contracts that are or will become subject to renegotiation, extension, or termination within five years. The utility shall also update any price adjustment affecting any of the filed contracts or arrangements.

c. Other contract offers. The procurement plan shall include a list and description of those types of contracts and arrangements listed in paragraph 20.13(1)*"b"* offered to the utility since the last filing into which the utility did not enter. In addition, the procurement plan shall include a list of those types of contracts and arrangements listed in paragraph 20.13(1)*"b"* which were offered to the utility for the prospective 12-month period and into which the utility did not enter.

d. Studies or investigation reports. The procurement plans shall include all studies or investigation reports which have been considered by the utility in deciding whether to enter into any of those types of contracts or arrangements listed in paragraphs 20.13(1)*"b"* and *"c"* which will be exercised or entered into during the prospective 12-month period.

e. Price hedge justification. The procurement plan shall justify purchasing allowance futures contracts as a hedge against future price changes in the market rather than for speculation.

f. Actual and projected costs. The procurement plan shall include an accounting of the actual costs incurred in the purchase and transportation of fuel and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraph 20.13(1)*"b"* for the previous 12-month period.

The procurement plan also shall include an accounting of all costs projected to be incurred by the utility in the purchase and transportation of fuel and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraph 20.13(1)*"b"* in the prospective 12-month period.

If applicable, the reporting of transportation costs in the procurement plan shall include all known liabilities, including all unit train costs.

g. Costs directly related to the purchase of fuel. The utility shall provide a list and description of all other costs directly related to the purchase of fuels for use in generating electricity not required to be reported by paragraph *"f."*

h. Compliance plans. Each utility shall file its SO_2 compliance plan as submitted to the EPA. Revisions to the compliance plan shall be filed with each subsequent procurement plan.

i. Evidence submitted. Each utility shall submit all factual evidence and written argument in support of its evaluation of the reasonableness and prudence of the utility's procurement practice decisions in the manner described in its procurement plan. The utility shall file data sufficient to forecast fuel consumption at each generating unit or power plant for the prospective 12-month period. The board may require the submission of machine-readable data for selected computer codes or models.

j. Additional information. Each utility shall file additional information as ordered by the board.

20.13(2) *Periodic review proceeding.* The board shall periodically conduct a proceeding to evaluate the reasonableness and prudence of a rate-regulated utility's procurement practices. The prudence review of allowance transactions and accompanying compliance plans shall be determined on information available at the time the options or plans were developed.

a. On or before May 15 of a required filing year, each utility shall file prepared direct testimony and exhibits in support of its fuel procurement decisions and its fuel requirement forecast. This filing shall be in conjunction with the filing of the plans. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchased fuel costs.

b. The board shall disallow any purchased fuel costs in excess of costs incurred under responsible and prudent policies and practices.

199—20.14(476) Flexible rates.

20.14(1) *Purpose.* This subrule is intended to allow electric utility companies to offer, at their option, incentive or discount rates to their customers.

20.14(2) *General criteria.*

a. Electric utility companies may offer discounts to individual customers, to selected groups of customers, or to an entire class of customers. However, discounted rates must be offered to all directly competing customers in the same service territory. Customers are direct competitors if they make the same end product (or offer the same service) for the same general group of customers. Customers that only produce component parts of the same end product are not directly competing customers.

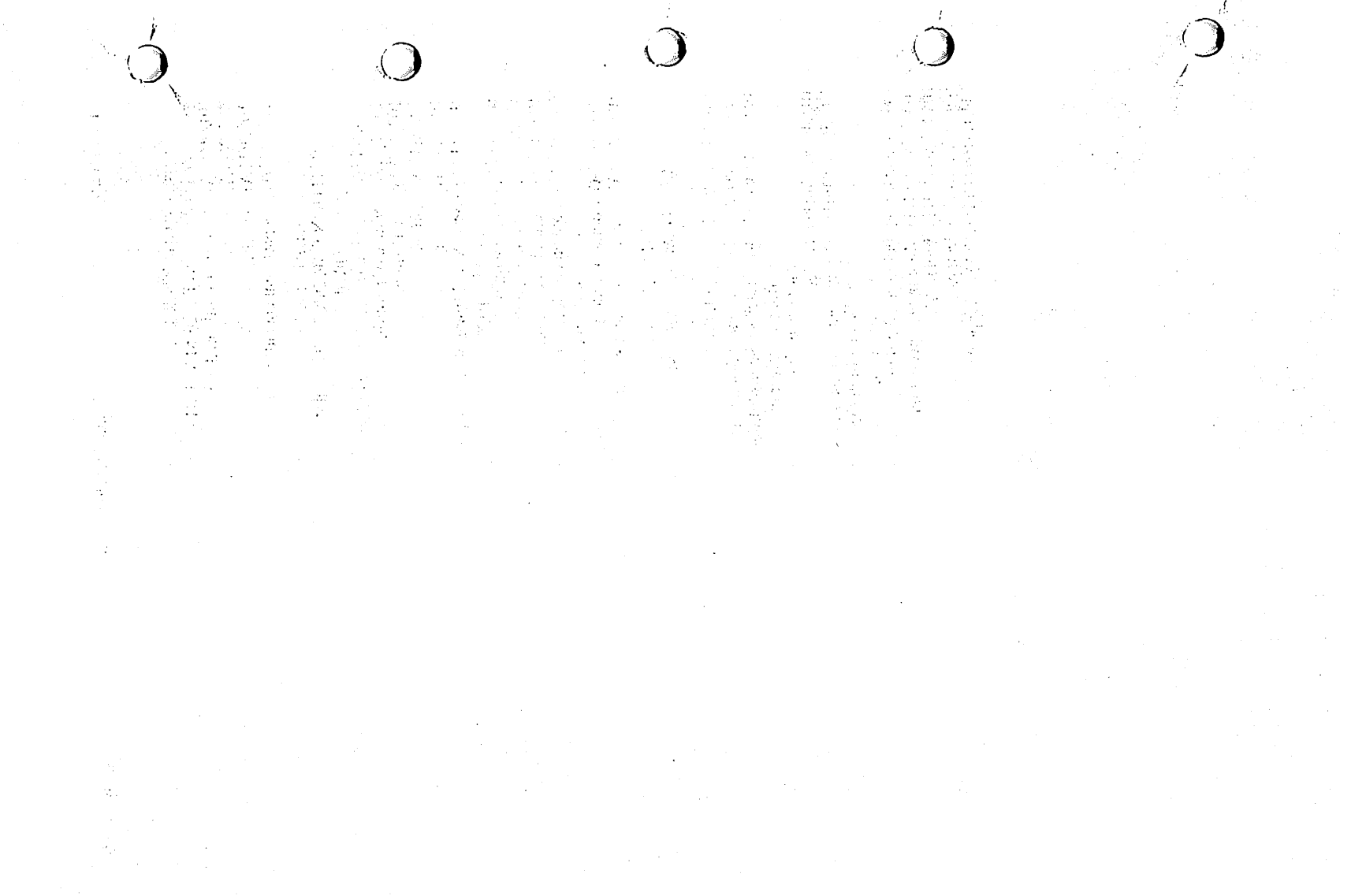
[Filed emergency 3/15/91, after Notice 1/23/91—published 4/3/91, effective 3/15/91]
[Filed 3/28/91, Notice 10/3/90—published 4/17/91, effective 5/22/91]
[Filed 4/25/91, Notice 12/26/90—published 5/15/91, effective 6/19/91]
[Filed 11/18/91, Notice 4/17/91—published 12/11/91, effective 1/15/92]
[Filed 3/20/92, Notice 8/7/91—published 4/15/92, effective 5/20/92]
[Filed 10/9/92, Notice 4/29/92—published 10/28/92, effective 12/2/92]
[Filed 7/27/93, Notice 3/3/93—published 8/18/93, effective 9/22/93]
[Filed 8/11/93, Notice 5/12/93—published 9/1/93, effective 10/6/93]***
[Filed 12/2/93, Notice 9/15/93—published 12/22/93, effective 1/26/94]
[Filed emergency 4/21/94—published 5/11/94, effective 4/21/94]
[Filed 6/28/94, Notice 4/13/94—published 7/20/94, effective 8/24/94]
[Filed 10/20/94, Notice 6/22/94—published 11/9/94, effective 12/14/94]
[Filed 9/4/97, Notice 3/12/97—published 9/24/97, effective 10/29/97]
[Filed 10/31/97, Notice 5/7/97—published 11/19/97, effective 12/24/97]
[Published 6/17/98 to update name and address of board]
[Filed 10/13/99, Notice 5/19/99—published 11/3/99, effective 12/8/99]
[Filed 12/8/99, Notice 4/21/99—published 12/29/99, effective 2/2/00]
[Filed 5/11/00, Notice 10/6/99—published 5/31/00, effective 7/5/00]
[Filed 6/22/00, Notice 3/8/00—published 7/12/00, effective 8/16/00]

***Effective date of 20.4(4) delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held September 15, 1993.

CHAPTER 102
PETITION FOR RULE MAKING

CHAPTER 103
PETITION FOR DECLARATORY ORDER

CHAPTER 104
UNIFORM WAIVER AND VARIANCE RULES



CHAPTER 27
TARGETED SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM

Renumbered as 261—Ch 55, IAB 7/19/95

CHAPTER 28
LOCAL HOUSING ASSISTANCE PROGRAM

261—28.1(77GA,HF732) Purpose. The local housing assistance program is designed to assist communities on a cooperative basis to address a range of housing development needs to position the communities for economic development, to meet housing needs arising as a result of other economic development in the area and to meet other unmet housing needs.

261—28.2(77GA,HF732) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific housing activities, projects or programs assisted with LHAP funds.

"Community" means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Economic development" means community action that directly leads to creation of more jobs or higher-paying jobs than were available before the action.

"Economic development organization" means an entity organized for the purpose of creating more jobs or higher-paying jobs in an area.

"HART" means the housing application review team, a body of affordable housing funding agencies which meets to review housing proposals.

"Housing needs assessment" means a comprehensive analysis of housing needs for one or more units of local government done in a format that conforms to IDED guidelines.

"Housing trust fund" means a fund for housing development that is sustained over time by dedicated revenues or earnings on invested capital.

"IDED" means the Iowa department of economic development.

"LHAP" means local housing assistance program.

"Local housing organization" means an entity organized to represent community housing development interests.

"Local support" means endorsement by local individuals or entities that have a substantial interest in a housing activity, particularly by those whose opposition or indifference would hinder the activity's success.

"Recipient" means the entity under contract with IDED to receive LHAP funds and undertake the funded housing activity.

"Recognized neighborhood association" means a group acknowledged by a city council or county board of supervisors as having the authority to speak for the general needs and welfare of a neighborhood.

"Subrecipient" means an entity operating under an agreement or contract with a recipient to carry out a funded LHAP activity.

261—28.3(77GA,HF732) Eligible applicants. Eligible applicants for LHAP funds include all incorporated cities and counties within the state of Iowa, housing trust funds, local housing organizations, recognized neighborhood associations, economic development organizations and homeless service providers.

28.3(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

28.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—28.4(77GA,HF732) Eligible activities and forms of assistance.

28.4(1) Eligible activities include those which better position a community to take advantage of economic development opportunities, meet housing needs arising as a result of previous successful economic development efforts in the area or meet other unmet housing needs. Eligible activities include new construction, rehabilitation, conversion, reconstruction, acquisition, demolition for the purpose of clearing lots for housing development, site improvement, provision of shelter and housing to homeless families and individuals and other housing-related activities as may be deemed appropriate by IDED.

a. Assisted housing shall be nonluxury housing with suitable amenities.

b. Assisted housing may be single-family housing or multifamily housing, and may be designed for occupancy by homeowners or tenants.

28.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans, loan guarantees or other forms of assistance as may be approved by IDED.

261—28.5(77GA,HF732) Application procedure. LHAP funds shall be awarded through an annual competition.

28.5(1) IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops and other means determined necessary by IDED.

28.5(2) Application forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309, (515)242-4825.

28.5(3) IDED may provide technical assistance as necessary to applicants.

28.5(4) Applicants shall submit a preapplication for review by the housing application review team by a deadline established by IDED, which shall be no earlier than 60 days after the announcement of availability of funds.

28.5(5) Applicants whose preapplications best meet the preliminary review criteria, as determined by the HART review and IDED staff review, shall be invited to submit full applications for funds. Applicants are encouraged, but not required, to submit a HART form for review by the HART team prior to, or in conjunction with, submitting a preapplication for funding under LHAP.

28.5(6) IDED shall provide by mail full application forms and instructions to the selected applicants with the invitation to apply.

28.5(7) Applications shall be submitted by a deadline established by IDED, which shall be no earlier than 60 days after the preapplication due date.

28.9(8) *Remedies for noncompliance.* At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

28.9(9) *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

These rules are intended to implement 1997 Iowa Acts, House File 732, section 4.

[Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]
[Filed 4/28/99, Notice 3/10/99—published 5/19/99, effective 6/23/99]
[Filed 6/23/00, Notice 5/17/00—published 7/12/00, effective 8/16/00]

CHAPTER 104
UNIFORM WAIVER AND VARIANCE RULES

261—104.1(ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

104.1(1) *Definitions.*

"Board" or *"IDED board"* means the Iowa department of economic development board created by Iowa Code chapter 15.

"Department" or *"IDED"* means the Iowa department of economic development authorized by Iowa Code chapter 15.

"Director" means the director of the department of economic development or the director's designee.

"Director/board" means either the director or the board depending on which one has decision-making authority pursuant to rule 104.2(ExecOrd11).

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

"Waiver or variance" means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

104.1(2) *Authority.*

a. A waiver or variance from rules adopted by the department may be granted in accordance with this chapter if (1) the department has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

261—104.2(ExecOrd11) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the board shall make the decision, upon consideration of all relevant factors:

1. Community Economic Betterment Account (CEBA) program, 261—Chapter 53.
2. New Jobs and Income Program (NJIP), 261—Chapter 58.
3. Workforce Development Fund, 261—Chapter 75.
4. Accelerated Career Education Program Physical Infrastructure Assistance Program (ACE PIAP), 261—Chapter 20.

104.2(1) *Criteria for waiver or variance.* The director/board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director/board finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the director/board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

104.2(2) *Special waiver or variance rules not precluded.* These uniform waiver and variance rules shall not preclude the director/board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.

261—104.3(ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

104.3(1) *Application.* All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

104.3(2) *Content of petition.* A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver or variance is requested.

b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

c. The relevant facts that the petitioner believes would justify a waiver or variance.

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.

e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Any information known to the requester regarding the department's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

104.3(3) *Burden of persuasion.* When a petition is filed for a waiver or variance from a department rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director/board should exercise its discretion to grant the petitioner a waiver or variance.

261—104.4(ExecOrd11) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department 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 department attesting that notice has been provided.

261—104.5(ExecOrd11) Department responsibilities regarding petition for waiver or variance.

104.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver or variance, the director/board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director/board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

104.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the director/board so provides by rule or order; or (c) when a statute so requires.

104.5(3) *Ruling.* An order granting or denying a waiver or variance 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 upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

104.5(4) *Conditions.* The director/board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

104.5(5) *Time for ruling.* The director/board shall grant or deny a petition for a waiver or variance 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. However, if a petition is filed in a contested case, the director/board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

104.5(6) *When deemed denied.* Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

104.5(7) *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.

261—104.6(ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

261—104.7(ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver or variance upon appropriate notice if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

261—104.8(ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

261—104.9(ExecOrd11) Defense. After the director/board issues an order granting a waiver or variance, 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.

261—104.10(ExecOrd11,17A) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A
Sample Petition (Request) for Waiver/Variance

BEFORE THE IOWA DEPARTMENT
OF ECONOMIC DEVELOPMENT

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER

Requests for waiver or variance from a department rule shall include the following information in the petition for waiver or variance where applicable and known:

a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver or variance is requested.

c. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.

d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. Provide history of prior contacts between the department and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Provide information known to the petitioner regarding the department's treatment of similar cases.

g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. Provide the name, address, and telephone number of any person or entity who would be adversely affected or disadvantaged by the grant of the waiver or variance.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving, by clear and convincing evidence, the following to the director/board: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
2. The department may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.
3. All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and 2000 Iowa Acts, House File 2206.

[Filed 6/23/00, Notice 1/12/00—published 7/12/00, effective 8/16/00]

CHAPTER 8
ADMITTANCE AND USE OF FAIRGROUNDS
[Prior to 5/18/88, see Fair Board[430] Ch 8]

371—8.1(173) Curfew. During the fair a curfew will be in force from 1 a.m. to 5 a.m. daily; only those persons with business may remain on the fairgrounds (including owners and caretakers of exhibits, guards, persons registered at dormitories, fair officials and employees).

371—8.2(173) Admittance to grounds. Year-round admittance to the fairgrounds may be made for justified and lawful purposes. The Iowa state fair board reserves the right to restrict admittance during the fair, special events, and during the hours of darkness. Failure to comply with this rule shall be cause for expulsion from the grounds or being charged under Iowa Code chapter 716.

371—8.3(173) Metal detectors. The use of metal detectors on the Iowa state fairgrounds is prohibited at all times unless approved in writing by the Iowa state fair board.

371—8.4(173) Pets.

8.4(1) No privately owned animals or pets shall be allowed to run at large on the Iowa state fairgrounds or upon lands under the jurisdiction of the Iowa state fair board except by permission of the fair board.

a. Animals shall be deemed as running at large unless carried by owner or on a leash or chain or confined or tied to a vehicle.

b. Any animal found running at large will be subject to confinement and will be turned over to the animal shelter.

c. No animals, except animals providing disability assistive services, may be taken into any building on the Iowa state fairgrounds that is posted stating such animals are not allowed in this building.

8.4(2) During the annual fair no pets shall be brought onto the Iowa state fairgrounds or upon lands under the jurisdiction of the Iowa state fair board except as follows:

a. Pets may be brought onto land designated as campgrounds by the Iowa state fair board. Pets brought onto state fair campgrounds are subject to campground rules and shall not be allowed to run at large.

b. Pets or other privately owned animals shall be permitted access to those portions of the Iowa state fairgrounds as is necessary for those animals to participate in competitions, exhibitions, or shows sanctioned or approved by the Iowa state fair board provided such animals are not allowed to run at large.

c. Pets or other privately owned animals subject to contractual agreement with the Iowa state fair to provide entertainment services during the annual fair shall be permitted access to those portions of the Iowa state fairgrounds as is necessary to perform such services. Animals providing entertainment services shall not be left unattended on state fair lands.

8.4(3) Regardless of the preceding provisions, no restriction shall be placed upon the admission of any pet or animal that is providing guide or assistive services to a person who requires accommodation for a disability to the Iowa state fairgrounds or other lands under the jurisdiction of the Iowa state fair board.

8.4(4) Persons bringing pets onto the Iowa state fairgrounds or upon lands under the jurisdiction of the Iowa state fair board shall clean up and dispose of all animal waste attributable to their pets.

8.4(5) Persons failing to comply with the Iowa state fair board's pet policies may be denied admission to the Iowa state fairgrounds or may be barred from bringing their pets onto state fair lands.

These rules are intended to implement Iowa Code sections 173.14 and 173.15.

[Filed 6/19/81, Notice 4/15/81—published 7/8/81, effective 8/12/81]
[Filed emergency after Notice 7/27/84, Notice 6/6/84—published 8/15/84, effective 8/10/84]
[Filed 6/28/85, Notice 5/22/85—published 7/17/85, effective 9/1/85]
[Filed 4/22/88, Notice 2/24/88—published 5/18/88, effective 6/30/88]
[Filed emergency 6/17/00 after Notice 5/17/00—published 7/12/00, effective 6/17/00]

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The fair board hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

371—9.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of "(official or body issuing these rules)" insert "the fair board".

371—9.3(17A,22) Requests for access to records.

9.3(1) In lieu of "(insert agency head)" insert "secretary/manager of the fair board". In lieu of "(insert agency name and address)" insert "Secretary of Fair Board, Statehouse, Des Moines, Iowa 50319".

9.3(2) Office hours. In lieu of "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

9.3(7) Fees.

c. Supervisory fee. In lieu of "(specify time period)" insert "one-half hour".

371—9.9(17A,22) Disclosures without the consent of the subject.

9.9(1) Open records are routinely disclosed without the consent of the subject.

9.9(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 9.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with 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 governmental 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 an authorized representative of such government agency or instrumentality had submitted a written request to the fair board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to 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 address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

371—9.10(17A,22) Routine use.

9.10(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 to be made by statute other than the public records law, Iowa Code chapter 22.

9.10(2) To the extent allowed by law, the following uses are considered routine uses of all fair board records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential 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 the fair board.

d. Transfers of information within the 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 and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

371—9.11(17A,22) Consensual disclosure of confidential records.

9.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 9.7(17A,22).

9.11(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 the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

371—9.12(17A,22) Release to subject.

9.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 9.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law.

9.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the fair board may take reasonable steps to protect confidential information relating to another subject.

371—9.13(17A,22) Availability of records.

9.13(1) *General.* Fair board records are open for public inspection and copying unless otherwise provided by rule or law.

9.13(2) *Confidential records.* The following records 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. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20, 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. 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)*"d."*

f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or 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. (See Iowa Code sections 17A.2, 17A.3.)

g. 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), 622.10 and 622.11. Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records made confidential by law.

9.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 9.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 9.4(3).

371—9.14(17A,22) Personally identifiable information—personnel files. The fair board maintains files containing information about employees and applicants for positions with the agency. The files include payroll records, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

371—9.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 9.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 9.13(17A,22). The records listed may contain information about individuals.

Council and commission records. Agendas, minutes, and materials presented to the fair board are available from the office of the fair board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Fair board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

1. Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.
2. Publications. The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.
3. Office publications. This office issues a variety of materials including premium books and newsletters, brochures and pamphlets, press releases, and statistical reports.
4. Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.
5. Office manuals. Information in office manuals such as the Superintendents Manual may be confidential under Iowa Code section 17A.2(7)"*f*" or other applicable provision of law.
6. All other records that are not exempted from disclosure by law.

371—9.16(17A,22) Data processing systems. None of the 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.

These rules are intended to implement Iowa Code section 22.11.

[Filed 8/1/88, Notice 5/18/88—published 8/24/88, effective 9/28/88]

CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]

Created by 1988 Iowa Acts, chapter 1277, sections 14 to 19, under the "umbrella" of the Department of Human Rights[421]

CHAPTER 1
FUNCTIONS

428—1.1(216A) Definitions. As used in this chapter:

"Administrator" means the administrator of the division of criminal and juvenile justice planning.

"Criminal and juvenile justice planning advisory council (CJJPAC)" means the advisory council established in Iowa Code section 216A.132.

"Division" means the division of criminal and juvenile justice planning.

"Juvenile justice advisory council (JJAC)" means the state advisory group described in P.L. 93-415, Section 223(a)(3), and established through executive order to oversee the administration of the Juvenile Justice and Delinquency Prevention Act (JJDPA) formula grants in Iowa.

428—1.2(216A,PL93-415) Function of the division.

1.2(1) The division shall provide staff support to the CJJPAC and the JJAC and shall assist them with the coordination of their efforts. Additionally, the division shall perform functions consistent with the duties and requirements outlined in Iowa Code chapter 216A, subchapter 9, P.L. 93-415 and other relevant federal and state requirements.

1.2(2) The division shall establish and maintain procedures to collect and report all instances of juvenile detention and confinement occurring in the state of Iowa consistent with P.L. 93-415, Section 223(a)(15). The monitoring function shall include the following:

a. The division shall collect relevant self-report information and perform on-site verification of data from jails, police lockups, juvenile detention facilities, state training schools, mental health institutes, locked residential treatment facilities for youth and other secure facilities.

b. Through written agreement, the jail inspection unit of the department of corrections shall provide the division and the specific jails and lockups with certification of their ability to separate juveniles and adults, consistent with P.L. 93-415, Section 223(a)(13).

c. Through written agreement, the department of inspections and appeals shall provide information to the division on holdings relative to P.L. 93-415, Section 223(a)(12)(A), in contracted private facilities that the department of inspections and appeals has authority to inspect.

d. Through written agreement, the department of human services shall provide information to the division on holdings relative to P.L. 93-415, Section 223(a)(12)(A), in state institutions that the department of human services administers.

1.2(3) Inquiries shall be directed to the division, the CJJPAC or the JJAC, Lucas State Office Building, Des Moines, Iowa 50319. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

428—1.3(216A) Function and activity of the CJJPAC. The CJJPAC is established by Iowa Code section 216A.132 and is charged with the responsibility to identify and analyze justice system issues of concern; develop and assist others in implementing recommendations and plans for system improvement; and provide for a clearinghouse of justice system information to coordinate with data resource agencies and to assist others in the use of justice system data. The CJJPAC shall advise the division on its administration of state and federal grants and appropriations and shall carry out other functions consistent with the intent of Iowa Code chapter 216A, subchapter 9.

428—1.4(216A) Function and activity of the JJAC. The JJAC is established through executive order pursuant to P.L. 93-415 to advise the division on juvenile justice issues; make recommendations to the governor and legislature; review and comment on the division's reporting of Iowa's compliance with the requirements of P.L. 93-415, Sections 223(a)(12), (13), (14) and (23); advise the division on its administration of state and federal grants and appropriations; supervise the division's administration of the Juvenile Justice and Delinquency Prevention Act formula grant and Title V delinquency prevention programs established in P.L. 93-415; and carry out other functions consistent with the intent of P.L. 93-415.

428—1.5(216A) CJJPAC and JJAC meetings.

1.5(1) Notice of meetings of the CJJPAC and the JJAC shall be published 24 hours in advance of the meeting and will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas shall be available by mail from the division to any interested persons if requested not less than five days in advance of the meeting. All meetings shall be open to the public, unless a closed session is voted by two-thirds of the entire membership or by all members present for one of the reasons specified in Iowa Code section 21.5. Special or electronic meetings may be called by the chair upon a finding of good cause and shall be held in accordance with Iowa Code section 21.8. CJJPAC or JJAC meetings shall be governed by the following procedures:

a. Persons wishing to appear before the CJJPAC or the JJAC shall submit the request to the respective council not less than five days prior to the meeting. Presentations may be made at the discretion of the respective chair and only upon matters appearing on the agenda.

b. Persons wishing to submit written material shall do so at least five days in advance of the scheduled meeting to ensure that CJJPAC or JJAC members have adequate time to receive and evaluate the material.

c. At the conclusion of each meeting, a time, date and place of the next meeting shall be set unless such meeting was previously scheduled and announced.

d. Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. The chair may request a person using such a device to discontinue its use when it is obstructing the meeting. If the person fails to comply with this request, the presiding officer shall order that person excluded from the meeting.

e. The chair may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

f. Other meeting protocol and procedures consistent with this subrule and Iowa Code chapter 21 may be established by the CJJPAC or the JJAC through bylaws approved by a majority of the members of the council subject to the bylaws.

1.5(2) Minutes of CJJPAC or JJAC meetings are prepared and are available for inspection at the division office during business hours. Copies may be obtained without charge by contacting the office.

1.5(3) The CJJPAC or JJAC may form committees to carry out those duties as are assigned by the respective council. Meetings of the committees shall conform to the conditions governing the respective full councils as listed in subrule 1.5(1).

These rules are intended to implement Iowa Code chapter 17A, Iowa Code sections 216A.131 to 216A.136, and section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and Public Law 93-415.

[Filed 3/15/91, Notice 2/6/91—published 4/3/91, effective 5/8/91]
[Filed emergency 6/22/00 after Notice 5/17/00—published 7/12/00, effective 6/22/00]

CHAPTER 3
JUVENILE JUSTICE YOUTH DEVELOPMENT PROGRAM

[Prior to 3/4/92, see Children, Youth and Families Division, 425—Chapter 7]
[Prior to 7/12/00, see 428—Chapters 3 to 5]

428—3.1(216A,232) Definitions. As used in this chapter:

"Administrator" means the administrator of the division of criminal and juvenile justice planning within the department of human rights.

"Applicant" means a city, county or other designated eligible entity preparing and submitting an application for funding through this program.

"Application" means a request to the division for funding that complies with federal and state requirements.

"Criminal and juvenile justice planning advisory council (CJJPAC)" means the advisory council established in Iowa Code section 216A.132.

"Decategorization," as established in Iowa Code section 232.188, means the department of human services' program whereby approved counties are permitted to pool their allocations of designated state and federal child welfare and juvenile justice funding streams, establish local planning and governance structures, and design and implement service systems that are more effective in meeting local needs.

"Decategorization governance board" means the board required to provide direction and governance for a decategorization project, pursuant to Iowa Code section 232.188.

"Division" means the division of criminal and juvenile justice planning within the department of human rights.

"Formula-based allocation" means a process that uses a formula to determine funding amounts to units of government or local public planning entities on a statewide basis.

"Grant review committee" means a committee established by the JJAC, the CJJPAC or the division to review and rank applications for funding. Individuals who are not members of the JJAC or the CJJPAC may serve on this committee.

"Justice Research and Statistics Association (JRSA)" is a national nonprofit organization that provides a clearinghouse of current information on state criminal justice research, programs, and publications.

"Juvenile Accountability Incentive Block Grant (JAIBG)" means a federally funded program to provide state and local governments funds to develop programs to reduce delinquency, improve the juvenile justice system, and increase accountability for juvenile offenders.

"Juvenile crime prevention community grants" means the community grant fund program established in Iowa Code section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and the federal Title V delinquency prevention program.

"Juvenile justice advisory council (JJAC)" means the state advisory group described in P.L. 93-415, Section 223(a)(3), and established through executive order to oversee the administration of the JJDPA formula grants in Iowa.

"Juvenile Justice and Delinquency Prevention Act (JJDPA)" means the federal Act, P.L. 93-415.

"Law enforcement expenditures" means the expenditures associated with police, prosecutorial, legal, and judicial services, and corrections as reported by the units of local government to the U.S. Census Bureau during the Census of Governments.

"Local public planning entities" means entities that have a local governance structure to plan, develop and coordinate services for children and families, and provide for implementation of services for children and families. Examples of local public planning entities include, but are not limited to, units of local government such as cities or counties, decategorization governance boards, community empowerment area boards, and school districts.

"Office of Juvenile Justice and Delinquency Prevention (OJJDP)" means the federal office within the U.S. Department of Justice that administers the Juvenile Justice and Delinquency Prevention Act and JAIBG.

