

*State of Iowa*

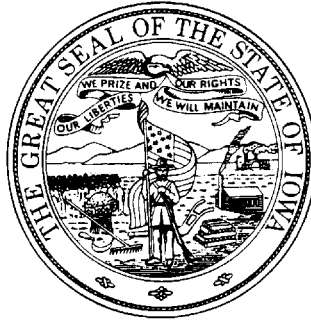
# **Iowa**

# **Administrative**

# **Code**

# **Supplement**

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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.

# INSTRUCTIONS

## FOR UPDATING THE IOWA ADMINISTRATIVE CODE

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**2.2(14) Motion.**

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

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(insert case title)	}	DOCKET NO. (insert docket No.)  MOTION FOR (insert subject matter of motion)
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COMES NOW (insert name of moving party) and moves the board to (insert specific relief sought) and in support thereof states:

(The motion shall then set forth in separately numbered paragraphs the grounds relied on in making the motion, including specific statutory or other authority.)

WHEREFORE, (insert name of moving party) prays the board to (insert specific relief or order sought).

Respectfully submitted,

---

(signature)  
(name)  
(address and zip code)

**2.2(15) Written appearance.**

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

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(insert case title)	}	DOCKET NO. (insert docket No.)  APPEARANCE
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COMES NOW (insert name of person filing appearance) and enters (insert pronoun) appearance on behalf of (insert name(s), address(es) and zip code(s) of person(s) on behalf of whom the appearance is filed) in this matter.

Respectfully submitted,

---

(signature)  
(name)  
(address and zip code)

**2.2(16) Certificate of service.**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of the rules of the Iowa utilities board.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

By \_\_\_\_\_  
(signature)  
(name)  
(address and zip code)

**2.2(17) Waiver request.**

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

(insert case title)



DOCKET NO. (insert docket No.)

WAIVER REQUEST

COMES NOW (insert name of person requesting the waiver), and files this request for a waiver, and in support states:

1. (Insert the specific waiver requested, including a citation to the specific rule the requester wants to be waived, and the precise scope and operative period of the requested waiver. If the request is for a permanent waiver, state the reasons why a temporary waiver would be impractical.)

2. (Insert the relevant facts and reasons that show each of the following: (a) the application of the rule would pose an undue hardship on the person for whom the waiver is requested; (b) the waiver would not prejudice the substantial legal rights of any person; (c) the provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and (d) substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.)

3. (Insert the names of the persons who may be adversely impacted by the grant of the waiver, if known.)

WHEREFORE, (insert name of requester) prays the board grant the request for a waiver of the rule specified above.

Respectfully submitted,

\_\_\_\_\_  
(signature of requester)  
(name)  
(address and zip code)



2.2(18) Application for certification of competitive natural gas provider (CNGP).

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

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IN RE:	}	DOCKET NO. (insert docket no.)
(insert applicant name)		APPLICATION FOR CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDER OR AGGREGATOR

---

COMES NOW (insert name of person or entity requesting the certificate) and files this application for a certificate as a competitive natural gas provider or aggregator (CNGP), and in support thereof states:

1. The legal name and all trade names under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Iowa, and the applicant’s state of incorporation.

2. The names, business addresses and business telephone numbers of the principal officers of the applicant who can be contacted regarding its operations in Iowa and telephone number(s) at which the CNGP can be contacted 24 hours a day.

3. Identification of affiliates that are certified under 199—19.14(476) and a listing of the names and addresses of all the applicant’s affiliates engaged in the provision of competitive natural gas services in any other state.

4. A listing of all legal actions and formal complaints pertaining to the provision of competitive natural gas services filed against the applicant or its affiliates at a public utility regulatory body other than the board that were pending in the 12 months prior to the date of the request for certificate, including identification of the title and number of applicable proceedings and a copy of the final orders in such proceedings or the citation to the website where the text of the orders can be found.

5. Identification of the states and jurisdictions in which the applicant or an affiliate has had a license or certificate to supply competitive natural gas services suspended, revoked, or denied, or where the applicant has voluntarily withdrawn from providing service due to financial or operational reasons. Applicant shall include identification of the title and number of any applicable proceedings and a copy of any final orders in such proceedings or the citation to the website where the text of the orders can be found.

6. Applicants who will be serving small volume customers must provide a demonstration that the applicant has the operational and financial capability to obtain and deliver the services it proposes to offer. At a minimum, applicants are required to submit financial statements. The applicant must submit a balance sheet, statement of income, statement of cash flow, and, if applicable, a statement of shareholders’ equity and the applicant’s debt structure, including bond rating. As a demonstration of the applicant’s operational ability, the applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant’s principal managerial and technical personnel, an operational flow chart, and a description of the applicant’s facilities and the services it intends to render. A request for confidential treatment for this information may be filed with the board, pursuant to 199—subrule 1.9(6).

7. A commitment to comply with all the applicable conditions of certification contained in 199—subrules 19.14(5) and 19.14(6). Acknowledgement that failure to comply with all the applicable conditions of certification may result in the revocation of the CNGP’s certificate.

8. A copy of the standard customer contract(s) and disclosure statement required by 199—paragraph 19.14(6)“c.”

This rule is intended to implement Iowa Code sections 17A.9A, 474.6, 476.6 and 476.8.

**199—2.3** Rescinded, effective 9/8/86.

**199—2.4(17A,474) Forms.** The following forms for proceedings under Iowa Code chapters 478, 479, and 479B are available upon request:

1. Petition for Electric Line Franchise.
2. Petition for Amendment of Electric Line Franchise.
3. Petition for Extension of Electric Franchise.
4. Exhibit C, Overhead Transmission Line: Typical Engineering Specifications.
5. Exhibit C-UG, Engineering Specifications for Underground Transmission Line.
6. Petition for Permit to Construct, Operate, and Maintain a Pipeline.
7. Petition for Renewal of Permit to Construct, Operate, and Maintain a Pipeline.
8. Exhibit C, Specifications for Pipeline.
9. Petition for Permit for Hazardous Liquid Pipeline.

These rules are intended to implement Iowa Code sections 474.1, 474.5, 474.6, 474.10, 476.6, 476.8 and 546.7.

[Filed 2/11/76, Notice 7/14/75—published 2/23/76, effective 3/29/76]

[Filed 8/28/81, Notice 7/8/81—published 9/16/81, effective 10/21/81]

[Filed 2/12/82, Notice 10/28/81—published 3/3/82, effective 4/7/82]

[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]

[Filed 1/6/89, Notice 7/27/88—published 1/25/89, effective 3/1/89]

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[Filed 10/13/99, Notice 5/19/99—published 11/3/99, effective 12/8/99]

[Filed 10/12/00, Notice 8/23/00—published 11/1/00, effective 12/6/00]

[Filed 3/1/01, Notice 7/12/00—published 3/21/01, effective 4/25/01]

**19.13(5) Reporting requirements.** A natural gas utility shall file with the board two copies of each transportation contract entered into within 30 days of the date of execution. The utility may delete any information identifying the end-user and replace it with an identification number. The utility shall promptly supply the deleted information if requested by the board staff. The deleted information may be filed with a request for confidentiality, pursuant to 199 Iowa Administrative Code rule 1.9(22).

**19.13(6) Written notice of risks.** The utility must notify its large volume users as defined in 19.14(1) contracting for transportation service in writing that unless the customer buys system supply reserve service from the utility, the utility is not obligated to supply gas to the customer. The notice must also advise the large volume user of the nature of any identifiable penalties, any administrative or reconnection costs associated with purchasing available firm or interruptible gas, and how any available gas would be priced by the utility. The notice may be provided through a contract provision or separate written instrument. The large volume user must acknowledge in writing that it has been made aware of the risks and accepts the risks.

**199—19.14(476) Certification of competitive natural gas providers and aggregators.**

**19.14(1) Definitions.** The following words and terms, when used in these rules, shall have the meanings indicated below:

*“Competitive natural gas provider”* or *“CNGP”* means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa, and it also means an aggregator as defined in Iowa Code section 476.86. CNGP includes an affiliate of an Iowa public utility. CNGP excludes the following:

1. A public utility which is subject to rate regulation under Iowa Code chapter 476.
2. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in Iowa Code section 437A.3(21)“a”(1), in which the municipally owned utility is located.

*“Competitive natural gas services”* means natural gas sold at retail in this state excluding the sale of natural gas by a rate-regulated public utility or a municipally owned utility as provided in the definition of CNGP in 19.14(1).

*“Large volume user”* means any end user whose usage exceeds 25,000 therms in any month or 100,000 therms in any consecutive 12-month period.

*“Small volume user”* means any end user whose usage does not exceed 25,000 therms in any month and does not exceed 100,000 therms in any consecutive 12-month period.

**19.14(2) General requirement to obtain certificate.** A CNGP shall not provide competitive natural gas services to an Iowa retail end user without a certificate approved by the board pursuant to Iowa Code section 476.87. An exception to this requirement is a CNGP that has provided service to retail customers before April 25, 2001. A CNGP subject to this exception shall file for a certificate under the provisions of this rule on or before June 1, 2001, to continue providing service pending the approval of the certificate.

**19.14(3) Filing requirements and application process.** Applications shall be made in the format and contain all of the information required in 199—subrule 2.2(18). Applications must be filed with the executive secretary at Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. An original and ten copies must be filed. An application fee of \$125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant will be billed an hourly rate for actual time spent by the board reviewing the application. Iowa Code section 476.87(3) requires the board to allocate the costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding.

An applicant shall notify the board during the pendency of the certification request of any material change in the representations and commitments required by this subrule within 14 days of such change. Any new legal actions or formal complaints as identified in 199 IAC 2.2(18), numbered paragraph “4,” are considered material changes in the request. Once certified, CNGPs shall notify the board of any material change in the representations and commitments required for certification within 14 days of such change.

**19.14(4) Deficiencies and board determination.** The board shall act on a certification application within 90 days unless it determines an additional 60 days is necessary. Applications will be considered complete and the 90-day period will commence when all required items are submitted. Applicants will be notified of deficiencies and given 30 days to complete applications. Applicants will be notified when their application is complete and the 90-day period commences.

**19.14(5) Conditions of certification.** CNGPs shall comply with the conditions set out in this subrule. Failure to comply with the conditions of certification may result in revocation of the certificate.

*a.* Unauthorized charges. A CNGP shall not charge or attempt to collect any charges from end users for any competitive natural gas services or equipment used in providing competitive natural gas services not contracted for or otherwise agreed to by the end user.

*b.* Notification of emergencies. Upon receipt of information from an end user of the existence of an emergency situation with respect to delivery service, a CNGP shall immediately contact the appropriate public utility whose facilities may be involved. The CNGP shall also provide the end user with the emergency telephone number of the public utility.

*c.* Reports to the board. Each CNGP shall file a report with the board on April 1 of each year for the 12-month period ending December 31 of the previous year. This information may be filed with a request for confidentiality, pursuant to 199—subrule 1.9(6). For each utility distribution system, the report shall contain the following information for its Iowa operations:

- (1) The average number of small volume end users served per month.
- (2) The average number of large volume end users served per month.
- (3) The total volume of sales to small volume end users, by month.
- (4) The total volume of sales to large volume end users, by month.
- (5) The revenue collected from small volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.
- (6) The revenue collected from large volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.
- (7) The date the applicant began providing service in Iowa.

*d.* Each CNGP shall provide to the board on a monthly basis the rates shown on the monthly bill required in 19.14(6) “*b*” for each customer pricing group.

**19.14(6) Additional conditions applicable to CNGPs providing service to small volume end users.** All CNGPs when providing service to small volume natural gas end users shall be subject to the following conditions in addition to those listed under subrule 19.14(5):

*a.* *Customer deposits.* Compliance with the following provisions shall apply to customers whose usage does not exceed 2500 therms in any month or 10,000 therms in any consecutive 12-month period.

- Customer deposits – subrule 19.4(2)
- Interest on customer deposits – subrule 19.4(3)
- Customer deposit records – subrule 19.4(4)
- Customer’s receipt for a deposit – subrule 19.4(5)
- Deposit refund – subrule 19.4(6)
- Unclaimed deposits – subrule 19.4(7)

*b.* *Bills to end users.* A CNGP shall include on bills to end users all the information listed in this paragraph. The bill may be sent to the customer electronically at the customer’s option.

- (1) The period of time for which the billing is applicable.
- (2) The amount owed for current service, including an itemization of all charges.
- (3) Any past-due amount owed.
- (4) The last date for timely payment.
- (5) The amount of penalty for any late payment.
- (6) The location for or method of remitting payment.

(7) A toll-free telephone number for the end user to call for information and to make complaints regarding the CNGP.

(8) A toll-free telephone number for the end user to contact the CNGP in the event of an emergency.

(9) A toll-free telephone number for the end user to notify the public utility of an emergency regarding delivery service.

(10) The tariffed transportation charges and supplier refunds, where a combined bill is provided to the customer.

*c. Disclosure.* Each prospective end user must receive in writing, prior to initiation of service, all terms and conditions of service and all rights and responsibilities of the end user associated with the offered service. The information required by this paragraph may be provided electronically, at the customer's option.

*d. Notice of service termination.* Notice must be provided to the end user and the public utility at least 12 calendar days prior to service termination. If the notice of service termination is rescinded, the CNGP must notify the public utility. CNGPs are prohibited from physically disconnecting the end user or threatening physical disconnection for any reason.

*e. Transfer of accounts.* CNGPs are prohibited from transferring the account of any end user to another supplier except with the consent of the end user. This provision does not preclude a CNGP from transferring all or a portion of its accounts pursuant to a sale or transfer of all or a substantial portion of a CNGP's business in Iowa, provided that the transfer satisfies all of the following conditions:

(1) The transferee will serve the affected end users through a certified CNGP;

(2) The transferee will honor the transferor's contracts with the affected end users;

(3) The transferor provides written notice of the transfer to each affected end user prior to the transfer;

(4) Any affected end user is given 30 days to change supplier without penalty; and

(5) The transferor provides notice to the public utility of the effective date of the transfer.

*f. Bond requirement.* The board may require the applicant to file a bond or other demonstration of its financial capability to satisfy claims and expenses that can reasonably be anticipated to occur as part of operations under its certificate, including the failure to honor contractual commitments. The adequacy of the bond or demonstration shall be determined by the board and reviewed by the board from time to time. In determining the adequacy of the bond or demonstration, the board shall consider the extent of the services to be offered, the size of the provider, and the size of the load to be served, with the objective of ensuring that the board's financial requirements do not create unreasonable barriers to market entry.

*g. Replacement cost for supply failure.* Each individual rate-regulated public utility shall file for the board's review tariffs establishing replacement cost for supply failure. Replacement cost revenue will be credited to the rate-regulated public utility's system purchased gas adjustment.

#### **199—19.15(476) Customer contribution fund.**

**19.15(1) Applicability and purpose.** This rule applies to each gas public utility, as defined in Iowa Code sections 476.1 and 476.1B. Each utility shall develop a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income heating energy assistance program for the payment of winter heating bills. The program shall be implemented on or before March 1, 1989.

**19.15(2) Program plan.** On or before February 1, 1988, each utility shall file with the utilities board a detailed description of its program plan. At a minimum, the plan shall include the following information:

*a.* A list of the members of the board or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;

*b.* A sample of the customer notification with a description of the method and frequency of its distribution;

- c. A sample of the authorization form provided to customers;
- d. The anticipated date of implementation.

Program plans for new customer contribution funds shall be rejected if not in compliance with this rule. Program plans for existing customer contribution funds existing prior to July 1, 1988, and determined by the board not to be in compliance with this rule shall be allowed until July 1, 1989, to comply, during which time such programs shall continue to operate.

**19.15(3) Notification.** Each utility shall notify all customers of the fund at least twice a year. The method of notice which will ensure the most comprehensive notification to the utility's customers shall be employed. Upon commencement of service and at least once a year, the notice shall be mailed or personally delivered to all customers. The other required notice may be published in a local newspaper(s) of general circulation within the utility's service territory. A utility serving fewer than 6,000 customers may publish their semiannual notices locally in a free newspaper, utility newsletter or shopper's guide instead of a newspaper. At a minimum the notice shall include:

- a. A description of the availability and the purpose of the fund;
- b. A customer authorization form. This form shall include a monthly billing option and any other methods of contribution.

**19.15(4) Methods of contribution.** The utility shall provide for contributions as monthly pledges, as well as one-time or periodic contributions. Each utility may allow persons or organizations to contribute matching funds.

**19.15(5) Annual report.** On or before September 30 of each year, each utility shall file with the board a report of all the customer contribution fund activity for the previous fiscal year beginning July 1 and ending June 30. The report shall be in a form provided by the board and shall contain an accounting of the total revenues collected and all distributions of the fund. The utility shall report all utility expenses directly related to the customer contribution fund.

**19.15(6) Binding effect.** A pledge by a customer or other party shall not be construed to be a binding contract between the utility and the pledgor. The pledge amount shall not be subject to delayed payment charges by the utility.

#### **199—19.16(476) Reserve margin.**

**19.16(1) Applicability.** All rate-regulated gas utility companies may maintain a reserve of natural gas in excess of their historic peaks and recover the cost of the reserve from their customers through the purchased gas adjustment.