"State juvenile crime enforcement coalition (JCEC)" means a group of individuals that develops a state plan to achieve the goals of JAIBG. The CJJPAC and the JJAC shall jointly act as the state JCEC.

"Subgrantee" means any applicant receiving funds through this program from the division.

"Title V delinquency prevention grants" means Title V, Sections 501-506, "Incentive Grants for Local Delinquency Prevention Programs Act," of the JJDPA.

"Unit of local government" means a county, township, city, or political subdivision of a county, township, or city that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes, and the recognized governing body of an Indian tribe that carries out substantial governmental duties and powers.

428—3.2(216A,232) Purpose and goals.

3.2(1) The purpose of the juvenile justice and youth development program is to assist the state in the establishment and operation of juvenile crime prevention programs; provide for greater accountability in the juvenile justice system; implement a results framework that promotes youth development; and comply with the JJDPA core requirements regarding the deinstitutionalization of status offenders, sight and sound separation of adults and juveniles in secure facilities, prohibitions on the use of adult jails to hold juveniles, and the disproportionate confinement of minority youth.

3.2(2) The primary goal of the coordinated juvenile justice and prevention program is to promote positive youth development by helping communities provide their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster healthy and nurturing environments that support the growth and development of productive and responsible citizens. Other specific goals of this program are to reduce youth violence, truancy, involvement in criminal gangs, substance abuse and other delinquent behavior.

428—3.3(216A,232,PL93-415) Program funding distribution. The division shall distribute funds available for this program through the following methods:

1. Competitive grants.
2. Formula-based allocations.
3. Sole source contracts.

Funding through any of these methods may be on an annual or multiyear basis.

428—3.4(216A,232,PL93-415) Competitive grants.

3.4(1) *Application announcement.* The administrator of the division shall announce through public notice the opening of any competitive grant application process. The announcement shall provide potential applicants with information that describes eligibility conditions, purposes for which the program funding shall be available, application procedures, and all relevant time frames established for proposal submittal and review, grant awards, and grant expenditure periods.

3.4(2) *Preapplication.* The division may request potential applicants to submit a preapplication summary of their proposal. If a preapplication is required, the division shall provide all potential applicants with sufficient information detailing the extent of the preapplication and the criteria for review. Preapplications received in a timely manner shall be presented to the grant review committee for screening. The committee shall use the same ranking system for each preapplication. It shall be based on the criteria provided to the applicant through the division activities specified in subrule 3.4(1). Applicants shall be notified in writing of the screening decisions.

3.4(3) *Content of applications.* Required elements of the applications shall be published in the request for applications and shall be based on a point system established by the division that reflects the requirements of federal and state funding sources. The division shall develop the application and selection criteria.

3.4(4) *Application review and selection process.* The division shall conduct a preliminary review of each application to ensure that the applicant is eligible and the application is complete. All applications that are submitted in a timely manner by eligible applicants and contain the necessary information shall be presented to the grant review committee. Members of the grant review committee shall review each application and shall assign numerical scores to each application using criteria and point values established by the division and listed in the request for applications. The rank order of scores assigned to the applications by the review committee shall be the basis for funding recommendations for each application reviewed. The grant review committee shall forward their funding recommendations for approval and final award decisions pursuant to rule 428—3.7(216A,232,PL93-415). Decisions to make final awards shall be consistent with applicable state and federal program requirements.

3.4(5) *Conflict of interest.* Persons shall not serve on the grant review committee or otherwise participate personally through decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which funds administered by the division are used when, to the person's knowledge, the person or a member of the person's immediate family, a partner, an organization in which the person is serving as an officer, director, trustee, partner, or employee or any person or organization with whom the person is negotiating or has any arrangement concerning prospective employment, or has a financial interest of less than an arms-length transaction. If a person's agency or organization submits an application, the person shall not be present when the grant review committee's recommendations are acted upon by the JJAC or the CJJPAC.

428—3.5(216A,232,PL93-415) Formula-based allocations.

3.5(1) *Funding recipients.* Only units of local government and local public planning entities may be considered eligible applicants to receive funding through this distribution method. The determination of which units of local government and local public planning entities are eligible applicants shall be made according to the state or federal law or regulation that makes funding available to the division for this distribution method. When such a determination is not established in law or regulation, the administrator shall make the determination with the advice of the CJJPAC and the JJAC.

3.5(2) *Formula to determine individual allocation amounts.* Allocation amounts to individual units of local government or local public planning entities shall be calculated according to the state or federal law or regulation that makes funding available to the division for this distribution method. When an allocation formula for funding to be distributed by the division is not established in this chapter or other law or regulation, the division shall calculate allocations based on a formula determined by the administrator. The formula shall be based on the number of children residing in the respective areas and may also be based on poverty rates, delinquency rates and other data relevant to child and family well-being. Application materials provided to the eligible units of local government or local public planning entities shall specify the formula used to calculate the allocation.

3.5(3) *Application procedures and requirements.*

a. Each unit of local government or local public planning entity that is eligible to be an applicant for funds pursuant to 3.5(1) shall be contacted by the division and provided an application that must be completed by the applicant prior to the applicant's receipt of the allocation.

b. The application may require the submission of a comprehensive plan to prevent and reduce juvenile crime that reflects the purposes and goals in rule 428—3.2(216A,232) and that structures the coordination and collaboration of other relevant community programs and activities. Evidence of such coordination and collaboration may be required to include assurances and documentation that the plan for this program was developed to include, or be an integral part of, other areawide plans related to, for example, child welfare, substance abuse, health, or education.

c. The application may require documentation that the application was completed with the participation of representatives from, for example, law enforcement, county attorneys, county and city governments, and health, human services, education and community service agencies.

d. The application may also require the applicant to certify and make assurances regarding policies and practices related to, but not limited to, funding eligibility, program purposes, service delivery and planning and administration capacities.

e. Each notified applicant shall submit the required information by the deadline established and announced by the division. The division reserves the right to extend the deadline.

f. Following its receipt and approval of a completed application, the division shall offer the applicant a contract authorizing the obligation of funds. These rules and all applicable state and federal laws and regulations shall become part of the contract by reference.

3.5(4) *Allocations declined, waived or combined.*

a. As allowed by federal or state law, when an eligible local public planning entity or unit of local government declines to submit an application for funds, such funds shall be retained by the division to be reallocated among all participating units of local government or local public planning entities or to be otherwise distributed for the development of services that have a statewide impact.

b. As allowed by federal or state law, the division may permit an eligible unit of local government to waive its right to a direct allocation and request that its allocation be awarded to and expended for its benefit by a larger or contiguous unit of local government or local public planning entity. A written waiver shall be required from the unit of local government that waives its right to a direct allocation and names a requested unit of local government or local public planning entity to receive and expend the funds. The unit of local government or local public planning entity receiving the funds must agree, in writing, to accept the redirected funds, to carry out all planning and application requirements and to serve as the fiscal agent for receiving the waived allocation. The division's instructions to eligible applicants shall describe the procedures required to implement this subrule.

c. As allowed by federal or state law, the division may permit applicants to enter into regional coalitions by planning for and utilizing combined allocations from the participating units of local government or local public planning entities. A unit of local government or local public planning entity shall serve as the applicant and fiscal agent for purposes of carrying out planning and application requirements, and for receiving the allocation and obligating and expending funds for the benefit of the combined units. The division's instructions to eligible applicants shall describe the process to implement this subrule.

428—3.6(216A,232,PL93-415) Sole source contracts. The division may determine, because of the nature of a certain problem or desired programmatic response, that a competitive grant or formula-based allocation process would not be the most appropriate or expeditious process through which to award funds. In such cases, the division may seek out a potential subgrantee with which it can develop a sole source contract for services. The division shall be alert to organizational conflicts of interest and noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. The division's awarding and administration of any sole source contract shall be governed by all relevant state and federal laws and regulations.

428—3.7(216A,232,PL93-415) Program funding sources and related provisions.

3.7(1) Sources of funding for this program may include juvenile crime prevention community grants, JJDPA formula grants, JAIBG funds and other funds made available to the division for the purpose of this program. The division may combine funding from these federal and state appropriations and grant programs to distribute through any of the methods outlined in 428—3.3(216A,232,PL93-415).

3.7(2) Juvenile crime prevention community grants.

a. These funds, when available, shall be distributed according to the provisions of 428—3.5(216A,232,PL93-415).

b. The decategorization governance boards established in Iowa Code section 232.188 shall be the eligible recipients of these funds.

c. The administrator may approve applications for these funds except that the JJAC may exercise approval authority over those applications that will be funded in whole or in part with federal Title V delinquency prevention grants.

d. The CJJPAC and the JJAC shall advise the division on its administration of these funds.

3.7(3) JJDPA formula grants.

a. The JJAC shall determine the amounts of these funds, when available, that are to be distributed according to the provisions of 428—3.3(216A,232,PL93-415).

b. The JJAC shall determine any specific purposes for which this funding shall be distributed through the provisions of 428—3.4(216A,232,PL93-415) and 428—3.6(216A,232, PL93-415).

c. The JJAC may review and exercise approval authority over any applications for these funds distributed through the provisions of 428—3.4(216A,232,PL93-415).

d. The administrator may approve applications for these funds when distributed through the provisions of 428—3.5(216A,232,PL93-415) and 428—3.6(216A,232, PL93-415).

3.7(4) Determination of JAIBG funding amounts to be distributed when available.

a. OJJDP determines the amount of JAIBG funds that the division will distribute to units of local government through the provisions of 428—3.5(216A,232,PL93-415).

b. The state JCEC may determine an amount and the purposes of JAIBG funds to be distributed through the provisions of 428—3.4(216A,232,PL93-415) and 428—3.6(216A,232,PL93-415) and the amount of JAIBG funds to be distributed to local public planning entities through the provisions of 428—3.5(216A,232,PL93-415).

3.7(5) JAIBG funding for units of local government.

a. Each year JAIBG funding is available, the division shall conduct a review of state and local juvenile justice expenditures to determine the primary financial burden for the administration of juvenile justice within the state of Iowa. If, after conducting this review, the state's financial burden in the program purpose areas is greater than 50 percent of the expenditures, the division may request OJJDP's approval to distribute to units of local government a lower percentage of the available funding than the percentage initially established by Congress for units of local government. The division shall consult with units of local government or organizations representing such units prior to submitting such a request.

b. The JAIBG allocations for individual units of local government shall be determined by a formula set by Congress which is based on a combination of law enforcement expenditures for each unit of local government and the number of Uniform Crime Report Part 1 violent crime reports by each unit of local government. Two-thirds of each unit of local government's allocation will be based on the law enforcement expenditure data and one-third will be based on the reported violent crime data, in the same ratio to the aggregate of all other units of general local government in the state.

c. To apply the formula set by Congress, the division shall use data collected by the U.S. Census Bureau pertaining to law enforcement expenditures and the Federal Bureau of Investigation pertaining to reported Part 1 violent crime, as compiled by the JRSA, and the department of public safety (DPS) of the state of Iowa.

d. If data, as compiled by JRSA, indicates that units of local government have not reported law enforcement expenditures, or have reported only partial law enforcement expenditures, the division may request complete law enforcement expenditure reports directly from the affected units of local government to determine the correct allocation. If no additional information is received from local units of government within 15 calendar days after requesting such expenditure reports, the division shall use the data as presented by JRSA.

e. If data, as compiled by JRSA, indicates that units of local government have not reported crime data to the DPS or have reported only partial crime data, the division may request complete violent crime data directly from the affected units of local government to determine the correct allocation. If no additional data is received from local units of government within 15 calendar days after requesting such data, the division shall use the data as presented by JRSA.

f. No unit of local government shall receive an allocation that exceeds 100 percent of the law enforcement expenditures of such unit as reported to the Census Bureau.

g. In order to qualify for JAIBG funds, a unit of local government's allocation must be $5,000 or more. If, based on the formula, the allocation for a unit of local government is less than $5,000 during a fiscal year, the amount shall be distributed by the division to the local decategorization governance board for those areas encompassing the unit of local government, as described in subrule 3.7(6).

3.7(6) JAIBG funding for local public planning entities. In any year in which JAIBG funds are available and the state JCEC determines an amount of these funds to be distributed through the provisions of 428—3.5(216A,232,PL93-415), the division may make such funds available to local decategorization governance boards. The division shall calculate allocations to each of the decategorization governance boards based on the number of children aged 5 to 17 years residing in the respective areas. The most recent available population data for children aged 5 to 17 years shall be used to calculate the allocations. In any year in which the division makes JAIBG funds available to local decategorization governance boards, the division shall make funds available to any county that is not participating in decategorization. The division shall calculate allocations to each county that is not participating in decategorization based on the number of children aged 5 to 17 years residing in the respective areas. The most recent available population data for children aged 5 to 17 years shall be used to calculate the allocations.

3.7(7) Other funds. When funds other than those provided for in subrules 3.7(2) through 3.7(6) are made available to the division for the purposes of this program, the division shall distribute such funds through the provisions of this chapter. With the advice of the JJAC and the CJJPAC, the division shall, consistent with applicable state and federal law and regulation, determine the distribution methods, eligible applicants and any allocation formulas to be used when making such funding available.

428—3.8(216A,232) Appeals.

3.8(1) Applicants choosing to appeal funding decisions must file a written appeal with the administrator within ten calendar days of the postmarked date of the written notification of the program's funding decisions.

3.8(2) All letters of appeal shall clearly state the reason(s) for the appeal and evidence of the reason(s) stated. Reason(s) for appeal must be based on a contention that the rules and procedures governing the funding process have not been applied properly. All appeals must clearly state in what manner the division failed to follow the rules of the selection process as governed by these administrative rules or procedures outlined in the application materials provided to all applicants by the division. The letter of appeal must also describe the remedy being sought.

3.8(3) If an appeal is filed within the ten calendar days, the division shall not enter into a contract with any applicant involved in the application process being appealed until the administrator has reviewed and decided on all appeals received in accordance with the criteria in subrules 3.8(1) and 3.8(2). The division administrator shall consider the information submitted by the appellant and relevant information from division staff when conducting the review. The review shall be conducted as expeditiously as possible so that all funds can be distributed in timely manner.

3.8(4) The decision of the division administrator shall represent the final division action for the purpose of implementing Iowa Code chapter 17A.

428—3.9(216A,232) Contract agreement.

3.9(1) *Contract offer.* Applicants shall be notified in writing of the division's intent to fund, contingent upon the funds available. The administrator shall have flexibility in determining which state and federal funds shall be utilized in awards and allocations to subgrantees. These rules and all applicable state and federal laws and regulations become a part of the contract by reference.

3.9(2) *Preaward negotiation.* The applicant may be requested to modify the original application in the negotiation process. The division reserves the right to fund all or part of the applicant's application.

3.9(3) *Withdrawal of contract offer.* If the applicant and the division are unable to successfully negotiate a contract, the division may withdraw the award offer and redistribute program funds in a manner consistent with the provisions of rule 428—3.14(216A,232).

3.9(4) *Contract modifications.* The subgrantee or the division may request a modification or revision of the contract.

3.9(5) *Reimbursement of expenditures.* Funds are to be spent to meet program goals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

428—3.10(216A,232) Contract termination.

3.10(1) *Termination by subgrantee.* The contract may be terminated by the subgrantee at any time during the contract period by giving 30 days' notice to the division.

3.10(2) *Termination by the division.*

a. The division may terminate a contract upon ten days' notice when the subgrantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The division may terminate a contract upon 30 days' notice when there is a reduction of funds by executive order.

b. Termination for convenience. The performance of work under the agreement may be terminated by the division in accordance with this clause in whole or, from time to time, in part whenever the division shall determine that such termination is in the best interest of the state. The division shall pay all reasonable costs associated with the agreement that the subgrantee has incurred up to the date of termination. The division shall not pay for any work that has not been done prior to the date of termination.

c. Termination for default. If the subgrantee fails to fulfill its obligations under this agreement properly or on time, or otherwise violates any provision of this agreement, the division may terminate the agreement by written notice to the subgrantee. The notice shall specify the acts of commission or omission relied on as cause for termination. All finished or unfinished products and services provided by the subgrantee shall, at the option of the division, become the state's property. The division shall pay the subgrantee fair and equitable compensation for satisfactory performance prior to receipt of notice of termination.

3.10(3) *Responsibility of subgrantee at termination.* Within 45 days of the termination, the subgrantee shall supply the division with a financial statement detailing all costs up to the effective date of the termination.

428—3.11(216A,232) Required reports.

3.11(1) Expenditure claim reports shall be required from subgrantees on provided forms. The division, pursuant to regular reimbursement procedures of the state of Iowa, shall reimburse subgrantees for actual expenditures specified in the approved budget.

3.11(2) Quarterly reports on program outcomes, program status and financial status shall be required from subgrantees on provided forms.

3.11(3) Other reports, including audit reports prepared by independent auditors, may be required by the division and specified in the request for applications or contract to assist in the monitoring and evaluation of programs.

3.11(4) Failure to submit required reports by the due date shall result in suspension of financial payments to the subgrantee by the division until such time as the reports are received. No new awards shall be made for continuation programs where there are delinquent reports from prior grants.

428—3.12(216A,232) Subgrantee records. Financial records, supporting documents, statistical records and all other records pertinent to the program shall be retained by the subgrantee in accordance with the following:

3.12(1) Records for any project shall be retained for three years after final closeout and audit procedures are completed and accepted by the division.

3.12(2) Representatives of the state auditor's office and the division shall have access to all books, accounts, documents, and other property belonging to or in use by a subgrantee pertaining to the receipt of funds under these rules.

428—3.13(216A,232) Allowable costs and cost restrictions.

3.13(1) Grant funds from this program shall be used to support only those activities and services specified and agreed to in the contract between the subgrantee and the division. The contract shall identify specific cost categories against which all allowable costs must be consistently charged.

3.13(2) Funds appropriated for this program shall not be expended for supplantation of federal, state, or local funds supporting existing programs or activities. Instructions for the application and acceptance of competitive grants, formula-based allocations, and sole source contracts may specify other cost limitations including, but not limited to, costs related to political activities, interest costs, fines, penalties, lawsuits or legal fees, and certain fixed assets and program equipment.

428—3.14(216A,232) Redistribution of funds. The division reserves the right to recapture and redistribute awarded funds based upon projected expenditures if it appears that funds shall not be expended by a subgrantee according to the conditions of the subgrantee's contract. Recaptured funds may be granted by the administrator to other applicants or subgrantees for services and activities consistent with the purposes and goals of the program.

428—3.15(216A,232) Compliance with state and federal laws. In acceptance of a grant, the subgrantee shall agree to comply with all applicable state and federal rules and laws including, but not limited to, the JJDPA.

428—3.16(216A,232) Immunity of state and agencies. The subgrantee shall defend and hold harmless the state and any federal funding source for the state from liability arising from the subgrantee's performance or attempted performance of its contract, and the subgrantee's activities with subcontractors and all other third parties.

These rules are intended to implement Iowa Code chapter 17A, Iowa Code sections 216A.131 to 216A.136, and section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and Public Laws 93-415 and 105-119.

[Filed emergency 8/5/88—published 8/24/88, effective 8/5/88]
[Filed 2/12/92, Notice 1/8/92—published 3/4/92, effective 4/8/92]
[Filed emergency 6/17/94—published 7/6/94, effective 6/17/94]
[Filed emergency 6/9/95—published 7/5/95, effective 6/9/95]
[Filed emergency after Notice 6/23/98—published 7/15/98, effective 7/15/98]
[Filed emergency 2/19/99—published 3/10/99, effective 2/19/99]
[Filed emergency 6/22/00 after Notice 5/17/00—published 7/12/00, effective 6/22/00]

CHAPTER 4
JUVENILE CRIME PREVENTION COMMUNITY GRANT FUND

Rescinded IAB 7/12/00, effective 6/22/00

CHAPTER 5
JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT PROGRAM (JAIBG)

Rescinded IAB 7/12/00, effective 6/22/00

CHAPTER 21
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

[Prior to 5/6/87, Employment Security[370]Ch 8]

581—21.1(97B) Organization. The Iowa public employees' retirement system was created by Iowa Code chapter 97B.

21.1(1) *Definitions.* Unless otherwise prescribed by federal or state regulations, the terms used in this chapter shall have the following meanings:

"Board" means the investment board of IPERS established in Iowa Code section 97B.8.

"Chief benefits officer" means the person employed by the director to administer the benefits programs of the retirement system.

"Chief investment officer" means the person employed by the director to administer the investment program of the retirement system.

"Department" means the Iowa department of personnel.

"Director" means the director of the Iowa department of personnel.

"Internal Revenue Code" means the Internal Revenue Code as defined in Iowa Code section 422.3.

"IPERS" means the Iowa public employees' retirement system.

21.1(2) *Administration.* The director, through the chief investment officer and the chief benefits officer, shall administer Iowa Code chapters 97, 97B, and 97C, shall execute contracts on behalf of IPERS, shall 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-services basis.

21.1(3) *Location.* IPERS' business address is 600 East Court Avenue, Des Moines, Iowa. In August 2000, IPERS' business location shall be 7401 Register Drive, Des Moines, Iowa. General correspondence, inquiries, requests for information or assistance, complaints, or petitions shall be addressed to: Iowa Public Employees' Retirement System, P.O. Box 9117, Des Moines, Iowa 50306-9117.

21.1(4) *Business hours.* Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

21.1(5) *Investment board.*

a. The board shall meet annually, and may meet more often, to review its investment policies. Future meeting dates shall be set by members of the board at the end of each meeting.

b. At the first meeting in each fiscal year, the voting members shall elect a chair and vice-chair.

c. The principal place of business of the investment board is located at 600 East Court Avenue, Des Moines, Iowa. In August 2000, the principal place of business of the investment board shall be 7401 Register Drive, Des Moines, Iowa.

d. Advance notice of time, date, tentative agenda, and place of each meeting shall be given in compliance with Iowa Code chapter 21.

e. Parties wishing to present items for the board's agenda for its next meeting shall file a written request with IPERS at least five workdays prior to the meeting. The board may take up matters not included on its agenda.

f. Quorum. Five members eligible to vote shall constitute a quorum. A simple majority vote of the full voting membership shall be the vote of the board.

g. 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 director.

581—21.2(97B) Records to be kept by the employer.

21.2(1) *Definition.* Each employing unit 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.

21.2(2) *Records shall show with respect to each employee:* the employee's name, address and social security account number; each date the employee was paid wages or other wage equivalent (e.g., room, board); the total amount of wages paid on each date including noncash wage equivalents; the total amount of wages including wage equivalents on which IPERS contributions are payable; and the amount withheld from wages or wage equivalents for the employee's share of IPERS contributions.

Effective January 1, 1995, records will show, with respect to each employee, member contributions picked up by the employer.

21.2(3) *Reports.* Each employing unit shall make reports as IPERS may require, and shall comply with the instructions printed upon any report form issued by IPERS pertaining to the preparation and return of the report. Effective July 1, 1991, employers must report all terminating employees to IPERS within seven working days following the employee's termination date. This report to IPERS shall contain the employee's last-known mailing address and such other information as IPERS might require.

21.2(4) *Fees.* IPERS may assess to an employer a fee based on IPERS' cost accrued in correcting an employer's errors if an employer fails to file required documents and remittances accurately.

This rule is intended to implement Iowa Code sections 97B.11, 97B.14 and 97B.53A.

581—21.3(97B) Liable employers.

21.3(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 more specific 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: municipalities, counties, school districts, drainage 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.

Some employers included are: 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. Any employing unit not already reporting to IPERS which fulfills the conditions with respect to becoming an employer shall immediately give notice to IPERS of that fact. Such notice shall set forth the name and address of the employing unit.

21.3(2) *Name change.* Any employing unit which has a change of name, address, title of the unit, its reporting official or any other identifying information shall immediately give notice in writing to IPERS. The notice shall include the former name, address and IPERS account number of the employing unit, the new name and address of the employing unit and the reason for the change if other than a change of reporting official.

j. Wages for certain testing purposes. Wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include a member's gross wages, excluding nontaxable fringe benefits and all amounts placed in tax-deferred vehicles including, but not limited to, plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457, and excluding IPERS contributions paid after December 31, 1994, by employers on behalf of employees. Effective January 1, 1996, the annual wages of a member taken into account for testing purposes under any of the applicable sections of Internal Revenue Code shall not exceed the applicable amount set forth in Internal Revenue Code Section 401(a)(17), and any regulations promulgated pursuant to that section. The foregoing sentence shall not be deemed to permit the maximum amount of wages of a member taken into account for any other purpose under Iowa Code chapter 97B to exceed the maximum covered wage ceiling under Iowa Code section 97B.1A(25). Effective January 1, 1998, wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include elective deferrals placed in tax-deferred plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457 by employers on behalf of employees.

21.4(2) Wages are reportable in the quarter in which they are actually paid to the employee, except in cases where employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, in which case the employer shall file wage adjustment reporting forms with IPERS allocating said 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.

An employer cannot report wages as having been paid to employees as of a quarterly 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 second quarter 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 third quarter wages.

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 21.4(1) above and shall not be covered.

21.4(3) One quarter of service will be credited for each quarter in which a member is paid covered wages.

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum. Effective January 1, 2000, and for each subsequent calendar year, covered wages shall not exceed $170,000 or the amount permitted for that 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 shall be included in determining the annual covered wage maximum. If the amount of wages paid to a member by several employers during a calendar year exceeds the covered wage limit, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. See subrule 21.8(1), paragraph *"h."*

This rule is intended to implement Iowa Code section 97B.1A(25).

581—21.5(97B) Identification of employees covered by the IPERS retirement law.

21.5(1) Definition of employee.

a. 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. A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration. 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, Education and Welfare, without the element of direction and control.

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 membership continues until the member terminates covered employment. The election window does not allow members who had been in coverage to elect out.

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. Coverage under IPERS will terminate when the board of trustees approves the election. The election, once received by the board of trustees, is irrevocable. If no election is filed by that date, the member will remain covered by IPERS until termination of covered employment. The election window does not allow a member who previously elected out of IPERS to reverse the decision and become covered under IPERS.

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.

Employment as defined in Iowa Code chapter 97B is not synonymous with IPERS membership. Some classes of employees are excluded under Iowa Code section 97B.1A(8)*"b"* from membership by their nature. The following subparagraphs are designed to clarify the status of certain employee positions.

(1) Effective January 1, 1999, elected officials in positions for which the compensation is on a fee basis, elected officials of school districts, elected officials of townships, and elected officials of other political subdivisions who are in part-time positions are covered by IPERS unless they elect out of coverage. 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.

(2) County and municipal court bailiffs who receive compensation for duties are included.

(3) City attorneys are included.

(4) Judicial magistrates are included unless they elect out of IPERS coverage. Having made a choice to remain in IPERS coverage, a judicial magistrate may not revoke that election and discontinue such coverage.

(5) Office and clerical staff of a county medical examiner's office are included, but county medical examiners and deputy county medical examiners are excluded.

(6) 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 are included. Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer, are to be treated as firefighters. Effective January 1, 1995, part-time police officers are covered in the same manner as full-time police officers. In accordance with Iowa Code section 80D.14, reserve peace officers employed under Iowa Code chapter 80D are excluded from coverage. In accordance with Iowa Code sections 384.6(1) and 411.3, a police chief or fire chief who has submitted a written request to the board of trustees created by section 411.36 to be exempt from chapter 411 is also exempt from coverage under IPERS. The city shall make contributions on behalf of such persons to the international city management association/retirement corporation.

(7) County social welfare employees are included.

(8) Members of county soldiers relief commissions and their administrative or clerical employees are included.

(9) Part-time elected mayors, mayors of townships, and mayors that 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.

(10) Field assessors are included.

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

(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 are included unless the employee elects out of coverage. If coverage is elected, the member may not terminate coverage until termination of covered employment.

(13) Persons hired for temporary employment are excluded from IPERS' coverage providing that they have not established an ongoing relationship with an IPERS-covered employer. Effective January 1, 1993, an ongoing relationship with an IPERS-covered employer is established when the employee is paid covered wages of $300 or more per quarter in two consecutive quarters, or if the employee is employed by a covered employer for 1,040 or more hours in a calendar year. Coverage will 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 will continue until that person completes four consecutive calendar quarters in which no services are performed for that employer after the last covered calendar quarter. Notwithstanding the foregoing sentence, no service credit will be granted to a temporary employee who has become a covered employee under this rule for any calendar quarter in which no covered wages are reported unless the employee is on an approved leave of absence. Contributions shall be paid, and service credit accrued, when wages are paid in the quarter after the ongoing relationship has been established.

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

(15) A county attorney is included as an employee whether or not employed on a full- or part-time basis.

(16) Tax study committee employees are included.

(17) Rescinded IAB 7/22/92, effective 7/2/92.

(18) School bus drivers who are considered to be public employees are included. School bus drivers who are independent contractors are excluded. A determination must be made by IPERS on the facts presented on a case-by-case basis.

(19) Persons who are enrolled as students and whose primary occupations are as students are not covered. Full-time and part-time students who are employed part-time by the institutions where they are enrolled as students are not covered. Full-time and part-time students who are employed full-time or part-time by a covered employer other than the institution where they are enrolled are covered. Full-time employees who are enrolled as part-time students in the institution where they are employed are covered. 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.

(20) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants and specialists in their field of specialized knowledge or skill are all excluded from coverage.

(21) Members of any other retirement system in Iowa maintained in whole or part by public funds are excluded. Effective July 1, 1996, an employee who is employed by a covered employer other than the employer that makes contributions on the member's behalf to such other retirement system in Iowa shall be a covered employee, unless the employee receives credit in such other retirement system for both jobs.

(22) Members who are contributing to the federal civil service retirement system or federal employees retirement system are excluded. Effective July 1, 1996, an employee who is employed by a covered employer other than the employer making contributions to such federal retirement systems shall be a covered employee, unless the employee receives credit in such federal retirement systems for both jobs.

(23) Employees of credit unions without capital stock organized and operated for mutual purposes without profit are excluded.

(24) Members of the ministry, rabbinate or other religious order who perform full- or part-time religious service for a covered employer are included; but members of the ministry, rabbinate or other religious order who have taken the vow of poverty are included, unless they elect out of coverage.

(25) Any physician, surgeon, dentist or member of other professional groups employed full-time by a covered employer is included; but 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 is excluded, except for city attorneys and health officials.

(26) Interns and resident doctors in the employ of a state or local hospital, school or institution are excluded.

(27) 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, are included.

(28) Effective July 1, 1994, volunteer firefighters and special police officers are considered temporary employees and will be covered if they meet the requirements of 581 IAC 21.5(1)*"a"*(13).

(29) Residents or inmates of county homes are excluded.

(30) Members of the state transportation commission, the board of parole, and the state health facilities council are included unless they elect out of coverage.

(31) 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.

(32) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in Iowa Code chapter 372 or 420 are included unless they elect out of coverage.

(33) Employees appointed by the state board of regents are covered unless, at the discretion of the state board of regents, they elect coverage in a retirement system qualified by the state board of regents.

(34) School employees who work in additional positions along with normal duties with the same employer will be considered 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.)

(35) "Adjunct instructors" employed by a community college or university are excluded from coverage. 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, as the case may be. 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 will 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.

(36) 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 are not covered unless: (a) both the enrollee and the covered employer elect coverage; or (b) the enrollee is currently contributing to IPERS. A covered employer is defined as the host agency where the enrollee is placed for training.

(37) Effective July 1, 1994, employees of area agencies on aging are excluded from coverage 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 have or terminates participation in an alternative plan, coverage under IPERS shall begin immediately.

(38) Effective July 1, 1994, arson investigators are no longer covered under IPERS. They were transferred to public safety peace officers' retirement, accident and disability system.

(39) Persons who meet the requirements of independent contractor status as determined by IPERS using the criteria established by the federal Internal Revenue Service are not included.

(40) Effective July 1, 1994, a person employed on or after that date for certain public safety positions is excluded from IPERS coverage. 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).

(41) Employees of area community colleges are included unless they elect coverage under an alternative system pursuant to a one-time irrevocable election.

(42) Volunteer emergency personnel, such as ambulance drivers, are considered temporary employees and will be covered if they meet the requirements of 581 IAC 21.5(1)*"a"*(13). Persons who meet such requirements will be covered under the protection occupation requirements of Iowa Code section 97B.49(16) if they are considered firefighters by their employers; otherwise they are covered under Iowa Code section 97B.11.

(43) Employees of the Iowa department of public safety hired pursuant to Iowa Code chapter 80 as peace officer candidates are excluded from coverage.

(44) Persons employed through any program described in Iowa Code section 15.225, subsection 1, and provided by the Iowa conservation corps shall not be covered.

(45) 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 are included 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.

(46) 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.

(47) 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.

(48) Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall be excluded. Notwithstanding the foregoing, persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

(49) Effective July 1, 1999, persons performing referee services for a covered employer shall be excluded from coverage, unless the performance of such services is included in the persons' regular job duties for the employers for which such services are performed.

(50) Effective July 1, 2000, patient advocates appointed under Iowa Code section 229.19 shall be included.

b. Each employer shall ascertain the federal social security account number of each employee subject to IPERS.

c. Rescinded IAB 7/5/95, effective 8/9/95.

21.5(2) The employer shall report the employee's federal social security account number in making any report required by IPERS with respect to the employee.

21.5(3) to **21.5(6)** Rescinded IAB 7/22/92, effective 7/2/92.

21.5(7) 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.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.42, 97B.42A, 97B.42B, 97B.49C, and 97B.52A and 2000 Iowa Acts, Senate File 2411, section 69.

581—21.6(97B) Wage reporting and payment of contributions by employers.

21.6(1) Any public employing unit whose combined employer/employee IPERS contribution tax equals or exceeds $100 per month is required to pay the tax on a monthly basis. All other employing units are required to file wage reports and pay the contribution tax on a quarterly basis. When IPERS becomes aware of the correct payment and reporting status of an employing unit, IPERS will send to the reporting official a supply of the employer remittance advice forms.

21.6(2) Each periodic wage reporting form must include all employees who earned reportable wages or wage equivalents under IPERS. If an employee has no reportable wage in a quarter but is still employed by the employing unit, the employee should be listed with zero wages.

21.6(3) All checks in payment of the total contribution tax shall be made payable to the Iowa Public Employees' Retirement System and mailed with the employer remittance advice to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117.

21.6(4) For employers filing quarterly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the calendar quarter in which the wages were paid.

For employers filing monthly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the month in which wages were paid.

Any employer filing monthly or quarterly employer remittance advice forms for two or more entities shall attach to each remittance form the checks covering the contributions due on that form. The combining of contributions due for payment from two or more entities into one check or multiple checks will not be accepted. Improperly paid contributions are considered as unpaid. Upon the request of the employer, IPERS may grant a waiver of the requirement which prohibits the combining of contributions. A single entity which has several accounts will be required to report all wages under one main account effective January 1, 1995.

21.6(5) A request for an extension of time to pay a contribution may be granted by IPERS for good cause if presented before the due date, but no extension shall exceed 30 days after the end of the calendar quarter. If an employer who has been granted an extension fails to pay the contribution on or before the end of the extension period, interest shall be charged and paid from the original due date as if no extension had been granted.

To establish good cause for an extension of time to pay, the employer must show that the failure to pay was not due to mere negligence, lack of ordinary care or attention, carelessness or inattention. The employer must affirmatively show that it did not pay timely because of some occurrence beyond the control of the employer.

21.6(6) When an employer has no reportable wages or no wages to report during the applicable reporting period, the periodic wage reporting document should be marked "no reportable wages" or "no wages" and returned to IPERS. When no employer's wage report is made, the employing unit's account is considered delinquent for the reporting period until the report is filed.

21.6(7) Substitute forms may be used if they meet all the IPERS reporting requirements and the employing unit receives advance approval from IPERS.

21.6(8) Magnetic tape reporting may be used by an employer after submitting a written request to IPERS. When the request is received, IPERS will send the employer a copy of the specifications for this type of reporting.

21.6(9) 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.

a. All covered members, except those identified in 21.6(9)*"b"* and *"c."*

(1) Member's rate—3.7%.

(2) Employer's rate—5.75%.

b. Sheriffs, deputy sheriffs, and airport firefighters, effective July 1, 2000.

(1) Member's rate—5.59%.

(2) Employer's rate—8.39%.

c. Members employed in a protection occupation, effective July 1, 2000.

(1) Member's rate—5.90%.

(2) Employer's rate—8.86%.

d. Members employed in a "protection occupation" shall include:

(1) Conservation peace officers.

(2) 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 definitions of employee in subrule 21.5(1).)

Effective January 1, 1995, part-time police officers will be included.

(3) 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.

(4) Airport firefighters employed by the military division of the department of public defense. Effective July 1, 1994, airport firefighters employed by the military division of the department of public defense shall pay the same contribution rate, and receive benefits under the same formula, as sheriffs and deputy sheriffs. Service under this subrule includes all membership service in IPERS as an airport firefighter.

(5) Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city of 100,000 population or more, and employees covered by the Iowa Code chapter 19A merit system whose primary duties are providing airport security and who carry or are licensed to carry firearms while performing those duties.

(6) Rescinded IAB 7/5/95, effective 8/9/95.

(7) 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.

(8) 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.

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

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

e. Prior special rates are as follows:

Effective July 1, 1999, through June 30, 2000:

(1) Sheriffs, deputy sheriffs, and airport firefighters—member's rate—5.69%; employer's rate—8.54%.

(2) Protection occupation—member's rate—5.58%; employer's rate—8.38%.

f. Pretax.

(1) 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.

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

(3) Effective January 1, 1999, employers must pay member contributions on a pretax basis as provided in subparagraph (1) above for both federal and state income tax purposes.

21.6(10) Effective July 1, 1992, credit memos that have been issued due to an employer's overpayment are void one year after issuance.

This rule is intended to implement Iowa Code sections 97B.49A to 97B.49I.

581—21.7(97B) Accrual of interest. Interest or charges as provided under Iowa Code section 97B.9 shall accrue on any contributions not received by IPERS by the due date, except that interest or charges may be waived by IPERS upon request prior to the due date by the employing unit, if due to circumstances beyond the control of the employing unit.

This rule is intended to implement Iowa Code section 97B.9 as amended by 2000 Iowa Acts, Senate File 2411, section 22.

581—21.8(97B) Refunds and returns of erroneously paid contributions.

21.8(1) *Refund formula.* A member is eligible for a refund of the employee accumulated contributions 30 days after the member's last paycheck is issued from which IPERS contributions will be deducted. 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:

a. 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.

b. Employer accumulated contributions. Effective July 1, 1999, 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, 100 for protection occupation members, and 88 for sheriffs, deputy sheriffs and airport firefighters. 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:

(1) 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.

(2) The member's portion of employer accumulated contributions shall be determined under subrule 21.8(2) below if the member had a combination of regular service and special service, or a combination of different types of special service.

(3) In making calculations under this subrule and subrule 21.8(2) below, IPERS shall round to not less than six decimal places to the right of the decimal point.

21.8(2) *Refunds for members eligible for a hybrid refund.* Effective July 1, 1999, the calculation of the member's portion of employer accumulated contributions for a "hybrid refund" shall be as follows:

a. A "hybrid refund" is a refund that is calculated for a member who has a combination of regular service and special service quarters, or a combination of different types of special service quarters.

b. 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: (1) the member's regular service factor, if any; and (2) the protection occupation service factor, if any; and (3) the sheriff/deputy sheriff/airport firefighter 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.

c. Upon reconciliation of the final contributions from a member's employer, the member's portion of the employer accumulated contributions under this subrule 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.

d. If wages reported for a quarter are a combination of regular and special service wages, or different types of 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.

e. If a member is last employed in a sheriff, deputy sheriff, or airport firefighter position, all quarters of "eligible service," as defined in Iowa Code section 97B.49C(1)"*d,*" shall be counted as quarters of sheriff/deputy sheriff/airport firefighter service credit.

f. 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.

g. Except as described above, this subrule shall not be construed to require or permit service eligible for coverage under Iowa Code section 97B.49B to be treated as special service under Iowa Code section 97B.49C, or vice versa, when determining the percentage payable under this subrule.

21.8(3) *Refund of retired reemployed member's contributions.*

a. 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.

b. 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 subrule 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 only elect the refund.

21.8(4) *General administrative provisions.* In addition to the foregoing, IPERS shall administer a member's request for a refund as follows:

a. To obtain a refund, a member must file a refund application form, which is available from IPERS or the member's employer.

b. The last pay date must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year. The employee's "termination date" is the last date on which the employee was paid and certified by the employer on the IPERS refund application. The applicant's signature must be notarized. Terminated employees must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered.

c. 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.

d. No payment of any kind shall be made under this rule if the amount due is less than $1.

e. Effective July 1, 2000, an employee is no longer required to be out of covered employment for 30 days before a refund application can be processed. However, an employee must sever all covered employment for four months and cannot file an application after returning to covered employment, even if more than four months have elapsed since the original termination. If the employee returns to covered employment before four months have passed, the refund will be revoked and the amounts paid plus interest must be repaid to the system.

21.8(5) *Emergency refunds.*

a. IPERS may issue an emergency refund to a member who has terminated covered employment and meets the refund eligibility requirements of Iowa Code section 97B.53, if:

(1) The member files an application for refund on a form provided by IPERS;

(2) The member alleges in writing that the member is encountering a financial hardship or unforeseeable emergency; and

(3) The member provides IPERS with payment instructions either in person or in writing.

b. Financial hardship or unforeseeable emergency includes:

(1) Severe financial hardship to a member resulting from a sudden and unexpected illness or accident of the member or a member's dependent;

(2) Loss of a member's property due to casualty; or

(3) Other similar extraordinary and unforeseeable circumstances which arise as a result of events beyond a member's control.

21.8(6) *Erroneously reported wages for employees not covered under IPERS.* Employers who erroneously report wages for employees that are not covered under IPERS may secure a warrant or credit, as elected by the employer, for the employer's contributions by filing an IPERS periodic wage reporting adjustments form available from IPERS. An employer that files a periodic wage reporting adjustments form requesting a warrant or credit shall receive a warrant or credit for both the employer and employee contributions made in error. The employer is responsible for returning the employee's share and for filing corrected federal and state wage reporting forms. Warrants will not be issued by IPERS if the amount due is less than $1. In such cases, the credit will be transferred to the employer's credit memo. 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 IPERS refund application form will not be permitted to file a periodic wage reporting adjustments form for that employee for the same period of time.

21.8(7) *Contributions paid on wages in excess of the annual covered wage maximum.* Effective for wages paid in calendar years beginning on or after January 1, 1995, IPERS shall automatically issue to each affected employer a warrant or credit, as elected by the employer, of both employer and employee contributions paid on wages in excess of the annual covered wage maximum for a calendar year. A report will be forwarded to each such employer detailing each employee for whom wages were reported in excess of the covered wage ceiling. Warrants or credits for the excess contributions made will be issued to the employers upon IPERS' receipt of certification from said employers that the overpayment report is accurate. Warrants will not be issued if the amount due is less than $1. In such cases, the credit will be transferred to the employer's credit memo. The employer is responsible for returning the employee's share of excess contributions. Where employees have simultaneous employment with two or more employers and as a result contributions are made on wages in excess of the annual covered wage maximum, warrants or credits for the excess employer and employee contributions shall be issued to each employer in proportion to the amount of contributions paid by the employer.

21.8(8) *Termination within less than six months of the date of employment.* If an employee hired for permanent employment resigns within six months of the date of employment, the employer may file IPERS' form for reporting adjustments to receive a warrant or the credit, as elected by the employer, for both the employer's and employee's portion 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.

21.8(9) *Reinstatement following an employment dispute.* If an involuntarily terminated employee is reinstated in covered employment as a remedy for an employment dispute, the member may restore 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.

21.8(10) *Commencement of disability benefits under Iowa Code section 97B.50(2).*

a. 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 began before July 1, 2000, the repayment must be made within 90 days after July 1, 2000;

(2) For members whose social security or railroad retirement disability payments begin on or after July 1, 2000, the repayment must be made within 90 days after the date social security payments begin; or

(3) For any member who could have reinstated a refund under (1) or (2) above but for the fact that IPERS has not yet received a favorable determination letter from the federal Internal Revenue Service, the repayment must in any event be received within 90 days after IPERS has received such a ruling.

b. IPERS must receive a favorable determination letter from the federal Internal Revenue Service before any refund can be reinstated under this subrule.

This rule is intended to implement Iowa Code sections 97B.10, 97B.46, 97B.50 as amended by 2000 Iowa Acts, Senate File 2411, section 50, and 97B.53 as amended by 2000 Iowa Acts, Senate File 2411, section 63.

581—21.9(97B) Appeals.

21.9(1) *Procedures.*

a. A party who wishes to appeal a decision by IPERS, other than a special service classification or a disability claim under 2000 Iowa Acts, Senate File 2411, section 51, 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:

(1) The name, address, and social security number of the applicant;

(2) A reference to the decision from which the appeal is being made;

(3) The fact that an appeal from the decision is being made; and

(4) The grounds upon which the appeal is based.

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 notice of further appeal. Upon receipt of notification of further appeal, IPERS shall inform the department of inspections and appeals of the filing of the appeal and of relevant information pertaining to the case in question. In determining the date that an appeal or any other document is filed with IPERS or the department of inspections and appeals, the following shall apply: An appeal or any other document 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. The department of inspections and appeals shall hold a hearing on the case and shall affirm, modify, or reverse the decision by IPERS.

b. Members shall file appeals of their special service classifications with their respective employers, using the appeal procedures of such employers. The appeal procedures for department of corrections employees shall be specified in rules adopted by the personnel division of the Iowa department of personnel. IPERS shall have no jurisdiction over special service classification appeals.

c. Appeals of disability claims under 2000 Iowa Acts, Senate File 2411, section 51, shall be filed and processed as provided under rule 581—21.31(78GA,SF2411).

21.9(2) *The determination of appeals.* 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. The decision shall be in writing, signed by the administrative law judge, and filed with IPERS, with a copy mailed to the appellant. Such 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.

21.9(3) *Appeal board.* A party appealing from a decision of an administrative law judge shall file a notice with the employment appeal board of the Iowa department of inspections and appeals, petitioning the appeal board for review of the administrative law judge's decision. 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 in IAC [486], 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.

21.9(4) *Judicial review.* The 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 appeal board or within 30 days a petition for judicial review is filed in the appropriate district court. The department, 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 department for judicial review of its decisions shall be brought in the district court of Polk County, Iowa.

21.9(5) *Contested case procedure.* Appeals of decisions by IPERS that are heard by the department of inspections and appeals shall be conducted pursuant to the rules governing contested case hearings adopted by the department of inspections and appeals under 481—Chapter 10.

This rule is intended to implement Iowa Code sections 97B.16, 97B.20, 97B.20A, 97B.20B, 97B.27 and 97B.29 and 2000 Iowa Acts, Senate File 2411, section 51.

581—21.10(97B) Beneficiaries.

21.10(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 is accepted by IPERS in lieu of a completed designation form. 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 retiree may name someone other than the member's contingent annuitant as beneficiary, but only for death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member. If a reemployed IPERS Option 4 retiree 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 death benefits awarded in a qualified domestic relations order (QDRO) shall be paid to the contingent annuitant as alternate payee, and the remainder of the death benefits shall be paid to the member's estate, or the member's heirs if no estate is probated.

21.10(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.

21.10(3) Payments to a beneficiary. 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 IPERS' application for death benefits based on the deceased member's account.

21.10(4) Where the designated beneficiary is an estate, trust, church, charity or other like organization, payment of benefits shall be made in a lump sum only.

21.10(5) Rescinded IAB 7/5/95, effective 8/9/95.

21.10(6) 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.

21.10(7) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary is on file with IPERS shall be made in one of the following ways:

a. Where the estate is open, payment shall be made to the administrator or executor.

b. 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:

(1) Copy of the will, if any;

(2) Copy of any letters of appointment; and

(3) Copy of the court order closing the estate and discharging the executor or administrator.

c. Where no estate is probated or the estate is closed prior to filing with IPERS 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.

d. 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, 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.

21.10(8) 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.

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 pursuant to section 97B.48(1) or 97B.51.

21.10(9) 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 to the member's estate if there are none. 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.

21.10(10) 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 $10,000 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 $10,000.

21.10(11) When a member on benefits returns to covered employment (or remains in covered employment if aged 70 or older), and dies before applying for a recomputation or recalculation of benefits, the death benefit formula will be applied to the wages and years of service reported after benefits begin.

21.10(12) Death benefits shall not exceed the maximum amount possible under the Internal Revenue Code.

21.10(13) 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.

21.10(14) 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.

21.10(15) A completed application must be filed with the department no later than five years after the date of the member's death or the total sum is forfeited. A beneficiary's right to receive a death benefit beyond the five-year limitation shall be extended to the extent permitted under Internal Revenue Code Section 401(a)(9) and the applicable treasury regulations. Notwithstanding the foregoing, 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 sections 97B.49A to 97B.49I and 97B.51(6) 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 subrule shall end April 1 of the year following the year of the member's death.

21.10(16) Effective July 1, 1998, a member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest 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. For claims filed prior to July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the third quarter of 1998. For claims filed on or after July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the quarter that the claim 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.

21.10(17) Interest is only accrued if the member dies before the member's retirement 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.

21.10(18) Death benefits under Iowa Code section 97B.52(1)*"b."*

a. The death benefit provided for under Iowa Code section 97B.52(1) is intended to benefit beneficiaries of members who die before retiring and shall not apply to retired reemployed members. For retired reemployed members who die during the period of reemployment, the member's death benefits shall be provided under the option elected at retirement subject to adjustments for reemployment wages.

b. An "eligible beneficiary" is one who receives preretirement death benefits during the period January 1, 1999, through December 31, 2000, (or if later, the date the system's actuary approves the payment of benefits under Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, section 75) and may elect to receive the larger of the lump sum amounts available under Iowa Code section 97B.52(1) or to receive a single life annuity that is the actuarial equivalent of the larger of such lump sum amounts. The eligible beneficiary must repay the prior death benefit received as follows:

(1) If the eligible 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 to the eligible beneficiary or as directed by the eligible beneficiary in writing.

(2) If the eligible beneficiary wishes to receive a single life annuity under Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, section 75, the eligible 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 Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, section 75, but only upon repaying 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 such retroactive monthly payments are authorized by statute or rule, and the balance shall be paid in a lump sum in after-tax dollars.

c. Claims for a single life annuity under this subrule filed by eligible beneficiaries and beneficiaries of members who die on or after the implementation date must be filed as follows:

(1) An eligible beneficiary must file a claim for a single life annuity within 12 months of the implementation date.

(2) The beneficiary of a member who dies while actively employed on or after the implementation date must file a claim for a single life annuity within 12 months of the member's death, provided that a surviving spouse files a claim for a single life annuity by the date that the member would have attained the age of 70½.

d. Elections to receive the lump sum amounts or single life annuity available under Iowa Code section 97B.52(1) as amended by 2000 Iowa Acts, Senate File 2411, sections 53 and 75, and this subrule shall be irrevocable once the first payment is made.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.1A(17), 97B.34, 97B.34A, 97B.44 and 97B.52 as amended by 2000 Iowa Acts, Senate File 2411, sections 53 and 75.

581—21.11(97B) Application for benefits.

21.11(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, 600 East Court Avenue, 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 or brought in person to IPERS. Option choice and date of retirement shall be clearly stated on the application form and all questions on the form shall be answered in full. If an optional allowance is chosen by the member in accordance with Iowa Code section 97B.48(1) or 97B.51, the election becomes binding when the first retirement allowance is paid. A retirement application is deemed to be valid and binding when the first payment is paid. Members may not cancel their applications, change their option choice, or change an Option 4 contingent annuitant after that date.

21.11(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 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.

Under subrule 21.11(6), 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.

21.11(3) Retirement benefits and the age reduction factor.

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 becomes 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 becomes 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.

These benefits are computed in accordance with Iowa Code sections 97B.49A to 97B.49I.

21.11(4) A member shall be eligible to receive monthly retirement benefits effective with the first day of the month in which the member becomes the age of 70, even though the member continues to be employed.

21.11(5) 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.

21.11(6) A member retiring on or after the early retirement or normal retirement date shall submit a written notice to IPERS setting forth the retirement date, provided the 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 21.18(2). A member who does not begin benefits timely in the first month that begins after the member's last day of service may receive up to six months of retroactive payments. The period for which retroactive payments may be paid is measured from the month that a valid contact occurs. For purposes of this subrule, a "contact" means a telephone call, facsimile transmission, E-mail, visit to IPERS at its offices or offsite locations, or a letter or other writing requesting a benefits estimate or application to retire, whichever is received first. A contact is only valid if a completed application to retire is received within six months following the month that a benefits estimate or application to retire form is mailed to the member in response to the contact. If a completed application to retire form is received more than six months after such a benefits estimate or application to retire is mailed, retroactive payments may only be made for up to six months preceding the month that the completed application to retire is received.

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 appropriate notice. 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 what adjustments or repayments are required in order to make the change.

If a member cannot be located so as 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. A member whose benefits are forfeited and then reinstated under this subrule shall only qualify for retroactive payments to the extent provided under Iowa Code section 97B.48(2).

21.11(7) Retirement benefits to a member shall terminate the day on which the member's death occurs. The benefits for the month of the member's death shall be prorated based on the number of days the member lived during that month. Notwithstanding the foregoing, for each death occurring on or after July 1, 1998, a member's retirement benefits shall terminate after payment is made to the member for the entire month during which the member's death occurs. For such deaths, death benefits shall begin with the month following the month in which the member's death occurs.

21.11(8) Upon the death of the retired member, IPERS will reconcile the decedent's account to determine if an overpayment was made to the retiree and if a 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.

The waiver of the necessary steps to effect collection may occur in cases where recovery of the moneys is not probable and where that action is not deemed prudent administration or cost-effective utilization of the funds of the system.

21.11(9) To receive retirement benefits, a member under the age of 70 must officially leave employment with an IPERS covered employer, 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.

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 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, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered by this chapter, with such employer 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 form with the department before returning to any employment with the same employer.

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.

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 form with the department before returning to any employment with a covered employer.

21.11(10) If a member files a retirement application but fails to select a 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 of record.

This rule is intended to implement Iowa Code sections 97B.5, 97B.15, 97B.48(1), 97B.49A to 97B.49I, 97B.50(1), 97B.51, 97B.52, and 97B.52A as amended by 2000 Iowa Acts, Senate file 2411, sections 59 and 60.

581—21.12(97B) Service credit. An employee working in a position for a school district or other institution which operates on a nine-month basis shall be credited with a year of service for each year in which three quarters of coverage are recorded, if the employee returns to covered employment the next operating year. The foregoing sentence shall be implemented as follows. A member will receive credit for the third quarter when no wages are reported in that quarter if the member works the following three calendar quarters and had covered wages or was on an approved leave of absence in the immediately preceding second quarter. An individual employed on a fiscal- or calendar-year basis shall be credited with a year of service for each year in which four quarters of coverage are recorded.

21.12(1) *Prior service.*

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. Effective July 1, 1990, "public employee" means not only an employee who had made contributions under IOASI, but also includes a member who had service as a public employee prior to July 4, 1953, in another state, or for the federal government, or within other retirement systems established in the state of Iowa and who qualifies for the buy-in programs referenced in 21.24(2). To receive credit for service in another system, however, the public employee who had not made contributions to IOASI but who wishes to receive prior service credit for public employment elsewhere must meet the following conditions:

(1) Have been a public employee;

(2) Waive on a form provided by IPERS all rights to a retirement in another system for that period of employment for the public employer(s), if any; and

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

A qualifying member who decides to purchase IPERS credit for prior service must make employer and employee contributions to IPERS for each year of service or fraction thereof allowed in this buy-in. This contribution shall be equal to the member's covered IPERS wages for the most recent full calendar year of IPERS coverage, using the rates in Iowa Code sections 97B.11, 97B.49B and 97B.49C then applicable to the type of service credit being purchased, and multiplied by the number of years or fraction thereof being purchased from other public employment.

c. Prior to July 1, 1990, public employment must have been for the state of Iowa, or a county, city, township, school district of the state of Iowa, or a political subdivision, provided the employment was not in an elective position, and provided further that the employee is not covered by another retirement plan funded in whole or in part by the state of Iowa or a political subdivision. Effective July 1, 1990, public employment may also include service for a public employer in another state, for the federal government, or for public employment covered by another retirement system within the state of Iowa.

d. 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.

21.12(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 can be given.

21.12(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.

21.12(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 needed stating the dates of employment, periods of interruption and that employment was not terminated during those periods.

21.12(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.

21.12(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.

21.12(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, 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.

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.

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.

21.12(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 will be scrutinized to ensure that:

(1) It refers to covered employment in Iowa;

(2) It is signed by the proper authority;

(3) It refers to the member in question;

(4) The position held is one for which prior service credit can be given;

(5) Any corrections, deletions, or additions in dates of service are initialed by the signer of the document;

(6) Anything on the reverse side of the form is taken into consideration; and

(7) Certification showing the highest gross wage earned in any 12 consecutive month period before July 4, 1953, refers 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 face of IPERS Form 502, 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.

21.12(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.

21.12(10) *Membership service.* 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.

This rule is intended to implement Iowa Code sections 97B.41(12), 97B.43 and 97B.75.

581—21.13(97B) Calculation of monthly retirement benefits.

21.13(1) If a member has four or more complete years of service credit in IPERS, a monthly payment allowance will be paid beginning with the first full month after all employment with all covered employers terminates. This allowance will be paid in accordance with the applicable paragraph of this rule and any option the member may elect pursuant to Iowa Code section 97B.51. 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 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. Benefits are not payable before the age of 55, except after July 1, 1990, in accordance with an early distribution in the case of retirement due to disability, as described in rule 581—21.22(97B).

21.13(2) Reduction for early retirement.

a. Effective July 1, 1988, a member's benefit formula will be reduced by one-quarter of 1 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 is less than 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 is less than 62 years of age 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 is less than 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, or such later date that the actuary certifies that the change can be made without increasing contributions, the age reduction shall be calculated by deducting 0.25 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.

21.13(3) 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 last day of service.

21.13(4) 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 21.13(2), if applicable, or a benefit as calculated in subrule 21.13(6).

21.13(5) 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.

21.13(6) Benefit formula.

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 21.13(2).

c. Effective July 1, 1996, 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. 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.

Notwithstanding the provisions of the foregoing paragraph, effective July 1, 2000, the "applicable years" and increases in the percentage multiplier for years in excess of the applicable years shall be determined under Iowa Code section 97B.49B(1) as amended by 2000 Iowa Acts, Senate File 2411, sections 36 and 37.

d. For special service members covered under Iowa Code section 97B.49B as amended by 2000 Iowa Acts, Senate File 2411, sections 36 and 37, 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 0.25 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, 0.25 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, 0.25 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 0.25 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.

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

21.13(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.

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, 2002, 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 purposes of this paragraph *"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 *"a."*

21.13(8) Initial benefit determination.

a. The initial monthly benefit for the retiree will be calculated utilizing the highest three calendar years of wages that have been reported as of the member's retirement. When the final quarter(s) of wages is reported for the retired member, a recalculation of benefits will be performed by IPERS to determine if the "computed year" as described in Iowa Code section 97B.1A(23) and 581 IAC 21.13(7), or the final calendar year, is to be used in lieu of the lowest of the three calendar years initially selected. 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.

b. 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.

c. The option one death benefit amount cannot exceed the member's investment and cannot lower the member's benefit below the minimum distribution required by federal law.

21.13(9) 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:

a. 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.

b. 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.

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

1. 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

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

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.

The early retirement adjustment for members 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.

The early retirement adjustment for members 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.

IPERS shall calculate the early retirement adjustment factor to be used in paragraph *"d"* below as follows: 100% - (minus) early retirement adjustment percentage = early retirement adjustment factor.

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.

d. IPERS shall use the following formula to calculate the adjusted minimum benefit: unadjusted minimum benefit x (times) option adjustment factor × (times) early retirement adjustment factor = adjusted minimum benefit.

e. IPERS shall compare the member's current benefit to the adjusted benefit determined as provided above. 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.

f. 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 paragraphs *"a"* to *"e"* above, 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.

21.13(10) Hybrid formula for members with more than one type of service credit.

a. Eligibility. Effective July 1, 1996, members having both regular and special service credit (as defined in Iowa Code section 97B.1A(21)) shall receive the greater of the benefit amount calculated under this subrule, or the benefit amount calculated under the applicable nonhybrid benefit formula.

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

(2) Members who have both types of special service under Iowa Code section 97B.1A(21), but do not have any regular service, may utilize the hybrid formula.