##### **19.16(2) Definitions.**

a. *Gas available to meet demand.* All firm gas contracted for by a utility, excluding the delivery-capacity of liquefied natural gas and propane storage facilities, shall be considered as gas available to meet demand.

b. *Contract demand.* The amount of firm gas a utility is entitled to take on a daily basis, pursuant to contract.

c. *Base period demand.* The maximum peak of the previous seven heating seasons (12-month period ending June 30) shall form the base period demand to establish a utility's maximum peak demand.

**19.16(3) Contract demand levels of less than 25,000 Mcf per day.** A reserve margin of 9 percent or less in excess of the base period demand will be presumed reasonable.

**19.16(4) Contract demand levels of more than 25,000 Mcf per day.** A reserve margin of 5 percent or less in excess of the base period demand will be presumed reasonable.

**19.16(5) Rebuttable presumption.** All gas available to meet demand in excess of an amount needed to meet the base period demand plus the reserve is presumed to be unjust and unreasonable unless a factual showing to the contrary is made during the annual review of gas proceeding. All gas available to meet demand less than an amount of base period demand plus the reserve is presumed to be just and reasonable unless a factual showing to the contrary can be made during the annual review of gas proceeding.

**19.16(6) Allocation of cost of the reserve.** Fifty percent of the reserve cost shall be collected as a demand charge allocation to noncontractual firm customers. The remaining 50 percent shall be collected as a throughput charge on customers excluding transportation customers who have elected no system supply reserve.

These rules are intended to implement 42 U.S.C.A. 8372, 10 CFR, 516.30, and Iowa Code sections 476.1, 476.2, 476.6, 476.8, 476.20, 476.54, 476.66, and 546.7.

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**441—65.4(234) Issuance.** All food stamp coupons are issued by direct mail except for expedited food stamp benefits, exchange for improperly manufactured or mutilated coupons, and exchange of old series coupons for new series coupons. Expedited food stamp coupons shall be issued over the counter by local or area offices. Persons residing in counties in which a local or area office is not located shall have their expedited food stamp coupons mailed unless the interview is conducted in person at a local or area office in the administrative area in which they reside and benefits are picked up on the day of the interview. Exchanged coupons are issued over the counter by local or area offices. Food stamp recipients may choose to receive and use their benefits by electronic benefit transfer (EBT) instead of food stamp coupons in counties where this option is available. Where the option of EBT issuance is available and the household chooses this option, expedited food stamp benefits may be issued by EBT if expedited time frames can be met. Food stamp benefits for ongoing certifications are mailed or are otherwise made available to the household on a staggered basis during the first 15 days of each month.

**65.4(1)** When persons reside in counties in which a local or area office is located and have coupons replaced as a result of a mail loss for one month, the coupons shall be mailed to the local or area office in the county in which the persons reside for six months. When persons reside in counties in which a local or area office is not located and have coupons replaced as a result of a mail loss for two months in a six-month period, the coupons shall be mailed to the local or area office to which that county's satellite office is directly assigned for six months except when the mail loss occurs because of the department's failure to mail to the address specified by the household. When a change of mailing address is reported, the old address becomes the wrong address as of the date of the report.

**65.4(2)** When a household reports a shortage in its mail issuance, the household shall present the coupon books received to an office in the administrative area in which the household resides for examination.

**65.4(3)** When a household presents \$200 or more of old series coupons to be exchanged for new series coupons, the household shall sign a statement that the coupons were validly purchased by the household, telling the approximate dates of purchase, and giving the reasons for the accumulation and the delay in presenting them for exchange.

**65.4(4)** When a household meets the residency requirements of the food stamp program within the state of Iowa and is eligible for direct mailing, the household may have the coupon allotment sent to any mailing address within the state or to a community or mailing address which does not exceed ten miles beyond the legal boundaries of the state.

**65.4(5)** Notwithstanding anything to the contrary in these rules or regulations, households applying for initial months' benefits after the fifteenth day of the month and eligible for expedited services who are determined eligible for the initial month and the next subsequent month shall receive their prorated initial month expedited allotment and their first full month's allotment at the same time.

**441—65.5(234) Hotline.** Rescinded IAB 10/30/91, effective 1/1/92.

**441—65.6(234) Delays in certification.**

**65.6(1)** When by the thirtieth day after the date of application the agency cannot take any further action on the application due to the fault of the household, the agency shall give the household an additional 30 days to take the required action. The agency shall send the household a notice of pending status on the thirtieth day.

**65.6(2)** When there is a delay beyond 60 days from the date of application and the agency is at fault and the application is complete enough to determine eligibility, the application shall be processed. For subsequent months of certification, the agency may require a new application form to be completed when household circumstance indicates changes have occurred or will occur.

**65.6(3)** When there is a delay beyond 60 days from the date of application and the agency is at fault and the application is not complete enough to determine eligibility, the application shall be denied. The household shall be notified to file a new application and that it may be entitled to retroactive benefits.

**441—65.7(234) Expedited service.** Notwithstanding anything to the contrary in these rules or regulations, the following shall apply to households applying for expedited service:

**65.7(1) *Period of certification.*** When a household has been certified under expedited service provisions and verification of eligibility factors has been postponed, the household shall be certified only for the month of application.

**65.7(2) *Homelessness.*** Homelessness shall not be a criteria for eligibility for expedited service.

**441—65.8(234) Deductions.**

**65.8(1) *Standard allowance for households with heating or air-conditioning expenses.*** When a household is receiving heating or air-conditioning service for which it is required to pay or receives assistance under the Low-Income Home Energy Assistance Act (LIHEAA) of 1981, the heating or air-conditioning standard shall be allowed. The standard allowance for utilities which include heating or air-conditioning costs is a single utility standard. This standard is \$202 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the consumer price index monthly periodical for January for fuels and other utilities for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

EXCEPTION: For the period beginning with food stamp issuances for April 2001, the standard utility allowance for households with a heating or air-conditioning expense as discussed above shall be \$268. Effective with food stamp issuances for October 2002, the standard utility allowance shall revert to the allowance calculated using the methodology outlined in this subrule. The utility standard effective October 1, 2002, shall be adjusted either up or down, as appropriate.

**65.8(2) *Heating expense.*** Heating expense is the cost of fuel for the primary heating service normally used by the household.

**65.8(3) *Telephone standard.*** When a household is receiving telephone service for which it is required to pay and the household is not entitled or chooses not to receive a single standard allowance, a standard allowance shall be allowed. This standard shall be \$18 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the consumer price index monthly periodical for January for telephone service for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

**65.8(4) *Energy assistance payments.*** For purposes of prorating the low income energy assistance payments to determine if households have incurred out-of-pocket expenses for utilities, the heating period shall consist of the months from October through March.

**65.8(5) *Standard allowance for households without heating or air-conditioning expenses.*** When a household is receiving some utility service other than heating or air-conditioning for which it is responsible to pay, or receives a fee for excess utility cost which can be for excess heating or air-conditioning expense, the following nonheating or air-conditioning standard shall be allowed. These utility expenses cannot be solely for telephone. This standard is \$103 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the consumer price index monthly periodical for January for electric service for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

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\*Amendments to subrules 65.30(5) and 65.130(7) and rules 65.32(234) and 65.132(234) effective 10/1/96.

\*\* Subrules 65.8(11) and 65.108(11) effective 1/1/97.

c. Part V, RETENTION OF RECORDS, provision B of General Permit No. 2 is amended to read as follows:

B. If there is a construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization. If there is no construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the plan at a readily available alternative site approved by the Department and provide it for inspection upon request. If the plan is maintained at an off-site location such as a corporate office, it shall be provided for inspection no later than two business days after being requested.

**64.15(3)** Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, 1997, to October 1, 2002. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classifications 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

**64.15(4)** "Discharge from On-Site Wastewater Treatment and Disposal Systems," NPDES Permit No. 4, effective July 1, 1998, to July 1, 2003.

**567—64.16(455B) Fees.**

**64.16(1)** A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee and a permit fee as specified in 64.16(3). Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. At the time the application is submitted, the applicant has the option of paying an annual permit fee or a multi-year permit fee.

Fees are nontransferable. If the application is returned to the applicant by the department, the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate permit fee renders the application incomplete and the department shall suspend processing of the application until the fee is received.

**64.16(2)** Payment of fees. Fees shall be paid by check or money order made payable to the "Iowa Department of Natural Resources."

**64.16(3)** Fee schedule. The following fees have been adopted:

a. For coverage under the NPDES General Permit the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.  
Annual Permit Fee . . . . . \$150 (per year)

or

Five-year Permit Fee . . . . . \$600  
Four-year Permit Fee . . . . . \$450  
Three-year Permit Fee . . . . . \$300

(Coverage provided by the five-year, four-year, and three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively.)

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) "Discharge from On-Site Wastewater Treatment and Disposal Systems," NPDES Permit No. 4. No fees shall be assessed.

b. Individual NPDES permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For storm water discharge associated with industrial activity, submitted on Form 2F, where the storm water is composed entirely of storm water or combined with process wastewater or other non-storm water wastewater.

Annual Permit Fee . . . . . \$300 (per year)

or

Five-year Permit Fee . . . . . \$1,250

(2) For storm water discharge from large and medium municipal separate storm sewers (systems serving a population of 100,000 or more).

Annual Permit Fee . . . . . \$300 (per year)

or

Five-year Permit Fee . . . . . \$1,250

(3) For participants in an approved group application and EPA has issued a model general permit and no industry-specific general permit is available or being developed.

Annual Permit Fee . . . . . \$300 (per year)

or

Five-year Permit Fee . . . . . \$1,250

**64.16(4) Fee refunds for storm water general permit coverage—pilot project.**

a. If, upon submittal of a complete Notice of Intent to discharge under a storm water general permit as required in 64.6(1), an applicant is not sent a written notice of general permit coverage by the department within 30 days of receipt by the department of a correctly completed Notice of Intent, the permit fee paid by the applicant shall be refunded to the applicant. The department shall determine if the criteria for submitting a correctly completed Notice of Intent have been met and shall notify an applicant within 30 days of receipt regarding deficiencies of the Notice of Intent. Fees for the renewal of prior authorizations under storm water general permits shall be refunded in the same manner and using the same criteria as for initial applications.

b. The decision of the department not to issue a refund under this subrule is final and not subject to further agency review.

c. This subrule expires June 30, 2001.

**567—64.17(455B) Validity of rules.** If any section, paragraph, sentence, clause, phrase or word of these rules, or any part thereof, be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect.

**567—64.18(455B) Applicability.** This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, if an animal feeding operation is required to apply for and obtain an NPDES permit, the provisions of this chapter relating to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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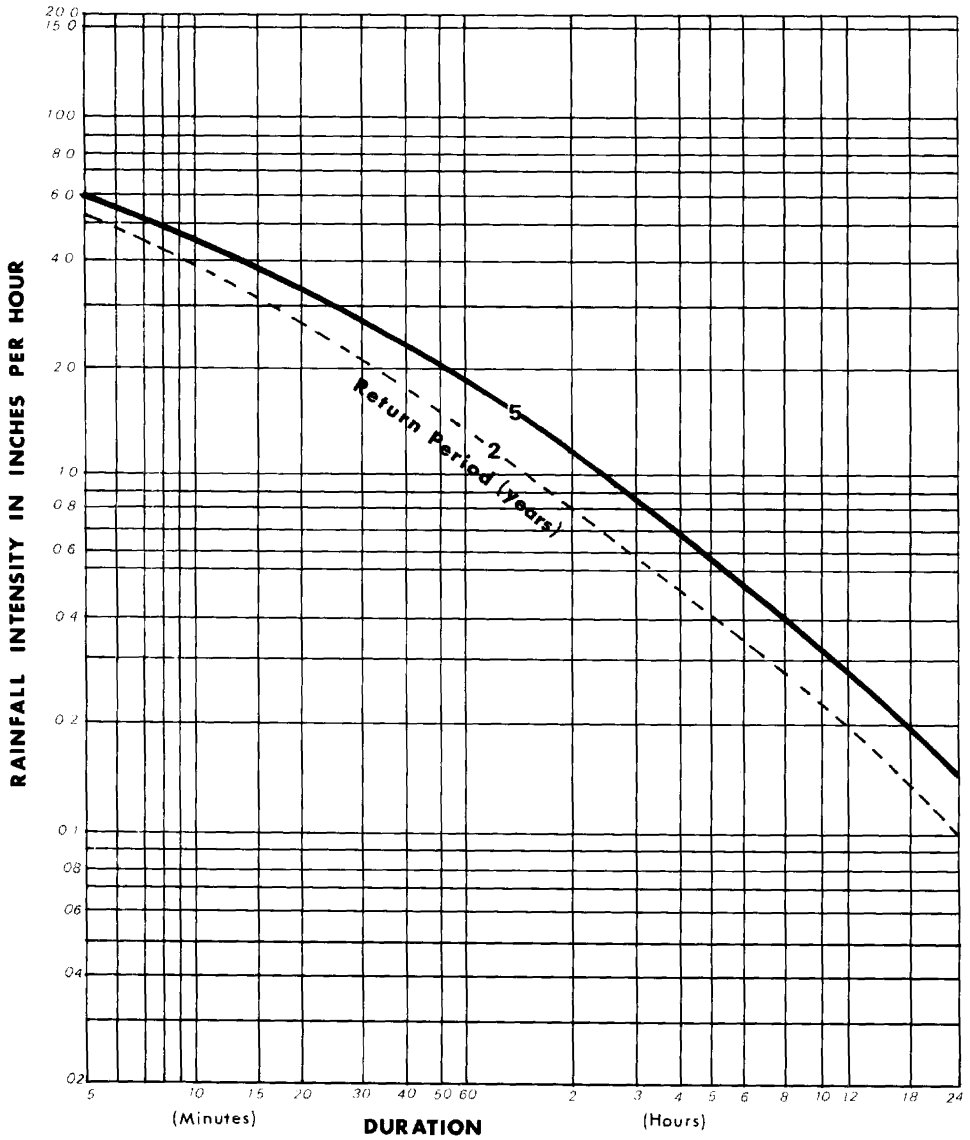
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CHAPTER 21  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

[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.** Beginning August 28, 2000, IPERS' business location is 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. Beginning August 28, 2000, the principal place of business of the investment board is 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.

**21.1(6) Calculation of investment management expenses limit.** For purposes of determining that IPERS' investment management expenses do not exceed four-tenths of one percent (0.40%) of the market value of the retirement fund, the amount appropriated under Iowa Code section 97B.7(2) "b," market value and investment management expenses shall be determined as follows.

a. Determination of market value. The calculation of market value as of any single date shall be performed by IPERS' investment staff using generally accepted accounting principles. For purposes of this subrule, market value shall be defined as the average of the quarterly ending market values for the fiscal year.

- b. Investment management expenses shall include:
- (1) Fees paid to advisory, management and consulting firms for the purpose of planning and executing the investment of the assets of the retirement fund;
  - (2) Fees and costs for the safekeeping of fund assets;
  - (3) Costs of monitoring:
    1. The performance and compliance of retirement fund investments, and
    2. The performance and compliance of advisory, management or consulting firms hired for the purpose of planning and executing the investment of the assets of the retirement fund;
  - (4) Costs of board meetings;
  - (5) Costs of board members' travel and education;
  - (6) Costs of IPERS' investment staff salaries, benefits, travel and education;
  - (7) Costs of any additional external legal, accounting or professional services authorized by the chief investment officer for the purpose of carrying out the requirements of Iowa Code section 97B.7; and
  - (8) Such other fees or costs as may be determined by the chief investment officer to be appropriately included by industry practice in the calculation of investment expenses.
- c. Investment management expenses shall not include:
- (1) Fees or costs that are capitalized in the cost of an investment including, but not limited to, fees paid to general partners in limited partnership investments, acquisition and closing fees for real estate investments, and brokerage commissions paid in purchasing and selling investment assets.
  - (2) Fees or costs that are netted against the income of commingled investment vehicles.
  - (3) Attorney fees, court costs, judgments, settlements, fines, penalties and similar costs of litigation or regulatory action relating to the investment of the assets of the retirement fund.
  - (4) Such other fees or costs as may be determined by the chief investment officer to be appropriately excluded by industry practice from the calculation of investment expenses.

**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.

**21.3(3) Termination.** Any employing unit which terminates for any reason shall provide IPERS with the following:

- a.* Complete name and address of the dissolved entity;
- b.* Assigned IPERS account number;
- c.* Last date on which wages were paid;
- d.* Date on which the entity dissolved;
- e.* Reason for the dissolution;
- f.* Whether or not the entity expects to pay wages in the future; and
- g.* Name and address of absorbed employing unit if applicable.

**21.3(4) Reports of dissolved or absorbed employers.** An employing unit that has been dissolved or entirely absorbed by another employing unit is required to file a quarterly or monthly report with IPERS through the last date on which it legally existed. Any wages paid after the legal date of dissolution are reported under the account number assigned to the new or successor employing unit, if any.

**21.3(5) IPERS account number.** Each reporting unit is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

This rule is intended to implement Iowa Code sections 97B.5, 97B.9 to 97B.12, 97B.15 and 97B.41(8) "a."