(3) 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 sheriff/deputy sheriff/airport firefighter service credit as defined under Iowa Code section 97B.49C.

3. Members who have 25 years of protection occupation service credit as defined in Iowa Code section 97B.49B (or the applicable years in effect at the member's retirement).

4. Members who have 30 years of regular service.

5. Members with less than 16 total quarters of service.

b. Assumptions. IPERS shall utilize the following assumptions in calculating benefits under this subrule.

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

(2) Increases in the benefit formula under this subrule 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.

(3) 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.

c. Years of service fraction not to exceed one.

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

(2) 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.

(3) Service credit shall first be subtracted from the member's regular service credit and, if necessary, shall next be subtracted from the member's protection occupation service, and sheriff/deputy sheriff/airport firefighter service credit, in that order.

d. Age reduction. The portion of the member's benefit calculated under this subrule that is based on the member's regular service shall be subject to a reduction for early retirement in the same manner as is provided for regular service retirements.

e. Calculations. A member's benefit under the hybrid formula shall be the sum of the following:

(1) The applicable percentage multiplier divided by 22 times the years of sheriff/deputy sheriff/airport firefighter service credit (if any) times the member's high three-year average covered wage, plus

(2) The applicable percentage multiplier divided by 25 (or the applicable years at that time under Iowa Code section 97B.49B) times the years of protection occupation class service credit (if any) times the member's high three-year average covered wage, plus

(3) 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 by dividing the applicable percentage multiplier by 22, 25 (or the applicable years at that time under Iowa Code section 97B.49B), and 30 and then multiplying those percentages by years of service credit 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 "*c,*" subparagraph (3), of this subrule.

21.13(11) Money purchase benefits.

a. 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.

b. 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.

c. For calculations under paragraph *"a,"* 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 paragraph *"b,"* the term "member reserve" means the member's total investment, excluding all other amounts standing to the member's credit.

d. For calculations under paragraph *"a,"* Options 2, 3, 4, and 5 shall be calculated by dividing the member's total reserve by the applicable Option 2, 3, 4, and 5 annuity factor taken from the department's tables to determine the monthly amount. For calculations under paragraph *"b,"* Options 2, 3, 4, and 5 shall be calculated by dividing the member reserve by the applicable Option 2, 3, 4, and 5 annuity factor taken from the department's tables to determine the monthly amount.

e. For Option 1, the cost per $1,000 of death benefit shall be determined according to the department'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.

f. If the member has prior service (service prior to July 4, 1953), the Option 2 benefit amount calculated under both paragraphs *"a"* and *"b"* 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 subrule. The Option 2 benefit amount based on prior service shall be adjusted for early retirement.

21.13(12) 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 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.

This rule is intended to implement Iowa Code sections 97B.1A(23), 97B.47, and 97B.49A to 97B.51.

581—21.14(97B) Interest on accumulated contributions.

21.14(1) The term interest as used in this rule means statutory interest plus the interest dividend. 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 2 percent per annum. The interest dividend is a credit to the accumulated contributions of active members and inactive vested members which equals the excess of the average rate of interest earned on the retirement fund through investment during a calendar year over the statutory interest plus twenty-five hundredths of 1 percent. For calendar years beginning January 1, 1997, a per annum interest rate at 1 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 subrule, the interest rate on one-year certificates of deposit shall be determined by the department based on the average rate for such certificates of deposit as of the first business day of each year as published in a publication 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.

21.14(2) If a member is vested upon termination, interest will continue to accrue through the month preceding the month of payment of the refund or, in the case of retirement benefits, through the month 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. A member automatically becomes vested upon the attainment of the age of 55. Interest shall not be credited to a member's account if the wages were reported in error. Effective July 1, 1995, interest will be credited to an inactive nonvested member's account as provided in Iowa Code section 97B.70, beginning on the first date thereafter that such a member becomes vested as provided in Iowa Code section 97B.1A(24).

21.14(3) Interest shall accrue on the undistributed accumulated contributions of all members, including those of inactive nonvested members, and on the undistributed accumulated contributions of deceased members that are payable under Iowa Code section 97B.52(1). No interest shall be credited to any other death benefit payable under Iowa code chapter 97B. The provisions of this subrule crediting interest to the undistributed accumulated contributions of inactive nonvested members shall not become effective until January 1, 1999.

21.14(4) Effective July 1, 1998, interest on the undistributed accumulated contributions described in subrule 21.14(3) shall accrue through the quarter preceding the quarter in which any distribution is made. If IPERS determines that a dispute among alleged heirs exists, the amount of the death benefits shall be placed in a non-interest-bearing account.

This rule is intended to implement Iowa Code sections 97B.52, 97B.53 and 97B.70.

581—21.15(97B) 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.

This rule is intended to implement Iowa Code sections 97B.40, 97B.52 and 97B.53.

581—21.16(97B) Approved leave periods.

21.16(1) 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 during 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).

21.16(2) 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 month during the member's period of military service equal to the member's average monthly compensation during the 12-month period immediately preceding the period of military service or, if shorter, the member's average monthly compensation for the period immediately preceding the period of military service. 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, 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 rule shall be irrevocable.

21.16(3) 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 subrule 21.16(1) above). Contributions may be made in increments of one quarter or more.

21.16(4) Reentry into public employment by an employee on a leave of absence under subrule 21.16(1) 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 rule.

21.16(5) 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.

21.16(6) 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 rule 21.24(97B). 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' actuary. In calculating the actuarial cost of a service purchase under this subrule, the actuary 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 the actuary uses gender-distinct mortality assumptions, 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 upon the recommendation of its actuary, 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 it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.1A(8A), 97B.1A(19) and 97B.81.

581—21.17(97B) Membership status.

21.17(1) Effective July 1, 1990, 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.

21.17(2) For the purposes of this rule, four quarters of coverage shall constitute a year of membership service for a member employed on a fiscal- or calendar-year basis. A member working for a school district or other institution which operates on a nine-month basis shall be granted a year of membership service for each year in which the member has three or more quarters of coverage, if the employee remains in covered employment for the next operating year. An employee who terminates covered employment and has no wages paid in the third quarter shall not receive service credit for the third quarter. Only one year of membership service credit shall be granted for any 12-month period.

21.17(3) Rescinded IAB 7/22/92, effective 7/2/92.

21.17(4) 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 subrule for qualifying as a vested member on the date of termination, shall be considered vested.

21.17(5) 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.

This rule is intended to implement Iowa Code section 97B.41.

581—21.18(97B) Retirement dates.

21.18(1) 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 last day of service or last day of leave, with or without pay, whichever is later.

21.18(2) 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.

21.18(3) 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.

21.18(4) The first month of entitlement of a member qualifying under the rule of 88 (see subrule 21.11(3)) 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.

21.18(5) Notwithstanding anything to the contrary, members shall commence receiving a distribution on or before the minimum distribution required beginning date set forth in the Internal Revenue Code. In general, members must begin distributions on or before April 1 of the calendar year after the calendar year in which they attain age of 70½, or actually terminate employment (if later).

21.18(6) 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.

This rule is intended to implement Iowa Code sections 97B.45, 97B.47 and 97B.48(1) and (2).

581—21.19(97B) Wage-earning disqualifications for retired members.

21.19(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 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 $14,000, 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 21.19(2) below.

Effective January 1, 1991, this earnings limitation does not apply to covered employment in an elective office. 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.

21.19(2) Beginning on or after July 1, 1996, the retirement allowance of a member subject to reduction pursuant to subrule 21.19(1) shall be reduced as follows:

a. A member's monthly retirement allowance in the next 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.

21.19(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 retiree. 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, 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.

21.19(4) In recomputing a retired member's monthly benefit, IPERS shall use the following assumptions.

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

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

c. If the reemployment period is four 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 amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original retirement. 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 $1,900 and the member elected at the member's original retirement to receive 50 percent of the Option 1 maximum death benefit, the death benefit attributable to the reemployment shall be $1,000 (50 percent times $1,900, rounded up to the nearest $1,000). 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.

This rule is intended to implement Iowa Code sections 97B.1A, 97B.45 and 97B.48A as amended by 2000 Iowa Acts, Senate File 2411, section 33.

581—21.20(97B) Identification of agents.

21.20(1) Recognition of agents. When a claimant before IPERS desires to be represented by an agent in the presentation of a case, 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.

21.20(2) Payment to incompetents. When it appears that the interest of a claimant or retiree 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.

21.20(3) 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 retiree or claimant are best served. Payments made to the agent on behalf of the individual will be used for the direct benefit of the retiree 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.

This rule is intended to implement Iowa Code sections 97B.34 and 97B.37.

581—21.21(97B) Actuarial equivalent (AE) payments.

21.21(1) If a member aged 55 or older requests an estimate of benefits which results in any one of the options having a monthly benefit amount of less than $50, the member may elect, under Iowa Code section 97B.48(1), to receive 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. Should the member later return to covered employment, any future benefits the member accrues will 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.

21.21(2) If a member, upon attaining the age of 70 or later, requests a retirement allowance without terminating employment and any one of the options results in a monthly benefit amount of less than $50, the member may elect to 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 any of the options having a monthly benefit amount of less than $50, the member may again elect to receive another AE payment. A member who elects to receive an AE payment without terminating employment may not elect to receive additional AE payments unless the member terminates all covered employment and completes a bona fide retirement as provided in these rules.

21.21(3) An AE payment 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.

This rule is intended to implement Iowa Code sections 97B.4, 97B.15 and 97B.48(1).

581—21.22(97B) Disability for persons not retiring under 2000 Iowa Acts, Senate File 2411, section 51.

21.22(1) The following standards apply to the establishment of a disability under the provisions of IPERS:

a. The member must inform IPERS at retirement that the retirement is due to an illness, injury or similar condition. The member must also initiate an application for federal Social Security disability benefits or federal Railroad Retirement Act disability benefits.

b. To qualify for the IPERS disability provision, the member must be awarded federal Social Security benefits due to the disability which existed at the time of retirement.

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.

21.22(2) If a member returns to covered employment after achieving a bona fide retirement, the benefits being provided to a 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 is aged 55 or older upon reemployment, the member shall continue to receive the monthly benefit payable to the member on the member's initial retirement date based on the member's age at the initial retirement date, years of membership service not to exceed 30, and benefit option, and subject to the applicable reductions for early retirement in place at the time of the initial retirement. The member's benefit shall also be subject to the applicable provisions of Iowa Code section 97B.48A pertaining to reemployed retirees.

21.22(3) Rescinded IAB 7/22/92, effective 7/2/92.

This rule is intended to implement Iowa Code section 97B.50.

581—21.23(97B) Confidentiality of records.

21.23(1) Records established and maintained by IPERS containing personal information are not public records under Iowa Code chapter 22. Records may be released to the member or the beneficiary (if the beneficiary is entitled to funds) or to a person designated by the member or beneficiary in writing. Records may also be released to an executor, administrator or attorney of record for an estate of a deceased member or beneficiary.

21.23(2) Summary information concerning the demographics of the IPERS membership and general statistical information concerning the system and its activities is made available in accordance with Iowa Code section 97B.17.

21.23(3) Notwithstanding any provisions of Iowa Code chapter 22 or 97B to the contrary, the department's records may be released to any political subdivision, instrumentality, or other agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this subrule. To obtain the records, the political subdivision, instrumentality, or agency shall, in writing, certify that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The department shall not be civilly or criminally liable for the release or rerelease of records in accordance with this subrule.

This rule is intended to implement Iowa Code sections 97B.15 and 97B.17.

581—21.24(97B) Service buy-in/buy-back.

21.24(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.

21.24(2) *Purchase IPERS credit for service in 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 members 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;

(2) Waive on a form provided by IPERS all rights to a retirement in another system for that period of employment sought to be purchased, if any; such a waiver must be accepted by the other retirement system before the member can proceed with a buy-in of that service time into IPERS; and

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

A quarter of credit will be given for each quarter the employee was paid. If no pay dates are shown, credit will be given if the employee had service of at least 15 days in the quarter.

b. 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 covered IPERS 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. 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 the other retirement system is a 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. Notwithstanding the foregoing, 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 into IPERS 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' actuary. In calculating the actuarial cost of a buy-in, the actuary 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 the actuary uses gender-distinct mortality assumptions, 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 upon the recommendation of its actuary, 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 it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.

21.24(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' actuary. In calculating the actuarial cost, the actuary 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 the actuary uses gender-distinct mortality assumptions, 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 upon the recommendation of its actuary, 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 it is delivered to the member. 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.

IPERS shall restore the wage records of a member who makes a buy-back and utilize those records in subsequent benefit calculations for that member.

21.24(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 21.24(3)) before receiving credit for service prior to 1946.

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

21.24(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, provided that the member:

(1) Produces verification of active duty service in the armed forces of the United States; and

(2) Is not receiving, or is not eligible to receive, retirement pay from the United States government for active duty service in the armed forces including full retirement disability compensation for this period of service. Disability payments received by the member as compensation for disability incurred while in service of the armed forces, which are not in lieu of military retirement compensation, will not disqualify a member from participating in this program.

A quarter of credit will be given when the date indicated on the DD214 shows service of at least 15 days in the quarter.

b. Prior to July 1, 1990, a person had to be an active member of IPERS as of July 1, 1988, and had to have covered wages during the 1987 calendar year in order to be eligible to apply. Partial buy-ins of allowable service time were not permitted until July 1, 1990.

c. For purchases prior to July 1, 1999, the member must pay IPERS the combined employee and employer contribution amount determined using the member's covered wages for the most recent full calendar year at the applicable rates in effect for that year under Iowa Code sections 97B.11, 97B.49B and 97B.49C for each year of the member's active duty service. A member must have at least four quarters of reported wages in any calendar year before a buy-in cost may be calculated.

d. 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. Between July 1, 1990, and July 1, 1992, members who did not have reported wages in the most recent calendar year were not permitted to purchase their otherwise eligible service time. Effective January 1 , 1993, the purchase will not affect the member's high three-year average wage.

e. Members eligible to complete the veterans' buy-in may buy the entire period of service or may buy credit in increments of one or more calendar quarters. If the entire period is not purchased, IPERS will calculate the proportionate cost of this period of service in accordance with this subrule. Fractional years of active service shall qualify a member for the equivalent quarters of credited IPERS covered service.

f. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary 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 the actuary uses gender-distinct mortality assumptions, 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 upon the recommendation of its actuary, 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 it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.

21.24(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 subrule 21.24(6)*"b."*

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.41(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 proof to IPERS 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' actuary. In calculating the actuarial cost, the actuary 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 the actuary uses gender-distinct mortality assumptions, 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 upon the recommendation of its actuary, 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 it is delivered to the member. After that time, a new cost quote must be obtained for any quarters not previously purchased.

21.24(7) *Vocational school (area college) employees 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. Rescinded IAB 7/22/92, effective 7/2/92.

d. 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 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 with IPERS and the employer electing participation in the alternative plan. The election 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. Members who elect out of IPERS coverage but remain with the same employer are eligible to apply for and receive a refund of their contributions plus interest. Such members may not, however, apply for retirement benefits until attaining the age of 70, or until they terminate employment with all public employers.

21.24(8) *Refunds of service purchase amounts.* A member may request 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. Such refund requests must be made in writing within 60 days after the date of the receipt issued by IPERS to the member for such amounts. Such refunds shall be in increments representing one or more quarters. Notwithstanding the foregoing, no refund shall be made if a member has made a service purchase under this rule and one or more monthly retirement allowance payments have been made thereafter. Furthermore, this subrule 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 subrule shall be effective for refund requests received by IPERS on or after May 3, 1996.

21.24(9) *Leaves of absence.* Service credit for leaves of absence that begin on or after July 1, 1998, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under subrule 21.24(2) above. 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.

21.24(10) *Service credit under Iowa Code section 97B.42A(4).* 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 subrule 21.24(2) above. 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. A member shall not be able to purchase service under this rule that was not eligible for optional coverage at the time of the employment.

21.24(11) *Public employment service credit under 2000 Iowa Acts, Senate File 2411, section 70.* A vested or retired member who has five 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 up to 20 quarters of service credit for such employment subject to the requirements of 2000 Iowa Acts, Senate File 2411, section 70. Service credit may not be purchased under this subrule for time periods when the member was eligible to elect coverage and failed to do so, or affirmatively elected out of coverage. Also, 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 21.24(2)*"f."*

21.24(12) *Federal Peace Corps program service credit under 2000 Iowa Acts, Senate File 2411, section 71.* A vested or retired member who has five or more years of service credit and who was previously employed full-time as a member of the federal Peace Corps program may purchase up to 20 quarters of service credit for such employment, subject to the requirements of 2000 Iowa Acts, Senate File 2411, section 71. Members with service credit for such employment under another public retirement system must provide a waiver of the service time to IPERS along with proof that the other public retirement system has accepted the waiver and allows withdrawals of the related service credit. The contributions required under this subrule shall be in an amount equal to the acturarial cost of the service purchase as determined under 21.24(2)*"f."*

21.24(13) *Purchase of service credit for employment with a qualified Canadian governmental entity.* A vested or retired member who has five or more years of service credit and who was previously employed full-time by a qualified Canadian governmental entity, as defined in Iowa Code section 97B.73 as amended by 2000 Iowa Acts, Senate File 2411, section 68, may purchase up to 20 quarters of service credit for such employment, subject to the requirements of Iowa Code section 97B.73 as amended by 2000 Iowa Acts, Senate File 2411, section 68. Members with service credit for such employment under another public retirement system must provide a waiver of the service time to IPERS along with proof that the other public retirement system has accepted the waiver and allows withdrawals of the related service credit. All communications from qualified Canadian governmental entities and their retirement systems must be certified in English translation. The contributions required under this subrule shall be in an amount equal to the actuarial cost of the service purchase as determined under 21.24(2)*"f."*

21.24(14) *Patient advocate service purchases.*

a. Current and former patient advocates employed under Iowa Code section 229.19 shall be eligible for a wage adjustment under Iowa Code section 97B.9(4) as amended by 2000 Iowa Acts, Senate File 2411, section 23, for the four quarters preceding the date that the patient advocate began IPERS coverage, or effective July 1, 2000, whichever is earlier. Additional service credit for employment as a patient advocate may be purchased as follows:

(1) For purchases completed prior to July 1, 2002, the cost for each quarter will be calculated using the methods set forth in paragraphs 21.24(2)*"b"* through *"e."*

(2) For purchases completed on or after July 1, 2002, the cost for each quarter will be calculated using the methods set forth in paragraph 21.24(2)*"f."*

b. Current patient advocates, former patient advocates who are vested or retired, and former patient advocates who have four quarters of wages on file as the result of wage adjustments shall qualify for service purchases under this subrule.

21.24(15) *IRC Section 415(n) compliance.* Effective for service purchases made on or after January 1, 1998, service purchases made under this rule and other posttax contributions shall not exceed $30,000 per calendar year. In addition, the amounts contributed for service purchases under this rule 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.

a. 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.

b. 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.

c. IPERS shall not permit the purchase of nonqualified service, as defined under IRC Section 415(n), unless such service is specifically authorized by the Iowa legislature. If so authorized, a member must have five years of existing service to make such a purchase, and the quarters of service purchased cannot exceed 20.

d. The limitations of this rule shall not apply to buybacks of prior refunds. In addition, the $30,000 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.

e. 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.

f. The provisions of this subrule shall apply to all vested members who have an account balance and retirees.

g. 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.

21.24(16) If a member is attempting to purchase service credit under this rule, and any particular subrule under this rule 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.

This rule is intended to implement Iowa Code sections 97B.42, 97B.43, 97B.72A, 97B.73 as amended by 2000 Iowa Acts, Senate File 2411, section 68, 97B.74, 97B.75, 97B.80 and 2000 Iowa Acts, Senate File 2411, sections 70 and 71.

581—21.25(97B) South Africa restrictions. Rescinded IAB 7/5/95, effective 8/9/95.

581—21.26(97B) Garnishments and income withholding orders. 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.

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.

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 been approved to receive funds from IPERS.

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.

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.

Funds withheld or garnished are taxable to the member. IPERS will assess a fee of $2 per payment in accordance with Iowa Code section 252D.18(1)*"b."* The fee will be deducted from the gross amount, less federal and state income tax, before a distribution is divided.

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 26 CFR Section 6334-1(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).

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.

This rule is intended to implement Iowa Code sections 97B.38 and 97B.39.

581—21.27(97B) Rollovers. If a member who is paid a lump sum distribution, or a beneficiary who is the member's spouse and is paid a lump sum death benefit which qualifies to be rolled over, requests that the taxable portion be rolled over to more than one IRA or other qualified plan, IPERS will 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. All amounts that would otherwise be eligible for rollover and are paid in the same taxable year shall be aggregated to determine if a distribution equals or exceeds the $200 minimum rollover amount.

This rule is intended to implement Iowa Code sections 97B.38, 97B.48, 97B.48A, 97B.52, 97B.53, and 97B.53B.

581—21.28(97B) 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.

This rule is intended to implement Iowa Code sections 97B.4, 97B.15 and 97B.25.

581—21.29(97B) Qualified domestic relations orders. This rule shall apply only to marital property orders. All support orders shall continue to be administered under rule 581—21.26(97B).

21.29(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" 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.

21.29(2) *Requirements.*

a. Mandatory provisions. A domestic relations order is a qualified domestic relations order if such order:

(1) Clearly specifies the name, Social Security number, and last-known mailing address of the member and the name, Social Security number, and last-known mailing address of the alternate payee;

(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; and

(5) Clearly specifies that the order is for purposes of making a property division.

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 21.29(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, 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; and

(4) 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 the order does not provide the successor's name, Social Security number, and last-known mailing address.

21.29(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. If a domestic relations order does not so provide, the alternate payee shall not be entitled to any portion of the death benefit payable with respect to a member, but the failure to award an alternate payee a share of the member's death benefits in a qualified domestic relations order shall not negate a proper beneficiary designation on file with IPERS.

c. 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.

d. 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.

e. The chief benefits officer, or a designee thereof, shall have exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A final determination by the chief benefits officer, or a designee thereof, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

f. 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.

g. 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 member is not receiving a retirement allowance at the time a domestic relations order is received 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.

h. IPERS and its staff shall have no liability for making or withholding payments in accordance with the provisions of this rule.

i. Alternate payees must notify IPERS of any change in mailing address. 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 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 his or her payments under the QDRO.

j. If an alternate payee's application is received less than two weeks before the member's first or next monthly payment is to be made, payments to the alternate payee shall begin the next following month.

k. For both lump sum and monthly payments, the alternate payee's tax withholding and rollover (if eligible) elections must be received not less than two weeks in advance of the alternate payee's first payment, or IPERS will use the applicable default elections.

This rule is intended to implement Iowa Code sections 97B.4, 97B.15 and 97B.39.

581—21.30(97B) Favorable experience dividend under Iowa Code section 97B.49F(2).

21.30(1) *Allocation of favorable experience.* The department shall annually allocate 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 according to the following schedule.

Years to Amortize Unfunded Liability	Percentage to FED Reserve
Greater than 0 but less than or equal to 3	50%
Greater than 3 but less than or equal to 6	35%
Greater than 6 but less than or equal to 9	25%
Greater than 9 but less than or equal to 12	15%
Greater than 12 but less than or equal to 15	5%
Greater than 15	0%

The portion of the favorable actuarial experience that is not allocated to the FED reserve as provided above will be retained and used by the system to pay down its unfunded actuarial accrued liability, except as otherwise required by Iowa Code section 97B.49F(2)"*c.*"

21.30(2) *Determination of applicable percentage.* The department 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 department'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 retirees under Iowa Code section 97B.49F(1). Notwithstanding the foregoing, the department 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 department 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 department shall make its annual applicable percentage decisions using at least a rolling five-year period.

c. If for any year the department cannot afford an applicable percentage equal to that payable to retirees under Iowa Code section 97B.49F(1), the department may use applicable percentages in succeeding years that are higher than those used in calculating dividends for retirees 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.

21.30(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 department 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 retiree, beneficiary, or contingent annuitant for the previous December, or such other month as determined by the department, 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 department. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

21.30(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 persons whose death occurs during the applicable calendar year.

Effective July 1, 2000, a retiree 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.

21.30(5) No transfer of favorable experience to the FED reserve fund shall exceed the amount that would extend IPERS' unfunded liability amortization period to more than the applicable limit then in effect under the funding policy adopted by IPERS.

This rule is intended to implement Iowa Code section 97B.49F(2) as amended by 2000 Iowa Acts, Senate File 2411, sections 43 and 45.

581—21.31(78GA,SF2411) Disability claim process under 2000 Iowa Acts, Senate File 2411, section 51. Except as otherwise indicated, this rule only shall apply to disability claims initiated under 2000 Iowa Acts, Senate File 2411, section 51. Except as otherwise indicated, disability claims under 2000 Iowa Acts, Senate File 2411, section 51, shall be administered under rule 581—21.22(97B).

21.31(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. 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.

21.31(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 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.

21.31(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 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 2000 Iowa Acts, Senate File 2411, section 51.

21.31(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 pertaining to the difficulty the member is having.

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 2000 Iowa Acts, Senate File 2411, section 51, 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 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.

21.31(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.

21.31(6) *Fast-track review.* IPERS' disability retirement benefits officer may refer any case to IPERS' chief benefits officer for fast-track review. The chief benefits officer 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.

21.31(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.

21.31(8) *General benefits provisions.* 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. "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. Disability may not be awarded to any member who has terminated employment before filing an application.

Any member who is awarded disability benefits under 2000 Iowa Acts, Senate File 2411, section 51, and this rule shall be eligible to elect any of the benefit options available under Iowa Code section 97B.51 as amended by 2000 Iowa Acts, Senate File 2411, section 52. All such options shall be the actuarial equivalent of the lifetime monthly benefit provided in 2000 Iowa Acts, Senate File 2411, section 51, subsections 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.

21.31(9) *In-service disability determinations.* Subject to the presumptions contained in 2000 Iowa Acts, Senate File 2411, section 51, 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.

21.31(10) *Appeal rights.* The member or the employer, or both, may appeal IPERS' initial disability determination. Such appeals must be in writing and submitted to IPERS' chief benefits officer within 30 days after the date of the system's initial notification letter. The system shall conduct an internal review of the initial disability determination, and the chief benefits officer shall notify the member who filed the appeal in writing of IPERS' final disability determination with respect to the appeal. The chief benefits officer 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 rule 581—21.9(97B).

21.31(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 as may be deemed necessary, in IPERS' sole discretion, to carry out this function. 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.

21.31(12) *Qualification for social security disability benefits.* Upon qualifying for social security disability benefits, a member may contact the system to have the member's disability benefits calculated under Iowa Code section 97B.50(2) as amended by 2000 Iowa Acts, Senate File 2411, section 49. The election to stop having benefits calculated under 2000 Iowa Acts, Senate File 2411, section 51, and start having benefits calculated under Iowa Code section 97B.50(2) as amended by 2000 Iowa Acts, Senate File 2411, section 49, must be in writing on forms developed or approved by the system, is irrevocable, and must be made within 60 days after the member receives written notification of eligibility for disability benefits from social security.

21.31(13) *Reemployment/income monitoring.* A member who retires under 2000 Iowa Acts, Senate File 2411, section 51, 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 the member's dependents.

For purposes of calculating the income offsets required under 2000 Iowa Acts, Senate File 2411, section 51, IPERS shall convert any lump sum workers' compensation award to an actuarial equivalent, as determined by IPERS' actuary.

This rule is intended to implement 2000 Iowa Acts, Senate File 2411, section 51.

581—21.32(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 IPERS, including those whose benefits are limited by Section 415 of the Internal Revenue Code.

21.32(1) IPERS shall administer the QBA. IPERS 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, IPERS has full authority to make modifications to the benefits payable under the QBA as may be necessary to maintain its qualification under Section 415(m) of the Internal Revenue Code.

21.32(2) All members, retired members, and beneficiaries of IPERS 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.

21.32(3) On and after the effective date of the QBA, IPERS 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 IPERS prior to any reduction or limitation because of Section 415 of the Internal Revenue Code and the actual monthly benefit payable from IPERS as limited by Section 415. IPERS 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 IPERS except for said Section 415 limitations.

21.32(4) IPERS may consult its actuary to determine the amount of benefits that cannot be provided under IPERS because of the limitations of Section 415 of the Internal Revenue Code, and the amount of contributions that must be made to the QBA rather than to IPERS. Fees for the actuary's service shall be paid by the applicable employers.

21.32(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 IPERS 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 qualified plan established and administered by IPERS. This fund is intended to be exempt from federal income tax under Sections 115 and 415(m) of the Internal Revenue Code. IPERS 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 IPERS trust fund to pay the maximum benefits permitted under Iowa Code chapter 97B. Employer contributions made to provide supplemental pension benefits shall not be commingled with the IPERS trust fund. 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 IPERS, for the payment of administrative expenses of the QBA for the plan year.

21.32(6) A member cannot elect to defer the receipt of all or any part of the payments due under this QBA.

21.32(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.

21.32(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.

21.32(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.

21.32(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.

[Filed 10/28/75, Notice 9/22/75—published 11/17/75, effective 12/23/75]
[Filed 9/1/77, Notices 7/27/77, Amended Notice 8/10/77—published 9/21/77, effective 10/26/77]*
[Filed 3/15/78, Notice 2/8/78—published 4/5/78, effective 5/10/78]
[Filed 7/19/79, Notice 6/13/79—published 8/8/79, effective 9/12/79]
[Filed 11/19/80, Notice 9/3/80—published 12/10/80, effective 1/14/81]
[Filed 10/8/82, Notice 9/1/82—published 10/27/82, effective 12/2/82]
[Filed 8/9/83, Notice 3/30/83—published 8/31/83, effective 10/5/83]
[Filed 8/24/84, Notice 7/4/84—published 9/12/84, effective 10/17/84]
[Filed 1/11/85, Notice 9/26/84—published 1/30/85, effective 3/6/85]
[Filed 8/30/85, Notice 7/3/85—published 9/25/85, effective 10/30/85]
[Filed 4/17/87, Notice 3/11/87—published 5/6/87, effective 6/10/87]
[Filed 2/18/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]
[Filed emergency 7/1/88—published 7/27/88, effective 7/1/88]
[Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 12/22/89]
[Filed 2/1/90, Notice 12/13/89—published 2/21/90, effective 3/30/90]

*Effective date of subrule 8.5(1) delayed by the Administrative Rules Review Committee 70 days from 10/26/77.

[Filed emergency 6/27/90—published 7/25/90, effective 7/1/90]
[Filed 8/31/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed 2/14/91, Notice 1/9/91—published 3/6/91, effective 4/12/91]
[Filed emergency 7/1/91—published 7/24/91, effective 7/1/91]
[Filed emergency 7/2/92—published 7/22/92, effective 7/2/92]
[Filed 2/10/93, Notice 7/22/92—published 3/3/93, effective 4/7/93]
[Filed 10/22/93, Notice 9/15/93—published 11/10/93, effective 12/15/93]
[Filed emergency 3/16/95—published 4/12/95, effective 3/16/95]
[Filed 6/16/95, Notice 5/10/95—published 7/5/95, effective 8/9/95]
[Filed emergency 8/7/95 after Notice 6/21/95—published 8/30/95, effective 8/9/95]
[Filed emergency 5/3/96—published 5/22/96, effective 5/3/96]
[Filed emergency 7/26/96—published 8/14/96, effective 7/26/96]
[Filed emergency 11/27/96—published 12/18/96, effective 11/27/96]
[Filed 2/20/97, Notice 8/14/96—published 3/12/97, effective 4/16/97]
[Filed 2/20/97, Notice 12/18/96—published 3/12/97, effective 4/16/97]
[Filed emergency 8/4/97—published 8/27/97, effective 8/4/97]
[Filed 10/31/97, Notice 8/27/97—published 11/19/97, effective 12/24/97]
[Filed emergency 6/11/98—published 7/1/98, effective 6/11/98]
[Filed 9/17/98, Notice 7/1/98—published 10/7/98, effective 11/11/98]
[Filed emergency 11/25/98—published 12/16/98, effective 11/25/98]
[Filed 4/29/99, Notice 12/16/98—published 5/19/99, effective 6/23/99]
[Filed 5/14/99, Notice 3/10/99—published 6/2/99, effective 7/7/99]
[Filed emergency 6/11/99—published 6/30/99, effective 6/11/99]
[Filed 9/17/99, Notice 6/30/99—published 10/6/99, effective 11/10/99]
[Filed emergency 2/18/00—published 3/8/00, effective 2/18/00]
[Filed emergency 6/22/00—published 7/12/00, effective 6/22/00]

CHAPTER 11
REMEDIAL CLAIMS

591—11.1(455G) Reserving and payment of claims.

11.1(1) *Reserving for remedial and retroactive claims under Iowa Code section 455G.9.*

a. All remedial and retroactive claims shall be reserved for their estimated exposure to the fund on the specific site. The reserve shall reflect the estimated exposure less copayment or deductible obligations. A separate reserve for upgrade benefits as provided for under 591—11.4(455G) shall be established.

b. Reserves shall reflect estimated total cost to the program, regardless of actual funding provided.

c. Prioritization pursuant to Iowa Code section 455G.12 shall be accomplished with rules if required and as determined by the board.

d. An incurred but not reported estimated reserve shall be developed for remedial claims anticipated, but not reported to the board.

e. Reserves may be changed to reflect changing knowledge on eligible claims.

11.1(2) *Reserving for financial responsibility claims under Iowa Code section 455G.11.* Rescinded IAB 2/9/00, effective 3/15/00.

11.1(3) *Payment of benefits under Iowa Code section 455G.9.*

a. The following underground storage tanks are not eligible for remedial account benefits:

(1) Tanks that were taken out of use prior to January 1, 1974. For purposes of this rule tanks taken out of use are tanks which have not actually been used by either depositing petroleum in the tank or by pumping petroleum from the tanks.

(2) Underground storage tanks which were removed from the ground prior to July 1, 1985.

(3) Underground storage tanks which were closed prior to July 1, 1985.

(4) Underground storage tanks which do not contain petroleum. For the purposes of this subrule petroleum means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). The following two categories of substances are not petroleum:

1. Substances which are regulated as hazardous waste under 42 U.S.C. 6921 et seq.

2. Substances which would be regulated under 42 U.S.C. 9601 et seq. if the substance were to leak from a tank, related piping, other part of the system or from spills or releases into the environment, including lands, waters and air.

b. To be eligible for benefits under Iowa Code sections 455G.9 and 455G.21, any owner or operator applying for such benefits shall demonstrate financial responsibility coverage using a method provided for under 567—Chapter 136 no later than October 26, 1990. If an owner or operator is unable to demonstrate financial responsibility coverage, or there is a lapse in the financial responsibility coverage for any period after October 26, 1990, the owner/operator will no longer be eligible for benefits if the site for which benefits are being requested has active tanks during the time the owner/operator was unable to demonstrate financial responsibility or if there is a lapse of financial responsibility coverage subject to the following limitation:

(1) The financial responsibility coverage requirement shall not be required on tanks which are temporarily closed consistent with 11.1(3)*"o."*

(2) An owner or operator who has had a lapse of financial responsibility coverage shall be allowed to remain eligible for remedial benefits if the following conditions are met:

1. The owner or operator applies for reinstatement of remedial benefits and submits a reinstatement fee according to the following table:

Fiscal Year	Per Tank Reinstatement Fee
July 1, 1991 through June 30, 1992	$330
July 1, 1992 through June 30, 1993	$415
July 1, 1993 through June 30, 1994	$495
July 1, 1994 through June 30, 1995	$575
July 1, 1995 through Present	$450

For each fiscal year in which the owner or operator lacked financial responsibility coverage, such owner or operator shall pay the per tank reinstatement fee for such fiscal year, as set forth above. The reinstatement fees above are for full years and shall be prorated on a per-month basis for each month or portion of a month for which there was a lapse of financial responsibility coverage. There is a minimum reinstatement fee of $500 per site per lapse of coverage.

2. At the time of the application for reinstatement of remedial benefits, all active tanks must be in compliance with all state and federal technical and financial responsibility requirements.

3. The owner or operator is in compliance with all other requirements of this rule.

4. An owner or operator is only eligible for reinstatement of remedial benefits one time per site. If there is another lapse of financial responsibility coverage on any active tank on site after remedial benefits have been reinstated, the owner or operator will lose eligibility for remedial benefits and will be subject to cost recovery pursuant to Iowa Code section 455G.13.

c. Impact of insurance on remedial account benefits. If owners or operators have insurance to cover corrective action costs for their underground storage tanks after January 1, 1985, other than pursuant to 455G.11 or other than pursuant to 40 CFR 280.95, 280.96, 280.99, 280.101, 280.102, and 280.103, the remedial account is only available to eligible owners and operators as follows:

(1) The remedial account will pay the deductible amount applicable to such insurance for owners and operators who are eligible for remedial account benefits, subject to the applicable remedial account deductible and copayment provisions.

(2) Except for payments made pursuant to 11.1(3)"*c*"(1) remedial account benefits are secondary to all such insurance.

(3) Remedial account benefits shall not be used to reimburse insurance companies for proceeds paid by those companies pursuant to the terms of such insurance.

(4) In the event of a dispute between the insurance company and the owner or operator or the board regarding insurance coverage, otherwise eligible owners and operators will receive remedial account benefits upon assigning their interest in such insurance to the board.

d. Claims which are filed with the board prior to January 31, 1990, or if filed by a city or county on or before September 1, 1990, for releases reported to the department after July 1, 1987, but prior to May 5, 1989; and claims filed with the board prior to September 1, 1990, for releases reported to the department after January 1, 1984, but prior to July 1, 1987, are retroactive claims which shall be eligible for reimbursement subject to the following guidelines:

(1) After a cutoff date has been passed.

(2) After priority payment procedures are established, if required.

(3) After the claim has been verified and all supporting materials have been supplied to the administrator for review.

(4) After a signed and notarized claim form has been received.

(5) Owners or operators whose method of showing proof of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa environmental protection commission's underground storage tank financial responsibility rules, 567—Chapter 136, in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator are self-insured for purposes of 455G.9(1)"*a*"(1)(a) and 455G.9(1)"*a*"(3)(b).

(6) A retroactive claim for a release shall be subject to the copayment requirements of Iowa Code section 455G.9(4).

(7) A retroactive claim for a release reported to the department prior to May 5, 1989, and after July 1, 1987, shall only be eligible if the owner or operator applying for benefits has not claimed bankruptcy anytime after July 1, 1987; a retroactive claim for a release reported to the department after January 1, 1984, but prior to July 1, 1987, shall only be eligible if the owner or operator applying for benefits has not claimed bankruptcy on or after January 1, 1985.

e. Claims filed with the board prior to February 26, 1994, for releases reported to the department after May 5, 1989, and on or before October 26, 1990, are remedial claims eligible for reimbursement subject to the following guidelines:

(1) After the owner/operator completes the claim form and has it notarized.

(2) When bills and estimates are received along with contracts, description of remedial plan and correspondence for budget approval on the work required by the department.

(3) When the work is complete or, if ongoing, as approved by the administrator and in accordance with priority rules.

(4) After the owner or operator has met deadlines and the department's technical requirements for cleanup. To be eligible, corrective action costs must be reasonable and necessary to complete the work required by the department. The board shall reimburse or pay only those corrective action costs which will cover the work as mandated by Iowa Code section 455B.471 et seq.

(5) Remedial claims shall be subject to copayments consistent with Iowa Code section 455G.9(4).

f. Remedial and retroactive claims may be paid monthly and will include all approved expenses, including tank and piping removal for active systems if the tank and piping removal occurs on or before March 17, 1999, and other costs as provided in Iowa Code chapter 455G. Cost of replacement materials excavated shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets department of natural resources requirements.

g. The board shall reimburse or pay eligible expenses for remedial or retroactive benefits only if those expenses have been approved prior to the commencement of work, as required by Iowa Code section 455G.12A. No corrective action costs shall be reimbursed unless reasonable, necessary and approved by the board or its designee.

h. When practical to do so, the board shall bid any work associated with this chapter with firms which have indicated to the administrator an interest to be on the board's list of firms supplying goods or services. To be eligible for inclusion in the vendors list, the firm shall have appropriate registration as a groundwater professional. Any firm supplying goods and services including, but not limited to, testing laboratories, cleanup equipment manufacturers and leak detection testing firms may also be included in the vendors list.

i. Reimbursement to the owner, operator or contractor under this chapter is subject to overall site cleanup report prioritization and classification. Sites which are classified as low-risk are eligible for remedial account benefits for monitoring expenses required by Iowa Code section 455B.474(1)"*f*""5," unless the tank is removed, upgraded, or replaced. If the underground tank system is removed, upgraded or replaced, provisions outlined in IAC 591—11.5(455G) and 591—11.6(455G) shall apply.

j. All claims eligible for funding under Iowa Code section 455B.474 will be subject to available funding.

k. The board may appeal any adverse administrative law decision or court judgment.

l. Rescinded IAB 6/5/96, effective 7/10/96.

m. The board may ratify and approve any actions taken by the board or its designee which were consistent with the provisions of this subrule 11.1(3) without regard to whether this subrule was in effect at the time the actions to be ratified were taken.

n. One hundred percent of corrective action costs and third-party liability not to exceed $1 million shall be reimbursed for a release for which the eligible claimant is subject to financial hardship if all of the following conditions are met:

(1) The claimant has completed the claim form, had it notarized, and submitted it to the board on or before December 1, 1996.

(2) Claimant is a small business as defined in Iowa Code section 455G.2(18) and has submitted self-certification forms documenting small business status.

(3) Claimant does not have a net worth of $15,000 or greater and has submitted documentation of net worth in accordance with Iowa Code section 455G.10(4) and 591—subrule 12.10(3) or the claimant is an individual who is financially unable to pay copayments associated with the cost of corrective action as determined by using the department's evaluation of ability to pay found at 567 IAC 135.17(455B).

(4) The release for which the claim has been made occurred prior to October 26, 1990.

(5) The release for which the claim has been made was reported to the DNR on or before December 1, 1996.

(6) The site for which the claim is made is in compliance with all technical requirements of 567—Chapters 135 and 136.

(7) The site for which the claim is made shall not be deeded or quitclaimed to the state or board in lieu of cleanup.

(8) Property taxes shall not be delinquent, unpaid or otherwise overdue.

(9) A responsible party with the ability to pay corrective action expenses cannot be found.

(10) The release for which the claim is made is one for which the federal Underground Storage Tank Trust Fund or other federal moneys do not provide coverage.

(11) The work is complete or, if ongoing, is approved by the administrator or the board pursuant to the cost containment provisions of Iowa Code section 455G.12A.

(12) All claims and payments are subject to prioritization guidelines set forth in rule 591—11.7(455G).

(13) If the property is acquired via eminent domain by a governmental subdivision.

o. An owner/operator eligible for remedial benefits who complied with 11.1(3)*"b"* by using program insurance authorized pursuant to Iowa Code section 455G.11 will remain eligible for remedial benefits even though the insured tanks were not upgraded by December 22, 1998, under the following conditions:

(1) The owner/operator temporarily closes the tanks in compliance with the closure requirements of the environmental protection commission 567—subrule 135.9(1) while the tanks are still insured under Iowa Code section 455G.11; and

(2) The owner/operator certifies the tanks continuously had financial responsibility coverage acceptable under 567—Chapter 136 from October 26, 1990, until the temporary closure; and

(3) The owner/operator certifies the tanks will be empty during the entire period of the temporary closure. Empty means all materials have been removed from the tanks using commonly approved practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent of weight of the total capacity of the tank system, remain in the tank system; and

(4) The owner/operator certifies that during the entire period of the temporary closure vent lines will be left open and functioning and all other lines, pumps, manways, and ancillary equipment will be capped and secured.

(5) The owner/operator certifies that within one year from the time the tanks were temporarily closed, the tanks will either be permanently closed, removed and replaced, or upgraded; and

(6) The owner/operator certifies the upgraded tanks and replacement tanks will meet the new tank or upgrade standards of the environmental protection commission rule 567—135.3(455B); and

d. Piping replacements. The following options are allowed for piping replacements:

(1) For any contaminated site:

1. Double walled piping.

2. Single walled piping installed in a barrier providing secondary containment between soil and the piping.

3. On suction systems, single wall piping when only one check valve is on the line directly under the pump.

(2) For sites which are not environmentally sensitive, suction systems with single wall piping meeting the department's upgrade standards set forth in 567—subrule 135.3(2) on pipes with leak detection are allowed if there is no more than one valve on the piping. All suction systems shall be installed with the slope of the pipe back to the tank and shall have only one check valve located directly under the suction pump.

e. Spill and overfill protection, cathodic protection, and leak detection. Nothing in this rule alters the department's upgrade requirements for spill and overflow protection, cathodic protection, and leak detection.

11.4(6) Tank and piping upgrades and replacements eligible for upgrade benefits.

a. The following tank and piping upgrades or replacements are eligible for upgrade benefits if completed on or before March 17, 1999:

(1) Double walled tanks.

(2) Single walled tanks meeting the department's requirements as specified in 567—paragraph 135.5(4)*"g,"* the tank zone providing an impermeable barrier between native soils and the tank, thus providing secondary containment.

(3) Double walled piping.

(4) Single wall piping installed in a barrier system, providing secondary containment between the soil and the piping. Nothing in this rule alters upgrade requirements for spill/overfill protection, cathodic protection and leak detection.

b. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, and on or before March 17, 1999, on sites which are classified as being environmentally sensitive:

(1) Pressurized systems: Tanks and piping shall comply with one of the tank and piping options specified in 11.4(6)*"a."*

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system pipes shall have the check valve located at the suction pump. These systems shall meet one of the options specified in 11.4(6)*"a,"* except that piping may be single wall when one check valve is on the line, under the pump.

c. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, and on or before March 17, 1999, on sites which are not classified as being environmentally sensitive:

(1) Pressurized systems: Piping shall comply with one of the pipe options specified in 11.4(6)*"a."* Tanks installed must be either one of the options specified in 11.4(6)*"a"* or be a department-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4), or in lieu of automatic in-tank gauging, be a department-approved electronic tank level monitor in conjunction with a department-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

(2) Suction systems: Tanks and piping shall be installed with the slope of the pipe back to the tank on all suction systems. All suction system piping shall have the check valve located at the suction pump. These systems must be either one of the options specified in 11.4(6)*"a"*; or be:

1. Pipes: single wall pipes meeting department upgrade standards on the pipes with leak detection pursuant to 567—subrule 135.3(2). If more than one valve is on the pipe, this option is not available.

2. Tanks: must be either one of the options specified in 11.4(6)*"a"* or be a department-approved tank with automatic in-tank gauging pursuant to 567—subrule 135.5(4), or in lieu of automatic in-tank gauging, be a department-approved electronic tank level monitor in conjunction with a department-approved UST statistical inventory reconciliation method pursuant to 567—subrule 135.5(4). Should the statistical inventory reconciliation method be used, the owner shall have monthly records on premises showing that all requirements on the system have been met. If either the automatic in-tank gauging or the electronic level reconciliation device is used, the program shall pay only the cost of the system installed and not ongoing monthly or yearly expenses.

11.4(7) Any system upgrade or replacement installed prior to March 25, 1992, which complies with the provisions of this rule shall be eligible for upgrade benefits if the system has been fully upgraded or replaced in accordance with 567—Chapter 135.

11.4(8) The board reserves the right to establish cost controls on the purchase and installation of underground storage tank equipment and systems. Upgrade benefits are not equipment and capital improvements for purposes of Iowa Code section 455G.9(6).

11.4(9) Evidence of insurance or self-insurance shall be provided to the department upon completion of the upgrade or replacement unless the Iowa UST program provides insurance coverage. If the Iowa UST program provides coverage, the administrator will notify the department.

11.4(10) Failure to obtain approval or qualify for upgrade benefits may be appealed as provided in 591—Chapter 17.

11.4(11) Rescinded IAB 7/12/00, effective 8/16/00.

This rule is intended to implement Iowa Code sections 455B.474(1)*"f"*(8) and 455G.9(1)*"a"*(5).

591—11.5(455G) Environmental damage offset. Rescinded IAB 1/17/96, effective 12/29/95.

591—11.6(455G) Soil remediation payments.

11.6(1) When reviewing applications for benefits under Iowa Code chapter 455G for cost of remediating soils, the criteria in this rule shall apply when determining payment eligibility.

11.6(2) Overexcavation and remediation of soils will have the cost approved by the board or its administrator prior to exceeding excavation limits specified in this rule.

11.6(3) Excavation after completion of the site cleanup report shall be limited to the immediate tank zone and tank lines or piping on tanks registered by the department.

a. On sites where monitoring-in-place has been approved by the department, overexcavation may be approved to a maximum of the actual tank zone, plus six lineal feet out from the tank zone, and two feet below the tank itself, unless normal groundwater heights are above that level, and may be approved to a maximum of two feet deep below the line and three feet total width along the tank line.

b. On sites where monitoring-in-place has not been approved by the department, overexcavation may be approved to a maximum of the actual tank zone, plus six lineal feet out from the tank zone, and two feet below the tank itself, unless normal groundwater heights are above that level, and may be approved to a maximum of two feet deep below the line and three feet total width along the tank line.

11.6(4) If overexcavation occurs prior to completion of the site cleanup report (SCR), the SCR shall no longer be eligible for 100 percent reimbursement up to $20,000 if approval of costs associated with the overexcavation and the scope of the work is not first approved by the board or the administrator. In such situations, the cost of the SCR will be paid as a remediation expense and subject to deductibles and copayments should approval not be obtained prior to proceeding.

11.6(5) Preapproval is required for overexcavation of any site, whether as a part of a remediation project or a tank upgrade or replacement, if the distances exceed board-authorized ranges set forth in subrule 11.6(3).

11.6(6) Rescinded IAB 3/26/97, effective 4/30/97.

591—11.7(455G) Prioritization of remedial account benefits and expenses. Rescinded IAB 1/17/96, effective 12/29/95.

591—11.8(455G) Payments for conducting RBCA analysis on "monitor only" sites.

11.8(1) When reviewing applications for benefits for the cost of completing an RBCA analysis on a site which has an approved SCR requiring "monitoring only," or on a site with an SCR submitted between August 15, 1996, and January 31, 1997, the criteria in this rule shall apply when determining payment eligibility.

11.8(2) Tier 1, Tier 2, and Tier 3 risk-based corrective action analysis must have budgets preapproved by the board or its administrator prior to any costs being incurred.

11.8(3) Benefits shall be limited to those costs associated with activities which are required to be completed in order for a Tier 1, Tier 2, or Tier 3 to be accepted by the department and which will determine the risk associated with the site.

11.8(4) Only sites which are currently eligible for benefits under this chapter are eligible for reimbursement of costs associated with activities under this rule.

11.8(5) One hundred percent of the costs may be preapproved not to exceed $10,000 for all activities associated with the completion of the Tier 1, Tier 2, or Tier 3 analysis. Costs which exceed $10,000 will be subject to the limitations of Iowa Code section 455G.9(1)*"f."*

These rules are intended to implement Iowa Code section 455B.474 and chapter 455G.

[Filed 10/26/90, Notice 3/7/90—published 11/14/90, effective 12/19/90]
[Filed emergency 8/30/91—published 9/18/91, effective 8/30/91]◊
[Filed emergency 9/13/91—published 10/2/91, effective 9/13/91]
[Filed emergency 10/17/91—published 11/13/91, effective 10/17/91]
[Filed 12/6/91, Notice 9/18/91—published 12/25/91, effective 1/29/92]◊
[Filed 12/6/91, Notice 10/2/91—published 12/25/91, effective 1/29/92]
[Filed 1/29/92, Notice 12/13/91—published 2/19/92, effective 3/25/92]
[Filed 9/25/92, Notice 3/18/92—published 10/14/92, effective 11/18/92]
[Filed 9/24/92, Notice 6/10/92—published 10/14/92, effective 11/18/92]
[Filed emergency 10/8/93—published 10/27/93, effective 10/8/93]

[Filed 1/27/94, Notice 8/18/93—published 2/16/94, effective 3/23/94]
[Filed 1/27/94, Notice 10/27/93—published 2/16/94, effective 3/23/94]
[Filed 5/9/94, Notice 10/27/93—published 5/25/94, effective 7/1/94]
[Filed 8/25/94, Notice 5/25/94—published 9/14/94, effective 11/1/94]*
[Filed without Notice 8/25/94—published 9/14/94, effective 11/1/94]*
[Filed emergency 10/28/94—published 11/23/94, effective 11/1/94]
[Filed emergency 12/14/94—published 1/4/95, effective 12/14/94]
[Filed 2/24/95, Notice 9/14/94—published 3/15/95, effective 4/19/95]
[Filed 2/24/95, Notice 10/12/94—published 3/15/95, effective 4/19/95]
[Filed 2/24/95, Notice 12/21/94—published 3/15/95, effective 4/19/95]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 5/4/95, Notice 3/15/95—published 5/24/95, effective 6/28/95]
[Filed 11/3/95, Notice 8/30/95—published 11/22/95, effective 12/27/95]
[Filed emergency 12/21/95 after Notice 7/19/95—published 1/17/96, effective 12/29/95]◊
[Filed emergency 12/26/95—published 1/17/96, effective 12/27/95]
[Filed 5/17/96, Notice 3/13/96—published 6/5/96, effective 7/10/96]
[Filed 3/7/97, Notice 12/18/96—published 3/26/97, effective 4/30/97]
[Filed 3/7/97, Notice 1/15/97—published 3/26/97, effective 4/30/97]◊
[Filed 6/2/97, Notice 3/26/97—published 6/18/97, effective 7/23/97]
[Filed 1/28/98, Notice 11/5/97—published 2/25/98, effective 4/1/98]◊
[Filed 1/28/98, Notice 11/19/97—published 2/25/98, effective 4/1/98]
[Filed 8/7/98, Notice 6/3/98—published 8/26/98, effective 9/30/98]
[Filed 10/29/98, Notice 8/26/98—published 11/18/98, effective 12/23/98]
[Filed 1/22/99, Notice 11/18/98—published 2/10/99, effective 3/17/99]◊
[Filed 1/22/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]
[Filed 10/22/99, Notice 8/11/99—published 11/17/99, effective 12/22/99]
[Filed 1/20/00, Notice 12/1/99—published 2/9/00, effective 3/15/00]
[Filed 5/5/00, Notice 3/22/00—published 5/31/00, effective 7/5/00]
[Filed 6/22/00, Notice 5/3/00—published 7/12/00, effective 8/16/00]

◊Two or more ARCs
*Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held October 11, 1994.

CHAPTER 25
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

CHAPTERS 26 and 27
Reserved

CHAPTER 28
MARIJUANA ERADICATION PROCEDURES

CHAPTERS 29 to 52
Reserved

CHAPTER 53
FIRE SERVICE TRAINING BUREAU

CHAPTER 54
FIREFIGHTER CERTIFICATION

CHAPTERS 55 to 58
Reserved

CHAPTER 59
VOLUNTEER EMERGENCY SERVICES PROVIDER DEATH BENEFITS

CHAPTER 28
MARIJUANA ERADICATION PROCEDURES

661—28.1(80) Reports of marijuana. Persons wishing to report marijuana growing in Iowa, whether cultivated or uncultivated, may contact any local law enforcement agency within the state of Iowa or the Division of Narcotics Enforcement, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Reports may be made to the division of narcotics enforcement by telephone through the toll-free Marijuana Hotline at 1-800-532-0052.

661—28.2(80) Cultivated marijuana. Upon receipt of information pertaining to marijuana cultivation or harvesting, the department of public safety, division of narcotics enforcement, shall investigate. If the information is valid and cultivation or harvesting of marijuana is confirmed, the division of narcotics enforcement shall initiate a criminal investigation, which may lead to the subsequent filing of criminal charges.

661—28.3(80) Uncultivated marijuana.

28.3(1) Upon receipt of information pertaining to wild uncultivated marijuana, the department of public safety, division of narcotics enforcement, shall notify the county sheriff of the report. If the property on which uncultivated marijuana is reported lies within a municipality with a police department, the chief of police shall also be notified. After the sheriff has been notified, the department of public safety, division of narcotics enforcement, shall notify, by regular mail, the owner of the land where uncultivated marijuana has been reported and shall request that the land owner voluntarily remove the marijuana. The county sheriff and the local policy chief, if any, shall be sent copies of the notice to the landowner, also by regular mail.

28.3(2) Notification to a landowner of information regarding uncultivated marijuana, as provided in subrule 28.3(1), shall be provided on a completed form "Notice of Marijuana Complaint."

Notification to a landowner of information regarding uncultivated marijuana growing on the landowner's property, as provided in this subrule, is intended to obtain voluntary cooperation in the eradication of marijuana.

28.3(3) The department shall provide information and training to law enforcement agencies regarding the identification and removal of marijuana and assistance to the Iowa State University Agriculture and Home Economics Extension Service in developing programs concerning the identification and removal of marijuana.

661—28.4(80) Scope and limitation. Nothing in this chapter shall be construed to be a restriction or limitation upon the nature or scope of the authority of any member of the department of public safety or of any other public officer as otherwise provided by law.

These rules are intended to implement Iowa Code section 80.9.

[Filed 10/15/91, Notice 7/10/91—published 11/13/91, effective 1/1/92]

CHAPTERS 29 to 52
Reserved

CHAPTER 53
FIRE SERVICE TRAINING BUREAU

661—53.1(78GA,HF2492) Fire service training bureau. There is established within the fire marshal division a fire service training bureau, with responsibility for instructing the general public and fire protection personnel throughout the state, providing service to public and private fire departments in the state, conducting research in the methods of maintaining and improving fire education consistent with the needs of Iowa communities, and performing any other functions assigned to the bureau by the state fire marshal in consultation with the state fire service and emergency response council.

The fire service training bureau is located at 3100 Fire Service Road, Ames, Iowa 50010-3100. The bureau can be contacted by telephone at (888)469-2374 (toll free) or at (515)294-6817, by fax at (800)722-7350 (toll free) or (515)294-2156, or by electronic mail at fstbinfo@dps.state.ia.us.

661—53.2(78GA,HF2492) Programs, services, and fees.

53.2(1) *Courses and tuition fees.* Current course offerings of the fire service training bureau are available in the document Catalog of Courses, Conferences and Services, available from the fire service training bureau upon request. Current course tuition fees and any other fees related to participation in courses shall be listed in the document Catalog of Courses, Conferences and Services, and shall be effective until superseded by publication of a later edition of the document. Prospective students should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Courses, Conferences and Services prior to submitting the tuition fee for a course.

53.2(2) *Conferences and fees.* Upcoming conferences offered by the fire service training bureau are listed in the document Catalog of Courses, Conferences and Services, available from the fire service training bureau upon request. Conference registration fees and any other fees related to attendance at conferences shall be listed in the document Catalog of Courses, Conferences and Services, and shall be effective until superseded by publication of a later edition of the document. Prospective students should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Courses, Conferences and Services prior to submitting registration fees or any other fees related to attendance at a conference.

53.2(3) *Publications and materials; fees.* All publications and materials currently offered for sale by the fire service training bureau are listed in the document Catalog of Publications and Materials, available from the fire service training bureau upon request. Current prices of publications shall be listed in the document Catalog of Publications and Materials, and shall be effective until superseded by publication of a later edition of the document. Persons wishing to purchase publications or materials should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Publications and Materials prior to submitting payment for publications or materials.

53.2(4) *Other services and tuition fees.* Services other than courses, conferences, and firefighter certification offered by the fire service training bureau are listed in the document Catalog of Courses, Conferences and Services, available from the fire service training bureau upon request. Current fees for these services shall be listed in the document Catalog of Courses, Conferences and Services, and shall be effective until superseded by publication of a later edition of the document. Prospective clients for these services should inquire of the fire service training bureau as to the date of most recent publication of the Catalog of Courses, Conferences and Services prior to submitting a request for or payment for any service.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

[Filed emergency 6/22/00—published 7/12/00, effective 7/1/00]

CHAPTER 54
FIREFIGHTER CERTIFICATION

661—54.1(78GA,HF2492) Firefighter certification program. There is established within the fire service training bureau of the fire marshal division a firefighter certification program for the state of Iowa, which shall be known as the Iowa fire service certification system. The Iowa fire service certification system is accredited by the International Fire Service Accreditation Congress to certify fire service personnel to accepted national standards. All certifications issued by the Iowa fire service certification system shall be based upon nationally accepted standards.