**581—21.4(97B) Definition of wages for employment during the calendar quarter—other definitions.** Unless the context otherwise requires, terms used in these rules, regulations, interpretations, forms and other official pronouncements issued by IPERS shall have the following meaning:

**21.4(1)** “Wages” means all compensation earned by employees, including vacation pay; sick pay; bonus payments; back pay; dismissal pay; amounts deducted from employee’s pay at the employee’s discretion for tax-sheltered annuities, dependent care and cafeteria plans; and the cash value of wage equivalents.

*a. Vacation pay.* The amount paid an employee during a period of vacation.

*b. Sick pay.* Payments made for sick leave which are a continuation of salary payments.

*c. Workers’ compensation, unemployment, short-term and long-term disability payments.*

Wages do not include workers’ compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust. Wages include payments for sick leave which are a continuation of salary payments if paid from the employer’s general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability.

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

*e. Banked holiday pay.* If an employer codes banked holiday time as holiday or vacation pay, the banked holiday pay will be treated as vacation pay when calculating covered wages. If an employer codes banked holiday pay as compensatory time, it will be combined with other compensatory time and subject to the time limits set forth in paragraph “d” above.

*f. Special lump sum payments.* Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. The foregoing items are excluded whether paid in a lump sum or in a series of installment payments. Wages do not include catastrophic leave paid in a lump sum.

*g. Other special payment arrangements.* Wages do not include amounts paid pursuant to special arrangements between an employer and employee whereby the employer pays increased wages and the employee reimburses the employer or a third-party obligor for all or part of the wage increase. This includes, but is not limited to, the practice of increasing an employee’s wages by the employer’s share of health care costs and having the employee reimburse the employer or a third-party provider for such health care costs. Wages do not include amounts paid pursuant to a special arrangement between an employer and employee whereby wages in excess of the covered wage ceiling for a particular year are deferred to one or more subsequent years. Wages do not include employer contributions (excluding employee contributions) to a plan, program, or arrangement whereby the amounts contributed are not included in the member’s federal taxable income.

Employers and employees that knowingly and willfully enter into the types of arrangements described in this subrule without making the appropriate wage adjustments, thereby causing an impermissible increase in the payments authorized under Iowa Code chapter 97B, may be prosecuted under Iowa Code section 97B.40 for engaging in a fraudulent practice. If IPERS determines that its calculation of a member’s monthly benefit includes amounts paid under an arrangement described in this subrule, IPERS shall recalculate the member’s monthly benefit, after making the appropriate wage adjustments. IPERS may recover the amount of overpayments caused by the inclusion of the payments described in this subrule from the monthly amounts payable to the member or amounts payable to the member’s successor(s) in interest, regardless of whether or not IPERS chooses to prosecute the employers and employees under Iowa Code section 97B.40.

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

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

*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(26). 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(26).

### **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 educational 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 educational institution where they are enrolled are covered. Full-time employees who are enrolled as part-time students in the educational 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.

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

(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 non-covered employer shall be covered.

(49) Effective July 1, 1999, persons performing referee services for covered employers 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, 97B.52A and 97B.73B.

**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) Except as otherwise directed in the implementing legislation or these rules, for incumbents of regular service positions reclassified as special service positions, all prior continuous service shall be treated as special service without requiring additional contributions.

(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.

**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.



**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. A reinstatement following an employment dispute shall not constitute a violation of Iowa Code section 97B.53(4), even if the reinstatement occurs less than four months after the last wages for employment are paid. Accordingly, the restoration described above or, if later, a buy-back, shall be permitted but is not required. However, if the employee is retroactively reinstated and the previously reported termination is expunged, the reemployment shall be treated as falling within the scope of Iowa Code section 97B.53(4) and a previously paid refund shall be repaid with interest.

**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 federal social security or railroad retirement 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 and 97B.53.

## **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 Iowa Code section 97B.50A, shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

- (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 Iowa Code section 97B.50A shall be filed and processed as provided under rule 581—21.31(97B).

**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, 97B.29 and 97B.50A.

#### **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(18)** Death benefits under Iowa Code section 97B.52(1).**a.** Definitions.

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

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

*“Implementation date”* means January 1, 2001.

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

*“Post-window period beneficiary”* means a beneficiary of a member who dies before the member’s first month of entitlement and on or after January 1, 2001.

*“Window period beneficiary”* means a beneficiary of a member who dies before the member’s first month of entitlement during the period January 1, 1999, through December 31, 2000.

**b.** Any window period beneficiary or post-window period beneficiary may elect to receive the lump sum amount available under Iowa Code section 97B.52(1). Sole beneficiaries may elect, in lieu of the foregoing lump sum amount, to receive a single life annuity that is the actuarial equivalent of such lump sum amount.

A window period beneficiary must repay any prior preretirement death benefit received as follows:

(1) If a window period beneficiary wishes to receive the larger lump sum amount, if any, the system shall pay the difference between the prior death benefit lump sum amount and the new death benefit lump sum amount.

(2) If a sole window period beneficiary wishes to receive a single life annuity under Iowa Code section 97B.52(1), the sole window period beneficiary may either:

1. Annuitize the difference between the previously paid lump sum amount and the new larger lump sum amount, if any; or

2. Annuitize the full amount of the largest of the lump sum amounts available under the revised statute, but must repay the full amount of the previously paid lump sum amount.

(3) To the extent possible, repayment costs shall be recovered from retroactive monthly payments, if any, and the balance shall be offset against current and future monthly payments until the system is repaid in full.

**c.** A claim for a single life annuity under this subrule must be filed as follows:

(1) A sole window period beneficiary must file a claim for a single life annuity within 12 months of the implementation date.

(2) A sole post-window period beneficiary must file a claim for a single life annuity within 12 months of the member’s death.

(3) A beneficiary who is a surviving spouse must file a claim for a single life annuity within the period specified in subparagraph (1) or (2), as applicable, or by the date that the member would have attained the age of 70 1/2, whichever period is longer.

*d.* Elections to receive the lump sum amount or single life annuity available under Iowa Code section 97B.52(1) and this subrule shall be irrevocable once the first payment is made. Election shall be irrevocable as of the date the first paycheck is issued, or would have been issued but for the fact that the payment is being offset against a prior preretirement death benefit payment.

*e.* No further benefits will be payable following the death of any beneficiary who qualifies and elects to receive the single life annuity provided under this subrule.

*f.* The provisions of this subrule shall not apply to members who die before January 1, 1999.

*g.* Procedures and assumptions to be used in calculating the lump sum present value of a member's accrued benefit:

(1) IPERS shall calculate a member's retirement benefit at earliest normal retirement age under IPERS' Option 2.

(2) For purposes of determining the "member date of death annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's date of death.

(3) For purposes of determining the "member unreduced retirement annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's earliest normal retirement date. If a member had already attained the member's earliest normal retirement date, IPERS shall assume that "age" means the member's nearest age at the date of death.

*h.* Procedures and assumptions for converting the lump sum present value of a deceased member's preretirement death benefit to a single life annuity:

(1) For purposes of determining the "age of beneficiary annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the beneficiary's nearest age as of the beneficiary's first month of entitlement.

(2) A beneficiary's first month of entitlement is the month after the date of the member's death, but is subject to the limit on retroactive payments described in paragraph j below.

*i.* Eligibility for FED payments. Any sole beneficiary who is eligible for and elects to receive a single life annuity under this subrule shall also qualify for the dividend payments authorized under subrule 21.30, subject to the requirements of that subrule.

*j.* Retroactive payments. Retroactive payments of monthly annuity amounts to sole beneficiaries who elect the single life annuity shall be payable as follows:

(1) Window period beneficiaries shall receive retroactive payments beginning with the month following the month of the member's death, provided that the beneficiary applies for the single life annuity within the time period specified in 21.10(18)"c."

(2) Post-window period beneficiaries may receive no more than six months of retroactive payments, provided that the beneficiary applies for the single life annuity within the period specified in 21.10(18)"c."

*k.* Retired reemployed members and aged 70 members who retire without terminating employment. Preretirement death benefits for retired reemployed members and aged 70 members who retire without terminating employment shall be calculated as follows:

(1) For beneficiaries of such members who elected IPERS' Option 4 or 6 at retirement, IPERS shall recompute (for retired reemployed members) or recalculate/recompute (for aged 70 members who retired without terminating employment) the member's monthly benefits as though the member had elected to terminate employment as of the date of death, to have the member's benefits adjusted for post-retirement wages, and then lived into the recomputation or recalculation/recomputation (as applicable) first month of entitlement.

(2) The recomputations provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS' Options 4 or 6, where the member's monthly benefit would have been increased by the period of reemployment, and is subject to the limitations of Iowa Code sections 97B.48A, 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. The recalculation/recomputations provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS' Options 4 or 6, where the member's monthly benefit would have been increased by the period of employment after the initial retirement, and is subject to the limitations of Iowa Code sections 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. In all other cases, preretirement death benefits under this subparagraph shall be equal to the lump sum amount equal to the accumulated employee and accumulated employer contributions.

(3) Beneficiaries of members who had elected IPERS' Option 4 or 6 may also elect to receive the accumulated employer and accumulated employee contributions described in the preceding sentence, in lieu of the increased monthly annuity amount.

(4) Notwithstanding subparagraph (2) above, if the member elected IPERS' Option 5 at retirement, the lump sum amount payable under this paragraph shall be the greater of the applicable commuted lump sum or the accumulated employee and accumulated employer contributions.

This rule is intended to implement Iowa Code sections 97B.1A(8), 97B.1A(17), 97B.34, 97B.34A, 97B.44 and 97B.52 and 2000 Iowa Acts, chapter 1077, section 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, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. The printed application form shall be completed by each member applying for benefits and shall be mailed 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 off-site 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).

For members aged 70 or older who choose to retire while actively employed, and fall within the scope of 2000 Iowa Acts, chapter 1077, section 74, retroactive payments shall not be payable prior to May 2000.

**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 monies 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.



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 for protection occupation members shall be determined under Iowa Code section 97B.49B(1).

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

(1) For each member retiring on or after July 1, 2000, and before July 1, 2001, 60 percent plus, if applicable, an additional 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, 2001, and whose three-year average covered wage at the time of retirement exceeds \$65,000, the member’s covered wages averaged for the highest six years of the member’s service or \$65,000, whichever is greater. For the calendar year beginning January 1, 2001, the six-year wage averaging trigger shall be increased to \$75,000.

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:  $100\% - (\text{minus}) \text{ early retirement adjustment percentage} = \text{early retirement adjustment factor}$ .

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:  $\text{unadjusted minimum benefit} \times (\text{times}) \text{ option adjustment factor} \times (\text{times}) \text{ early retirement adjustment factor} = \text{adjusted minimum benefit}$ .

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 calculating the age reduction to be applied to the portion of the member's benefit based on the member's regular service, the system shall use all quarters of service credit, including both regular and special service quarters.

*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.

*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.

#### **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 Iowa Code section 97B.50A.**

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

**21.22(3)** Upon terminating a reemployment that resulted in the suspension of all or a portion of the member's disability retirement allowance, the member's benefits shall be recomputed under Iowa Code section 97B.48A and 581—21.19(97B). To requalify for a monthly retirement allowance under Iowa Code section 97B.50(2), the member must furnish a new or updated social security disability award letter, or other acceptable documentation from the Social Security Administration indicating that the member is currently eligible for social security disability benefits.

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 Iowa Code section 97B.80A.** 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 Iowa Code section 97B.80A. 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 Iowa Code section 97B.80B.** 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 Iowa Code section 97B.80B. 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 actuarial 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, may purchase up to 20 quarters of service credit for such employment, subject to the requirements of Iowa Code section 97B.73. 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) 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.

**21.24(17)** If a member is attempting to purchase service credit under this rule, or any other rule relating to the purchase of service credit, the determination of the actuarial cost of the service purchase shall include assumptions based on the regular retirement formula, special service retirement formula, or hybrid retirement formula under which the member will actually retire.

This rule is intended to implement Iowa Code sections 97B.42, 97B.43, 97B.72A, 97B.73, 97B.74, 97B.75, 97B.80, 97B.80A and 97B.80B.

**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 member's name and last-known mailing address and the names and last-known mailing addresses of alternate payees, and requires that the social security numbers of the member and alternate payees be provided to IPERS in a cover letter or a court's Confidential Information Form;

(2) Clearly specifies a fixed dollar amount or a percentage, but not both, of the member's benefits to be paid by IPERS to the alternate payee or the manner in which the fixed dollar amount or percentage is to be determined, provided that no such method shall require IPERS to perform present value calculations of the member's accrued benefit;

(3) Clearly specifies the period to which such order applies, including whether benefits cease upon the death or remarriage of the alternate payee;

(4) Clearly specifies that the order applies to IPERS; 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.

<u>Years to Amortize Unfunded Liability</u>	<u>Percentage to FED Reserve</u>
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.

For otherwise eligible retired reemployed members who chose to suspend their monthly allowance under paragraph 21.19(2) "c," the suspension shall have no effect on the calculation of FED.

**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).

**581—21.31(97B) Disability claim process under Iowa Code section 97B.50A.** Except as otherwise indicated, this rule shall apply only to disability claims initiated under Iowa Code section 97B.50A. Except as otherwise indicated, disability claims under Iowa Code section 97B.50(2) shall be administered under rule 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 to members who qualify pursuant to Iowa Code section 97B.50A(13). The application consists of the following sections which must be completed and returned to the system's designated retirement benefits officer:

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

**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 Iowa Code section 97B.50A.

**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 Iowa Code section 97B.50A and this rule which are alleged to have resulted in injury to the members being examined.

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

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

**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, subject to July 1, 2000, enactment date and the terms and conditions of Iowa Code section 97B.50A(13). "Last day on the payroll" shall include any form of authorized leave time, whether paid or unpaid. If a member receives short-term disability benefits from the employer while awaiting a disability determination hereunder, disability benefits will accrue from the date the member's short-term disability payments are discontinued. If an initial favorable determination is appealed, the member shall continue to receive payments pending the outcome of the appeal.

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

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

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

IPERS shall, at the member's written request, precertify a member's medical eligibility through the procedures set forth in subrules 21.31(3) and 21.31(4), provided that IPERS shall have full discretion to request additional medical information and to redetermine the member's medical eligibility if the member chooses not to apply for disability benefits at the time of the precertification. IPERS shall not pay for the costs of more than one such precertification per 12-month period.

**21.31(9) *In-service disability determinations.*** Subject to the presumptions contained in Iowa Code section 97B.50A in determining whether a member's mental or physical incapacity arises in the actual performance of duty, "duty" shall mean:

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

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

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

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

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

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

**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 party 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 or railroad retirement disability benefits.** Upon qualifying for social security or railroad retirement disability benefits, a member may contact the system to have the member's disability benefits calculated under Iowa Code section 97B.50(2). The election to stop having benefits calculated under Iowa Code section 97B.50A and to start having benefits calculated under Iowa Code section 97B.50(2) 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 or railroad retirement and has commenced receiving such payments.

**21.31(13) Reemployment/income monitoring.** A member who retires under Iowa Code section 97B.50A and this rule shall be required to supply a copy of a complete set of the member's state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year. IPERS may suspend the benefits of any such member if such records are not timely provided.

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

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

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

**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 limitations 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.

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## SUBSTANCE ABUSE COMMISSION[643]

Created by 1986 Iowa Acts, chapter 1245, under the Public Health Department[641] “umbrella”

<p style="text-align: center;"><b>CHAPTER 1</b> <b>ORGANIZATION</b></p> <p>1.1(125) Definitions</p> <p>1.2 Reserved</p> <p>1.3(125) Commission</p> <p style="text-align: center;"><b>CHAPTER 2</b> <b>CRITERIA FOR AWARDS OR GRANTS</b></p> <p>2.1(125) Adoption by reference</p> <p style="text-align: center;"><b>CHAPTER 3</b> <b>LICENSURE STANDARDS FOR SUBSTANCE ABUSE TREATMENT PROGRAMS</b></p> <p>3.1(125) Definitions</p> <p>3.2(125) Licensing</p> <p>3.3(125) Type of licenses</p> <p>3.4(125) Nonassignability</p> <p>3.5(125) Application procedures</p> <p>3.6(125) Application review</p> <p>3.7(125) Inspection of licensees</p> <p>3.8(125) Licenses—renewal</p> <p>3.9(125) Corrective action plan</p> <p>3.10(125) Grounds for denial of initial license</p> <p>3.11(125) Suspension, revocation, or refusal to renew a license</p> <p>3.12(125) Contested case hearing</p> <p>3.13(125) Rehearing application</p> <p>3.14(125) Judicial review</p> <p>3.15(125) Reissuance or reinstatement</p> <p>3.16(125) Complaints</p> <p>3.17(125) Variances</p> <p>3.18 Reserved</p> <p>3.19(125) Funding</p> <p>3.20(125) Inspection</p> <p>3.21(125) General standards for all substance abuse treatment programs</p> <p>3.22(125) Inpatient, residential, and halfway house safety</p> <p>3.23(125) Specific standards for inpatient, residential, and halfway house service</p> <p>3.24(125) Specific standards for inpatient, residential, and halfway house substance abuse service admitting juveniles</p>	<p>3.25(125) Specific standards for assessment and evaluation programs</p> <p>3.26 to 3.34 Reserved</p> <p>3.35(125) Specific standards for methadone treatment centers</p> <p style="text-align: center;"><b>CHAPTER 4</b> <b>PROCEDURES</b></p> <p>4.1(17A) Request for rule change</p> <p>4.2(17A) Declaratory decision</p> <p>4.3(17A) Informal procedures</p> <p>4.4(17A) Notice of hearings for contested cases</p> <p>4.5(17A) Ex parte communications</p> <p>4.6(17A) Decisions and orders—rehearing</p> <p>4.7(17A) Judicial review</p> <p style="text-align: center;"><b>CHAPTER 5</b> <b>PUBLIC RECORDS AND FAIR INFORMATION PRACTICES</b> (Uniform Rules)</p> <p>5.1(17A,22) Definitions</p> <p>5.3(17A,22) Requests for access to records</p> <p>5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records</p> <p>5.9(17A,22) Disclosures without the consent of the subject</p> <p>5.10(17A,22) Routine use</p> <p>5.11(17A,22) Consensual disclosure of confidential records</p> <p>5.12(17A,22) Release to subject</p> <p>5.13(17A,22) Availability of records</p> <p>5.14(17A,22) Personally identifiable information</p> <p>5.15(17A,22) Other groups of records</p> <p>5.16(17A,22) Data processing systems</p> <p>5.17(17A,22) Applicability</p> <p style="text-align: center;"><b>CHAPTER 6</b> <b>LICENSURE STANDARDS FOR CORRECTIONAL FACILITIES</b></p> <p>6.1(125) Definitions</p> <p>6.2(125) Inspection</p> <p>6.3(125) General standards for all correctional substance abuse treatment programs</p> <p>6.4(125) Specific standards for correctional substance abuse program</p>
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CHAPTER 9  
REGIONS FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT

**643—9.1(125) Service areas established.** The department of public health, with the consent of the commission on substance abuse, has established regions for substance abuse prevention and treatment service areas. Substance abuse assessment, prevention and education, and outpatient and follow-up treatment and rehabilitation shall be available in each service area. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital, inpatient treatment, residential treatment, and halfway house treatment shall be available within reasonable driving distance of the service area.