Inquiries and requests regarding the Iowa fire service certification system should be directed to Iowa Fire Service Certification System, Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50010-3100. The bureau can be contacted by telephone at (888)469-2374 (toll free) or at (515)294-6817, by fax at (800)722-7350 (toll free) or (515)294-2156, or by electronic mail at fstbinfo@dps.state.ia.us.

54.1(1) *Eligibility.* Any person seeking certification through the Iowa fire service certification system shall be a current member of a fire, emergency, or rescue organization within the state of Iowa and shall be at least 18 years of age.

EXCEPTION: Persons not meeting the requirement of membership in a fire, emergency, or rescue organization may be granted exceptions to this requirement on an individual basis. Individuals seeking such exceptions shall address these requests to the fire service training bureau.

54.1(2) *Application.* Application forms for each level of firefighter certification may be obtained from the fire service training bureau, or on the bureau's Web site at http://www.state.ia.us/government/dps/fm/fstb. In order to enter the certification program, an applicant shall submit a completed application, accompanied by the required fee, to the fire service training bureau. The fee must accompany the application form, although a purchase order from a public agency or private organization may be accepted in lieu of prior payment. The application and fee shall be submitted no less than two weeks prior to the date of any examination in which the applicant wishes to participate.

661—54.2(78GA,HF2492) Certification standards. Standards for Iowa firefighter certification are based upon nationally recognized standards established by the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Certification at each level in the Iowa fire service certification system results in national certification as well.

54.2(1) *Firefighter I.* Certification as firefighter I is based upon the requirements for firefighter I certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," 1997 edition, chapter 3, published by the National Fire Protection Association.

EXCEPTION: Any person applying for certification as a firefighter I who applied to the Fire Service Institute, Iowa State University Extension, by May 15, 2000, and completes certification requirements by July 15, 2000, shall be required to meet the requirements for firefighter I certification established in NFPA 1001, "Fire Fighter Professional Qualifications," 1992 edition, chapter 3, published by the National Fire Protection Association.

54.2(2) *Firefighter II.* Certification as firefighter II is based upon the requirements for firefighter II certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," 1997 edition, chapter 4, published by the National Fire Protection Association.

EXCEPTION: Any person applying for certification as a firefighter II who applied to the Fire Service Institute, Iowa State University Extension, by May 15, 2000, and completes certification requirements by July 15, 2000, shall be required to meet the requirements for firefighter II certification established in NFPA 1001, "Fire Fighter Professional Qualifications," 1992 edition, chapter 4, published by the National Fire Protection Association.

54.2(3) *Driver operator (pumper).* Certification as a driver operator (pumper) is based upon the requirements for fire department vehicle driver/operator certification established in NFPA 1002, "Standard for Fire Vehicle Driver/Operator Professional Qualifications," 1993 edition, published by the National Fire Protection Association.

54.2(4) *Fire officer.* Certification as a fire officer is based upon the requirements for fire officer certification established in NFPA 1021, "Standard for Fire Officer Professional Qualifications," 1997 edition, published by the National Fire Protection Association.

54.2(5) *Fire service instructor I.* Certification as a fire service instructor I is based upon the requirements for certification as a fire service instructor I established in NFPA 1041, "Standard for Fire Service Instructor Professional Qualifications," 1996 edition, chapter 2, published by the National Fire Protection Association.

661—54.3(78GA,HF2492) Fees. The following fees are established for certification at each level. Fees are due at the time of application.

Firefighter I	$ 50
Firefighter II	$ 50
Driver/Operator (Pumper)	$ 65
Fire Officer	$ 75
Fire Service Instructor I	$ 35

Fees may be paid by personal check made payable to "Iowa Department of Public Safety - Fire Service Training Bureau," credit card, purchase order from a public agency or private organization, check or draft from a public agency or private organization, money order, or cash.

661—54.4(78GA,HF2492) Certification, denial, and revocation of certification.

54.4(1) *Certification.* Upon completion of the requirements for certification, the applicant's name shall be entered into the Iowa certification database maintained by the fire service training bureau for the respective level of certification and into the National Certification Data Base maintained by the International Fire Service Accreditation Congress. Individuals who successfully complete the certification requirements shall also receive an individualized certificate awarding national certification from the fire service training bureau, which will bear a numbered seal from the International Fire Service Accreditation Congress, and additional insignia from the fire service training bureau.

54.4(2) *Denial of certification.* Certification shall be denied to any applicant who fails to meet all of the requirements for the type of certification, who knowingly submits false information to the fire service training bureau, or who engages in fraudulent activity during the certification process.

54.4(3) *Revocation.* The fire marshal may revoke the certification of any individual who is found to have knowingly provided false information to the fire service training bureau during the certification process or to have engaged in fraudulent activity during the certification process.

54.4(4) *Appeals.* Any person who is denied certification or whose certification is revoked may appeal the denial or revocation. Appeals of denials or revocations of certification shall be made to the commissioner of public safety within 30 days of the issuance of the denial or revocation using the contested case procedures specified in 661—Chapter 10.

These rules are intended to implement 2000 Iowa Acts, House File 2492.

[Filed emergency 6/22/00—published 7/12/00, effective 7/1/00]

CHAPTERS 55 to 58
Reserved

CHAPTER 59
VOLUNTEER EMERGENCY SERVICES PROVIDER DEATH BENEFITS

661—59.1(78GA,SF2452) Volunteer emergency services provider death benefit program. There is established within the fire marshal division a volunteer emergency services provider death benefit program with responsibility for administering the payment of death benefits to beneficiaries of volunteer emergency services providers who die in the line of duty, as provided in 2000 Iowa Acts, Senate File 2452, section 97.

Information about the program can be obtained by mail from the Volunteer Emergency Services Provider Death Benefit Program, Fire Marshal Division, Department of Public Safety, 621 East 2nd Street, Des Moines, Iowa 50309-1831, by telephone at (515)281-5821, or by electronic mail at fminfo@dps.state.ia.us.

661—59.2(78GA,SF2452) Eligibility. The beneficiary of a volunteer emergency services provider who is killed in the line of duty is eligible for a lump-sum payment of $100,000 from the volunteer emergency services provider death benefit program, provided that application is made to the program in accordance with requirements established in this chapter and all eligibility criteria are satisfied.

59.2(1) *Application.* Application forms for the volunteer emergency services provider death benefit program may be obtained on request from the fire marshal division. The fire marshal may accept a legible copy of a completed application for the federal public safety officer benefits program as an application for payment of benefits from the volunteer emergency services provider death benefit program. Completed application forms shall be mailed or delivered to the Volunteer Emergency Services Provider Death Benefit Program, Fire Marshal Division, Department of Public Safety, 621 East 2nd Street, Des Moines, Iowa 50309-1831. A completed application form shall be accompanied by a letter from the chief or other responsible supervisory official of the department in which the volunteer emergency services provider was serving at the time of the line-of-duty death, certifying that the death of the volunteer was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer. Any evidence or proof available to the chief or responsible supervisory official to support the claim shall accompany the letter.

59.2(2) *Definitions.* The following definitions apply to the volunteer emergency services provider death benefit program.

"Beneficiary" means the surviving spouse of the volunteer emergency services provider who died in the line of duty. If there is no surviving spouse, and there is a surviving child or surviving children of the volunteer emergency services provider, then "beneficiary" means the surviving child of the member. If there is more than one surviving child, the children are cobeneficiaries who shall share equally in the lump-sum payment of the death benefit. If there is no surviving spouse or child of the volunteer emergency services provider, "beneficiary" means the surviving father or mother of the volunteer emergency services provider if either or both survives at the time of the line-of-duty death of the volunteer emergency services provider. If both the mother and father of the volunteer emergency services provider survive at the time of the line-of-duty death of the volunteer emergency services provider, then the father and mother are cobeneficiaries who shall share equally in the lump-sum payment. If there is no surviving spouse, child, or parent at the time of the line-of-duty death of the volunteer emergency services provider, then "beneficiary" means the estate of the deceased volunteer emergency services provider.

"Line-of-duty death" means the death of a volunteer emergency services provider which was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer. The death is not a line-of-duty death if any of the following apply:

1. The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the volunteer emergency services provider's death.
2. The death was caused by the intentional misconduct of the volunteer emergency services provider or by such provider's intent to cause the provider's own death.
3. The volunteer emergency services provider was voluntarily intoxicated at the time of death.
4. The volunteer emergency services provider was performing the provider's duties in a grossly negligent manner at the time of death.
5. A beneficiary who would otherwise be entitled to a benefit under this chapter was, through the beneficiary's actions, a substantial contributing factor to the volunteer emergency services provider's death.

661—59.3(78GA,SF2452) Determination. After receiving an application for benefits from the volunteer emergency services provider death benefit program, the fire marshal shall make a determination as to whether or not the application meets the requirements for payment of benefits. The fire marshal may require the beneficiary or the chief or responsible supervisory official who has certified that the death is a line-of-duty death to submit any additional information that the fire marshal deems material to making the determination. If the determination is that the requirements for payment of benefits have been met, the fire marshal shall so notify the beneficiary or cobeneficiaries and shall request that the department of revenue and finance issue a warrant payable to the beneficiary in the amount of the lump-sum payment provided or, if there are cobeneficiaries, that the department of revenue and finance issue warrants in equal shares of the lump-sum amount payable to each of the cobeneficiaries.

59.3(1) *Denial and notification.* If the fire marshal determines that the eligibility criteria have not been met, the fire marshal shall notify in writing the beneficiary or cobeneficiaries and the chief or responsible supervisory official who certified that the death occurred in the line of duty of the determination and of the reason or reasons for the denial.

59.3(2) *Appeals.* If an application for payment from the volunteer emergency services provider program is denied, the beneficiary or any cobeneficiary may appeal that decision to the commissioner of public safety by filing an appeal in writing to the commissioner of public safety within 30 days of the date of the denial of the application by the fire marshal. Appeals shall be processed in accordance with contested case procedures specified in 661—Chapter 10.

These rules are intended to implement 2000 Iowa Acts, Senate File 2452, section 97.

[Filed emergency 6/22/00—published 7/12/00, effective 7/1/00]

EXAMPLE E. A separate area in an office building is set aside for vending machines with seating facilities for eating provided. The seating area and the vending machines are maintained and operated under contract by a vending company. In this case, sales of prepared food and drink through the vending machines are taxable as sales for consumption on the premises of the retailer.

b. Catered food. All sales of food, food products, and drinks on a catered basis are subject to tax.

c. Off-premises consumption. When a sale of prepared food is clearly identifiable as being for consumption off of the premises, the sale is taxable if the food is:

(1) Hot or cold,

(2) Prepared by the retailer, and

(3) For immediate consumption.

"Hot or cold" means that the food is intentionally sold in a heated or cooled state. Food that is not heated or cooled is taxable if sold in combination with other heated or cooled food on a nonitemized basis. Availability of self-service heating facilities indicates intent to sell food in a heated state whether or not the food is actually heated at the time of sale.

Preparation by the retailer for immediate consumption includes, but is not limited to: cooking, mixing, sandwich making, blending, heating, or pouring. Preparation by the retailer includes customer utilization of on-premises facilities for the purpose of preparing food for immediate consumption. The division of food and drink into smaller portions is not by itself preparation by the retailer for immediate consumption off of the premises of the retailer. Food prepared for immediate consumption is food prepared to a point generally accepted as ready to be eaten without further preparation and that is sold in a manner that suggests readiness for immediate consumption. Actual immediate consumption of the food is not necessary for the sale to be taxable if the food has been prepared for immediate consumption.

Sales of foods that are often for immediate consumption off of the premises of the retailer include: delicatessen, ice cream, popcorn, and vending machine.

If a vendor does not provide seating or other eating facilities, sales of prepared food and drink by the vendor by such means as vendor-owned vending machines or mobile vendors or from snack shops or concession stands are usually for consumption off of the premises of the retailer. However, if a vendor sells prepared food at retail food establishments without separate seating or eating facilities and on the same premises operates facilities for such activities as recreation, entertainment, education, office work, or manufacturing, then the sales of prepared food can be taxable under 20.5(2)*"a"* depending on the type of the item sold.

The following examples are intended to show some of the situations in which sales are taxable as hot or cold food and drink prepared by the retailer for immediate consumption off of the premises of the retailer.

EXAMPLE A. The owner of a sports stadium leases concession stands at the stadium to a company that operates the stands during events at the stadium. The concession operator prepares and heats sandwiches and sells other food and drink prepared and packaged by others. No separate eating facilities are provided. All sales by the concessionaire are for immediate consumption off of the premises of the retailer. Therefore, only the sales of candy, candy-coated items, taxable beverages, as well as sandwiches and other food prepared by the retailer that are sold hot or cold are taxable.

EXAMPLE B. A convenience store without separate eating facilities sells sandwiches prepared and packaged by a wholesale distributor. Microwave ovens are available for heating the sandwiches. No separate eating facilities are available. Sales of these sandwiches are not taxable because the sandwiches are not for consumption on the premises of the retailer and because the sandwiches were not prepared by the retailer.

EXAMPLE C. An area in an office building is set aside by the owner of the building for food and drink vending machines. Separate eating facilities are provided by the owner of the building. Vending machines and accompanying microwave ovens located in the area are owned and operated by a vending service under contract with the owner of the building. The retailer prepares none of the food placed in the machines. The vending service is the retailer. Sales of food and drink through the vending machines are for immediate consumption off of the premises of the retailer. Thus, sales of food and drink through the vending machines are not taxable unless the sales involve candy, candy-coated items, or taxable beverages.

d. Sales of food and beverages for human consumption by certain nonprofit organizations. Sales of food and beverages made by certain organizations are exempt. Retroactively to July 1, 1988, the gross receipts from sales of food and beverages for human consumption by organizations are exempt from sales tax if the organization is nonprofit, principally promotes a food or beverage product for human consumption that is produced, grown, or raised in Iowa, and is exempt from federal income tax under Section 501(c) of the Internal Revenue Code. Refunds are allowed for tax, penalty, and interest paid by such organizations on sales made between July 1, 1988, and June 30, 1998. For details, examples, and requirements on claiming a refund, see 701—17.32(422).

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 1998 Iowa Acts, chapter 1091.

701—20.6(422,423) Vending machines. Before July 1, 1985, any food item which is sold through a vending machine shall not be exempt from sales tax. On or after July 1, 1985, prepared food and drinks sold through vending machines will be taxable either if sold for consumption on the premises of the retailer under 20.5(2)*"a"* or if prepared by the retailer for immediate consumption off of the premises of the retailer under 20.5(2)*"c."* Candy, candy-coated items, candy products, and beverages described in subrule 20.1(3) are taxable when sold through vending machines.

This rule is intended to implement Iowa Code section 422.45.

701—20.7(422,423) Prescription drugs and devices. Sales of prescription drugs and devices as defined in 20.7(1) and dispensed for human use or consumption in accordance with 20.7(2) and 20.7(3) shall be exempt from sales tax. On and after July 1, 1992, rentals of prescription devices as defined in subrule 20.7(1) below are exempt from service tax. Gross receipts from the sales of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption are exempt from tax. On and after July 1, 1992, gross receipts from the sales of any oxygen purchased for human use or consumption (whether prescribed or not) are exempt from tax.

20.7(1) *Definitions of "prescription drug" for two periods of time.*

a. For sales occurring between July 1, 1987, and June 30, 1993, a "prescription drug" is any of the following:

(1) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public,

(2) A drug or device that under federal law is required prior to being dispensed or delivered to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription", or

(3) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

b. For sales or rentals occurring on and after July 1, 1993, a "prescription drug" and "medical device" are defined as follows:

(1) A "medical device" means equipment or supplies, including orthopedic or orthotic devices, intended to be prescribed by a practitioner for human use to an ultimate user.

(2) A "prescription drug" is a drug intended to be dispensed for human consumption to an ultimate user pursuant to a prescription or medication order from a practitioner.

(3) An "ultimate user" is any individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The phrase does not include any entity created by law, such as a corporation or partnership.

On and after July 1, 1993, the sale or rental of a medical device or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user's body.

EXAMPLE A: A sports medicine clinic purchases a new type of device which scans the inside of the human body to disclose injured soft tissue. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its sale is not exempt from tax.

EXAMPLE B: Pursuant to a practitioner's prescription, a pacemaker is inserted in a patient's body. The pacemaker is dispensed to an ultimate user and its sale is exempt from tax.

EXAMPLE C: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption, shall be deemed a device or drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE A: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE B: A federal law permits but does not require the painkiller mentioned in Example A to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 20.8(422,423), 20.9(422,423) and 20.10(422,423) for examples of medical devices sold without a prescription but exempt from tax.

20.7(2) *Persons authorized to dispense prescription drugs or prescription devices.* In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.

b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

d. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.

e. Persons licensed by the state board of dentistry to practice dentistry in Iowa.

f. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.

g. Persons licensed by the optometry examiners as therapeutically certified optometrists.

h. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when dispensing in accordance with Iowa Code chapter 151.

i. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.

j. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

20.7(3) *Disposition of prescription drugs and devices.* Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not require a prescription by such person but the drug or device must be recorded as if a prescription would have been issued or required. If this condition is met, the gross receipts from the sale of the drug or device shall be exempt from sales tax.

20.7(4) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under 20.7(2) shall be required to collect sales tax on any prescription drugs or devices.

20.7(5) *Prescription drugs and devices purchased by hospitals for resale.* This subrule is applicable to both nonprofit and for-profit hospitals for periods prior to July 1, 1998. On and after that date the subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug or device is actually transferred to the patient; (2) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. See rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also see rule 701—18.59(422,423) for the exemption applicable to all purchases of goods and services purchased on or after July 1, 1998, by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—$30.00". In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by nurses aides. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

A hospital's purchase of a prescription drug or device for purposes other than resale will still be exempt from tax if a device or drug is intended to be prescribed to an ultimate user and the hospital's use of the drug or device is otherwise exempt under 20.7(1).

This rule is intended to implement Iowa Code section 422.45.

701—20.8(422,423) Exempt sales of nonprescription medical devices, other than prosthetic devices. A prescription is not required for sales of the medical devices mentioned in subrule 20.8(1) to be exempt from tax if those devices are purchased for human use or consumption.

20.8(1) Definitions.

"Anesthesia trays" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"Biopsy" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

"Biopsy needles" includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, rosenthal-type needles, and "J" Jamshidi needles are all examples of biopsy needles.

"Cannula" means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and ableson cricothyrotomy cannula.

"Catheter" means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: robinson/nelation catheters, all types of foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

"Catheter trays." Universal foley catheter trays, economy foley trays, urethral catherization trays and catheter trays with domed covers are nonexclusive examples of these trays.

"Diabetic testing materials" means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

"Drug infusion device" means a device designed for the slow introduction of a drug solution into the human body. The term includes devices which infuse by means of pumps or gravity flow (drip infusion).

"Fistula" means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

"Hypodermic syringe" means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

"Insulin" means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

"Intraocular lens" means a lens located inside the eye.

"Kit" means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

"Medical device," for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

"Myelogram" means a radiographic picture of the spinal cord. A "radiographic" picture is one taken using radiation other than visible light.

"Nebulizer" means a mechanical device which converts a liquid to a spray or fog.

"Oxygen equipment" means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannula, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

"Set." See "Kit" above.

"Tray." See "Kit" above.

20.8(2) Sales of the following medical devices are exempt from tax. If a medical device is of such a type that it can be rented as well as sold, the rental of that device is exempt as of the date that the sale of that device is exempt, except as set out in *"b"* below.

a. Insulin, hypodermic syringes, and diabetic testing materials.

b. As of July 1, 1992, sales of oxygen equipment; as of July 1, 1993, the rental of oxygen equipment.

c. Effective July 1, 1994, and retroactive to July 1, 1993, sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, intraocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets are no longer taxable.

20.8(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, the sale of a biopsy needle or an invasive catheter would be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, sales of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

20.8(4) Sales of the medical devices mentioned in this rule may be exempt for periods other than those set out in this rule. For instance, a medical device might be prescribed by a practitioner or its sale or rental might be "covered" by Medicare or Medicaid. See subrule 20.7(1) and rule 20.10(422,423) for more information.

This rule is intended to implement Iowa Code section 422.45.

701—20.9(422,423) Prosthetic, orthotic and orthopedic devices.

20.9(1) *Prosthetic devices.* Sales or rental of prosthetic devices shall be exempt from sales tax. This rule is applicable to sales or rental of prosthetic devices made on or after April 1, 1988.

20.9(2) *Orthotic and orthopedic devices.* Sales or rental of orthotic and orthopedic devices prescribed for human use which meet the provisions of subrules 20.9(3) and 20.9(4) shall be exempt from sales tax. This rule is applicable to sales or rental of orthotic and orthopedic devices made on or after April 1, 1988.

20.9(3) *Definitions.*

a. *"Prosthetic device"* means a piece of special equipment designed to be a replacement or artificial substitute for an absent or missing part of the human body and intended to be dispensed with or without a prescription to an ultimate user. See subrule 20.7(1), paragraph *"b,"* for a definition and examples of the term "ultimate user." The term "prosthetic device" includes ostomy, urological, and tracheostomy devices and supplies.

The following is a nonexclusive list of prosthetic devices:

Artificial arteries
Artificial breasts
Artificial ears
Artificial eyes
Artificial heart valves
Artificial implants
Artificial larynx
Artificial limbs
Artificial noses
Artificial teeth
Cardiac pacemakers
Contact lenses
Cosmetic gloves
Dental bridges and implants
Drainage bags
Hearing aids
Ileostomy devices
Intraocular lenses
Karaya paste
Karaya seals
Organ implants
Ostomy belts
Ostomy clamps
Ostomy cleaners and deodorizers
Ostomy pouch
Ostomy stoma caps and paste
Penile implants
Prescription eyeglasses
Stoma bags
Tracheal suction catheters
Tracheostomy care and cleaning starter kits
Tracheostomy cleaning brushes
Tracheostomy tubes
Urinary catheters
Urinary drainage bags
Urinary irrigation tubing
Urinary pouches

b. *"Orthotic device"* means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

c. *"Orthopedic device"* means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

Abdominal belts
Alternating pressure mattresses
Alternating pressure pads
Anti-embolism stockings
Arch supports
Arm slings
Artificial sheepskin
Bone cement
Bone nails
Bone pins
Bone plates
Bone screws
Bone wax
Braces
Canes
Casts
Cast heels
Cervical braces
Cervical collars
Cervical pillows
Clavicle splints
Corrective braces
Corrective shoes
Crutch cushions
Crutch handgrips
Crutch tips
Crutches
Decubitus prevention devices
Dorsolumbar belts
Dorsolumbar supports
Elastic bandages
Elastic supports
Exercise devices
Head halters
Hernia belts
Iliac belts
Invalid rings
Knee immobilizers
Lumbosacral supports
Muscle stimulators
Nerve stimulators
Orthopedic implants
Orthopedic shoes
Patient lifts
Plaster (surgical)
Rib belts
Rupture belts
Sacroiliac supports
Sacrolumbar belts
Sacrolumbar supports
Shoulder immobilizers
Space shoes
Splints
Traction equipment
Transcutaneous electrical nerve stimulators (tens unit)
Trapezes
Trusses
Walkers
Wheelchairs

d. "Related devices." Sales or rental of devices which are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices shall be exempt from tax. *Daw Industries, Inc. v. United States,* 714 F.2d 1140 (Fed. Cir. 1983).

e. "Medical equipment and supplies." The scope of the term medical equipment and supplies is broader than the terms prescription drugs or medical devices. While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 20.7(1), 20.9(1), 20.9(2), and rule 20.8(422,423). Sales of the below-listed items would generally be taxable. However, for the period between July 1, 1992, and June 30, 1993, sales of the listed items would be exempt from tax if covered by Title XVIII or XIX of the federal Social Security Act. See rule 20.10(422,423).

Adhesive bandages
*Anesthesia trays
Aneurysm clips
Arterial bloodsets
Aspirators
Athletic supporters
Atomizers
Autolit
Back cushions
Bathing aids
Bathing caps
Bedpans
Bedside rails
Bedside tables
Bedside trays
Bedwetting prevention devices
Belt vibrators
*Biopsy needles
*Biopsy trays
*Blood administering sets
Blood cell washing equipment
Blood pack holders
Blood pack trays
Blood pack units
Blood pressure meters
Blood processing supplies
Blood tubing
Blood warmers
*Drug infusion devices (other than hypodermic syringes)
Dry aid kits for ears
EKG paper
Earmolds
Electrodes (other than tens units)
Emesis basins
Enema units
First-aid kits
*Fistula sets
Foam slant pillows
Gauze bandages
Gauze packings
Gavage containers
Geriatric chairs
Grooming aids
Hand sealers
Hearing aid carriers
Hearing aid repair kits
Heart stimulators
Heat lamps
Heat pads
*Hemodialysis devices
Hemolators
Hospital beds
Hot water bottles
Ice bags
Ident-a-bands
*Nebulizers
*Needles (hypodermic)
Overbed tables
Page turning devices
Pap smear kits
Paraffin baths
Physicians instruments
Pigskin
Plasma extractors
Plasmapheresis units
Plastic heat sealers
Prescribed device repair kits and batteries
Respirators
Resuscitators
Sauna baths
Security pouches
Servipak dialysis supplies
Shelf trays
Shower chairs
Side rails
Sitz bath kit
*Small-vein infusion kits
Specimen containers
*Spinal puncture trays
Sponges (surgical)
Stairway elevators
Staples

Breast pumps
Breathing machines
*Cannula systems
Cardiac electrodes
Cardiopulmonary equipment
*Catheter trays
Chair lifts
Clamps
Clip-on ash trays
Commode chairs
Connectors
Contact lens cases
Contact lens solution
Convoluted pads
Corrective pessaries
Cotton balls
Diagnostic kits
Dialysis chairs
Dialysis supplies
*Dialyzers
Dietetic scales
Disposable diapers
Disposable gloves
Disposable underpads
Donor chairs
Dressings
Incontinent garments
Incubators
Infrared lamps
Inhalators
*Insulin infusion devices
Iron lungs
Irrigation apparatus
*Irrigation solutions
*IV administering sets
IV connectors
*IV solutions
*IV tubing
*Kidney dialysis machines
Laminar flow equipment
Latex gloves
Leukopheresis pumps
Lymphedema pumps
Manometer trays
Massagers
Maternity belts
Medigrade tubing
Modulung oxygenators
Moist heat pads
*Myelogram trays
Myringotomy tubes
Steri-peel
Stools
*Stopcocks (intravenous)
Suction equipment
Sunlamps
Surgical bandages
Surgical equipment
Suspensories
Sutures
Thermometers
Toilet aids
Tourniquets
Transfer boards
*Transfusion sets
Tube sealers
Underpads
Urinals
Vacutainers
Vacuum units
Vaporizers
*Venous blood sets
Vibrators
Whirlpools
X-ray film

*Sales of these medical devices are exempt as of July 1, 1993.

20.9(4) *"Prescribed"* shall mean a written prescription or an oral prescription, later reduced to writing, issued by:

a. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

b. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

c. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.

d. Persons licensed by the state board of dentistry to practice dentistry in Iowa.

e. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.

f. Persons licensed by the optometry examiners as therapeutically certified optometrists.

g. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when lawfully dispensing prescription devices.

h. Any other person authorized under Iowa law to dispense prescription drugs or medical devices requiring a prescription.

i. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

20.9(5) *Power devices.* Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which can be used to operate a number of devices.

This rule is intended to implement Iowa Code sections 422.45(15) and 423.4(4).

701—20.10(422,423) Sales and rentals covered by Medicaid and Medicare. Between July 1, 1992, and June 30, 1993, gross receipts from the sale or rental of drugs, devices, equipment and supplies ("medications") which are covered by Title XVIII (Medicare) or Title XIX (Medicaid) of the federal Social Security Act are exempt from tax.

A "covered sale or rental" is one for which any portion of the cost of medications is paid by the state of Iowa or the federal government as required by the Medicaid or Medicare programs. A sale or rental is "covered" even if a user of medications is required to pay a certain percentage or fixed amount of its cost. Covered sales or rentals include those for which a user of medications is reimbursed the cost of a purchase or rental; or sales or rentals for which any portion of the cost is paid by any private insurance company administering the Medicaid or Medicare programs on behalf of the state of Iowa or the federal government. The direct purchase or rental of any medications by the state of Iowa or the federal government is exempt from tax under existing law, and this rule is not applicable to it.

For an extensive list of medications, the purchase or rental of which is covered by Medicaid, see 441—Chapter 78, Iowa Administrative Code.

701—20.11(422,423) Reporting. Retailers are required to keep records of and report the actual total gross sales for each filing or reporting period. A deduction may be taken for all tax-exempt sales but a record must be kept to substantiate all deductions taken.

Certain retailers finding it difficult to maintain detailed records of their taxable and nontaxable retail sales may alleviate this difficulty by the use of a formula method which will reasonably approximate the actual taxable receipts.

Written approval must be obtained from the audit and compliance division of the department to use a formula method. If a retailer requests an alternate formula, the retailer shall first list the reasons why an alternate formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw or require an update in procedure at any time.

The use of the formula is an authorization for reporting the most accurate amount of taxable and nontaxable gross receipts but the retailer shall be responsible for the actual tax liability. Additional assessments may be made if an audit discloses the formula is not producing the proper tax payments.

701—20.12(422,423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than $100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2000, this period begins at 12:01 a.m. on Friday, August 4, and ends at 12 midnight on Saturday, August 5. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

20.12(1) *Definitions.* The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

"Accessories" include but are not limited to jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

"Clothing or footwear" means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

"Special clothing or footwear" is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

20.12(2) *Exempt sales.* The exemption applies to each article of clothing or footwear selling for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, both items qualify for the exemption even though the customer's total purchase price ($160) exceeds $99.99. The exemption does not apply to the first $99.99 of an article of clothing or footwear selling for more than $99.99. For example, if a customer purchases a pair of pants costing $110, sales tax is due on the entire $110.

20.12(3) *Taxable sales.* This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on the clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, the $90 charge for the pants is exempt, but tax is due on the $15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

20.12(4) *Special situations.*

a. Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

b. Sales of exempt clothing combined with gifts of taxable merchandise. When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than $100 during the exemption period.

c. Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. Under Iowa sales tax law, a sale of tangible personal property occurs when a purchaser takes delivery of tangible personal property in return for a consideration. Therefore, if a customer takes delivery of qualifying clothing or footwear during the exemption period (usually by taking possession of it; see rule 701—16.22(422,423) for general information on layaway sales) that sale of eligible clothing will qualify for the exemption.