**643—9.2(125) Request for a change in service areas.** Any existing service provider may file an application with the director to change an existing service area.

**643—9.3(125) Application.** The application shall include the following:

1. The name, address, and description of the applicant;
2. A description of the proposed change;
3. The applicant's rationale in support of the change in service area;
4. The number of clients the applicant proposes to serve and the proposed increase in quality or quantity of services to these clients;
5. A description of community support for the change; and
6. The names and addresses of all affected parties, including existing service providers.

**643—9.4(125) Notification of affected parties.** Within ten calendar days of receipt of a completed application, the director shall provide written notification to any affected parties identified in the application and shall allow any affected parties so notified 30 calendar days to submit written information in support of, or in opposition to, the application.

**643—9.5(125) Public hearing.** The director may hold a public hearing at which the applicant and any affected parties may provide an oral presentation with respect to their positions. The director shall give notice to the applicant and all affected parties ten calendar days prior to holding the hearing. The hearing shall not be a contested case hearing as that term is defined in Iowa Code chapter 17A.

**643—9.6(125) Proposed decision.** The director shall issue a written proposed decision which includes findings of fact and either approves or rejects the application. In issuing this decision, the director shall consider the proposed application, other information received from the applicant, information received from affected parties, the terms of any relevant contract, city and county lines, population concentrations, and existing substance abuse treatment and prevention services.

**643—9.7(125) Change during term of contract.** The director shall not approve an application which would change a service area during the term of an existing contract or after the release of a request for proposal for a new contract. Applications submitted after issuance of a request for proposal will, if granted, not become effective until after the expiration of the contract awarded pursuant to said request for proposal.

**643—9.8(125) Commission review.** The director's proposed decision shall be reviewed by the commission at its next regularly scheduled meeting. The commission shall review all of the materials considered by the director, as described in rule 9.6(125), and the proposed decision and vote to approve or reject the director's proposed decision.

**643—9.9(125) Commission decision.** The commission's decision shall be issued in writing and shall be final agency action for the purposes of Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 125.12.

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c. Any person found to be practicing under the title of advanced registered nurse practitioner or using the abbreviation ARNP without being registered as defined in this subrule shall be subject to disciplinary action.

**7.2(3) General education and clinical requirements.**

a. The general educational and clinical requirements necessary for recognition by the board as a specialty area of nursing practice are as follows:

(1) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills as approved by the board; or

(2) Satisfactory completion of a formal advanced practice educational program of study in a nursing specialty area approved by the board and appropriate clinical experience as approved by the board.

b. Additional requirements. Nothing in this rule shall be construed to mean that additional general educational or clinical requirements cannot be defined in a specialty area.

**7.2(4) Application process.** A registered nurse who wishes to practice as an advanced registered nurse practitioner shall submit the following to the office of the board:

a. An advanced registered nurse practitioner application form which may be obtained from the office of the board.

b. A registration fee as established by the board.

c. A copy of the time-dated, advanced level certification by appropriate national certifying body evidencing that the applicant holds current certification in good standing; copy of official transcript directly from the formal advanced practice educational program maintaining the records necessary to document that all requirements have been met in one of the specialty areas of nursing practice as listed in subrule 7.2(1). The transcript shall verify the date of completion of the program/graduation and the degree conferred. A registered nurse may make application to practice in more than one specialty area of nursing practice.

**7.2(5) Initial registration.** The executive director or a designee shall have the authority to determine if all requirements have been met for registration as an advanced registered nurse practitioner. If it has been determined that all requirements have been met:

a. Official licensure records of the registered nurse shall denote registration as an advanced registered nurse practitioner as well as the specialty area(s) of nursing practice.

b. The registered nurse shall be issued a registration card and a certificate to practice as an ARNP which clearly denotes the name, title, specialty area(s) of nursing practice, and expiration date of registration. The expiration date shall be based on the same period of licensure to practice as a registered nurse.

**7.2(6) Registration completion.** The registered nurse shall complete the registration process within 12 months of receipt of the application materials. The board reserves the right to destroy the documents after 12 months.

**7.2(7) Denial of registration.** If it has been determined that all requirements have not been met, the registered nurse shall be notified in writing of the reason(s) for the decision. The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial by the executive director or designee.

**7.2(8)** *Application process for renewal of registration.* Renewal of registration for the advanced registered nurse practitioner shall be for the same period of licensure to practice as a registered nurse. The executive director or a designee shall have the authority to determine if all requirements have been met for renewal as an advanced registered nurse practitioner. A registered nurse who wishes to continue practice as an advanced registered nurse practitioner shall submit the following at least 30 days prior to the license expiration to the office of the Iowa board of nursing:

- a. Completed renewal application form.
- b. Renewal fee as outlined in rule 655—3.1(17A,147,152,272C), definition of “fees.”
- c. Documentation of current time-dated, advanced level certification by appropriate national certifying body.

**7.2(9)** *Continuing education requirements.* Continuing education shall be met as required for certification by the relevant national certifying body, as outlined in 655—subrule 5.2(3), paragraph “e.”

**7.2(10)** *Denial of renewal registration.* If it has been determined that all requirements have not been met, the applicant shall be notified in writing of the reason(s) for the decision. Failure to obtain the renewal will result in termination of registration and of the right to practice in the advanced registered nurse practitioner specialty area(s). The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial of the executive director or designee.

**7.2(11)** *Registration to practice as an advanced registered nurse practitioner restricted, revoked, or suspended.* Rescinded IAB 12/29/99, effective 2/2/00.

These rules are intended to implement Iowa Code sections 17A.3, 147.10, 147.53, 147.76, 147.107(6) and 152.1 and 2000 Iowa Acts, House File 2105.

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**5.764(7)** Water supplies.

*a.* All automatic sprinklers installed in college buildings shall be provided with adequate and reliable water supplies.

*b.* Public water supplies for sprinkler systems in college buildings shall have a minimum of 4-inch service pipe providing a minimum of 500 gallons of water per minute and shall have at least 15 pounds pressure at the highest sprinkler head.

*c.* Where public water supply is not available and a pressure supply tank is used, the tank shall be a minimum of 6,000 gallons capacity. The pressure tank shall operate at an air pressure adequate to discharge all of the water in the tank.

**5.764(8)** All automatic sprinkler systems required by these regulations shall be maintained in a reliable operating condition at all times and such periodic inspections and tests as are necessary shall be made to ensure proper maintenance.

**5.764(9)** In buildings of ordinary or better construction, stairway enclosures will not be required if protected by a partial or standard sprinkler system. Basement cutoffs of vertical openings will be required. This modification of open stairways is permitted only in buildings that do not exceed a basement and two full stories.

**661—5.765(100) Open plan buildings.**

**5.765(1)** In buildings where the design of the building lends itself to the classification of an open plan building, the requirements for fire safety of subrules 5.764(2) to 5.764(9) shall apply.

**5.765(2)** This will include regulations for all buildings where there are no permanent solid partitions between rooms or between rooms and corridors that are used for exit facilities.

**5.765(3)** Open plan buildings shall have enclosed stairways and any other vertical openings between floors protected in accordance with subrule 5.754(1).

**5.765(4)** Open plan buildings shall not exceed 30,000 square feet in undivided area. Solid walls or smoke stop partitions shall be provided at intervals not to exceed 300 feet. Such walls or partitions shall have doors of a type that are at least 1¾-inch solid core wood doors and the partitions shall be the equivalent of one-hour construction.

**5.765(5)** Any cafeterias, gymnasiums or auditoriums shall be separated from the rest of the building by solid walls and no exits from other parts of the building shall require passing through such assembly areas.

**5.765(6)** Open plan buildings that do not have a direct exit door from each classroom to the outside shall be protected by a complete automatic fire detection system.

**5.765(7)** A sprinkler system may be installed in lieu of an automatic fire detection system in an open plan building.

**5.765(8)** Distance of travel to the nearest exit in an open plan building shall not exceed 100 feet from any point.

EXCEPTION: In a sprinklered building, the distance may be increased to 150 feet.

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**661—5.766 to 5.774** Reserved.

## NEW COLLEGE BUILDINGS

**661—5.775(100) New college buildings.** Subsection 10-1.1.2 of the NFPA Life Safety Code 101, 1994 edition, along with referenced appendices and chapters, is hereby adopted by reference as the rules governing college buildings, additions, alterations and renovations for which plans are approved by the state fire marshal on or after February 1, 2000, with the following amendments:

1. Add 10-1.1.2.1 to read as follows:

10-1.1.2.1 Panic hardware or fire exit hardware. Any door in a required means of egress from an area having an occupant load of 50 or more persons shall be permitted to be provided with a latch or lock only if it is panic hardware or fire exit hardware complying with 5-2.1.7.

2. Add 10-1.1.2.2 to read as follows:

10-1.1.2.2 Fire alarms. A fire alarm system and partial smoke detector system shall be provided in accordance with Section 7-6.

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**661—5.776 to 5.799** Reserved.

## FIRE SAFETY RULES FOR RESIDENTIAL OCCUPANCIES

**661—5.800(100) General provisions.**

**5.800(1) Scope.** Rules 661—5.801(100) through 661—5.806(100) apply to residential occupancies, except for bed and breakfast inns. In addition, rules 661—5.807(100) through 661—5.809(100) apply to residential occupancies, including bed and breakfast inns, and to all one- and two-family dwellings.

**5.800(2) Definitions.** The following definitions apply to rules 661—5.801(100) through 661—5.820(100).

“*Apartment house*” is any building or portion thereof which contains three or more dwelling units.

“*Atrium*” is an opening through two or more floor levels other than enclosed stairways, elevators, hoistways, escalator, plumbing, electrical, air conditioning or other equipment which is closed at the top and not defined as a mall.

“*Bed and breakfast home*” means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests. Rule 661—5.820(100) shall not apply to bed and breakfast homes. However, a bed and breakfast home shall have a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor.

“*Bed and breakfast inn*” is a building or structure equipped, used, or advertised as or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished for hire to transient guests and which has nine or fewer guest rooms.

“*Convent or monastery*” is a place of residence occupied by a religious group of people, especially monks or nuns.

“*Dormitories*” are buildings or spaces where group sleeping accommodations are provided for guests in a series of closely associated rooms under joint occupancy and single management, such as college dormitories, fraternity houses, sorority houses, with or without meals but without individual cooking facilities.

“*Existing residential occupancy*” is a residential occupancy placed in its current use prior to October 31, 1985.

“*Guest*” is any person hiring or occupying a room for living or sleeping purposes.

“*Guest room*” is any room or rooms used or intended to be used by a guest for sleeping purposes. Every hundred square feet of superficial floor area in a dormitory shall be considered to be a guest room.

“*Hotel/motel*” is any building containing six or more guest rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

“*Lodging or rooming house*” is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

“*New residential occupancy*” is a residential occupancy placed into its current use on or after October 31, 1985.

“*Residential occupancies*” include hotels, motels, apartment houses, dormitories, lodging and rooming houses, convents and monasteries each accommodating more than ten persons.

#### NEW RESIDENTIAL OCCUPANCIES

### **661—5.801(100) General requirements.**

#### **5.801(1) Construction, height and allowable floor area.**

*a. General.* Buildings or parts of buildings classed as residential occupancies shall be limited to the types of construction set forth in Table 5-B in rule 5.50(100) “Exits” and shall not exceed, in area or height, the limits specified in Table 8-B.

*b. Special provisions.* Residential occupancies more than two stories in height or having more than 3,000 square feet of floor area above the first story shall be limited to the types of construction and height in Table 8-B.

EXCEPTION: Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels when such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction may be constructed of:

1. Noncombustible materials or fire-retardant treated wood in buildings of any type of construction; or
2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or V construction.

Storage or laundry rooms that are within residential occupancies that are used in common by tenants shall be separated from the rest of the building by not less than one-hour fire-resistive occupancy separation.

**5.801(2) Light and ventilation.** All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural light by means of exterior glazed openings with an area not less than one-tenth of the floor area of such rooms with a minimum of 10 square feet. All bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than one-twentieth of the floor area of the rooms with a minimum of 1½ square feet.

All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural ventilation by means of openable exterior openings with an area of not less than one-twentieth of the floor area of such rooms with a minimum of 5 square feet.

In lieu of required exterior openings for natural ventilation, an approved mechanical ventilating system may be provided. Such systems shall be capable of providing two air changes per hour in all guest rooms, dormitories, habitable rooms and public corridors. One-fifth of the air supply shall be taken from the outside. In bathrooms, water closet compartments, laundry rooms and similar rooms, a mechanical ventilation system connected directly to the outside shall be capable of providing five air changes per hour.

For the purpose of determining light and ventilation requirements, any room may be considered as a portion of an adjoining room when one-half of the area of the common wall is open and unobstructed and provides an opening of not less than one-tenth of the floor area of the interior room or 25 square feet, whichever is greater.

Required exterior openings for natural light and ventilation shall open directly onto a street or public alley, yard or court located on the same lot as the building.

EXCEPTION: Required windows may open into a roofed porch where the porch:

1. Abuts a street, yard or court;
2. Has a ceiling height of not less than 7 feet; and
3. Has the longer side at least 65 percent open and unobstructed.

**5.801(3) *Mixed occupancies general.*** When a building is used for more than one occupancy purpose, each part of the building comprising a distinct "Occupancy," as shown in the occupancy classification Table 8-A shall be separated from any other occupancy as specified in Table 8-C.

EXCEPTION: Gift shops, administrative offices and similar rooms not exceeding 10 percent of the floor area of the major use.

**5.801(4) *Occupant load.*** For the purpose of establishing exit requirements, the occupant load of any building or portion thereof used for the purpose of rules 5.801(100) to 5.803(100) shall be determined by dividing the net floor area assigned to that use by the square feet per occupant as indicated in Table 5-A and rule 661—5.51(100).

**5.801(5) *Dormitories.*** New dormitories shall comply with the requirements for new hotels within this chapter.

#### **661—5.802(100) Exit facilities in new residential occupancies.**

**5.802(1) *Types of exits.*** Exits of the specified number and width shall be one or more of the following types as listed in state fire marshal's fire safety rules and regulations for new and existing buildings.

1. Doors of the swinging type leading directly to the outside or to a lobby or passageway leading to the outside of the building. (See rule 5.53(100))
2. Horizontal exits. (See rule 5.57(100))
3. Smokeproof towers. (See rule 5.59(100))
4. Interior stairs. (See rule 5.55(100) and 5.58(100))
5. Outside stairs. (See rule 5.55(100))
6. Ramps. (See rule 5.56(100))
7. Escalators. (See rule 5.58(100))
8. Exit passageways. (See rule 5.61(100))
9. Corridors and exterior balconies. (See rule 5.54(100))
10. Exit courts. (See rule 5.60(100))

**5.802(2) *Number of exits.*** The minimum number of exits shall be as prescribed in rule 5.52(100).

EXCEPTION 1: Except as provided in Table 5-A, only one exit need be provided from the second story within an individual dwelling unit.

EXCEPTION 2: Two or more dwelling units on the second story may have access to only one common exit when the total occupant load using that exit does not exceed 10 or 2,000 square feet of floor area. See Table 5-A.

**5.802(3) *Required exit width.*** Exit width shall be determined as outlined in subrule 5.52(2).

**5.802(4) *Arrangement of exits.*** The arrangement of required exits shall be as prescribed in subrule 5.52(3).

**5.802(5) *Travel distance.*** The maximum travel distance from any point to an exterior exit door, horizontal exit, exit passageway, or an enclosed stairway shall not exceed 150 feet, or 200 feet in a building equipped with an automatic sprinkler system complying with subrule 5.52(6). These distances may be increased 100 feet when the last 150 feet is within a corridor complying with rule 5.54(100).

**5.802(6) Exit illumination.** At any time the building is occupied, exits shall be illuminated with light having an intensity of not less than one foot-candle at floor level and in accordance with the requirements of rule 5.62(100).

**5.802(7) Exit signs.** Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress in accordance with the requirements of rule 5.63(100).

**5.802(8) Shaft enclosures.**

*a. General.* Openings extending vertically through floors shall be enclosed in a shaft of fire-resistive construction having the time period set forth in Table 5-B for shaft enclosures. Protection for stairways shall be as specified in rules 5.58(100) and 5.59(100).

EXCEPTION 1: An enclosure will not be required for openings which serve only one adjacent floor and are not connected with openings serving other floors and which are not concealed within the building construction.

EXCEPTION 2: Stairs within individual apartments need not be enclosed.

*b. Rubbish and linen chutes.* In new residential occupancies, rubbish and linen chutes shall terminate in rooms separated from the remainder of the building by a one-hour fire-resistive occupancy separation. Openings into the chutes and termination rooms shall not be located in exit corridors or stairways.

**5.802(9) Atriums.**

*a. General.* Buildings classified as residential occupancies with automatic sprinkler protection throughout may have atriums complying with the provisions of this rule. Such atriums shall have a minimum opening and dimensions as follows:

Height in Stories	Minimum Clear Opening (Ft.)	Minimum Area (Sq. Ft.)
3-4	20	400
5-8	30	900
8 or more	40	1,600

NOTE: The above dimensions are the diameters of inscribed circles whose centers fall on a common axis for the full heights of the atrium.

*b. Smoke-control system.* A mechanically operated air-handling system shall be installed that will exhaust smoke either entering or developed within the atrium. Exhaust openings shall be located in the ceiling or in a smoke-trap area immediately adjacent to the ceiling of the atrium. The lowest level of the exhaust openings shall be located above the top of the highest portion of door openings into the atrium. Supply openings sized to provide a minimum of 50 percent of the exhaust volume shall be located at the lowest level of the atrium.

When the height of the atrium is 55 feet or less, supply air may be introduced by gravity, provided smoke control is accomplished. When the height of the atrium is more than 55 feet, supply air shall be introduced mechanically from the floor of the atrium and be directed vertically toward the exhaust outlets. In atriums over six stories in height or where tenant spaces above the second story are open to the atrium, supplemental supply air may be introduced at upper levels. The exhaust and supply system for the atrium shall operate automatically upon the actuation of the automatic sprinkler system within the atrium or areas open to the atrium or by the actuation of two or more smoke detectors required by this rule. The exhaust and supply equipment shall also be manually operable by controls designed for fire department use. The smoke-control system may be separate or integrated with other air-handling systems. When the smoke-control mode is actuated, air-handling systems which would interfere with the smoke-control system shall be automatically shut down.

Enclosed tenant spaces shall be provided with an approved smoke-control system.

The atrium smoke-control system shall exhaust not less than the following quantities of air:

1. For atriums having a volume of not more than 600,000 cubic feet, including the volume of any levels not physically separated from the atrium, not less than six air changes per hour nor less than 40,000 cfm. A lesser cfm is acceptable if it can be shown by test that smoke will not migrate beyond the perimeter of the atrium.

2. For atriums having a volume of more than 600,000 cubic feet, including the volume of any levels not physically separated from the atrium, not less than four air changes per hour.

Smoke detectors which will automatically operate the atrium smoke-control system shall be installed at the perimeter and on the ceiling of the atrium and on the ceiling of each floor level that is open to the atrium. In floor levels open to the atrium, detectors shall be within 15 feet of the atrium. Detectors shall be located in accordance with their listing.

c. *Enclosure of atriums.* Atriums shall be separated from adjacent spaces by not less than one-hour fire-resistive construction.

EXCEPTION: Open exit balconies are permitted within the atrium.

Openings in the atrium enclosure other than fixed glazing shall be protected by tight-fitting fire assembly doors which are maintained automatic closing by actuation of a smoke detector, or self-closing.

Fixed glazed openings in the atrium enclosure shall be equipped with fire windows having a fire-resistive rating of not less than three-fourths hour, and the total area of such openings shall not exceed 25 percent of the area of the common wall between the atrium and the room into which the opening is provided.

EXCEPTION: In residential occupancies, openings may be unprotected when the floor area of each room or dwelling unit does not exceed 1,000 square feet and each room or unit has an approved exit not entering the atrium.

d. *Travel distance.* When a required exit enters the atrium space, the travel distance from the doorway of the tenant space to an enclosed stairway, horizontal exit, exterior door or exit passageway shall not exceed 100 feet.

e. *Standby power.* The smoke-control system for the atrium and the smoke-control system for the tenant space are to be provided with approved standby power.

f. *Interior finish.* The interior finish of walls and ceilings of the atrium and all unseparated tenant spaces shall be Class A with no reduction in class for sprinkler protection.

g. *Acceptance of the smoke-control system.* Before the certificate of occupancy is issued, the smoke-control systems shall be tested in an approved manner and shall show compliance with the requirements of this rule.

h. *Inspection of the smoke-control system.* All operating parts of the smoke-control systems shall be tested by an approved inspection agency or by the owner or the owner's representative when so approved. Inspections shall be made every three months and a log of the tests be kept by the testing agency. The log shall be on the premises and available for examination by fire department personnel.

i. *Combustible furnishings in atriums.* The quantity of combustible furnishings in atriums shall not exceed that specified below:

(1) The potential heat of combustible furnishings and decorative materials within atriums shall not exceed 9,000 Btu per pound when located within an area of the atrium that is more than 20 feet below ceiling-mounted sprinklers.

(2) All decorative materials shall be noncombustible or shall be flame-retardant treated and so maintained.

(3) Devices generating an open flame shall not be used nor installed within atriums.



**661—5.803(100) General safety requirements.**

**5.803(1) *Special hazards.*** Chimneys and heating apparatus shall conform to manufacturer's instruction and nationally recognized codes. The storage and handling of gasoline, fuel oil or other flammable liquids shall be in accordance with national fire codes. Doors leading into rooms in which volatile flammable liquids are stored or used shall be protected by a fire assembly having a one-hour fire protection rating. The fire assembly shall be self-closing and shall be posted with a sign on each side of the door in 1-inch block letters stating: FIRE DOOR — KEEP CLOSED.

Every room containing a boiler or central heating plant shall be separated from the rest of the building by not less than a one-hour fire-resistive occupancy separation.

EXCEPTION: A separation shall not be required for rooms with equipment servicing only one dwelling unit.

**5.803(2) *Interior finish.***

*a. Corridors, lobbies and enclosed stairways.* Interior finish in all corridors and lobbies shall be Class A, or Class B will be permitted in a fully sprinklered building, and in enclosed stairways, Class A.

*b. General assembly.* Interior finish in general assembly areas shall be Class A in exit. See Table No. 5-C following 661—5.105(100).

*c. Interior floor finish.* Interior floor finish within corridors and exits shall be Class I or Class II interior floor finish. See Table No. 5-D following 661—5.105(100).

**5.803(3) *Windows for rescue.*** Every sleeping room below the fourth story shall have at least one openable window or exterior door approved for emergency rescue. The units shall be openable from the inside without the use of separate tools.

All rescue windows from sleeping rooms shall have a minimum net clear opening of 5.7 square feet. The minimum net clear opening height dimension shall be 24 inches. The minimum clear opening width dimension shall be 20 inches. Where windows are provided as a means of rescue, they shall have a finished sill height of not more than 44 inches above the floor.

Bars, grilles, grates or similar devices may be installed on emergency escape or rescue windows or doors, provided:

1. Devices are equipped with approved release mechanisms which are openable from the inside without use of a key or special knowledge or effort; and

2. The building is equipped with smoke detectors installed in accordance with subrule 5.803(4).

**5.803(4) *Protection systems.***

*a. Smoke detectors.* Every dwelling unit in apartment houses, dormitories, and every guest room in a hotel/motel or lodging house used for sleeping purposes shall be provided with approved smoke detectors. In all new construction, required smoke detectors shall receive their primary power from the building wiring when wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. (For specific requirements see Iowa Code section 100.18.)

*b. Alarm systems.* Every apartment house three stories or more in height or containing more than 15 apartments and every hotel three stories or more in height, or containing 20 or more guest rooms shall have installed therein an approved automatic or manually operated fire alarm system designed to warn the occupants of the building in the event of fire. Fire alarm systems shall be so designed that all occupants of the building may be warned simultaneously.

EXCEPTION: An alarm system need not be installed in buildings not over two stories in height when all individual apartments and guest rooms and contiguous attic and crawl spaces are separated from each other and from common areas by at least one-hour fire-resistive occupancy separations and each individual apartment or guest room has an exit direct to a yard or public way.

c. *Automatic sprinkler system.* Automatic sprinkler systems shall be provided in all residential occupancies more than four stories in height or more than 65 feet above grade level. (Also see subrule 5.52(6) and Iowa Code section 100.39.)

d. *Portable fire extinguishers.* Approved-type fire extinguishers shall be provided on each floor, so located that they will be accessible to the occupants, and spaced so that no person will have to travel more than 75 feet from any point to reach the nearest extinguisher. Additional extinguishers may be required in areas that constitute a special hazard. Type and number of portable extinguishers shall be determined by the state fire marshal or local fire authority.

e. *Maintenance.* Regular and proper maintenance of electric service, heating plants, alarm systems, sprinkler systems, fire doors and exit facilities shall be required.

#### EXISTING RESIDENTIAL OCCUPANCIES

### **661—5.804(100) Existing residential occupancies.**

**5.804(1) Application.** The requirements of rules 661—5.804(100) through 661—5.807(100) shall apply to existing hotels/motels, apartment houses, dormitories, lodging and rooming houses, convents accommodating more than ten persons, and monasteries accommodating more than ten persons.

No building or structure housing existing residential occupancies shall be occupied in violation of rules 5.804(100) to 5.806(100).

**5.804(2) Reasonable safety provisions.** The state fire marshal or local enforcement authority shall determine the adequacy of means of egress and other measures for safety from fire in accordance with these rules. In existing buildings where physical limitations may require disproportionate effort or expense with little increase in life safety, the state fire marshal or local enforcement authority may grant exceptions to these rules, but only when it is clearly evident that reasonable safety is provided.

**5.804(3) Change of occupancy.** No existing building or portion of an existing building may have its occupancy changed to residential use unless the building or portion thereof meets the requirements for new residential occupancies.

**5.804(4) Occupant load.** For the purpose of establishing exit requirements, the occupant load of any building or portion thereof used for the purposes of rules 5.804(100) to 5.806(100) shall be determined by dividing the net floor area assigned to that use by the square feet per occupant as indicated in Table 5-A and rule 661—5.51(100) of the state fire marshal's fire safety rules regarding exits.

### **661—5.805(100) Exit facilities.**

**5.805(1) Types of exits.** Exits of the specified number and width shall be one or more of the following types as listed in the state fire marshal's fire safety rules and regulations for new and existing buildings.

1. Doors of the swinging types leading directly to the outside or to a lobby or passageway leading to the outside of the building. (See rule 5.53(100))
2. Horizontal exits. (See rule 5.57(100))
3. Smokeproof towers. (See rule 5.59(100))
4. Interior stairs (See rules 5.55(100) and 5.58(100))
5. Outside stairs. (See rule 5.55(100))
6. Ramps. (See rule 5.56(100))
7. Escalators. (See rule 5.58(100))
8. Exit passageways. (See rules 5.61(100) and 5.101(100))
9. Corridors and exterior balconies. (See rule 5.54(100))
10. Exit courts. (See rule 5.60(100))

An existing stairway, fire escape or other exit component which meets the requirements of rules 5.100(100) to 5.105(100) may be continued in use provided it is in good repair and acceptable to the authority having jurisdiction.

Any exit modification required by this chapter shall meet the requirements for new construction.

**5.805(2) *Number of exits.*** The minimum number of exits shall be as prescribed in subrule 5.52(1) or 5.101(1).

EXCEPTION 1: Any living unit which has an exit directly to the street or yard at ground level or by way of an outside stairway, or an enclosed stairway with fire-resistance rating of one hour or more serving that apartment only and not communicating with any floor below the level of exit discharge or other area not a part of the apartment served, may have a single exit serving that unit only.

EXCEPTION 2: Any building less than three stories in height with no floor below the floor of exit discharge or, in case there is such a floor, with the street floor construction of at least one-hour fire resistance, may have a single exit, under the following conditions:

a. The stairway is completely enclosed with a partition having a fire-resistance rating of at least one hour with self-closing fire doors protecting all openings between the stairway enclosure and the building.

b. The stairway does not serve any floor below the floor of exit discharge.

c. All corridors serving as access to exits have at least a one-hour fire-resistance rating.

d. There is not more than 35 feet of travel distance to reach an exit from the entrance door of any living unit.

**5.805(3) *Required exit width.*** Exit width shall be determined as outlined in subrule 5.52(2).

**5.805(4) *Arrangement of exits.*** The arrangement of required exits shall be as prescribed in subrule 5.52(3).

**5.805(5) *Travel distance.*** The maximum travel distance from any point to an exterior exit door, horizontal exit, exit passageway, or an enclosed stairway shall not exceed 150 feet.

EXCEPTION: The travel distance may be increased to 200 feet if protected throughout by an automatic sprinkler system.

**5.805(6) *Dead-end corridors.*** Dead-end corridors shall not exceed 20 feet in length.

EXCEPTION: When corridors meet requirements of rule 5.105(100).

**5.805(7) *Exit illumination.*** Exits shall be illuminated at any time the building is occupied with light having an intensity of not less than 1 foot-candle at floor level and in accordance with the requirements of rule 5.62(100).

**5.805(8) *Exit signs.*** Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress in accordance with the requirements of subrule 5.101(5).

**5.805(9) *Protection of vertical openings.*** All interior stairways, elevator shafts, light and ventilation shafts and other vertical openings shall be enclosed or protected as provided in rule 5.102(100).

EXCEPTION 1: Unprotected openings connecting not more than three floors may be permitted provided the building is completely sprinklered.

EXCEPTION 2: Stairs within individual apartments need not be enclosed.

## **661—5.806(100) General provisions.**

**5.806(1) *Hazardous areas.*** An area used for general storage, boiler or furnace rooms, fuel storage, janitor's closets, maintenance shops, including woodworking and painting area, laundries and kitchens shall be separated from other parts of the building by construction having not less than one-hour fire-resistance rating, and all openings shall be protected with at least 1¾-inch solid core wood doors or equivalent equipped with approved self-closing devices, or such rooms or spaces may be protected by an automatic sprinkler system.

EXCEPTION: A separation shall not be required for such rooms with equipment serving only one dwelling unit.

**5.806(2) Interior finish.**

a. *Corridors, lobbies, and enclosed stairways.* Interior finish in all corridors and lobbies shall be Class A, or Class B will be permitted in a fully sprinklered building, and in enclosed stairways, Class A.

b. *General assembly.* Interior finish in general assembly areas shall be Class A in exit. See Table No. 5-C following 661—5.105(100).

c. *Interior floor finish.* Interior floor finish within corridors and exits shall be Class I or Class II interior floor finish. See Table No. 5-D following 661—5.105(100).

**5.806(3) Windows for rescue.** Every sleeping room below the fourth story should have at least one openable window or exterior door approved for emergency rescue. The units shall be openable from the inside without the use of separate tools.

Any new or replacement windows from sleeping rooms shall have a minimum net clear opening of 5.7 square feet. The minimum net clear opening height dimension shall be 24 inches. The minimum clear opening width dimension shall be 20 inches. Where windows are provided as a means of rescue, they shall have a finished sill height of not more than 44 inches above the floor.

**5.806(4) Protection systems.**

a. *Smoke detectors.* Every dwelling unit within an apartment house, dormitory and every guest room in a hotel used for sleeping purposes shall be provided with approved smoke detectors. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. (For specific requirements see Iowa Code section 100.18.)

b. *Alarm systems.* Every apartment house three stories or more in height or containing more than 15 apartments and every hotel three stories or more in height containing 20 or more guest rooms shall have installed therein an approved automatic or manually operated fire alarm system designed to warn the occupants of the building in the event of fire. The fire alarm system shall be so designed that all occupants of the building may be warned simultaneously.

EXCEPTION: An alarm system need not be installed in buildings when all individual apartments and guest rooms and contiguous attic and crawl spaces are separated from each other and from common areas by at least one-hour fire-resistive occupancy separations and each individual apartment or guest room has an exit direct to a yard or public way.

Stations for operating any manually operated fire alarm system shall be placed immediately adjacent to the telephone switchboard in the building if there is a switchboard and at such other locations as may be required by the authority having jurisdiction.

Presignal alarm systems will not be permitted.

c. *Automatic sprinkler protection.* When automatic sprinkler protection is provided it shall be as required by subrule 5.52(6).