20.12(5) *Calculating taxable and exempt gross receipts—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer offering a 10% discount. After applying the 10% discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (it is over $99.99), and the blouse is exempt (it is less than $99.99). See rule 701—15.6(422,423) for a definition of the word "discount" and a description of which retailers' reductions in price are discounts which reduce the taxable sales prices of items and which are not.

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount, regardless of whether the retailer is reimbursed for the amount represented by the coupon. Therefore, a retailer's coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20 off, the final sales price of the shoes is $90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item. See 701—subrule 15.6(3).

c. Buy one, get one free or for a reduced price or "two for the price of one" sales. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the price of one" cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1. A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50% off, selling each pair of $120 pants for $60, each pair of pants qualifies for the exemption.

EXAMPLE 2. A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25% off, thereby selling each pair of $100 shoes for $75, each pair of shoes qualifies for the exemption.

EXAMPLE 3. A retailer advertises shirts as "buy two for the price of one" for $140. Tax is due on $140. Each shirt cannot be rung up as costing $70. However, as described in examples 1 and 2 above, the $140 cost of each shirt can be discounted to bring the price of each shirt within the exemption's limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater. See 701—subrule 15.6(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for (as explained in rule 701—15.13(422,423)) are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

20.12(6) *Treatment of various transactions associated with sales.*

a. Rain checks. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for the same item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE. A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE. During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE. Before the exemption period, a customer purchases a $60 dress. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

20.12(7) *Nonexclusive list of exempt items.* The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

Adult diapers
Aerobic clothing
Antique clothing
Aprons—household
Athletic socks
Baby bibs
Baby clothes—generally
Baby diapers
Baseball caps
Bathing suits
Belts with buckles attached
Blouses
Boots—general purpose
Bow ties
Bowling shirts
Bras
Bridal apparel—sold not rented
Camp clothing
Caps—sports and others
Chefs' uniforms
Children's novelty costumes
Choir robes
Clerical garments
Coats
Corsets
Costumes—Halloween, Santa Claus, etc., sold not rented
Coveralls
Cowboy boots
Diapers—cloth and disposable
Dresses
Dress gloves
Dress shoes
Ear muffs
Employee uniforms other than those primarily designed for athletic activity or protective use
Formal clothing—sold not rented
Fur coats and stoles
Galoshes
Garters and garter belts
Girdles
Gloves—cloth, dress and leather
Golf clothing—caps, dresses, shirts and skirts
Graduation caps and gowns—sold not rented
Gym suits and uniforms
Hats
Hiking boots
Hooded (sweat) shirts
Hosiery, including support hosiery
Jackets
Jeans
Jerseys for other than athletic wear
Jogging apparel
Knitted caps or hats
Lab coats
Leather clothing
Leg warmers
Leotards and tights
Lingerie
Men's formal wear—sold not rented
Neckwear, e.g., scarves
Nightgowns and nightshirts
Overshoes
Pajamas
Pants
Panty hose
Prom dresses
Ponchos
Raincoats and hats
Religious clothing
Riding pants
Robes
Rubber thongs—"flip-flops"
Running shoes without cleats
Safety shoes (adaptable for street wear)
Sandals
Shawls
Shirts
Shoe inserts and

laces
Stockings
Suits
Support hose
Suspenders
Sweatshirts
Sweatsuits
Swim trunks
Tennis dresses
Tennis skirts
Ties
Tights
Trousers
Tuxedoes (except cufflinks)—sold not rented
Underclothes
Underpants
Undershirts
Uniforms—generally
Veils
Vests—general, for wear with suits
Walking shoes
Windbreakers
Work clothes

20.12(8) *Nonexclusive list of taxable items.* The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

Accessories—generally
Alterations of clothing
Athletic supporters
Backpacks
Ballet shoes
Barrettes
Baseball cleats
Baseball gloves
Belt buckles sold without belts
Belts for weight lifting
Belts needing buckles but sold without them
Bicycle shoes with cleats
Billfolds
Blankets
Boutonnieres
Bowling shoes—rented and sold
Bracelets
Buttons
Chest protectors
Clothing repair
Coin purses
Corsages
Dry cleaning services
Elbow pads
Employee uniforms primarily designed for athletic activities or protective use
Fabric sales
Fishing boots (waders)
Football pads
Football pants
Football shoes
Goggles
Golf gloves
Ice skates
In-line skates
Insoles
Jewelry
Key cases and chains
Knee pads
Laundry services
Life jackets and vests
Luggage
Monogramming services
Pads—elbow, knee, and shoulder, football and hockey
Patterns
Protective gloves and masks
Purses
Rental of clothing
Rental of shoes or skates
Repair of clothing
Roller blades
Safety clothing
Safety glasses
Safety shoes—not adaptable for street wear
Shoes with cleats or spikes
Shoulder pads for dresses and jackets
Shower caps
Skates—ice and roller
Swim fins, masks and and goggles
Ski boots, masks, suits and vests

Special protective clothing or footwear not adaptable for street wear	prescription	Weight lifting belts
	Sweatbands—arm, wrist and head	Wrist bands
	Tap dance shoes	Yard goods
Sports helmets	Thread	Yarn
Sunglasses—except	Vests—bulletproof	Zippers

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, House File 2351.

These rules are intended to implement Iowa Code chapters 422 and 423.

[Filed July 1, 1974]
[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]
[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]
[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]
[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]
[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]
[Filed 10/4/85, Notice 8/14/85—published 10/23/85, effective 11/27/85]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 11/25/87, Notice 10/7/87—published 12/16/87, effective 1/20/88]
[Filed 11/25/87, Notice 10/21/87—published 12/16/87, effective 1/20/88]
[Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]
[Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
[Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]
[Filed 12/30/93, Notice 11/10/93—published 1/19/94, effective 2/23/94]
[Filed 2/24/95, Notice 1/18/95—published 3/15/95, effective 4/19/95]
[Filed 10/15/98, Notice 9/9/98—published 11/4/98, effective 12/9/98]
[Filed 10/30/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]
[Filed emergency 6/23/00—published 7/12/00, effective 6/23/00]
[Filed 6/22/00, Notice 5/17/00—published 7/12/00, effective 8/16/00]

h. Other investment income. All other investment income shall be included in the numerator of the business activity formula to the extent that the intangible personal property which produced that income is an integral part of some business activity occurring regularly in Iowa. If the intangible personal property is not part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion has been made, the other investment income shall be included in the numerator if the taxpayer's commercial domicile is in this state.

i. Activity ratio. Income which is not subject to Iowa tax shall not be included in the computation of the business activity ratio.

54.2(4) Grossed-up foreign income. For purposes of administration of the Iowa corporation income tax law, gross-up (Section 78 of the Internal Revenue Code) shall be considered to be nonbusiness income, irrespective of the fact that the income creating the gross-up may be business income, and shall be allocated to the situs of the income payor.

This rule is intended to implement Iowa Code Supplement sections 422.32(2) and 422.33(1).

701—54.3(422) Application of related expense to allocable interest, dividends, rents and royalties—tax periods beginning on or after January 1, 1978. Rule 54.2(422) deals with the separation of "net" income; therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa. Related expenses shall mean those expenses directly related, including related federal income taxes. *Allphin v. Joseph E. Seagram & Sons,* 204 S.W. 2d 515 (Ky. 1956). For tax periods beginning on or after January 1, 2000, related expense includes both directly related expense and indirectly related interest expense. The portion of interest expense indirectly related to allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties shall be determined by multiplying the net amount of interest expense, after deducting interest directly related to an item of income, by a ratio. The numerator of the ratio is the average value of investments which produce or are held for the production of allocable interest, other than interest from securities of states and their political subdivisions, dividends, rents and royalties. The denominator is the average value of all assets of the taxpayer, less securities of states and their political subdivisions. (*Hunt-Wesson, Inc. v. Franchise Tax Board of California,* No. 98-2043 (U.S. Sup. Ct., filed February 22, 2000)).

A "directly related expense" shall mean an expense which can be specifically attributed to an item of income. Interest expense shall be considered directly related to a specific property which generates, has generated, or could reasonably have been expected to generate gross income if the existence of all of the facts and circumstances described below is established. Such facts and circumstances are as follows: (1) the indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property; (2) the proceeds of the borrowing were actually applied to the specified purpose; (3) the creditor can look only to the specific property (or any lease or other interest therein) as security for the loan; (4) it may be reasonably assumed that the return on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and (5) there are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in (3) and (4) above.

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of such facts and circumstances are not present in substance. Any expense directly or indirectly attributable to allocable interest, dividends, rents and royalties shall be deducted from such income to arrive at net allocable income.

EXAMPLE (i): For purposes of this example, it is assumed that the taxpayer has nonbusiness rental income. The taxpayer invests in a 20-story office building. Under the terms of the lease agreements, the taxpayer provides heat, electricity, janitorial services and maintenance. The taxpayer also pays the property taxes. Construction of the building was funded through borrowings which meet the criteria of a direct expense under the provisions of this paragraph. The directly related expenses to the operation of the property are:

Interest expense	$1,200,000
Property taxes	500,000
Depreciation	500,000
Electricity	300,000
Heat	200,000
Insurance	150,000
Janitorial services	100,000
Repairs	50,000
Total expense	$3,000,000

The directly related expense of the allocable nonbusiness rental income is $3,000,000.

EXAMPLE (ii): For purposes of this example, it is assumed that the taxpayer has nonbusiness income. The taxpayer is a multistate manufacturer of processed foods. It has a nonbusiness investment portfolio which is managed by an investment firm for a fee. The fee paid for the management of the portfolio is a directly related expense to the dividends and interest income received. The fee is attributed to the various types of income on the ratio that the various types of income bear to the total income produced.

EXAMPLE (iii): Same as example (ii), except that in addition to the investments described, the taxpayer also has investments in oil properties. The depletion expense is a directly related expense to the oil royalty income.

This rule is intended to implement Iowa Code section 422.33.

701—54.4(422) Net gains and losses from the sale of assets. For purposes of administration of this rule, a capital gain or loss shall mean the sale price or value at the time of disposal of an asset less the adjusted basis, whether reportable as short-term or long-term capital gain or ordinary income for federal income tax purposes.

Nonbusiness gain or loss from the sale, exchange or other disposition of property if the property while owned by the taxpayer was not operationally related to the taxpayer's trade or business carried on in Iowa shall be allocated as follows:

54.4(1) Gains or losses from the sale, exchange or other disposition of real property located in this state are allocable to this state.

54.4(2) Gains and losses from the sale, exchange or other disposition of tangible personal property are allocable to this state if:

a. The property had a situs in this state at the time of sale; or

b. The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

54.7(7) Utility companies shall determine their Iowa gross receipts or gross revenues from transporting natural or casinghead gas for others that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" is defined to be the transportation of 1,000 cubic feet or one dekatherm of natural or casinghead gas for a distance of one mile. Where the transportation is less than one mile, the taxpayer must accumulate the fractions of one mile into one-mile increments for purposes of computing "traffic units." The taxpayer may use either 1,000 cubic feet or one dekatherm as a "traffic unit" as long as the numerator and denominator are computed on the same basis.

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer's case, results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

54.7(8) Utility companies shall determine their Iowa gross receipts or gross revenues from transporting electricity for others that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" is defined to be the transportation of 1,000 kilowatt-hours of electricity for a distance of one mile. Where the transportation is less than one mile, the taxpayer must accumulate the fractions of one mile into one-mile increments for purposes of computing "traffic units."

If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2) and in this subrule, in the taxpayer's case, results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to this state on some other basis. See rule 701—54.9(422).

This rule is intended to implement Iowa Code section 422.33.

701—54.8(422) Apportionment of income derived from more than one business activity carried on within a single corporate structure. Net income from corporations where more than one business activity is conducted within a single unitary corporate structure shall be apportioned by combining gross receipts or gross revenues of each business activity in the business activity ratio. Where necessary, formulas authorized by the department's rules or statute shall be used to ascertain the gross receipts from such business activities.

EXAMPLE: The taxpayer is engaged in the business of both manufacture of tangible personal property and trucking. During the tax year, the taxpayer received $1,000,000 in gross receipts, $400,000 of which was from its manufacturing operations and $600,000 of which was from its trucking operations. In its trucking operations, the taxpayer traveled 100,000 miles in Iowa and 400,000 everywhere, and in its manufacturing operations, $300,000 of sales were attributable to this state. The numerator of the business activity ratio would be $450,000, which includes $300,000 from manufacturing operations and $150,000 (100,000/400,000 × 600,000 = 150,000) from trucking operations. See subrule 54.7(2). The denominator of the business activity ratio would be $1,000,000.

This rule is intended to implement Iowa Code section 422.33.

701—54.9(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by Iowa Code subsection 422.33(2), or 701—Chapter 54, in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by Iowa Code subsection 422.33(2), and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing such alternative method shall be submitted to the department. The department shall require detail and proof within such time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. Such petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair,* 437 U.S. 267, 57 L.Ed.2d 197(1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair,* supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue,* 414 N.W.2d 113 (Iowa 1987).

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule "statutory method of apportionment" means the Iowa single sales factor formula set forth in Iowa Code section 422.33, subsection 2, paragraph *"b,"* and the apportionment methods set forth in 701—Chapter 54.

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the audit division if the request is the result of an audit or by the policy section of the technical services division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing its return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.33.

[Filed 12/12/74]
[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]
[Filed 10/14/77, Notice 9/7/77—published 11/2/77, effective 12/7/77]
[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 1/16/81, Notice12/10/80—published 2/4/81, effective 3/11/81]
[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]
[Filed emergency 10/26/82—published 11/10/82, effective 10/26/82]
[Filed 12/16/83, Notices 9/14/83, 11/9/83—published 1/4/84, effective 2/8/84]
[Filed 2/10/84, Notice 1/4/84—published 2/29/84, effective 4/5/84]
[Filed 3/8/85, Notice 1/30/85—published 3/27/85, effective 5/1/85]
[Filed 4/18/86, Notice 3/12/86—published 5/7/86, effective 6/11/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]
[Filed 8/16/89, Notice 7/12/89—published 9/6/89, effective 10/11/89]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]
[Filed 7/2/92, Notice 5/27/92—published 7/22/92, effective 8/26/92]◊

◊Two ARCs

[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]
[Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
[Filed 11/24/99, Notice 9/22/99—published 12/15/99, effective 3/29/00]
[Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]
[Filed 6/22/00, Notice 5/17/00—published 7/12/00, effective 8/16/00]

l. Receipts (fees or charges) from the issuance of traveler's checks and money orders shall be attributed to the state where the taxpayer's office is located that issued the traveler's checks. If the traveler's checks are issued by an independent representative or agent of the taxpayer, the fees or charges shall be attributed to the state where the independent representative or agent issued the traveler's checks.

m. Fees, commissions, or other compensation for financial services rendered within this state.

n. Any other gross receipts resulting from the operation as a financial organization within the state to the extent the items do not represent a recapture of an expense.

o. Receipts from management services if the recipient of the management services is located in this state.

This rule is intended to implement Iowa Code section 422.63.

701—59.29(422) Allocation and apportionment of income in special cases. If a taxpayer feels that the allocation and apportionment method as prescribed by rule 701—59.28(422) in the taxpayer's case results in an injustice, the taxpayer may petition the department for permission to determine the taxable net income, both allocable and apportionable, to the state on some other basis.

The taxpayer must first file the return as prescribed by rule 701—59.28(422) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing the alternative method shall be submitted to the department. The department shall require detail and proof within the time as the department may reasonably prescribe. In addition, the alternative method of allocation and apportionment will not be allowed where the taxpayer fails to produce, upon request of the department, any information the department deems necessary to analyze the request for an alternative method of allocation and apportionment. The petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is, per se, insufficient proof that the statutory method of allocation and apportionment is invalid. *Moorman Manufacturing Company v. Bair,* 437 U.S. 267, 57 L.Ed.2d 197 (1978). In essence, a comparison of the statutory method of apportionment with another formulary apportionment method is insufficient to prove that the taxpayer would be entitled to the alternative formulary apportionment method. *Moorman Manufacturing Company v. Bair,* supra.

One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa. Any corporation deriving income from business operations partly within and partly without Iowa must determine that net business income attributable to this state by the prescribed formula for apportioning net income, unless the taxpayer proved by clear and cogent evidence that the statutory formula apportions income to Iowa out of all reasonable proportion to the business transacted within Iowa. *Moorman Manufacturing Company v. Bair,* supra.

Separate accounting is not allowable for a unitary business where the separate accounting method fails to consider factors of profitability resulting from functional integration, centralization of management, and economics of scale. *Shell Oil Company v. Iowa Department of Revenue,* 414 N.W.2d 113 (Iowa 1987).

The burden of proof that the statutory method of apportionment attributes to Iowa income out of all reasonable proportion to the business transacted within Iowa is on the taxpayer. In order to utilize separate accounting, the taxpayer's books and records must be kept in a manner that accurately depicts the exact geographical source of profits. In any petition to utilize separate accounting, the taxpayer must submit schedules which accurately depict net income by division or product line and the amount of income earned within Iowa.

There are alternative methods of separate accounting utilizing different accounting principles. A mere showing that one separate accounting method produces a result substantially different than the statutory method of apportionment is not sufficient to justify the granting of the separate accounting method shown. The taxpayer must not only show that the separate accounting method advocated by the taxpayer in comparison with the statutory method of apportionment produces a result which, if the statutory method of apportionment were used, would be out of all reasonable proportion to the business transacted within Iowa. The taxpayer must also show that all other conceivable reasonable separate accounting methods would show, when compared with the statutory method of apportionment, that the statutory method of apportionment substantially produces a distorted result.

As used in this rule, "statutory method of apportionment" means the apportionment factor set forth in rule 701—59.28(422).

All requests to use an alternative method of allocation and apportionment submitted to the department will be considered by the audit and compliance division if the request is the result of an audit or by the policy section of the technical services division if the request is received prior to audit. If the department concludes that the statutory method of allocation and apportionment is, in fact, both inapplicable and inequitable, the department shall prescribe a special method. The special method of allocation and apportionment prescribed by the department may be that requested by the taxpayer or some other method of allocation and apportionment which the department deems to equitably attribute income to business activities carried on within Iowa.

If the taxpayer disagrees with the determination of the department, the taxpayer may file a protest within 60 days of the date of the letter setting forth the department's determination and the reasons therefor in accordance with rule 701—7.41(17A). The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

If no protest is filed within the 60-day period, then no hearing will be granted on the department's determination under this rule. However, this does not preclude the taxpayer from subsequently raising this question in the event that the taxpayer protests an assessment or denial of a timely refund claim, but this issue will only be dealt with for the years involved in the assessment or timely refund claim.

The use of an alternative method of allocation and apportionment would only be applicable to the years under consideration at the time the special method of allocation and apportionment is prescribed. The taxpayer's continued use of a prescribed method of allocation and apportionment will be subject to review and change within the statutory, or legally extended period(s).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income earned within Iowa by an alternative method of allocation and apportionment, the taxpayer shall apprise the department of such changes prior to filing the taxpayer's return for the current year. After reviewing the information submitted, along with any other information the department deems necessary, the department will notify the taxpayer if the alternative method of allocation and apportionment is deemed applicable.

This rule is intended to implement Iowa Code section 422.63.

Rules 701—59.25(422) to 701—59.29(422) are effective for tax years beginning on or after June 1, 1989.

[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]
[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed emergency 1/19/83—published 2/16/83, effective 1/19/83]
[Filed emergency 6/3/83—published 6/22/83, effective 6/3/83]
[Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]
[Filed 6/8/89, Notice 5/3/89—published 6/28/89, effective 8/2/89]
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]◊
[Filed 9/13/90, Notice 8/8/90—published 10/3/90, effective 11/7/90]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
[Filed 7/2/92, Notice 5/27/92—published 7/22/92, effective 8/26/92]
[Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]◊
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]
[Filed 3/22/96, Notice 2/14/96—published 4/10/96, effective 5/15/96]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 8/5/98, Notice 7/1/98—published 8/26/98, effective 9/30/98]
[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
[Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]
[Filed 6/22/00, Notice 5/17/00—published 7/12/00, effective 8/16/00]

◊Two ARCs

CHAPTER 71
ASSESSMENT PRACTICES AND EQUALIZATION
[Prior to 12/17/86, Revenue Department[730]]

701—71.1(405,427A,428,441,499B) Classification of real estate.

71.1(1) *Responsibility of assessors.* All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue and finance pursuant to Iowa Code section 441.45. See rule 71.8(428,441).

71.1(2) *Responsibility of boards of review, county auditors, and county treasurers.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

71.1(3) *Agricultural real estate.* Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit.

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.

***71.1(4)** *Residential real estate.* Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, condominiums, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate. Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.

*Amendments to 71.1(4) nullified by 2000 Iowa Acts, SJR 2005, editorially removed IAC Supplement 7/12/00 pursuant to Iowa Code section 17A.6(3).

*71.1(5) *Commercial real estate.* Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)*"j,"* except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, condominiums, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate. Condominiums shall be classified as residential real estate through the 2004 assessment year if used or intended for use for human habitation pursuant to a horizontal property regime declaration recorded prior to January 1, 1999, or included in a development plan approved by a city or county in an extension of a horizontal property regime declared prior to January 1, 1999.

71.1(6) *Industrial real estate.*

a. Land and buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(6)*"a"*(1). Property in which the performance of these activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises' primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises' primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo,* 230 Iowa 750, 298 N.W. 654 (1941).

*Amendments to 71.1(5) nullified by 2000 Iowa Acts, SJR 2005, editorially removed IAC Supplement 7/12/00 pursuant to Iowa Code section 17A.6(3).

[Filed 5/11/71; amended 8/16/73]
[Filed 6/21/77, Notice 4/6/77—published 7/13/77, effective 8/17/77]
[Filed emergency 7/21/77—published 8/10/77, effective 7/21/77]
[Filed emergency 8/3/79—published 8/22/79, effective 8/3/79]
[Filed emergency 8/1/80—published 8/20/80, effective 8/1/80]
[Filed 3/25/81, Notice 2/18/81—published 4/15/81, effective 5/20/81]
[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]
[Filed 3/25/83, Notice 2/16/83—published 4/13/83, effective 5/18/83]
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed emergency 8/13/84—published 8/29/84, effective 8/13/84]
[Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]
[Filed 4/5/85, Notice 1/16/85—published 4/24/85, effective 5/29/85]
[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]
[Filed 1/10/86, Notice 12/4/85—published 1/29/86, effective 3/5/86]
[Filed 3/21/86, Notice 2/12/86—published 4/9/86, effective 5/14/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 5/15/87, Notice 3/25/87—published 6/3/87, effective 7/8/87]
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 6/10/88, Notice 5/4/88—published 6/29/88, effective 8/3/88]
[Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
[Filed 12/7/90, Notice 10/17/90—published 12/26/90, effective 1/30/91]
[Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 11/15/96, Notice 10/9/96—published 12/4/96, effective 1/8/97]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 2/12/99, Notice 9/23/98—published 3/10/99, effective 4/14/99]*
[Filed 1/7/00, Notice 12/1/99—published 1/26/00, effective 3/1/00]

*Amendments nullified by 2000 Iowa Acts, SJR 2005, editorially removed IAC Supplement 7/12/00 pursuant to Iowa Code section 17A.6(3).

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CHAPTER 520
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[Prior to 6/3/87, Transportation Department[820]—(07,F) Ch 8]

761—520.1(321) Safety and hazardous materials regulations.

520.1(1) *Regulations.*

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390-399 (October 1, 1999).

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, 1999).

c. Effect of state law. The Iowa department of transportation will follow and enforce the adopted federal regulations where not in conflict with state law.

d. Copies of regulations. Copies of the federal regulations may be reviewed at the state law library.

520.1(2) *Carriers subject to regulations.*

a. Operators of commercial vehicles, as defined in Iowa Code section 321.1 are subject to the federal regulations adopted in this rule unless exempted under Iowa Code section 321.449 or 321.450.

b. Rescinded IAB 9/16/92, effective 10/21/92.

520.1(3) *Declaration of knowledge of regulations.* Operators of commercial vehicles who are subject to the regulations adopted in this rule shall at the time of application for authority to operate in Iowa or upon receipt of their Iowa registration declare knowledge of the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations adopted in this rule.

This rule is intended to implement Iowa Code sections 321.1, 321.449 and 321.450.

761—520.2(321) Definitions. The following definitions apply to the regulations adopted in rule 761—520.1(321):

"Any requirements which impose any restrictions upon a person" as used in Iowa Code Supplement section 321.449(6) means the requirements in 49 CFR Parts 391 and 395.

"Driver age qualifications" as used in Iowa Code Supplement section 321.449(3) means the age qualifications in 49 CFR 391.11(b)(1).

"Driver qualifications" as used in Iowa Code Supplement section 321.449(2) means the driver qualifications in 49 CFR Part 391.

"Farm customer" as used in Iowa Code section 321.450, unnumbered paragraph 3, means a retail consumer residing on a farm or in a rural area or city with a population of 3000 or less.

"Gasoline" as used in Iowa Code section 321.450, first unnumbered paragraph, means leaded gasolines, no-lead gasolines, ethanol and ethanol-blended gasolines, aviation gasolines, number 1 and number 2 fuel oils, diesel fuels, aviation jet fuels and kerosene.

"Hours of service" as used in Iowa Code Supplement section 321.449(2) means the hours of service requirements in 49 CFR Part 395.

"Record-keeping requirements" as used in Iowa Code Supplement section 321.449(2) means the record-keeping requirements in 49 CFR Part 395.

"Rules adopted under this section concerning physical and medical qualifications" as used in Iowa Code Supplement section 321.449(5) and Iowa Code section 321.450, unnumbered paragraph 2, means the regulations in 49 CFR 391.11(b)(6) and 49 CFR Part 391, Subpart E.

"Rules adopted under this section for a driver of a commercial vehicle" as used in Iowa Code Supplement section 321.449(4) means the regulations in 49 CFR Parts 391 and 395.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

761—520.3(321) Motor carrier safety regulations exemptions.

520.3(1) The following intrastate vehicle operations are exempt from the motor carrier safety regulations concerning inspection in 49 CFR Part 396.17 as adopted in rule 761—520.1(321):

a. Implements of husbandry including nurse tanks as defined in Iowa Code section 321.1.

b. Special mobile equipment (SME) as defined in Iowa Code section 321.1.

c. Unregistered farm trailers as defined in 761—subrule 400.1(3), pursuant to Iowa Code section 321.123.

d. Motor vehicles registered for a gross weight of five tons or less when used by retail dealers or their employees to deliver hazardous materials, fertilizers, petroleum products and pesticides to farm customers.

520.3(2) Reserved.

This rule is intended to implement Iowa Code sections 321.1, 321.123, 321.449 and 321.450.

761—520.4(321) Hazardous materials exemptions. These exemptions apply to the regulations adopted in rule 761—520.1(321):

520.4(1) Pursuant to Iowa Code section 321.450, unnumbered paragraph 3, "retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products and pesticides to farm customers within a 100-air-mile radius of their retail place of business" are exempt from 49 CFR 177.804; and, pursuant to Iowa Code Supplement section 321.449(4), they are exempt from 49 CFR Parts 391 and 395. However, pursuant to Iowa Code section 321.449, the retail dealers and their employees under the specified conditions are subject to the regulations in 49 CFR Parts 390, 392, 393, 396 and 397.

520.4(2) Rescinded IAB 3/10/99, effective 4/14/99.

This rule is intended to implement Iowa Code section 321.450.

761—520.5 Reserved.

761—520.6(307,321) Out-of-service order.

520.6(1) A person shall not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance shall be issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until necessary repairs are made. The out-of-service order shall be consistent with the North American Uniform Out-of-Service Criteria issued by the Federal Motor Carrier Safety Administration.

520.6(2) Notwithstanding Iowa Code sections 321.449 and 321.450, an operator of a commercial motor vehicle for which a commercial driver's license is required shall be subject to the 24-hour out-of-service provisions of Iowa Code section 321.208A.

This rule is intended to implement Iowa Code sections 307.12, 321.3, 321.208A, 321.449, and 321.450.

761—520.7(321) Driver's statement. A "driver" as used in Iowa Code Supplement section 321.449(5) and Iowa Code section 321.450, unnumbered paragraph 2, shall carry at all times a notarized statement of employment. The statement shall include the following:

1. The driver's name, address and social security number;
2. The name, address and telephone number of the driver's pre-July 29, 1996, employer;
3. A statement, signed by the pre-July 29, 1996, employer or the employer's authorized representative, that the driver was employed to operate a commercial vehicle only in Iowa; and
4. A statement showing the driver's physical or medical condition existed prior to July 29, 1996.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

761—520.8(321) Agricultural operations. The provisions of 49 CFR Part 395.3 shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in Iowa if such transportation:

1. Is limited to an area within a 100-air-mile radius from the source of the commodities or the distribution point from the farm supplies, and

2. Is conducted only during the time frames of March 15 through June 30 and October 4 through December 14.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

[Filed emergency 7/18/85—published 8/14/85, effective 7/19/85]
[Filed emergency 11/20/86—published 12/17/86, effective 11/21/86]
[Filed 2/6/87, Notice 12/17/86—published 2/25/87, effective 4/1/87]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]
[Filed emergency 5/29/87—published 6/17/87, effective 6/1/87]
[Filed emergency 7/22/87—published 8/12/87, effective 7/22/87]
[Filed 10/23/87, Notices 6/17/87, 8/12/87—published 11/18/87, effective 1/1/88]
[Filed emergency 3/30/88—published 4/20/88, effective 4/1/88]
[Filed 6/22/88, Notice 4/20/88—published 7/13/88, effective 8/17/88]
[Filed emergency 9/21/89—published 10/18/89, effective 9/21/89]
[Filed 11/30/89, Notice 10/18/89—published 12/27/89, effective 1/31/90]
[Filed 6/7/90, Notice 3/21/90—published 6/27/90, effective 8/1/90]
[Filed emergency 8/8/90—published 9/5/90, effective 8/10/90]
[Filed emergency 10/24/90—published 11/14/90, effective 10/24/90]
[Filed 11/7/90, Notice 9/5/90—published 11/28/90, effective 1/2/91]
[Filed 5/9/91, Notices 11/14/90, 2/20/91—published 5/29/91, effective 7/3/91]
[Filed 7/3/91, Notice 5/15/91—published 7/24/91, effective 8/28/91]
[Filed 8/26/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]*
[Filed 6/2/93, Notice 4/28/93—published 6/23/93, effective 7/28/93]
[Filed emergency 7/13/93—published 8/4/93, effective 7/13/93]
[Filed 9/8/94, Notice 8/3/94—published 9/28/94, effective 11/2/94]
[Filed 8/17/95, Notice 7/5/95—published 9/13/95, effective 10/18/95]
[Filed 5/1/96, Notice 3/27/96—published 5/22/96, effective 6/26/96]
[Filed 1/16/97, Notice 12/4/96—published 2/12/97, effective 3/19/97]
[Filed 5/22/97, Notice 4/9/97—published 6/18/97, effective 7/23/97]
[Filed 4/9/98, Notice 2/25/98—published 5/6/98, effective 6/10/98]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/14/99]
[Filed 6/16/00, Notice 4/19/00—published 7/12/00, effective 8/16/00]

CHAPTERS 521 and 522
Reserved

*Effective date of 520.1(1)"*a*" and "*b*"; rescission of 520.1(2)"*b*"; and 520.3 delayed until adjournment of the 1993 Regular Session of the General Assembly by the Administrative Rules Review Committee at its meeting held October 14, 1992; delay lifted by the Committee November 10, 1992.

g. The proposed loan term and interest rate and a detailed description of the applicant's ability to repay the loan. See subrule 831.6(7).

h. Audited financial statements for the past two years plus a current balance sheet for the entity that is to repay the loan.