**5.806(5) Portable fire extinguishers.** Approved-type fire extinguishers shall be provided on each floor, so located that they will be accessible to the occupants, and spaced so that no person will have to travel more than 75 feet from any point to reach the nearest extinguisher. Additional extinguishers may be required in areas that constitute a special hazard. Type and number of portable extinguishers shall be determined by the state fire marshal or local fire authority.

**5.806(6) Fire and general equipment.** All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, exit facilities, doors and their appurtenances, electric service, heating and ventilation equipment.

All fire protection or extinguishing systems, coverage, spacing and specifications shall also be maintained in accordance with recognized standards at all times and shall be extended, altered or augmented as necessary to maintain and continue protection whenever any building so equipped is altered, remodeled, or added to. All additions, repairs, alterations or servicing shall be made in accordance with recognized standards.

**5.806(7) Storage.** Excessive storage of combustible or flammable materials such as papers, cartons, magazines, paints, and similar materials so as to constitute an unnecessary hazard in the opinion of the authority having jurisdiction shall not be permitted.

These rules are intended to implement Iowa Code chapter 100.

**661—5.807(100) Smoke detectors definition.** “Approved” is defined as being acceptable to the state fire marshal. Any equipment, device or procedure which bears the stamp of approval or meets applicable standards prescribed by an organization of national reputation such as the Underwriters Laboratories, Inc., National Bureau of Standards, Factory Mutual Laboratories, American Society for National Fire Protection Association, American Society of Mechanical Engineers or American Standards Association, which undertakes to test and approve or provide standards for equipment, devices or procedures of the nature prescribed in these regulations shall be deemed acceptable to the state fire marshal.

**661—5.808(100) General requirements.**

**5.808(1)** Approved single station smoke detectors will be acceptable in all areas covered by these regulations, unless other fire warning equipment or materials are required by other standards.

**5.808(2)** Any installation of wiring and equipment shall be in accordance with the latest edition of the National Fire Protection Association Standard No. 70, National Electric Code, and other applicable standards.

**5.808(3)** All devices, combinations of devices, and equipment to be installed in conformity with these regulations shall be approved and used for the purposes for which they are intended.

**5.808(4)** A combination system, such as a household fire warning system whose components may be used in whole or in part, in common with a nonfire emergency signaling system, such as a burglar alarm system or an intercom system, shall not be permitted or approved, except for one- or two-family dwellings.

**5.808(5)** All power supplies shall be sufficient to operate the alarm for at least four continuous minutes.

**5.808(6)** Power source.

*a.* In new buildings and additions constructed after July 1, 1991, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke detectors may be solely battery operated when installed in existing buildings, or in buildings without commercial power, or in buildings which undergo alterations, repairs or additions regulated by subrule 5.808(2).

*b.* New and replacement smoke detectors installed after May 1, 1993, which receive their primary power from the building wiring shall be equipped with a battery backup.

**5.808(7)** The failure of any nonreliable or short-life component which renders the detector inoperative shall be readily apparent to the occupant of the sleeping unit without the need for a test. Each smoke detector shall detect abnormal quantities of smoke that may occur and shall properly operate in the normal environmental condition.

**5.808(8)** Equipment shall be installed, located and spaced in accordance with the manufacturer’s recommendations.

**5.808(9)** Installed fire warning equipment shall be mounted so as to be supported independently of its attachment to wires.

**5.808(10)** All apparatus shall be restored to normal immediately after each alarm or test.

**5.808(11) Location within dwelling units.**

a. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a detector shall be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a detector shall be installed on each level. When sleeping rooms are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches or more, smoke detectors shall be installed in the hallway and in the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

b. Location in efficiency dwelling units and hotels. In efficiency dwelling units, hotel suites and in hotel sleeping rooms, detectors shall be located on the ceiling or wall of the main room or hotel sleeping room. When sleeping rooms within an efficiency dwelling unit or hotel suite are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. When actuated, the detector shall sound an alarm audible within the sleeping area of the dwelling unit, hotel suite or sleeping room in which it is located.

**661—5.809(100) Smoke detectors—notice and certification of installation.**

**5.809(1) Notice of installation.** Owners of rental residential buildings containing two or more units required by law to install smoke detectors shall notify their local fire department upon installation of required smoke detectors.

**5.809(2) Certification—single-family dwelling units.** A person who files for homestead credit pursuant to Iowa Code chapter 425 shall certify that the single-family dwelling unit for which credit is filed has a smoke detector(s) installed in accordance with 5.808(6) and 5.808(11)“a,” or that such smoke detector(s) will be installed within 30 days of the date of filing for credit.

**5.809(3) Reports to fire marshal.** Each county or city assessor charged with the responsibility of accepting homestead exemption credit applications will obtain certification of smoke detection on a form acceptable to the state fire marshal, signed by the person making application for credit and file a quarterly report with the fire marshal listing the name, address and whether applicant attested to a detector(s) being present at the time of application or that a detector(s) would be installed as required within 30 days.

**661—5.810(100) Smoke detectors—new and existing construction.**

**5.810(1) New construction.** All multiple-unit residential buildings and single-family dwellings which are constructed after July 1, 1991, shall include the installation of smoke detectors meeting the requirements of rule 661—5.807(100) and rule 661—5.808(100).

**5.810(2) Existing construction.** All existing single-family units and multiple-unit residential buildings shall be equipped with smoke detectors as required in 5.808(11)“a.”

Rules 5.807(100) to 5.810(100) are intended to implement Iowa Code section 100.18.

Miscellaneous structures	11	M-1	Private garages, carports.
		M-2	Fences over six feet high, tanks and towers.
Residential	12	R-1	Hotels and apartment houses. Convents and monasteries (more than 10 people).
		R-3	Lodging houses (five guests or rooms).

TABLE 8-B: ALLOWABLE FLOOR AREA  
(Per single story)  
AND MAXIMUM HEIGHT OF BUILDINGS

TYPES OF CONSTRUCTION									
I	II			III		IV	V		
F.R.	F.R.	ONE-HOUR	N	ONE-HOUR	N	H.T.	ONE-HOUR	N	
BASIC ALLOWABLE FLOOR AREA FOR BUILDINGS ONE STORY IN HEIGHT (In Square Feet)									
Unlimited	29,900	13,500	13,500	9,100	13,500	9,100	13,500	10,500	6,000
MAXIMUM HEIGHT IN FEET									
Unlimited	160	65	65	55	65	55	65	50	40
MAXIMUM HEIGHT IN STORIES									
Unlimited	12	4	4	2	4	2	4	3	2

See Notes 1. - 6.

N — No Requirements for Fire Resistance

F.R. — Fire Resistive

H.T. — Heavy Timber

NOTE 1: Separation on two sides. Where public space, streets, or yards more than twenty feet in width extend along and adjoin the sides of the building, floor areas may be increased at a rate of 1¼ percent for each foot by which the minimum width exceeds twenty feet but the increase shall not exceed 50 percent.

NOTE 2: Separation on three sides. Where public space, streets or yards more than twenty feet in width extend along and enjoin three sides of the building, floor areas may be increased at a rate of 2½ percent for each foot by which the minimum width exceeds twenty feet, but the increase shall not exceed 100 percent.

NOTE 3: Separation on all sides. Where public space, streets or yards more than twenty feet in width extend on all sides of a building and enjoin the entire perimeter, floor areas may be increased at a rate of 5 percent for each foot by which the minimum width exceeds twenty feet. Such increases shall not exceed 100 percent.

NOTE 4: Areas of buildings over one story. The total combined floor area for multistory buildings may be twice that permitted by Table 8-B for one-story buildings, and the floor area of any single story shall not exceed that permitted for a one-story building.

NOTE 5: Automatic sprinkler system. The areas specified in Table 8-B may be tripled in one-story buildings and doubled in buildings of more than one story if the building is provided with an approved automatic sprinkler system throughout. The area increases permitted for installing an approved automatic sprinkler system may be compounded with that specified in Notes 1, 2, and 3.

NOTE 6: The area increases permitted in Note 5 shall not apply when automatic sprinkler systems are installed under the following provisions:

- a. An increase in allowable number of stories.
- b. Substitution for one-hour fire-resistive construction.
- c. Atriums.

TABLE 8-C—REQUIRED SEPARATION  
IN BUILDINGS OF MIXED OCCUPANCY  
(In Hours)

	A-1	A-2	A-2.1	A-3	A-4	B-1	B-2	B-3	B-4	E	H-1	H-2	H-3	H-4,5	I	M <sup>2</sup>	R-1	R-3
I	3	3	3	3	3	4	2	4	4	1	NP <sup>3</sup>	4	4	4	—	1	1	1
R-1	1	1	1	1	1	3 <sup>1</sup>	1	1	1	1	4	3	3	3	1	1	—	N
R-3	1	1	1	1	1	1	N	N	N	1	4	3	3	3	1	1	N	—

<sup>1</sup>The three-hour separation may be reduced to one hour where the Group B, Division 1 Occupancy, is limited to the storage of passenger motor vehicles having a capacity of not more than nine persons per vehicle and provided no repair or fueling is done and the area does not exceed 3,000 square feet in a building.

<sup>2</sup>In the one-hour occupancy separation between a Group R, Division 3 and M Occupancy, the separation may be limited to the installation of materials approved for one-hour fire-resistive construction on the garage side and a self-closing, tight fitting solid wood door in lieu of a one-hour fire assembly. Fire dampers shall not be required in ducts piercing this separation for ducts constructed of not less than No. 26 gauge galvanized steel.

<sup>3</sup>Not permitted.



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#### BED AND BREAKFAST INNS

### **661—5.820(100) Bed and breakfast inns.**

**5.820(1) Appliances.** Heating, cooking and gas and electrical equipment and appliances must conform with nationally recognized codes and standards and be installed and maintained in accordance with manufacturer's recommendations. If the building has an operable solid fuel fireplace, all components must be cleaned and maintained in accordance with NFPA 211, 1996 edition.

**5.820(2) Smoke detectors.** Each bed and breakfast inn must be equipped with a system of interconnected smoke detectors. At least one detector must be located in each guest bedroom and at the top of each stairwell and at intervals not to exceed 30 feet in exit corridors. In existing buildings these smoke detectors may be battery operated. In buildings or additions for which construction is started on or after May 1, 2001, the smoke detector system must include battery backup but receive primary power from the building's electrical wiring. Detectors must be installed and maintained in accordance with NFPA 72, 1998 edition.

**5.820(3) Emergency lighting.** Each bed and breakfast inn must be equipped with approved emergency lighting so located and directed in a manner that will illuminate the routes of travel from each guest-occupied room to the outside of the building.

**5.820(4) Windows.** Each bed and breakfast inn guest sleeping room must have at least one outside window that is openable without the use of tools or special knowledge. The window must be large enough that, when open and without breaking glass, it will permit the emergency egress of guests.

**5.820(5) Exits.** Each story that has one or more guest sleeping rooms must have two means of exit that are remote from each other and so arranged and constructed as to minimize any possibility that both may be blocked by any one fire or other emergency.

**5.820(6) Exit door markings.** Exit doors must be marked in accordance with 661—5.63(100), except internally illuminated exit signs are not required if the door is clearly illuminated by emergency lighting.

**5.820(7) Fire extinguishers.** Fire extinguishers must be installed and maintained in accordance with National Fire Protection Association Standard Number 10, 1998 edition.

**5.820(8) Smoking prohibited.** Smoking is not permitted in any sleeping room, and rooms shall be posted with plainly visible signs so stating.

**5.820(9) Additional prohibitions.** Candles, lamps or solid fuel fireplaces shall not be used in guest sleeping rooms.

**5.820(10) Directions.** Each bed and breakfast inn shall have clearly displayed in each guest bedroom printed directions and a diagram for emergency evacuation procedures. These directions must include the primary route to the outside and how to use the emergency egress window in the event the primary route cannot be traversed.

This rule is intended to implement Iowa Code section 137C.35.

### **661—5.821 to 5.849 Reserved.**

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## EXPLOSIVE MATERIALS

**661—5.850(101A) Rules generally.** The code, “NFPA 495 Manufacture, Transportation, Storage, and Use of Explosive Materials,” 1992 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, with the exception of chapter 2 and references to other specific standards contained in chapter 2, is hereby adopted by reference as the rules governing the manufacture, transportation, storage, and use of explosive materials in the state of Iowa.

This rule is intended to implement Iowa Code section 101A.5.

**661—5.851(101A) Inventory.** Inventory shall be of such that it shows amount of explosive material on hand, quantities dispensed and to whom, and quantity on hand at the end of each calendar working day. Anytime a shortage appears it shall be reported immediately to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal form 4712 (Department of Treasury, Internal Revenue Service) to be implemented, a copy of which shall be sent to the Iowa Department of Public Safety, attention of state fire marshal.

This rule is intended to implement Iowa Code section 101A.5.

**661—5.852 to 5.864** Reserved.

**661—5.865(101A,252J) Grounds for suspension, revocation, or denial of commercial explosives licenses.** The department may refuse to issue a commercial license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

1. Finding that the applicant or licensee is not of good moral character and sound judgment.
2. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.
3. Finding that the applicant or licensee falsified information in the current or any previous license application.
4. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A or these rules.
5. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code Supplement chapter 252J.

An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked other than because of receipt of a certificate of noncompliance from the child support recovery unit may appeal that action pursuant to 661-chapter 10. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit shall be subject to the provisions of rule 661—5.866(252J) and procedures specified in 661-chapter 10 for contesting department actions shall not apply in these cases.

This rule is intended to implement Iowa Code section 101A.2 and Iowa Code Supplement chapter 252J.

**661—5.866(252J) Child support collection procedures.** The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code Supplement chapter 252J:

**5.866(1)** The notice required by Iowa Code Supplement section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee, identification card holder, or applicant may accept service personally or through authorized counsel.

**5.866(2)** The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service upon the licensee or applicant.

**5.866(3)** Licensees and applicants for licenses shall keep the department informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**5.866(4)** All departmental fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code Supplement chapter 252J.

**5.866(5)** In the event a licensee or applicant files a timely district court action following service of a department notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension or denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code chapter 252J.

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Effective date of 5.300, 5.301(6), 5.301(7), 5.302, 5.304(2)“c”(2), 5.304(3), 5.304(4), 5.305, 5.350 and 5.351 delayed by the Administrative Rules Review Committee 70 days.

Subrule 5.305(3) which was delayed 70 days from November 8, 1979, is renumbered and amended as 5.305(2) to be effective January 17, 1980.

Effective date of 5.400 and 5.450 to 5.452 delayed by the Administrative Rules Review Committee 70 days. These amendments published in IAC 10/3/79, ARC 0596.

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\*\*Effective date of 661—5.620(100,135C), introductory paragraph, and subrule 5.620(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.



**8.302(8)** “*Sexual exploitation*” means sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

**8.302(9)** “*Sexually violent offense*” means any of the following indictable offenses:

- a. Sexual abuse as defined in Iowa Code section 709.1.
- b. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- c. Sexual misconduct with offenders in violation of Iowa Code section 709.16.
- d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.
- e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “d” of this subrule if committed in this state.

**8.302(10)** “*Sexually violent predator*” means a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

**8.302(11)** “*Aggravated offense*” means a conviction for any of the following offenses:

- a. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
- b. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
- c. Sexual abuse in the third degree in violation of Iowa Code section 709.4, subsection 1.
- d. Lascivious acts with a child in violation of Iowa Code section 709.8, subsection 1.
- e. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
- f. Burglary in the first degree in violation of Iowa Code section 713.3, subsection 1, paragraph “d.”
- g. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
- h. Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.

**8.302(12)** “*Full-time or part-time*” means a period of time exceeding 14 days or an aggregate period of time exceeding 30 days during any calendar year pursuant to 42 U.S.C. § 14071(a)(3)(F).

**661—8.303(692A) Forms and procedures.** The following forms and procedures are prescribed for use with the Iowa sex offender registry. Supplies of these forms may be obtained by contacting the Iowa sex offender registry at the division of criminal investigation.

**8.303(1) Notification.** Form DCI-144, “Notification of Registration Requirement,” which notifies offenders of their duty to register with the Iowa sex offender registry shall be provided to persons identified as being required to register. Failure to provide offenders with Form DCI-144 does not relieve offenders of their duty to register with the Iowa sex offender registry.

**8.303(2) Registration.**

a. Form DCI-145, “Sex Offender Registration,” shall be completed by or on behalf of each offender and submitted to the sheriff of the county in which the offender will be residing and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry.

b. Form DCI-145 shall also be used to report changes of residence, telephone number, or name of registrants. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant’s place of residence, telephone number, or name changes within five days of the change of residence, telephone number, or name, whether within or outside the state of Iowa. The original of each completed Form DCI-145 shall be forwarded to the division of criminal investigation by the registering agency within three days of receiving the completed form.

If a registrant moves from one county to another, the registrant shall submit copies of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

When the department receives notification that a registrant has changed residence to a location outside of Iowa, the department shall notify the registering state agency in the registrant's new state of residence of the registrant's name, new address, and telephone number.

c. Upon initial submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender. Current photographs of the registrant shall accompany submission of Form DCI-145 upon each subsequent submission of Form DCI-145 unless the registrant's appearance has not changed significantly in the judgment of the submitting agency.

d. A list of all registrants within a county shall be provided each month by the division of criminal investigation to the county sheriff. Each county sheriff may provide copies of these lists to other law enforcement, criminal justice, and juvenile justice agencies with jurisdiction in the county.

**8.303(3) Annual verification.** Form DCI-146, "Annual Verification of Address," shall be mailed by the division of criminal investigation to each registrant to the last address known to the registry annually during the month of original registration. Form DCI-146 shall be returned by the registrant to the division of criminal investigation within ten days of receipt. Form DCI-146 shall be mailed to the registrant in an envelope clearly stating that it is to be returned to the division of criminal investigation if the addressee no longer resides at the address indicated and that Iowa law prohibits its being forwarded.

EXCEPTION: Form DCI-146 shall be mailed quarterly by the division of criminal investigation to each registrant who is a sexually violent predator to the last address known to the registry and shall be completed and returned to the division of criminal investigation by the registrant within ten days of receipt.

**8.303(4) Application for determination.** Form DCI-148, "Application for Determination," shall be completed by a registrant to initiate a request that the department review whether one or more offenses of which the registrant has been convicted require registration with the Iowa sex offender registry or whether the time period during which the registrant is required to register has expired. A registrant who submits a completed copy of Form DCI-148 for review shall provide with it copies of any sentencing or adjudicatory orders related to each offense for which a determination of whether registration is required is being requested. The completed application (Form DCI-148) shall specify the exact grounds for the application and shall include a statement of any additional facts which the registrant intends to present to the department in support of the application. Failure to submit any of the required orders shall constitute grounds for denial of the application. If the application sets forth an issue of fact which cannot be evaluated based upon the record of convictions, sentencing and adjudicatory orders, and relevant statutory provisions, the commissioner may refer the matter to an administrative law judge or presiding officer for a hearing.

**8.303(5) Decision of determination.** Form DCI-149, "Decision of Determination," shall be used by the division of criminal investigation to notify a registrant who has submitted a request for determination (Form DCI-148) of the results of that review. A completed Form DCI-149 shall be mailed to any registrant who has filed a completed Form DCI-148 within 90 days of the receipt by the division of criminal investigation of the completed Form DCI-148 and all required supporting documents. A decision of determination shall be signed by the commissioner and shall constitute final agency action for the purposes of Iowa Code chapter 17A.



If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

**8.303(6) Request for information.** Form DCI-150, "Request for Registry Information," shall be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry shall submit a completed copy of Form DCI-150 to a sheriff or police department. A separate form shall be submitted for each person about whom information is being requested.

**8.303(7) Confidential background investigation.** A government agency conducting a confidential background investigation shall submit a completed Form DCI-151 to the division of criminal investigation to request information regarding the individual about whom the background investigation is being conducted.

**8.303(8) Affirmative public notification.**

*a.* Form DCI-152, "Notice of Intent to Make Affirmative Public Notification," shall be used by the division of criminal investigation to notify a registrant that the division intends to engage in affirmative public notification regarding the registrant in accordance with subrule 8.304(1).

*b.* Form DCI-153 shall be used by the division of criminal investigation to carry out affirmative public notification regarding a particular registrant in accordance with subrule 8.304(1). Additional information, including, but not limited to, a photograph of the registrant may be attached to Form DCI-153.

**8.303(9) Confidential records.** Completed forms filled out pursuant to rules 8.301(692A) through 8.399 are confidential records that may not be released to the public.

EXCEPTION: Completed copies of Form DCI-150 are public records only if public release of a form is authorized by the person completing the form.

**661—8.304(692A) Release of information.** The purpose of release of information from the Iowa sex offender registry is to afford protection to the public. The procedures specified here are intended to maximize the degree of protection afforded the public from potential risks presented by registrants while ensuring registrants their due process rights.

**8.304(1) Affirmative public notification for public protection.** A criminal or juvenile justice agency may initiate affirmative public notification regarding the identity and location of a specific registrant subsequent to the completion of a risk assessment of the registrant by the division of criminal investigation, the department of corrections, the department of human services, or a juvenile court officer which has resulted in a finding that the registrant is "at risk." A request for confirmation that a risk assessment resulting in classifying the registrant as "at risk" has been completed may be sent to the division of criminal investigation by mail, electronic mail via the Internet to [jsor@dps.state.ia.us](mailto:jsor@dps.state.ia.us), facsimile transmission or via the Iowa on-line warrants and articles (IOWA) system.

A criminal or juvenile justice agency shall not initiate affirmative public notification regarding an individual who has been convicted of kidnapping or false imprisonment, and the crime did not involve attempted sexual abuse or sexual abuse, and the person has not committed another offense that would require the person to register.

a. *Risk assessment.* An assessment of the risk presented by a registrant shall be prepared prior to any affirmative public notification regarding that registrant. The assessment of risk for a registrant shall be prepared by the division of criminal investigation for a registrant who has moved to Iowa but is not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Risk assessments shall be prepared by the department of corrections, juvenile court officers, or the department of human services for registrants as specified in 1999 Iowa Acts, Senate File 294 [1999 Iowa Code Supplement section 692A.13A]. Risk assessments shall be completed following procedures prescribed by the department of corrections.

b. *Risk categories.* The assessment of risk presented to the community by a registrant shall result in placement of the registrant into one of the following categories: "low risk" or "at risk." "At risk" includes registrants who have been assessed to be a "moderate risk" or "high risk."

All registrants are by virtue of their presence on the registry classified as "low-risk" offenders, unless they are classified as offenders "at risk" on the basis of assessments completed by the division of criminal investigation, department of corrections, department of human services, or a juvenile court officer.

c. *Affirmative public notification procedures.* The means, method, and scope of release of information shall be based upon the determination of level of risk presented by a registrant. The following forms of notification may be utilized for each level of risk assessed.

(1) Low risk. For a registrant classified as presenting a low risk to the community, notification of the registrant's name, current address, criminal history, and a current photograph of the registrant may be provided to any law enforcement agency likely to encounter the registrant. These shall include, but are not limited to, any county or municipal agency with jurisdiction over the registrant's place of residence, place of employment or school or any other place to which the registrant is known to travel on a frequent basis.

(2) At risk. For a registrant classified as "at risk," the notification described in subparagraph (1) shall be completed. Also, persons likely to encounter the registrant may be notified through the following means. The department shall consult with the county attorney, sheriff, and local law enforcement agencies with jurisdiction in the registrant's place of residence, employment, school attendance, and other locations that the registrant is known to frequent, regarding appropriate forms of affirmative public notification. Form DCI-153 shall be used to carry out affirmative public notification initiated by the division of criminal investigation.

1. Notification of agencies or organizations in the community in which the registrant lives, is employed or attends school, or is known to frequent, where there are potential victims.

2. Personal or written notification of neighbors in the vicinity of the residence of the registrant, the registrant's place of employment or school, or other places the registrant is known to frequent.

3. Releases to media outlets which cover the community or communities in which the registrant resides, is employed or attends school, or is known to frequent including but not limited to the registrant's name and photograph.

4. Distribution of leaflets to residences and businesses in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

5. Posting of notices in public locations in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

(3) Responsibility for affirmative public notification. Affirmative public notification is intended to be a process of cooperation between the department of public safety and local law enforcement agencies with jurisdiction in locations where the registrant resides, is employed, attends school, or is known to frequent.

(4) Any county sheriff or police department shall provide access to the list of all registrants classified as “at risk” within the county in which the sheriff or police department has jurisdiction to any person who requests such a list; however, records of persons protected under 18 U.S.C. § 3521 shall not be disclosed.

(5) Subject to the availability of sufficient funds, the department shall provide electronic access to information from the Iowa sex offender registry regarding registrants who:

1. Commit a criminal offense against a minor, an aggravated offense, sexual exploitation, a sexually violent offense, or another relevant offense on or after July 1, 1999, of this Act and who have been assessed to be a “moderate risk” or “high risk.”

2. Committed an offense prior to July 1, 1999, and who have been assessed to be a “moderate risk” or “high risk” and whose opportunity to request a hearing regarding the assessment of risk has lapsed.

*d. Findings—prior notice—right to appeal—affirmative public notification by department.*

(1) When a risk assessment has been completed by the division of criminal investigation, the department of corrections, or the department of human services, the agency which conducted the risk assessment shall notify, or cause to be notified, the registrant of the initial finding, by providing to the registrant a completed copy of Form DCI-152 and of the risk assessment. Procedures for notifying a registrant of the results of a risk assessment and providing for appeals thereof shall be subject to the rules of the agency conducting the risk assessment. Copies of the risk assessment and related documents, including any appeals and documentation of the results of appeals, shall be provided to the division of criminal investigation. When a risk assessment has been completed by a juvenile court officer, the juvenile court officer shall notify the division of criminal investigation of the results of the risk assessment and provide a copy of the risk assessment to the division of criminal investigation.

When a risk assessment has been completed by the division of criminal investigation or the division of criminal investigation has received a completed risk assessment from a juvenile court officer, notice shall be given by the division of criminal investigation to the registrant by personal service or by certified mail, return receipt requested, 14 days prior to the commencement of any affirmative public notification, unless it is impracticable to give timely notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of certified mail or if certified mail is undeliverable because the registrant has not complied with registry requirements to provide a current address. The notice shall contain the following information:

1. A copy of the completed risk assessment;

2. A description of the scope of affirmative public notification which may result from the risk assessment;

3. That unless application is made for a hearing on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant;

4. That the offender may make application for a hearing by filing a written request for a hearing and mailing or serving it on the department at an address prescribed on the notice so it is received on or by the date mentioned in the notice;

5. That if application is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice, there will be no affirmative public notification until and unless the result of the risk assessment is affirmed, or is modified, through the hearing process.

(2) A registrant who has received notice from the division of criminal investigation that a risk assessment has been completed by the division of criminal investigation or a juvenile court officer may appeal the result of the risk assessment in writing to the administrative services division of the department of public safety within 14 days of the date on which the notice is sent to the registrant by the division of criminal investigation.

(3) Affirmative public notification shall not proceed until at least 14 days after notice of the result of the risk assessment has been mailed or delivered to the registrant.

EXCEPTION: If the director of the division of criminal investigation finds that the registrant presents an immediate threat to the safety of the public, affirmative public notification may proceed at the same time as notice is sent to the registrant. In such a case, the notice shall inform the registrant that affirmative public notification may proceed immediately, based upon the finding that the registrant presents an immediate threat to the safety of the public.

(4) If the department does not receive a written application for a hearing within the time guidelines set forth above, the department may undertake affirmative public notification if the result of the risk assessment was that the registrant is "at risk."

(5) When the department receives an application for a hearing, the department shall refer the matter to an administrative law judge or a presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial finding to the presiding officer with the application for hearing. The administrative law judge or presiding officer shall set a hearing within seven days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

(6) All documents relating to the hearing shall be confidential prior to, during, and after the hearing. The hearing itself shall be conducted *in camera*.

(7) Rule 661—10.321(17A), which governs introduction and consideration of evidence, shall apply to proceedings under this rule.

(8) The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

(9) After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue a written order affirming, reversing, or modifying the result of the risk assessment. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party. The order itself shall remain confidential, in accordance with Iowa Code section 692A.13.

(10) The registrant or the director of the division of criminal investigation may appeal the administrative law judge's or presiding officer's order to the commissioner of public safety. Appeal must be served in writing within 14 days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision, and the department or other criminal or juvenile justice agency may undertake affirmative public notification, if warranted by the result of the risk assessment.

(11) The commissioner shall consider an appeal on the record made before the administrative law judge or presiding officer. The commissioner shall not consider any additional facts on appeal. The commissioner may, at the commissioner's discretion, request written briefs or oral argument in an appeal. The commissioner shall issue a written decision affirming, reversing, or modifying the order of the presiding officer. A copy of the decision shall be promptly mailed to each party. The decision, and all related information, shall remain confidential, in accordance with Iowa Code section 692A.13. The commissioner's decision shall constitute final agency action for purposes of Iowa Code section 17A.19.

(12) Subsequent affirmative public notification. For a registrant who has been assessed as “at risk” and who has been notified of the result of the risk assessment and the possibility of affirmative public notification, a criminal or juvenile justice agency may initiate affirmative public notification in any area in which the registrant resides, is employed, attends school, or frequents subsequent to the initial notification to the registrant.

*e. Affirmative public notification initiated by other criminal or juvenile justice agency.* A criminal or juvenile justice agency may initiate affirmative public notification with regard to a registrant subsequent to the completion by the division of criminal investigation, the department of corrections, the department of human services, or a juvenile court officer of a risk assessment finding that the registrant is “at risk.” Prior to initiating affirmative public notification, the agency initiating it shall provide notice to the registrant of the agency’s decision to initiate affirmative public notification, of the intended scope and manner of affirmative public notification, and of the registrant’s right to contest the decision. A copy of the notice shall be submitted to the division of criminal investigation at the same time as it is transmitted to the registrant. The notice shall contain instructions to the registrant as to the procedures for contesting the decision and the time allowed to do so. Affirmative public notification shall not proceed until the time allowed for contesting the decision has expired or, if the decision is contested, until the decision has been upheld. Any written or published form of affirmative public notification shall prominently display the identity of the agency initiating the notification.

Any criminal or juvenile justice agency initiating affirmative public notification regarding any registrant is authorized to request assistance in carrying out affirmative public notification from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant’s residence, place of employment or school, or other places which the registrant is known to frequent.

**8.304(2)** *Release of information in response to individual request.* A sheriff or police department that receives a completed Form DCI-150 shall inquire of the division of criminal investigation as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and shall provide the requester with the following information: name of registrant, address of registrant, age of registrant, gender of registrant, and physical description of registrant.

**8.304(3)** *Release of information for confidential background investigations.* The division of criminal investigation may release additional information regarding a registrant to personnel of criminal justice agencies or to personnel of government agencies conducting confidential background investigations.

**8.304(4)** *Release of information for bona-fide research.* Information from the Iowa sex offender registry may be released to persons conducting bona-fide research. A person conducting bona-fide research may request access to information from the Iowa sex offender registry by submitting a completed Form DCI-155 to the division of criminal investigation. Information identifying persons who have requested information about registrants using Form DCI-150 shall not be released to researchers unless permission has been obtained from each person who would be identified.

**8.304(5)** *Submission of information to the National Sex Offender Registry.* The division shall submit sex offender registry data as required to the National Sex Offender Registry of the Federal Bureau of Investigation.

**661—8.305(692A) Expungement of records.**

**8.305(1)** *Expungement upon reversal of conviction.* The division of criminal investigation shall expunge the registration of any registrant if the conviction which forms the basis for the registrant's being required to register is reversed upon receipt of a certified copy of the court order reversing the conviction, providing that the person has been convicted of no other offense which would require registration.

**8.305(2)** *Expungement upon expiration of registration period.* The division of criminal investigation shall expunge a registrant's registration upon expiration of the period during which the registrant is required to register, provided that the registrant has not subsequently been convicted of an offense that would require registration.

**661—8.306 to 8.399** Reserved.

These rules are intended to implement Iowa Code chapter 692A.

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[Filed 2/22/01, Notice 7/26/00—published 3/21/01, effective 5/1/01]

CHAPTER 54  
FIREFIGHTER CERTIFICATION

**661—54.1(100B) 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. Participation in the Iowa fire service certification system is voluntary in that state law does not require certification to work or volunteer as a firefighter in Iowa. However, some fire departments within the state require certification for continued employment or promotion.

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](mailto:fstbinfo@dps.state.ia.us). Further information can be found on the Web site for the fire service training bureau at [www.state.ia.us/government/dps/fm/fstb](http://www.state.ia.us/government/dps/fm/fstb).

**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 [www.state.ia.us/government/dps/fm/fstb](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(100B) Certification standards.** Standards for Iowa firefighter certification are based upon nationally recognized standards established by the National Fire Protection Association (NFPA), 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 a 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.

**54.2(2) Firefighter II.** Certification as a 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.

**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,” 1998 edition, published by the National Fire Protection Association.

**54.2(4) Fire officer I.** Certification as a fire officer I 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(100B) Fees.** Current certification application fees and any other fees related to participation in the certification process shall be listed in the publication Certification Procedures Guide for each level of certification, published by the fire service training bureau and available on request from the fire service training bureau. The information in each guide shall be effective upon publication until superseded by publication of a later edition. Prospective candidates who are considering application for a particular level of certification should contact the fire service training bureau for the latest date of publication of the Certification Procedures Guide.

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, or money order. The check, credit card information, purchase order, money order or draft shall be submitted with the application.

**661—54.4(100B) 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 Iowa Code chapter 100B.

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CHAPTER 59  
VOLUNTEER EMERGENCY SERVICES  
PROVIDER DEATH BENEFITS

**661—59.1(100B) 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 Iowa Code section 100B.11.

Information about the program may 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](mailto:fminfo@dps.state.ia.us).

**661—59.2(100B) 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(100B) 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 Iowa Code section 100B.11.

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- CHAPTER 19  
SALES AND USE TAX ON  
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- 19.9(422,423) Construction contracts with equipment sales (mixed contracts)

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1195, section 3.

**701—17.37(422,423) Temporary exemption from sales tax on certain utilities.** Effective February 5, 2001, the sales of specific energy sources are exempt from Iowa sales tax. Specified sales of energy are exempt from local option taxes as well; see rule 701—107.9(422B).