761—831.11(327H) Evaluation and approval.

831.11(1) The department shall review the contents of each application for verification and may visit the project site. Department staff shall develop a funding recommendation for each complete application for submission to the commission.

831.11(2) The commission shall be responsible for determining the projects to be funded and the amount to be funded for each project, subject to the availability of railroad revolving loan funds. The commission may fund all or part of a project and may make funding dependent upon adherence to a time schedule or fulfillment of specified conditions.

831.11(3) In making its decision to fund a project, the commission shall consider the project's demonstrated ability to meet the purpose of the program, the strength of the applicant's ability to repay the loan, the amount of matching funds to be provided, the proposed interest rate, and loan term if it is lower than the program maximum.

761—831.12(327H) Project agreement and administration.

831.12(1) *Agreement.* After the commission has approved loan funding for a project, an agreement shall be negotiated and executed between the department and the applicant.

a. The agreement shall specify the scope of the project, the approved funding level, and other conditions for project funding.

b. As applicable, the agreement shall address responsibilities for project design, right of way acquisition, contracting, construction, and materials inspection; documentation required for payment by the department; audit requirements; and maintenance of the completed project.

831.12(2) *Reimbursement.* The department shall reimburse the applicant for actual eligible project costs not to exceed the percentage match and the total amount approved by the commission.

831.12(3) *Audits.*

a. Prior to execution of the agreement, the department may perform a preaudit evaluation of the applicant or any other source. A preaudit evaluation typically includes an examination of accounting methods to determine the ability to segregate and accumulate costs to be charged against the project, and an analysis of costs factors to ensure their propriety and allowability.

b. The department may conduct a final audit of all project costs.

831.12(4) *Default.* The commission may revoke a funding commitment, seek repayment of funds loaned or take both actions if the applicant fails to fulfill the terms of the agreement.

These rules are intended to implement Iowa Code section 327H.20A.

[Filed 12/14/99, Notice 10/20/99—published 1/12/00, effective 2/16/00]

CHAPTERS 832 to 839
Reserved

CHAPTER 840
RAIL RATE REGULATION
Rescinded IAB 5/5/99, effective 6/9/99

CHAPTERS 841 to 899
Reserved

PUBLIC TRANSIT

CHAPTER 900
CONTRACTS SET ASIDE FOR
DISADVANTAGED BUSINESS ENTERPRISES
[Prior to 6/3/87, Transportation Department [820]—(09,A)Ch 1]
Rescinded IAB 9/28/94, effective 11/2/94

CHAPTERS 901 to 909
Reserved

CHAPTER 910
COORDINATION OF PUBLIC TRANSIT SERVICES

[Prior to 6/3/87, Transportation Department [820]—(09,A)Ch 2]

761—910.1(324A) Definitions. For purposes of this chapter, the following definitions shall apply in addition to the definitions in Iowa Code section 324A.1:

"Council" means the statewide transportation coordination advisory council formed in rule 910.3(324A).

"Department" means the state department of transportation. The office of public transportation of the air and transit division of the department administers Iowa Code chapter 324A.

"Emergency transportation" means transportation provided when life, health or safety is in danger, such as ambulance or law enforcement transportation.

"Incidental transportation" means transportation provided by an agency or entity when the driver must provide supervision, educational assistance or other support enroute and at the origin or destination. Transportation used merely to access other services is not incidental.

"Provider" means any recipient of direct or indirect, state, federal or local funds, including a public transit system, that provides or contracts for public transit services.

"Public school transportation" means passenger transportation provided by or for a legally organized Iowa public school district for school district purposes.

"Public transit service" means any publicly funded passenger transportation for the general public or for specific client groups not including public school transportation, emergency transportation or incidental transportation or transportation provided by the state department of human services or state department of corrections on the grounds of the following institutions:

State juvenile home, Toledo;
State training school, Eldora;
Cherokee mental health institute;
Clarinda mental health institute;
Independence mental health institute;
Mount Pleasant mental health institute;
Glenwood state hospital-school;
Woodward state hospital-school;
Iowa veterans home, Marshalltown;
Iowa state penitentiary, Fort Madison;
Iowa state men's reformatory, Anamosa;
Iowa correctional institution for women, Mitchellville;
Medium security unit, Mount Pleasant;
Riverview release center, Newton;
Iowa medical and classification center, Oakdale;
North central correctional facility, Rockwell City;
Correctional treatment unit, Clarinda.

"Public transit system" means one of the 35 systems established under Iowa Code chapter 324A.

This rule is intended to implement Iowa Code section 324A.1.

761—910.2(17A) Information and location. Requests for forms or information about the coordination of public transit services shall be addressed to: Office of Public Transportation, Air and Transit Division, Iowa Department of Transportation, Park Fair Mall, 100 East Euclid Avenue, Suite 7, Des Moines, Iowa 50313; telephone (515)237-3302.

This rule is intended to implement Iowa Code section 17A.3.

761—910.3(324A) Statewide transportation coordination advisory council.

910.3(1) *Purpose.* An advisory council shall be formed by the department to assist with implementation of the compliance reviews required by statute. The council shall assist in the review of information concerning the transportation operations of providers and advise the department as to whether the provider should be found to be in compliance with the transportation coordination mandate of Iowa Code chapter 324A.

910.3(2) *Advisory council.*

a. Membership. Membership in the council shall at minimum include one representative from the department of human services, one from the department of elder affairs and one from the department. Other state agencies as well as federal agencies and statewide private agencies funding local transportation services may also be granted membership.

b. Chairperson. The director of transportation or the director's representative shall serve as chairperson of the council.

c. Staff. Staff support for council activities shall be provided by the department's office of public transportation.

d. Meetings. Meetings shall be held at least once each month and may be held more frequently if necessary to enable the council to expeditiously discharge its duties.

910.3(3) *Duties.* The council shall:

a. Review and make recommendations to the member agencies concerning guidelines and criteria for the review process operated by the council.

b. Provide the department with written recommendations for findings of compliance or noncompliance with the transportation coordination mandate of Iowa Code chapter 324A for individual providers based upon review of each provider's request for certification.

c. Upon request of a member agency, review all transportation components of funding applications or plans submitted by a recipient of the member agency.

d. Advise and make recommendations to the department's office of public transportation concerning public transportation policy.

This rule is intended to implement Iowa Code sections 324A.4 and 324A.5.

761—910.4(324A) Certification process.

910.4(1) *Requirement for certification.* All providers are required to request a certification of compliance with the transportation coordination mandate of Iowa Code chapter 324A by submitting the certification application form in the Appendix to this rule plus a copy of a certificate of insurance or documentation of self-insurance. *Agencies that provide a mixture of public transit service and other service shall request certification based on that part of their overall operation which is public transit service.

910.4(2) *Form distribution.*

a. Recipients of state or state-administered funds. Each state agency in its own funding application or contract process shall require each recipient of funding to submit a request for certification of compliance.

b. Recipients of other funds. The department shall contact local governments and federal agencies to determine whether they are funding any providers that are not funded through the state. The department shall send to any providers identified in this way, or by other means, an explanation of the certification requirement and a copy of the certification request form in the Appendix.

910.4(3) *Submission of request forms.*

a. Recipients of state funds shall submit both the certification application and the certificate of insurance forms annually to the funding agency.

b. Recipients of funds from multiple sources may submit a single request form to all state funding sources if it covers all agency transportation functions.

*See Appendix at end of Chapter 910

c. Providers not receiving any funds from state agencies shall return their completed forms within 20 working days of receipt.

d. Agencies or organizations that receive a form from the department and believe that none of their services fit the definition of public transit services shall respond to the department within 20 working days of receipt, stating this belief and providing a brief description of any passenger transportation service they do provide and why it should not be considered public transit service.

910.4(4) *Incomplete or unreturned request forms.*

a. Forms submitted to a state funding agency as part of a funding application shall be reviewed for completeness by that agency within 10 working days.

b. Forms submitted directly to the department by its recipients or by providers not receiving state or state-administered funds shall be reviewed for completeness by the office of public transportation within 10 working days.

c. The reviewing agency shall inform the provider in writing of any information deficiencies and allow 10 working days from receipt for submittal of missing information.

d. Each state agency shall report to the council each case in which a provider has failed upon notification to supply the required information within the required time frame.

e. All completed request forms submitted to state funding agencies shall be forwarded to the council staff within five working days after verifying completeness.

910.4(5) *Processing requests.*

a. The council staff shall evaluate completed requests based on the compliance standards found in rule 910.5(324A) and make a recommendation for a finding of compliance or noncompliance to the council within 20 working days of receiving the completed request form.

b. Ten working days prior to the council's scheduled monthly meeting, the council staff shall distribute to each council member and to the respective providers a meeting agenda and copies of all compliance finding recommendations completed since the previous agenda mailing.

c. At their monthly meeting the council shall consider the compliance finding recommendations of the staff and may accept the staff recommendations as their recommendations to the director of transportation, change the recommendations and provide a statement of reasons, or defer action pending further review.

d. Upon consideration of the council recommendations, the department shall make a final finding of compliance or noncompliance and notify the provider and the state funding agency, if applicable, in writing of the department's decision within five working days after the council meeting.

This rule is intended to implement Iowa Code section 324A.4.

761—910.5(324A) Standards for compliance. A provider shall be found compliant if the provider meets both of the following standards:

910.5(1) All vehicles used for the public transit services it provides or contracts for are insured for $1 million per accident for all hazards or the provider maintains a self-insurance fund adequate to provide equivalent protection.

910.5(2) The provider:

a. Purchases all services from a designated public transit system, or

b. Operates all services open to the public under contract with and control of a designated transit system, or

c. Purchases all services from a private-for-profit operator of public transit services, or

d. Operates its own services which:

(1) The designated public transit system is currently unable to provide, or

(2) When considered as a whole using fully allocated costs, prove to be more economical than the purchase of equivalent services from the designated public transit system.

e. Uses a combination of services in paragraphs *"a," "b," "c,"* and *"d."*

This rule is intended to implement Iowa Code section 324A.4.

761—910.6(324A) Noncompliance. A provider shall be found noncompliant if:

910.6(1) The provider has not submitted required data upon expiration of either the original submittal deadline or the additional ten-day grace period after written notification of deficiencies in an original submittal.

910.6(2) The provider's request for certification has been processed and the provider did not qualify for a finding of compliance.

This rule is intended to implement Iowa Code section 324A.4.

761—910.7(324A) Noncompliant sanctions. A provider that is denied certification and continues the noncompliant activities for more than 30 days shall be subject to the penalties and sanctions specified in Iowa Code subsection 324A.5(3).

910.7(1) If the department of human services purchases services from the noncompliant provider, the department's office of public transportation shall notify the department of human services of the noncompliant finding.

910.7(2) If the noncompliant provider is a recipient of public funds from other than the department of human services, the department's office of public transportation shall notify the proper authority as required in Iowa Code subsection 324A.5(3).

This rule is intended to implement Iowa Code sections 324A.4 and 324A.5.

761—910.8(17A,324A) Revocation.

910.8(1) If certification is revoked, the air and transit division shall send a written notice of revocation to the provider.

910.8(2) The affected public transit system, the provider and the air and transit division shall meet within 10 days after the date of the revocation notice to determine an acceptable amendment of the transportation services. The amendments which are agreed upon shall become effective within 60 days. The contract between the provider and the affected public transit system shall be amended, if necessary, to agree with the service changes.

910.8(3) If the transportation services are not timely amended, the air and transit division shall initiate actions as required in Iowa Code subsection 324A.5(3).

This rule is intended to implement Iowa Code sections 17A.18 and 324A.5.

Appendix to rule 761—910.4(324A)

Date _____

FY _____

CERTIFICATION APPLICATION

State/Federal Administering Agency _____

I. GENERAL INFORMATION:

Agency Name: _____

Address: _____

_____

Contact Person: _____ Phone:(_____) _____

Service Area (counties): _____

Types of Clients: _____

Types of Services: _____

_____

Does agency provide transportation services? Yes _____ No _____

Does agency use public funds for transportation? Yes _____ No _____

II. TRANSPORTATION ACTIVITIES:

Population groups served: Elderly _____ Youth Economically Deprived _____ Public _____

Persons with physical disabilities _____ Persons with mental disabilities _____ Other _____

Describe others: _____

_____

Services Accessed: Medical _____ Day Care _____ Shopping _____ Nutrition _____ Employment _____

Recreation _____ Education/training _____ Other social services _____

What percent of your transportation service (in terms of miles driven) is operated during the following time periods?

_____ % weekdays + _____ % evenings + _____ % weekends = 100%

Is any part of agency's transportation purchased from an urban or regional transit system?

Yes _____ No _____ If yes, please indicate system:

_____

III. AGENCY OPERATED VEHICLE FLEET:

Year/ Model	Seats/ Wheelchairs	Special Equipment*	% Used for Passengers	Average Monthly Ridership	Average Monthly Vehicle Miles	Owned/ Leased

* Two-way radio, wheelchair lift, ramp, etc.

IV. FUNDING SOURCES USED FOR SUPPORT OF TRANSPORTATION: **Total $ _____**

Source	Federal	State	Local	Annual Total
1.				$
2.				$
3.				$
4.				$
5.				$
6.				$
Total	----------	----------	----------	$

V. PURCHASE OF SERVICE (Contracts and Vendor Agreements): **Total $** _____

	Average Monthly Ridership	Average Monthly Vehicle Miles	Projected Annual Expenditures
Taxi			$
Intracity bus			$
Regional/Urban Transit System			$
Other - specify			$
Total	----------	----------	$

VI. OPERATION OF OWN TRANSPORTATION SERVICE: **Total $** _____

STAFF	Number	% of Time	Projected Annual Expenditures
Administrative			$
Drivers			$
Maintenance			$
Professional			$
Escorts			$
Volunteers reimbursement		$ /mile	$
Other - specify			$
Subtotal	----------	----------	$

VEHICLE OPERATING COSTS	Projected Annual Expenditures
Fuel and oil	$
Maintenance and repair	$
Insurance	$
Licenses and fees	$
Staff mileage reimbursement $ /mile	$
Indirect cost or overhead	$
Other - specify	$
Subtotal	$

PURCHASE OR LEASE OF VEHICLES AND SPECIAL EQUIPMENT

Vehicle Type	No. to be Leased	No. to be Purchased	No. for Replacement	No. for Expansion	Special Equipment	Projected Annual Cost
						$
						$
						$
Subtotal	----------	----------	----------	----------	----------	$

Note: The total funding in Section IV must equal the total expenditures in Section V plus Section VI.

[Filed 3/8/85, Notice 1/16/85—published 3/27/85, effective 5/1/85]
[Filed 2/20/86, Notice 1/1/86—published 3/12/86, effective 4/16/86]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]
[Filed 11/3/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]
[Filed emergency 7/1/92—published 7/22/92, effective 7/27/92]
[Filed 11/20/92, Notice 10/14/92—published 12/9/92, effective 1/13/93]
[Filed 9/8/94, Notice 7/20/94—published 9/28/94, effective 11/2/94]

CHAPTER 911
SCHOOL TRANSPORTATION SERVICES PROVIDED BY REGIONAL TRANSIT SYSTEMS

761—911.1(321) Purpose and information.

911.1(1) *Purpose.* This chapter establishes standards for school transportation services provided by Iowa's regional transit systems under contract with local schools.

911.1(2) *Information.* Information and forms may be obtained from the Department of Transportation, Office of Public Transit, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1708.

761—911.2(321,324A) Definitions. For the purpose of these rules, the following definitions apply:

"Automobile" means a motor vehicle, except a motorcycle or motorized bicycle, designed primarily to carry nine persons or less, as defined in Iowa Code section 321.1.

"Bus" means a motor vehicle, excluding a trailer, designed to carry ten or more persons.

"Contract" means a written agreement between a public or nonpublic school or other group and a regional transit system which defines the terms and conditions under which school transportation service is to be provided. It shall not include the relationship between a regional transit system and an individual fare-paying passenger in either fixed route or demand response service.

"Multipurpose vehicle" means a motor vehicle designed to carry not more than ten persons, and constructed either on a truck chassis or with special features for occasional off-road operation, as defined in Iowa Code section 321.1.

"Regional transit system" means a regional transit system designated under Iowa Code section 324A.1 and all subcontracted providers to the designated regional transit system. It does not mean an urban transit system designated under that section.

"School bus" means a bus that complies with all federal motor vehicle safety standards applicable to a school bus.

"School transportation service" means transit service provided under contract to a public or nonpublic school or other group, including day care centers, to transport students to or from schools or school-sponsored activities.

"Student" means a person attending a public or nonpublic school, grades prekindergarten through high school.

"Vehicle" means an automobile, multipurpose vehicle, bus or school bus as defined in this rule.

761—911.3(321) Services to students as part of the general public. All services provided by regional transit systems must be open to the public. This chapter shall not be construed to restrict the use of these services by any individual fare-paying passenger, in either fixed route or demand response service.

761—911.4(321) Contracts for nonexclusive school transportation. As common carriers in urban transportation service, regional transit systems may contract with schools, day care providers, after-school program providers, or others to provide nonexclusive school transportation service that meets the requirements of this chapter. Exclusive service contracts are prohibited.

761—911.5(321) Adoption of federal regulations.

911.5(1) *Code of Federal Regulations.* The department of transportation adopts the following portions of the October 1, 1999, Code of Federal Regulations, which are referenced throughout this chapter:

a. 49 CFR Part 38, Americans with Disabilities Act Accessibility Specifications for Transportation Vehicles.

b. 49 CFR Part 571, Federal Motor Vehicle Safety Standards.

c. 49 CFR Part 653, Prevention of Prohibited Drug Use in Transit Operations.

d. 49 CFR Part 654, Prevention of Alcohol Misuse in Transit Operations.

911.5(2) *Obtaining copies of regulations.* Copies of these regulations are available from the state law library.

761—911.6(321) Driver standards. The following standards apply to regional transit system drivers assigned to provide school transportation service:

911.6(1) *FTA drug and alcohol testing.* Each driver is subject to the following testing for drug and alcohol usage as required by the Federal Transit Administration in 49 CFR Parts 653 and 654, including:

a. Preemployment testing.

b. Reasonable suspicion testing.

c. Postaccident testing.

d. Random testing.

e. Return to duty testing.

f. Follow-up testing.

911.6(2) *Training.* Each new driver must, within the first six months of assignment and at least every 12 months thereafter, complete a course of instruction approved by the department of education, in accordance with Iowa Code section 321.376.

911.6(3) *Driving record check.* The regional transit system must review the driving record of each driver prior to employment and on an annual basis.

911.6(4) *Criminal record check.* The regional transit system must conduct a criminal records review of each driver prior to employment and on an annual basis. This review verifies that the driver has no history of child abuse or other criminal activity.

911.6(5) *Driver licensing.* Each driver must be licensed appropriately for the size and type of vehicle used as provided in Iowa Code section 321.189. A Class A, B or C commercial driver's license with passenger endorsement may be required. If a commercial driver's license is not required, a Class D (chauffeur) license with passenger endorsement is required.

911.6(6) *School bus operator's permit.* Each driver who transports students must have a school bus operator's permit issued by the department of education in accordance with Iowa Code section 321.376.

761—911.7(321) Vehicle standards. The following standards apply to regional transit system vehicles assigned to provide school transportation service:

911.7(1) *Vehicle construction.*

a. Each vehicle must be constructed in compliance with the federal motor vehicle safety standards for that type of vehicle as set forth in 49 CFR Part 571. The capacity rating of automobiles and multipurpose vehicles shall not be modified or altered in any way except by the original manufacturer.

b. On or after July 1, 2001, each bus in use must also comply with the following federal motor vehicle safety standards:

(1) Standard No. 217, Bus Emergency Exits and Window Retention and Release. Buses purchased after January 1, 2000, shall incorporate a rear emergency exit door in meeting this standard.

(2) Standard No. 220, School Bus Rollover Protection.

(3) Standard No. 221, School Bus Body Joint Strength.

(4) Standard No. 301, Fuel System Integrity.

911.7(2) *Passenger restraint/protection.* Each automobile, multipurpose vehicle or school bus must provide passenger restraint/protection devices as required for that type of vehicle in the federal motor vehicle safety standards. Each bus must meet the standards listed in either *"a"* to *"d"* below or *"e"* below:

a. Standard No. 207, Seating Systems.

b. Standard No. 208, Occupant Crash Protection.

c. Standard No. 209, Seat Belt Assemblies.

d. Standard No. 210, Seat Belt Assembly Anchorages.

e. Standard No. 222, School Bus Passenger Seating and Crash Protection.

911.7(3) *Accessibility for persons with disabilities.* Each vehicle used for students with disabilities must comply with all applicable provisions of 49 CFR Part 38.

911.7(4) *Signage.* A vehicle must not be signed as a school bus.

911.7(5) *Department of education inspection.* Every vehicle must be inspected twice annually by the department of education school bus inspectors and officers of the Iowa state patrol to determine if the vehicle meets all vehicle standards set forth in this chapter.

The department of education will notify each regional transit system of the dates and locations of scheduled inspections. Inspections must be documented on a form prescribed jointly by the departments of transportation and education.

761—911.8(321) Maintenance. Regional transit system vehicles assigned to provide school transportation service must be maintained in a safe and operable condition. The following maintenance practices apply:

911.8(1) *FTA drug and alcohol testing of mechanics.* All personnel providing maintenance services on regional transit system vehicles are subject to drug and alcohol testing as required by the Federal Transit Administration in 49 CFR Parts 653 and 654.

911.8(2) *Daily pretrip vehicle inspections.* Drivers of these vehicles must perform daily pretrip vehicle inspections using a form prescribed by the department of transportation. Regional transit systems must retain daily pretrip vehicle inspection reports and documentation of follow-up maintenance for one year.

911.8(3) *Annual vehicle inspection.* Maintenance personnel must annually inspect each vehicle using a form prescribed by the department of transportation. Regional transit systems must retain annual inspection forms for one year.

761—911.9(321) Safety equipment. Regional transit system vehicles assigned to provide school transportation service must carry the following safety equipment:

911.9(1) *Communication equipment.* Each vehicle must be equipped with a two-way radio or cellular telephone capable of emergency communication between the vehicle and the regional transit system's base of operations.

911.9(2) *First-aid/body fluids cleanup kit(s).* Each vehicle must be equipped with a first-aid kit of sufficient size and content for the capacity of the vehicle and, in addition, be equipped with a body fluid cleanup kit. These may be provided as separate kits or combined into one kit. The contents of the kit(s) must be contained in one or more moisture-proof and dustproof containers mounted in an accessible location within the driver's compartment and must be removable from the vehicle in an emergency.

911.9(3) *Fire extinguisher.* Each bus or school bus must be equipped with a minimum 5-pound capacity, dry chemical fire extinguisher. Each automobile and multipurpose vehicle must be equipped with an extinguisher of at least 2.5-pound capacity. Extinguishers must have a 2A-10BC rating.

761—911.10(321) Operating policies. School transportation services provided by regional transit systems must be designed to maximize the safety of student riders and must, at a minimum, meet the following standards:

911.10(1) *Passenger loading/unloading.* Unless prohibited by law, students transported in vehicles other than school buses must be loaded and unloaded on the same side of the street as their residence or other origin or destination. Students may be released only to the custody of a designated school official, parent or guardian, employee of the department of human services, or law enforcement official, unless other arrangements are made in advance.

911.10(2) *Student passenger behavior and discipline policy.* Each contract for school transportation service must include a policy relating to the behavior of students while they ride in vehicles. The regional transit system or school must provide instruction to all drivers assigned to school transportation service relative to the content and application of the policy. If a student is removed from a vehicle for one or more policy violations, the student may be released only to the custody of a school official, parent or guardian, employee of the department of human services or a law enforcement officer. In all cases, the school must be notified immediately of any such disciplinary action, and a written report must be filed with the school describing the circumstances resulting in the removal.

911.10(3) *Standing prohibited.* Under no circumstances shall a student be permitted or required to stand while a vehicle is in motion. Every student must be provided an appropriate seat at all times.

911.10(4) *Stops at rail crossings.* Every driver must make a complete stop before crossing the tracks of any railroad crossing, in accordance with Iowa Code section 321.343. In the case of a bus or school bus, the driver must open the service entrance door, look and listen for approaching trains and proceed to cross the tracks only when the driver can do so safely. No stop is needed where the crossing is posted with an exempt sign.

911.10(5) *Accident reporting.* If a driver is involved in a collision or other incident causing or having a potential to cause injuries to students, the regional transit system must immediately notify the school of the incident. The regional transit system must file all accident reports required by law. In addition, the regional transit system must complete a school bus accident report on a form prescribed by the department of education and submit it to the school or the department of education.

911.10(6) *Passenger instruction/evacuation drills.* Each school must provide students assigned to school transportation service with school bus passenger safety instruction and emergency evacuation drills at least twice each school year. These evacuation drills must involve a vehicle of the same type used to provide the school transportation service.

911.10(7) *Special training for drivers carrying students with disabilities.* Each school contracting for school transportation services for a student with one or more disabilities must provide the regional transit system with information on any special needs of the student and, if necessary, provide the assigned driver with appropriate information and training on how to appropriately respond to the needs of the student during transit and in the event of an emergency.

These rules are intended to implement Iowa Code sections 321.189, 321.343, 321.376 and 324A.1 and Iowa Code Supplement sections 321.1 and 321.377.

[Filed 6/22/00, Notice 4/19/00—published 7/12/00, effective 8/16/00]

CHAPTERS 912 to 919
Reserved

CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per-mile rate for use of a private auto shall be 29 cents per mile.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Rescinded, effective July 1, 1982.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

1 day = .143 × weekly rate
2 days = .286 × weekly rate
3 days = .429 × weekly rate
4 days = .571 × weekly rate
5 days = .714 × weekly rate
6 days = .857 × weekly rate

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 2000, through June 30, 2001, are the tables in effect on July 1, 2000, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [Rev. January 2000].)
2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Iowa Withholding Tax Guide, Publication 44-001 [Rev. January 1998], for all wages paid on or after January 1, 1998.)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [Rev. January 2000].)

This rule is intended to implement Iowa Code section 85.61(6).

876—8.9(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: $20 for 1 to 20 pages; $20 plus $1 per page for 21 to 30 pages; $30 plus $.50 per page for 31 to 100 pages; $65 plus $.25 per page for 101 to 200 pages; $90 plus $.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed.

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]
[Filed emergency 6/22/84—published 7/18/84, effective 7/1/84]
[Filed emergency 5/31/85—published 6/19/85, effective 7/1/85]
[Filed 9/4/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]
[Filed emergency 6/13/86—published 7/2/86, effective 7/1/86]
[Editorially transferred from [500] to [343] IAC Supp. 9/24/86]
[Filed emergency 5/22/87—published 6/17/87, effective 7/1/87]
[Filed emergency 5/31/88—published 6/29/88, effective 7/1/88]
[Filed emergency 5/12/89—published 5/31/89, effective 7/1/89]
[Filed emergency 5/31/90—published 6/27/90, effective 7/1/90]
[Filed emergency 7/1/91—published 7/24/91, effective 7/1/91]
[Filed emergency 6/5/92—published 6/24/92, effective 7/1/92]
[Filed 8/13/92, Notice 6/24/92—published 9/2/92, effective 10/7/92]
[Filed 8/13/92, Notice 7/8/92—published 9/2/92, effective 10/7/92]
[Filed emergency 5/21/93—published 6/9/93, effective 7/1/93]
[Filed emergency 6/3/94—published 6/22/94, effective 7/1/94]
[Filed 1/13/95, Notice 12/7/94—published 2/1/95, effective 3/8/95*]
[Filed emergency 5/10/95—published 6/7/95, effective 5/17/95]
[Filed emergency 7/7/95—published 8/2/95, effective 7/7/95]
[Filed 4/3/96, Notice 2/14/96—published 4/24/96, effective 7/1/96]
[Filed emergency 6/11/96—published 7/3/96, effective 7/1/96]
[Filed 1/10/97, Notice 12/4/96—published 1/29/97, effective 3/5/97]
[Filed emergency 6/17/97—published 7/16/97, effective 7/1/97]
[Filed 5/1/98, Notice 3/25/98—published 5/20/98, effective 6/24/98]
[Filed emergency 6/23/98—published 7/15/98, effective 7/1/98]
[Filed emergency 6/30/98—published 7/29/98, effective 7/1/98]
[Filed emergency 7/1/98—published 7/29/98, effective 7/1/98]
[Filed 1/5/99, Notice 7/29/98—published 1/27/99, effective 3/3/99]
[Filed emergency 6/25/99—published 7/14/99, effective 7/1/99]
[Filed 5/12/00, Notice 4/5/00—published 5/31/00, effective 7/5/00]
[Filed emergency 6/22/00—published 7/12/00, effective 7/1/00]◊

*Effective date of 343—8.9(85,86), second unnumbered paragraph, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 13, 1995; delay lifted by this Committee May 9, 1995.
◊Two ARCs

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