This exemption is not applicable to electricity, regardless of whether the electricity is used for heat. Electricity charges on utility bills will continue to be subject to Iowa sales and local option taxes. This exemption does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

**17.37(1) Definitions.** The following definitions are applicable to this rule:

*“Fuel”* means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. *“Fuel”* includes propane, heating fuel, and kerosene. However, *“fuel”* does not include blended kerosene used as motor fuel or special fuel.

*“Heat”* means to increase or maintain the temperature of a residential dwelling, apartment unit, or condominium. Due to metered gases and fuels being used for other purposes in the dwelling, such as clothes dryers, gas stoves, and hot water heaters, this temporary exemption for metered gas used for heating purposes will also be extended to metered gases and fuels used for appliances in the residential dwelling, individually metered apartment unit, or individually metered condominium.

*“Metered gas”* means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individually metered apartment unit, or individually metered condominium.

*“Residential dwelling”* means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as a detached garage or outbuilding. However, a garage attached to the residential dwelling that is used strictly for residential purposes will fall within the exemption. Also excluded from this exemption are classified commercial facilities. Classified commercial facilities include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

**17.37(2) Metered gas exemption.** Effective February 5, 2001, the gross receipts from the sale, furnishing or service of metered gas for residential customers which is used to provide energy to residential dwellings, individually metered apartment units, and individually metered condominiums, and that has a billing date of March 2001 or April 2001, are exempt from sales tax.

*a. Billing date determinative.* The determining factor for exemption for metered gas is the billing date for the metered gas. The exemption applies only to bills for metered gas which are dated in March 2001 or April 2001.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for exemption of metered gas. For example, a utility company issues a billing for metered gas on January 8, 2001, and customer A loses the billing. Customer A calls the utility company in late February and requests that a new billing be issued. The utility company issues a replacement billing to customer A and the replacement bill has a date of March 3, 2001. The date of the original billing issued to customer A is determinative for the purpose of qualifying for the exemption. The fact that a previously taxable billing was reissued during an exemption period does not qualify the reissued billing for the exemption.

*b. Qualifying usage.* All metered gas billed to a residential customer during March 2001 and April 2001, which will be used as energy for a residential dwelling, individually metered apartment unit, or individually metered condominium as defined in this rule, qualifies for exemption. This exemption includes metered gas used to operate heating units, appliances, and hot water heaters.

c. *Qualifying structures.* Structures that include both residential and commercial usage on the same meter are subject to a proration formula to obtain the qualifying portion eligible for exemption. To qualify for proration, the structure must be used for both commercial and residential purposes. The purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas that is eligible for exemption. See 701—subrule 15.3(2). The exemption certificate must be in writing and detail how the percentages of exempt residential usage and taxable nonresidential usage were developed. For example, a gift shop, Miss Barb's Bangles and Baubles, is located on the town square of Indianola, Iowa. Above the gift shop is an apartment. The gas usage of the apartment and the gift shop are monitored by one gas meter. The metered gas usage for the apartment is exempt, but usage for the gift shop is not. As a result, a proration formula must be established to separately reflect the metered gas usage of the apartment and the gift shop. In addition, the occupant of the apartment must provide an exemption certificate to the metered gas utility company to request the exemption. Approved exemption certificates are available upon request from the department.

It is important to note that the exemption for metered gas is limited to metered gas provided to residential customers. Consequently, a building containing apartment units is not considered to be residential. Instead, if it is classified as commercial property for property tax or any other purpose it is not eligible for exemption unless each apartment has a separate meter to monitor usage.

d. *Credit.* A utility company that sells, furnishes or services metered gas to residential customers may bill customers sales tax even if the customer qualifies for the exemption from sales tax under this subrule in March and April 2001 if the utility company cannot adjust its billing process in time to accommodate this exemption. Subsequently, the utility company must provide a credit for tax collected from a qualifying utility customer during the exemption period and the credit is to appear on the first possible billing date after March 31, 2001.

**17.37(3) Fuel exemption.** Effective February 5, 2001, through March 31, 2001, the gross receipts from the sale, furnishing, or service of fuel used to heat a residential dwelling, apartment unit, or condominium is exempt from sales tax.

a. *Qualifying fuel.* Any fuel which is used to provide heat for a residential dwelling, apartment unit, or condominium, as defined for the purposes of this rule, is exempt from tax. The fuel must be used to heat the residential dwelling, apartment unit, or condominium.

b. *Delivery date determinative.* The determining factor for exemption from sales tax is the delivery date of the fuel. Payment date, billing date, or date of execution of the contract for fuel is not a factor. Prices established by contracts executed to establish a fixed price for fuel are not impacted by this exemption. The exemption for fuel applies to the furnishing of the fuel and the delivery service. Only fuel delivered in the time frame beginning February 5, 2001, through March 31, 2001, is exempt.

Consequently, contracts executed to establish a fixed price for fuel, which may also include total or partial prepayment for the fuel under the contract, are exempt only for the amount of fuel delivered beginning February 5, 2001, through March 31, 2001. For example, in September 2000, customer A executed a contract with a propane retailer for fuel which will be delivered in January, February, March and April of 2001. Customer A pays \$1,000 of the contract price to the retailer. Customer A cannot claim exemption for the entire \$1,000 previously paid. Instead, customer A may only receive exemption on the \$525 in gross receipts in fuel delivered under the contract from February 5, 2001, through March 31, 2001.

This rule is intended to implement Iowa Code section 422.45 as amended by 2001 Iowa Acts, House File 1.

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CHAPTER 52  
FILING RETURNS, PAYMENT OF TAX AND  
PENALTY AND INTEREST

[Prior to 12/17/86, Revenue Department[730]]

**701—52.1(422) Who must file.** Every corporation, organized under the laws of Iowa or qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

For tax years beginning on or after January 1, 1989, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real or tangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

For tax years beginning on or after January 1, 1995, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. For tax years beginning on or after January 1, 1999, every corporation doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

Political organizations described in Internal Revenue Code Section 527 which are domiciled in this state and are required to file federal Form 1120POL and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

Homeowners associations described in Internal Revenue Code Section 528 which are domiciled in this state and are required to file federal Form 1120H and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

**52.1(1) Definitions.**

*a. Doing business.* The term “doing business” is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be “doing business.” In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

For the period from July 1, 1986, through December 31, 1988, the term “doing business” does not include placing of liquor in bailment pursuant to 1986 Iowa Acts, chapter 1246, section 603, if this is the corporation’s sole activity within Iowa. Any activities by corporate officers or employees in Iowa in addition to bailment are “doing business” and will subject the corporation to corporation income tax.

*b. Representative.* A person may be considered a representative even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

*c. Tangible property having a situs within this state.* The term “tangible property having a situs within this state” means that tangible property owned or used by a foreign corporation is habitually present in Iowa or it maintains a fixed and regular route through Iowa sufficient so that Iowa could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S. Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller*, 202 U.S. 584, 26 S. Ct. 714, 50 L.Ed. 1155 (1906); *American Refrigerator Transit Company v. State Tax Commission*, 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review*, Woodbury County, 210 N.W.2d 828.

*d. Intangible property located or having a situs within Iowa.* Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.*, 519 So.2d 217 (La. App. 1988). The term “intangible property located or having a situs within Iowa” means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler v. South Carolina Tax Commission*, 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

**52.1(2) Corporate activities not creating taxability.** Public Law 86-272, 15 U.S.C.A., Sections 381-385, in general prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and, if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272. Public Law 86-272 does not extend to those corporations which sell services, real estate, or intangibles in more than one state or to domestic corporations. For example, Public Law 86-272 does not extend to brokers or manufacturers’ representatives or other persons or entities selling products for another person or entity.

*a.* If the only activities in Iowa of a foreign corporation selling tangible personal property are those of the type described in the noninclusive listing below, the corporation is protected from the Iowa corporation income tax law by Public Law 86-272.

(1) The free distribution by salespersons of product samples, brochures, and catalogues which explain the use of or laud the product, or both.

(2) The lease or ownership of motor vehicles for use by salespersons in soliciting orders.

(3) Salespersons’ negotiation of a price for a product, subject to approval or rejection outside the taxing state of such negotiated price and solicited order.

(4) Demonstration by salesperson, prior to the sale, of how the corporation’s product works.

(5) The placement of advertising in newspapers, radio, and television.

(6) Delivery of goods to customers by foreign corporation in its own or leased vehicles from a point outside the taxing state. Delivery does not include nonimmune activities, such as picking up damaged goods.

(7) Collection of state or local-option sales taxes or state use taxes from customers.

(8) Audit of inventory levels by salespersons to determine if corporation’s customer needs more inventory.

(9) Recruitment, training, evaluation, and management of salespersons pertaining to solicitation of orders.

(10) Salespersons’ intervention/mediation in credit disputes between customers and non-Iowa located corporate departments.

“*Business entity*” means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

“*Disability*” means the same as defined in Iowa Code section 225C.46. Therefore, “disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. “Disability” does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

“*Employee*” means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

“*Small business*” means that the business either had gross receipts in the tax year before the current tax year of \$3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

“*Workplace modifications*” means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

**52.17(3) Allocation of credit to owners of a business entity.** If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro-rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of \$2,500 and one shareholder of the S corporation receives 25 percent of the earnings of the corporation, that shareholder would receive an assistive device credit for the tax year of \$625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code section 422.33.

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**107.8(2) Nexus requirements for retailers effective on and after July 1, 1999.** Effective on and after July 1, 1999, to be obligated to collect a local option tax imposed by a jurisdiction, a retailer must have physical presence within that local option jurisdiction and “delivery,” as defined in rule 107.3(422B), must occur within the jurisdiction. A retailer is considered to have physical presence within a local option tax jurisdiction if the retailer has, among other things, an employee or a representative or a site owned, leased or rented within the jurisdiction. For additional information see the definition of “retailer” as provided in Iowa Code sections 422.42(13) and 423.1(8). See rule 701—30.1(423) for a list of other activities which will create nexus for local option tax purposes.

Rules 107.1(422B) to 107.8(422B) are intended to implement Iowa Code section 422.53 and Iowa Code chapter 422B as amended by 1999 Iowa Acts, chapter 156.

**701—107.9(422B) Sales not subject to local option tax, including transactions subject to Iowa use tax.** The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with ten exceptions:

1. The sale of Iowa lottery tickets or shares is not subject to local option sales tax.
2. All gross receipts from the sale of motor fuel and special fuel as defined in Iowa Code chapter 452A.
3. For the period beginning July 1, 1985, and ending June 30, 1987, the sale or rental of farm machinery and equipment and industrial machinery, equipment, and certain computers is not subject to local option sales or service tax.
4. For taxes imposed on and after January 1, 1986, the gross receipts from the rental of rooms, apartments, or other sleeping quarters which are taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax is imposed shall be exempt from local option sales tax.
5. For taxes imposed on or after January 1, 1986, the gross receipts from the sale of natural gas or electricity in a city or county shall be exempt from tax if the gross receipts are subject to a franchise or user fee during the period the franchise or user fee is imposed.
6. On and after February 8, 1996, a local taxing jurisdiction is prohibited from taxing the gross receipts from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government’s Telecommunications Act of 1996 defines a “direct-to-home satellite service” as “only programming transmitted or broadcast by satellite directly to the subscribers’ premises or in the uplink process to the satellite.” A “local taxing jurisdiction” is “any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.”
7. On and after July 1, 1989, the gross receipts from sales of equipment by the Iowa state department of transportation are exempt from local option sales tax.
8. Certain construction-related equipment and other items are exempt.

The general application of this exception is as follows: The gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures are exempt from local option sales tax.

The following definitions apply to this rule:

*“Directly used”* includes equipment used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. To determine if equipment is “directly used,” one must first ensure that the equipment is used during the specified activity and not before that process has begun or after it has ended. If the machinery or equipment is used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, to be “directly used,” it must constitute an integral and essential part of such activity as distinguished from a use in such an activity that is incidental, merely convenient, or is remote. The fact that the machinery or equipment is essential or necessary to new construction, reconstruction, alterations, expansion, or remodeling of real property or structures does not mean that it is also “directly used” in such an activity. Machinery or equipment may be necessary to one of the previously mentioned activities, but so remote from it that it is not directly used in the activity.

In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questionable is to the machinery or equipment whose direct use is not questionable, the more likely it is that the former is directly used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questionable. The closer in time the use, the more likely that the questionable machinery or equipment’s use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in the activities at issue.

*“Equipment”* means tangible personal property (other than a machine) directly and primarily used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. “Equipment” may be characterized as property which performs a specialized function, which, of itself, has no moving parts, or if it does possess moving parts, its source of power is external to it.

*“Primarily used”* includes machinery and equipment utilized in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. Machinery or equipment is “primarily used” in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures if more than 50 percent of the total time the machinery or equipment is used in the activity at issue (new construction, reconstruction, alterations, expansion, or remodeling of real property or structures). If a unit of machinery or equipment is used more than 50 percent of the time for the activity at issue and the balance of time for other business purposes, the exemption applies. If a unit of machinery or equipment is used 50 percent or more of the time for business purposes and not being used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, the exemption does not apply.

*“Real property”* includes the earth, the ground, a building, structure and other tangible personal property incorporated into the ground or a building that becomes a part of the ground, structure or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. *Mid-American Growers, Inc. v. Dept. of Revenue*, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Instead, a building or structure that is affixed to the ground is considered to be real property. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. A test which can be applied to differentiate between equipment and real property is the following: If property is sold to a contractor, and the retailer would be required to consider the property “building material” and charge the contractor sales tax upon the purchase of this building material, then sale of the property is not exempt from local option tax.

*“Replacement parts”* means those parts essential to any repair or reconstruction necessary to self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of such equipment or equipment’s exempt use in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. “Replacement parts” does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, and tools or utility boxes.

*“Self-propelled building equipment”* has the same meaning as that in 701—subrule 17.9(5), paragraph “c,” where the term is defined as an implement which is capable of movement from one place to another under its own power. “Self-propelled building equipment” includes, but is not limited to, skid-loaders, earthmovers and tractors.

Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. However, effective May 1, 1999, if a transaction involves the use of natural gas, natural gas service, electricity, or electric service, then local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. Local excise tax is to be collected and administered in the same manner as local option sales and service tax. Except as otherwise provided in this chapter, all rules governing local option sales and service tax also apply to local excise tax. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, gross receipts from the sale are exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 422.45(46).) Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

Any limitation upon the right of a subdivision of the state to impose a sales or service tax upon a transaction is not applicable to the local option sales and service tax if the statute which contains the limitation has an effective date prior to July 1, 1985. As a nonexclusive example, a county is not prohibited from imposing a local option sales tax upon the gross receipts from sales of cigarettes or tobacco products which are subject to state sales tax.

9. Effective February 5, 2001, the gross receipts from the sale of metered gas to residential customers for energy for a residential dwelling, individually metered apartment unit, or individually metered condominium, with a billing date of March 2001 or April 2001, are exempt from local option taxes. For more detail regarding this exemption see 701—17.37(422,423).

10. Effective February 5, 2001, the gross receipts from the sale of propane, heating fuel and kerosene for the purpose of heating a residential dwelling, apartment unit or condominium, which is delivered to the customer beginning February 5, 2001, through March 31, 2001, are exempt from local option taxes. For more detail regarding this exemption see 701—17.37(422,423).

This rule is intended to implement Iowa Code section 422B.8 and section 422.45 as amended by 2001 Iowa Acts, House File 1.

**701—107.10(422B) Local option sales and service tax payments to local governments.** For periods after July 1, 1997, when a local sales and service tax is imposed, the director of revenue and finance within 15 days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. Effective May 20, 1999, the adjustment for an overpayment which resulted in a previous year will be reflected beginning with the November payment. The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

Each county's account is to be proportionately distributed to participating governments 75 percent on the basis of the most recent certified federal census population, and 25 percent on the basis of the sum of property tax dollars levied by participating boards of supervisors or by cities for the three years from July 1, 1982, through June 30, 1985.

“The most recent certified federal census” is the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the United States Bureau of the Census. If a subsequent certified census occurs which modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

The “sum of property tax dollars levied” by boards of supervisors or city councils for the three years from July 1, 1982, through June 30, 1985, is the amount obtained by using data from county tax rate reports and city tax rate reports compiled by the office of management.

Division of the amount from each county's account to be distributed is done with these steps.

1. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.



2. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.



**107.16(3)** *Allocation of costs to eligible jurisdictions within a county.* The department will apply charges for each eligible jurisdiction within each county against the estimated local option sales and service tax payments due each eligible jurisdiction for the months of October, January, April, and July of each fiscal year. For the purpose of this rule, an eligible jurisdiction is an area entitled to receive local option sales and service taxes. Each city or unincorporated area shall receive the same proportionate shares of the cost as received in revenues for that jurisdiction. Computation for the distribution of costs will be based on the formula used for distribution of revenues for each jurisdiction. For additional information regarding estimated payments see 701—107.10(422B).

This rule is intended to implement 2000 Iowa Acts, House File 2545, section 28.

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◇Two ARCs

\*At its meeting held October 9, 2000, the Administrative Rules Review Committee delayed the effective date of 107.16 until adjournment of the 2001 Session of the General Assembly.



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